

117TH CONGRESS
1ST SESSION

H. R. 4006

To require original equipment manufacturers of digital electronic equipment to make available certain documentation, diagnostic, and repair information to independent repair providers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2021

Mr. MORELLE introduced the following bill; which was referred to the
Committee on Energy and Commerce

A BILL

To require original equipment manufacturers of digital electronic equipment to make available certain documentation, diagnostic, and repair information to independent repair providers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Repair Act”.

1 **SEC. 2. REQUIREMENT TO MAKE DIAGNOSTIC, MAINTENANCE, AND REPAIR EQUIPMENT AVAILABLE**
2 **TO INDEPENDENT REPAIR PROVIDERS.**
3

4 (a) **GENERAL REQUIREMENT.**—For digital electronic
5 equipment sold or used in the United States, an original
6 equipment manufacturer shall make available, for the pur-
7 poses of diagnosis, maintenance, or repair of such equip-
8 ment, to independent repair providers or owners of such
9 digital electronic equipment manufactured by or on behalf
10 of, or sold or otherwise supplied by the original equipment
11 manufacturer, in a timely manner and on fair and reason-
12 able terms, documentation, parts, and tools, inclusive of
13 any updates to information or embedded software.

14 (b) **ADDITIONAL REQUIREMENTS RELATED TO AN EXPRESS WARRANTY.**—When the OEM has made an ex-
15 press warranty with respect to digital electronic equipment
16 and the wholesale price of the equipment is \$100 or more,
17 the manufacturer shall provide such parts, tools, and doc-
18 umentation as to enable the repair of the equipment dur-
19 ing the warranty period, at an equitable price and conven-
20 ience of delivery and of enabling functionality, in light
21 of—
22

23 (1) the actual cost to the OEM to prepare and
24 distribute the part, tool, or documentation, exclusive
25 of any research and development costs incurred;

1 (2) the ability of owners and independent repair
2 providers to afford the part, tool, or documentation;
3 and

4 (3) the means by which the part, tool, or docu-
5 mentation is distributed.

6 **SEC. 3. ENFORCEMENT.**

7 (a) ENFORCEMENT BY THE FEDERAL TRADE COM-
8 MISSION.—

9 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
10 TICES.—A violation of section 2 shall be treated as
11 a violation of a rule defining an unfair or deceptive
12 act or practice prescribed under section 18(a)(1)(B)
13 of the Federal Trade Commission Act (15 U.S.C.
14 57a(a)(1)(B)).

15 (2) POWERS OF THE COMMISSION.—

16 (A) IN GENERAL.—The Commission shall
17 enforce this Act and any regulations promul-
18 gated under this Act in the same manner, by
19 the same means, and with the same jurisdic-
20 tion, powers, and duties as though all applicable
21 terms and provisions of the Federal Trade
22 Commission Act (15 U.S.C. 41 et seq.) were in-
23 corporated into and made a part of this Act,
24 and any person who violates this Act or a regu-
25 lation promulgated under this Act shall be sub-

1 ject to the penalties and entitled to the privi-
2 leges and immunities provided in the Federal
3 Trade Commission Act.

4 (B) REGULATIONS.—The Commission
5 may, under section 553 of title 5, United States
6 Code, prescribe any regulations it determines
7 necessary to carry out this Act.

8 (C) EFFECT ON OTHER LAWS.—Nothing in
9 this Act shall be construed in any way to limit
10 the authority of the Commission under any
11 other provision of law.

12 (b) ENFORCEMENT BY STATE ATTORNEYS GEN-
13 ERAL.—

14 (1) IN GENERAL.—If the chief law enforcement
15 officer of a State, or an official or agency designated
16 by a State, has reason to believe that any person has
17 violated or is violating section 2, the attorney gen-
18 eral, official, or agency of the State, in addition to
19 any authority it may have to bring an action in
20 State court under its consumer protection law, may
21 bring a civil action in any appropriate United States
22 district court or in any other court of competent ju-
23 risdiction, including a State court, to—

24 (A) enjoin further such violation by such
25 person;

1 (B) enforce compliance with such section;

2 (C) obtain civil penalties; and

3 (D) obtain damages, restitution, or other
4 compensation on behalf of residents of the
5 State.

