SENATE, No. 4033



STATE OF NEW JERSEY

219th LEGISLATURE



INTRODUCED NOVEMBER 4, 2021

Sponsored by:

Senator JOSEPH P. CRYAN

District 20 (Union)

SYNOPSIS

Fair Repair Act”; concerns repairs to certain consumer electronics.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning the repair of certain consumer products and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. As used in this act:

“Authorized repair provider” means a person having an arrangement for a definite or indefinite period in which an original equipment manufacturer grants the use of a trade name, service mark, or related characteristic for the purposes of offering repair services under the name of the original equipment manufacturer. An “authorized repair provider” includes an authorized subcontract repair or refurbishment facility having such an agreement.

“Diagnostic, service, or repair documentation” includes schematic diagrams, repair technical updates, and updates and corrections to embedded software.

“Embedded software” means any programmable instructions provided on firmware delivered with the equipment for the purposes of equipment operation, including all relevant patches and fixes made by the original equipment manufacturer for this purpose, including, but not limited to, a basic internal operating system, an internal operating system, a machine code, an assembly code, a root code, and a microcode.

“Equipment” means digital electronic equipment or a part for the equipment originally manufactured for distribution and sale in this State.

“Fair and reasonable terms” means an equitable price in light of relevant factors including, but not limited to: (1) the net cost to the authorized repair provider for similar information obtained from an original equipment manufacturer, less any discounts, rebates, or other incentive programs; (2) the cost to the original equipment manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading, or altering the product, but including amortized capital costs for the preparation and distribution of the information; (3) the price charged by another original equipment manufacturer for similar information; (4) the price charged by an original equipment manufacturer for similar information prior to the launch of an original equipment manufacturer website; (5) the ability of aftermarket technicians or shops to afford the information; (6) the means by which the information is distributed; (7) the extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use; and (8) inflation.

“Firmware” means a software program or set of instructions programmed on a hardware device to allow the device to communicate with other computer hardware.

“Independent repair provider” means a person operating in this State without affiliation to an original equipment manufacturer or an authorized repair provider, which is engaged in the diagnosis, service, maintenance, or repair of equipment, except that an original equipment manufacturer shall be considered an independent repair provider for purposes of those instances when an original equipment manufacturer engages in the diagnosis, service, maintenance, or repair of equipment that is not affiliated with the original equipment manufacturer.

“Motor vehicle” means the same as defined in R.S.39:1-1, except that it excludes a motorcycle and recreation vehicle.

“Motor vehicle dealer” means a “dealer” as defined in R.S.39:1-1.

“Motor vehicle manufacturer” means a “manufacturer” as defined in R.S.39:1-1.

“Original equipment manufacturer” means any person who, in the ordinary course of its business, is engaged in the business of selling or leasing new equipment and is engaged in the diagnosis, service, maintenance, or repair of equipment.

“Owner” means a person who owns or leases equipment purchased or used in this State.

“Part” means any replacement part, either new or used, made available by the original equipment manufacturer to an authorized repair provider for purposes of effecting repair.

“Trade secret” means the same as defined in section 2 of P.L.2011, c.161 (C.56:15-2).

2. a. An original equipment manufacturer of equipment sold, offered for sale, or used in this State shall make available:

(1) to any independent repair provider or owner of equipment manufactured by the original equipment manufacturer, the same diagnostic, service, or repair documentation for no charge or in the same manner and in the same timeframe as the original equipment manufacturer makes diagnostic, service, or repair documentation available to its authorized repair providers; and

(2) for purchase by the owner, an authorized agent, or any independent repair provider, equipment or service parts, inclusive of any updates to the embedded software of the equipment, under fair and reasonable terms.

An original equipment manufacturer shall not be required to sell equipment or service parts if the parts are no longer available to the original equipment manufacturer or an authorized repair provider.

b. An original equipment manufacturer that sells diagnostic, service, or repair documentation to an independent repair provider or an owner in a format that is standardized with other original equipment manufacturers, and on terms and conditions more favorable than those in which the authorized repair provider obtains the same documentation, shall be prohibited from requiring an authorized repair provider to continue purchasing the documentation in a proprietary format unless the proprietary format includes diagnostic, service, or repair documentation or functionality that is not available in a standardized format.

c. An original equipment manufacturer of equipment sold, offered for sale, or used in this State shall make available for purchase by independent repair providers and owners all diagnostic repair tools incorporating the same diagnostic, repair, and remote communications capabilities that the original equipment manufacturer makes available to its own repair or engineering staff or any authorized repair provider. Each original equipment manufacturer shall offer tools for sale to an independent repair provider or owner under fair and reasonable terms.

