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 SENATE OF THE UNITED STATES

Mr. Luján (for himself, Ms. Lummis, and Mr. Wyden) introduced the following bill; which was read twice and referred to the Committee on

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”.


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

In the case of digital electronic equipment manufactured by or on behalf of, sold, or otherwise supplied by an original equipment manufacturer, the original equipment manufacturer shall make available, for the purposes of diagnosis, maintenance, or repair of such equipment, to independent repair providers and owners of such equipment on fair and reasonable terms, documentation, parts, and tools, inclusive of any updates.

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 subject 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 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 ju-
risdiction, 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 federal 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 defendant 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 provisions apply to this Act:

(1) Security-related functions not excluded.—For digital electronic 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, mainte-
nance, or repair of the equipment.

(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 perform-
ance 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, 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) **AUTHORIZED REPAIR PROVIDER.**—

(A) **IN GENERAL.**—The term “authorized repair provider” means with respect to an OEM, a person that is unaffiliated with the OEM and that—

(i) has an arrangement with the OEM in which the OEM grants to a person 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

(ii) has an arrangement with the OEM to offer such services on behalf of the OEM.
(B) CLARIFICATION.—An OEM that offers
the services of diagnosis, maintenance, or repair
of digital electronic equipment manufactured by
it or on its behalf, or sold or otherwise supplied
by the OEM, and who does not have an ar-
angement described in subparagraph (A) with
an unaffiliated person with respect to providing
such services for such equipment, shall be con-
sidered an authorized repair provider with re-
spect to such equipment.

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

(3) DOCUMENTATION.—The term “documenta-
tion” means any manuals, diagrams, reporting out-
put, service code descriptions, schematic, security
code or password, or other information used in ef-
fecting the services of diagnosis, maintenance, or re-
pair of digital electronic equipment.

(4) FAIR AND REASONABLE TERMS.—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 favorable costs and
terms under which an OEM offers the part, tool, or
documentation to an authorized repair provider—

(A) accounting for any discount, rebate,
convenient and timely 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 re-
pair provider, or any additional cost, burden, or
impediment the OEM imposes on an owner or
independent repair provider;

(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 paragraph (1)(A).

(5) INDEPENDENT REPAIR PROVIDER.—

(A) IN GENERAL.—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, when such person is engaged in the
diagnosis, maintenance, or repair of digital electronic equipment manufactured by or on behalf of, sold, or otherwise supplied by the OEM.

(B) CLARIFICATION.—An OEM or, with respect to that OEM, a person who has an arrangement described in paragraph (1)(A) 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.

(6) MEDICAL DEVICE.—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)).

(7) MOTOR VEHICLE.—

(A) IN GENERAL.—The term “motor vehicle” means a vehicle that is designed for transporting persons or property on a street or highway and is certified by the manufacturer under all applicable Federal safety and emissions
standards and requirements for distribution and
sale in the United States.

(B) Exclusions.—The term “motor vehicle” does not include—

(i) a motorcycle; or

(ii) a recreational vehicle or an auto
home equipped for habitation.

(8) Motor vehicle dealer.—The term “motor vehicle dealer” means a person who—

(A) is engaged in the business of selling or
leasing new motor vehicles to another person
pursuant to a franchise agreement;

(B) has obtained a license to engage in
such business under the applicable State law;
and

(C) is engaged in the services of diagnosis,
maintenance, or repair of motor vehicles or
motor vehicle engines pursuant to such fran-
chise agreement.

(9) Motor vehicle manufacturer.—The
term “motor vehicle manufacturer” means a person
engaged in the business of manufacturing or assem-
bling new motor vehicles.

(10) Original equipment manufacturer;
oem.—The term “original equipment manufacturer”
or “OEM” means any person who 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 person.

(11) OWNER.—The term “owner” means a person who owns or leases digital electronic equipment.

(12) PART.—The term “part” means any replacement part, either new or used, made available by or to 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.

(13) TOOLS.—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 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.