6 (2) NOTICE AND INTERVENTION BY THE
7 FTC.—The attorney general (or other such officer)
8 of a State shall provide prior written notice of any
9 action under paragraph (1) to the Commission and
10 provide the Commission with a copy of the complaint
11 in the action, except in any case in which such prior
12 notice is not feasible, in which case the attorney gen-
13 eral shall serve such notice immediately upon insti-
14 tuting such action. The Commission shall have the
15 right—

16 (A) to intervene in the action;

17 (B) upon so intervening, to be heard on all
18 matters arising therein; and

19 (C) to file petitions for appeal.

20 (3) LIMITATION ON STATE ACTION WHILE FED-
21 ERAL ACTION IS PENDING.—If the Commission has
22 instituted a civil action for violation of this Act, no
23 State attorney general, or official or agency of a
24 State, may bring an action under this paragraph
25 during the pendency of that action against any de-

1 fendant named in the complaint of the Commission
2 for any violation of this Act alleged in the complaint.

3 (4) RELATIONSHIP WITH STATE LAW CLAIMS.—

4 If the attorney general of a State has authority to
5 bring an action under State law directed at acts or
6 practices that also violate this Act, the attorney gen-
7 eral may assert the State law claim and a claim
8 under this Act in the same civil action.

9 **SEC. 4. RULES OF CONSTRUCTION, LIMITATIONS, AND NON-**
10 **APPLICATION.**

11 The following rules of construction, limitations, and
12 non-application provision apply to this Act:

13 (1) SECURITY-RELATED FUNCTIONS NOT EX-
14 CLUDED.—For equipment that contains an elec-
15 tronic security lock or other security-related func-
16 tion, the original equipment manufacturer shall
17 make available to the owner and to independent re-
18 pair providers, on fair and reasonable terms, any
19 special documentation, tools, and parts needed to
20 disable the lock or function, and to reset it when dis-
21 abled in the course of diagnosis, maintenance, or re-
22 pair of the equipment. Such documentation, tools,
23 and parts may be made available to owners and
24 independent repair facilities through appropriate se-
25 cure data release systems.

1 (2) PROTECTION OF TRADE SECRETS.—Nothing
2 in this Act shall be construed to require an original
3 equipment manufacturer to divulge a trade secret, as
4 defined in section 1839 of title 18, United States
5 Code, to an owner or an independent repair provider
6 except as necessary to provide documentation, parts,
7 and tools on fair and reasonable terms.

8 (3) TERMS OF AGREEMENT WITH AUTHORIZED
9 REPAIR PROVIDERS.—Notwithstanding any law, rule
10 or regulation to the contrary, no provision in this
11 Act shall be construed to abrogate, interfere with,
12 contradict or alter the terms of any arrangement de-
13 scribed in section 5(1)(A), including the performance
14 or provision of warranty or recall repair work by an
15 authorized repair provider on behalf of an original
16 equipment manufacturer pursuant to such arrange-
17 ment, except that any provision in such terms that
18 purports to waive, avoid, restrict or limit an OEM's
19 obligations to comply with this Act shall be void and
20 unenforceable.

21 (4) NON-APPLICATION TO MOTOR VEHICLE OR
22 MOTOR VEHICLE EQUIPMENT MANUFACTURERS.—
23 Nothing in this Act shall apply to a motor vehicle
24 manufacturer, a manufacturer of motor vehicle

1 equipment, or a motor vehicle dealer, acting in that
2 capacity.

3 (5) NON-APPLICATION TO MANUFACTURERS OF
4 MEDICAL DEVICES.—Nothing in this Act shall apply
5 to a manufacturer of a medical device, acting in that
6 capacity.

7 **SEC. 5. DEFINITIONS.**

8 In this Act, the following definitions apply:

9 (1) The term “authorized repair provider”
10 means—

11 (A) with respect to an OEM, a person or
12 business that is unaffiliated with the OEM and
13 that has an arrangement with the OEM for a
14 definite or indefinite period in which the OEM
15 grants to a person or business license to use a
16 trade name, service mark or other proprietary
17 identifier for the purposes of offering the serv-
18 ices of diagnosis, maintenance, or repair of dig-
19 ital electronic equipment under the name of the
20 OEM, or other arrangement with the OEM to
21 offer such services on behalf of the OEM; or

22 (B) an OEM that offers the services of di-
23 agnosis, maintenance, or repair of digital elec-
24 tronic equipment manufactured by it or on its
25 behalf, and who does not have an arrangement

1 described in subparagraph (A) with an unaffili-
2 ated individual or business with respect to pro-
3 viding such services, shall be considered an au-
4 thorized repair provider with respect to such
5 equipment.