An original equipment manufacturer that provides diagnostic, service, or repair documentation to aftermarket diagnostic tool manufacturers, diagnostics providers, or service information publications and systems shall have fully satisfied its obligations under this subsection and shall not be responsible for the content and functionality of aftermarket diagnostic tools, diagnostics, or service information systems.

d. Original equipment manufacturer equipment sold, offered for sale or used in this State for the purpose of providing security-related functions shall not exclude diagnostic, service, and repair documentation necessary to reset a security-related electronic function from information provided to an independent repair provider or owner.

3. A violation of section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill) is an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.).

4. Nothing in P.L. , c. (C. ) (pending before the Legislature as this bill) shall be:

a. construed to require an original equipment manufacturer to divulge a trade secret;

b. construed to require original equipment manufacturers or authorized repair providers to provide an owner or independent repair provider access to non-diagnostic documentation provided by an original equipment manufacturer to an authorized repair provider pursuant to the terms of an authorizing agreement; or

c. read, interpreted, or construed to abrogate, interfere with, contradict, or alter the terms of any agreement executed and in force between an authorized repair provider and an original equipment manufacturer including, but not limited to, the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to an authorized repair agreement, except that any provision in an authorized repair agreement that purports to waive, avoid, restrict, or limit an original equipment manufacturer's compliance with this section shall be void and unenforceable.

5. Nothing in P.L. , c. (C. ) (pending before the Legislature as this bill) shall apply to motor vehicle manufacturers, any product or service of a motor vehicle manufacturer, or motor vehicle dealers.

6. This act shall take effect immediately and shall be retroactive to equipment sold or offered for sale on or after July 1, 2012.

STATEMENT

This bill, to be known and cited as the “Fair Repair Act,” establishes fair repair practices for digital electronic equipment, such as mobile phones, tablets, and other common consumer electronic devices.

Under the bill, an original equipment manufacturer of equipment sold, offered for sale, or used in this State is required to make available to independent repair providers or equipment owners:

(1) the same diagnostic, service, or repair documentation for no charge or in the same manner and in the same timeframe as the original equipment manufacturer makes it available to authorized repair providers; and

(2) equipment or service parts, inclusive of any updates to the embedded software of the equipment, for purchase under fair and reasonable terms.

The bill prohibits an original equipment manufacturer that sells diagnostic, service, or repair documentation to an independent repair provider or an owner in a format that is standardized with other original equipment manufacturers and on terms and conditions more favorable than those in which an authorized repair provider obtains the same documentation, from requiring an authorized repair provider to continue purchasing the documentation in a proprietary format unless the proprietary format includes diagnostic, service, or repair documentation or functionality that is not available in a standardized format.

The bill also requires each original equipment manufacturer of equipment sold, offered for sale, or used in this State to make available for purchase by independent repair providers and owners all diagnostic repair tools incorporating the same diagnostic, repair, and remote communications capabilities that the original equipment manufacturer makes available to its own repair or engineering staff or any authorized repair provider. An original equipment manufacturer is required to offer tools for sale to an independent repair provider or owner under fair and reasonable terms.

Under the bill, an original equipment manufacturer providing diagnostic, service, or repair documentation to aftermarket diagnostic tool manufacturers, diagnostics providers, or service information publications and systems is not responsible for the content and functionality of aftermarket diagnostic tools, diagnostics, or service information systems.

In addition, original equipment manufacturers are not to exclude diagnostic, service, and repair documentation necessary to reset a security-related electronic function from information provided to an owner or independent repair provider.

The bill makes violations of these provisions unlawful practices under the consumer fraud act. An unlawful practice under the consumer fraud act is punishable by a monetary penalty of not more than $10,000 for a first offense and not more than $20,000 for any subsequent offense. In addition, violations may result in cease and desist orders issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to the injured party.

The bill does not apply to motor vehicles, vehicle manufacturers, or vehicle dealers. The bill’s provisions are retroactive to equipment sold or offered for sale on or after July 1, 2012.