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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fair Repair Act”.
SEC. 2. REQUIREMENT TO MAKE DIAGNOSTIC, MAINTENANCE, AND REPAIR EQUIPMENT AVAILABLE TO INDEPENDENT REPAIR PROVIDERS.

(a) GENERAL REQUIREMENT.—For digital electronic equipment sold or used in the United States, an original equipment manufacturer shall make available, for the purposes of diagnosis, maintenance, or repair of such equipment, to independent repair providers or owners of such digital electronic equipment manufactured by or on behalf of, or sold or otherwise supplied by the original equipment manufacturer, in a timely manner and on fair and reasonable terms, documentation, parts, and tools, inclusive of any updates to information or embedded software.

(b) ADDITIONAL REQUIREMENTS RELATED TO AN EXPRESS WARRANTY.—When the OEM has made an express warranty with respect to digital electronic equipment and the wholesale price of the equipment is $100 or more, the manufacturer shall provide such parts, tools, and documentation as to enable the repair of the equipment during the warranty period, at an equitable price and convenience of delivery and of enabling functionality, in light of—

(1) the actual cost to the OEM to prepare and distribute the part, tool, or documentation, exclusive of any research and development costs incurred;
(2) the ability of owners and independent repair providers to afford the part, tool, or documentation; and

(3) the means by which the part, tool, or documentation is distributed.

SEC. 3. ENFORCEMENT.

(a) ENFORCEMENT BY THE FEDERAL TRADE COMMISSION.—

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

(2) POWERS OF THE COMMISSION.—

(A) IN GENERAL.—The Commission shall enforce this Act and any regulations promulgated under this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act, and any person who violates this Act or a regulation promulgated under this Act shall be sub-
ject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

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

(C) Effect on Other Laws.—Nothing in this Act shall be construed in any way to limit the authority of the Commission under any other provision of law.

(b) Enforcement by State Attorneys General.—

(1) In General.—If the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating section 2, the attorney general, official, or agency of the State, in addition to any authority it may have to bring an action in State court under its consumer protection law, may bring a civil action in any appropriate United States district court or in any other court of competent jurisdiction, including a State court, to—

(A) enjoin further such violation by such person;
(B) enforce compliance with such section;
(C) obtain civil penalties; and
(D) obtain damages, restitution, or other
compensation on behalf of residents of the
State.

(2) NOTICE AND INTERVENTION BY THE
FTC.—The attorney general (or other such officer)
of a State shall provide prior written notice of any
action under paragraph (1) to the Commission and
provide the Commission with a copy of the complaint
in the action, except in any case in which such prior
notice is not feasible, in which case the attorney gen-
eral shall serve such notice immediately upon insti-
tuting such action. The Commission shall have the
right—
(A) to intervene in the action;
(B) upon so intervening, to be heard on all
matters arising therein; and
(C) to file petitions for appeal.

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

(4) RELATIONSHIP WITH STATE LAW CLAIMS.—
If the attorney general of a State has authority to bring an action under State law directed at acts or practices that also violate this Act, the attorney general may assert the State law claim and a claim under this Act in the same civil action.

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

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

(1) SECURITY-RELATED FUNCTIONS NOT EXCLUDED.—For equipment that contains an electronic security lock or other security-related function, the original equipment manufacturer shall make available to the owner and to independent repair providers, on fair and reasonable terms, any special documentation, tools, and parts needed to disable the lock or function, and to reset it when disabled in the course of diagnosis, maintenance, or repair of the equipment. Such documentation, tools, and parts may be made available to owners and independent repair facilities through appropriate secure data release systems.
(2) Protection of trade secrets.—Nothing in this Act shall be construed to require an original equipment manufacturer to divulge a trade secret, as defined in section 1839 of title 18, United States Code, to an owner or an independent repair provider except as necessary to provide documentation, parts, and tools on fair and reasonable terms.

(3) Terms of agreement with authorized repair providers.—Notwithstanding any law, rule or regulation to the contrary, no provision in this Act shall be construed to abrogate, interfere with, contradict or alter the terms of any arrangement described in section 5(1)(A), including the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to such arrangement, except that any provision in such terms that purports to waive, avoid, restrict or limit an OEM’s obligations to comply with this Act shall be void and unenforceable.

(4) Non-application to motor vehicle or motor vehicle equipment manufacturers.—Nothing in this Act shall apply to a motor vehicle manufacturer, a manufacturer of motor vehicle equipment manufacturers.
equipment, or a motor vehicle dealer, acting in that capacity.

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

**SEC. 5. DEFINITIONS.**

In this Act, the following definitions apply:

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

(A) with respect to an OEM, a person or business that is unaffiliated with the OEM and that has an arrangement with the OEM for a definite or indefinite period in which the OEM grants to a person or business license to use a trade name, service mark or other proprietary identifier for the purposes of offering the services of diagnosis, maintenance, or repair of digital electronic equipment under the name of the OEM, or other arrangement with the OEM to offer such services on behalf of the OEM; or

(B) an OEM that offers the services of diagnosis, maintenance, or repair of digital electronic equipment manufactured by it or on its behalf, and who does not have an arrangement
described in subparagraph (A) with an unaffiliated individual or business with respect to providing such services, shall be considered an authorized repair provider with respect to such equipment.

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

(3) The term “documentation” means any manuals, diagrams, reporting output, service code descriptions, schematic, or other guidance or other information used in effecting the services of diagnosis, maintenance, or repair of digital electronic equipment.

(4) The term “embedded software” means any programmable instructions provided on firmware delivered with digital electronic equipment, or with a part for such equipment, for the purposes of equipment operation, including all relevant patches and fixes made by the manufacturer of such equipment or part for this purpose.

(5) The term “fair and reasonable terms”, with respect to a part, tool, or documentation, means at costs and terms that are equivalent to the most fa-
favorable costs and terms under which an OEM offers
the part, tool, or documentation to an authorized re-
pair provider—

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

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

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

(6) The term “firmware” means a software pro-
gram or set of instructions programmed on digital
electronic equipment, or on a part for such equip-
ment, to allow the equipment or part to commu-
nicate within itself or with other computer hardware.
(7) The term “independent repair provider” means with respect to an OEM, a person that is not affiliated with the OEM or with an authorized repair provider of the OEM, which is engaged in the diagnosis, maintenance, or repair of digital electronic equipment, except that an OEM or, with respect to that OEM, a person who has such an arrangement with that OEM, or who is affiliated with a person who has such an arrangement with that OEM, shall be considered an independent repair provider for the purposes of those instances when such OEM or person engages in the diagnosis, service, maintenance, or repair of digital equipment that is not manufactured by or sold under the name of that OEM.

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

(9) The term “original equipment manufacturer” or “OEM” means any person who, in the ordinary course of its business, is engaged in the business of selling, leasing, or otherwise supplying new digital electronic equipment or parts of equipment manufactured by or on behalf of itself, to any individual or business.
(10) The term “owner” means a person who owns or leases a digital electronic equipment.

(11) The term “part” means any replacement parts, either new or used, made available by an OEM for purposes of effecting the services of maintenance or repair of digital electronic equipment manufactured by or on behalf of, sold or otherwise supplied by the OEM.

(12) The term “tools” means any software program, hardware implement, or other apparatus used for diagnosis, maintenance, or repair of digital electronic equipment, including software or other mechanisms that provision, program, or pair a new part, calibrate functionality, or perform any other function required to bring the equipment back to fully functional condition.

SEC. 6. EFFECTIVE DATE.

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