6 (2) The term “digital electronic equipment”
7 means any product that depends for its functioning,
8 in whole or in part, on digital electronics embedded
9 in or attached to the product.

10 (3) The term “documentation” means any
11 manuals, diagrams, reporting output, service code
12 descriptions, schematic, or other guidance or other
13 information used in effecting the services of diag-
14 nosis, maintenance, or repair of digital electronic
15 equipment.

16 (4) The term “embedded software” means any
17 programmable instructions provided on firmware de-
18 livered with digital electronic equipment, or with a
19 part for such equipment, for the purposes of equip-
20 ment operation, including all relevant patches and
21 fixes made by the manufacturer of such equipment
22 or part for this purpose.

23 (5) The term “fair and reasonable terms”, with
24 respect to a part, tool, or documentation, means at
25 costs and terms that are equivalent to the most fa-

1 vorable costs and terms under which an OEM offers
2 the part, tool, or documentation to an authorized re-
3 pair provider—

4 (A) accounting for any discount, rebate,
5 convenient means of delivery, means of enabling
6 fully restored and updated functionality, rights
7 of use, or other incentive or preference the
8 OEM offers to an authorized repair provider, or
9 any additional cost, burden, or impediment the
10 OEM imposes on an independent repair pro-
11 vider;

12 (B) not conditioned on or imposing a sub-
13 stantial obligation or restriction that is not rea-
14 sonably necessary for enabling the owner or
15 independent repair provider to engage in the di-
16 agnosis, maintenance, or repair of digital elec-
17 tronic equipment made by or on behalf of the
18 OEM; and

19 (C) not conditioned on an arrangement de-
20 scribed in section 5(1)(a).

21 (6) The term “firmware” means a software pro-
22 gram or set of instructions programmed on digital
23 electronic equipment, or on a part for such equip-
24 ment, to allow the equipment or part to commu-
25 nicate within itself or with other computer hardware.

1 (7) The term “independent repair provider”
2 means with respect to an OEM, a person that is not
3 affiliated with the OEM or with an authorized repair
4 provider of the OEM, which is engaged in the diag-
5 nosis, maintenance, or repair of digital electronic
6 equipment, except that an OEM or, with respect to
7 that OEM, a person who has such an arrangement
8 with that OEM, or who is affiliated with a person
9 who has such an arrangement with that OEM, shall
10 be considered an independent repair provider for the
11 purposes of those instances when such OEM or per-
12 son engages in the diagnosis, service, maintenance,
13 or repair of digital equipment that is not manufac-
14 tured by or sold under the name of that OEM.

15 (8) The term “medical device” has the meaning
16 given the term “device” under section 201(h) of the
17 Federal Food, Drug and Cosmetic Act (21 U.S.C.
18 321(h)).

19 (9) The term “original equipment manufac-
20 turer” or “OEM” means any person who, in the or-
21 dinary course of its business, is engaged in the busi-
22 ness of selling, leasing, or otherwise supplying new
23 digital electronic equipment or parts of equipment
24 manufactured by or on behalf of itself, to any indi-
25 vidual or business.

1 (10) The term “owner” means a person who
2 owns or leases a digital electronic equipment.

3 (11) The term “part” means any replacement
4 parts, either new or used, made available by an
5 OEM for purposes of effecting the services of main-
6 tenance or repair of digital electronic equipment
7 manufactured by or on behalf of, sold or otherwise
8 supplied by the OEM.

9 (12) The term “tools” means any software pro-
10 gram, hardware implement, or other apparatus used
11 for diagnosis, maintenance, or repair of digital elec-
12 tronic equipment, including software or other mecha-
13 nisms that provision, program, or pair a new part,
14 calibrate functionality, or perform any other func-
15 tion required to bring the equipment back to fully
16 functional condition.

17 **SEC. 6. EFFECTIVE DATE.**

18 This Act shall take effect 60 days after the date of
19 enactment of this Act and shall apply with respect to
20 equipment sold or in use on or after the effective date of
21 this Act.

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