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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

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

Mr. MORELLE introduced the following bill; which was 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 Representatives 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. REQUIREMENTS FOR ORIGINAL EQUIPMENT MANU-**2 **FACTURERS.**

3 (a) IN GENERAL.—In the case of digital electronic
4 equipment manufactured by or on behalf of, sold, or other-
5 wise supplied by an original equipment manufacturer, the
6 original equipment manufacturer shall make available, for
7 the purposes of diagnosis, maintenance, or repair of such
8 equipment, to independent repair providers and owners of
9 such equipment on fair and reasonable terms, documenta-
10 tion, parts, and tools, inclusive of any updates.

11 (b) PROHIBITION ON THE USE OF CERTAIN
12 PARTS.—An original equipment manufacturer shall not
13 use parts pairing or any other mechanism to—

14 (1) prevent the installation or functioning of
15 any otherwise-functional part, including a non-man-
16 ufacturer approved replacement part or component;
17 (2) inhibit or reduce the functioning of any
18 part, such that replacement by an independent re-
19 pair provider or the device owner would cause the
20 device to operate with reduced functionality or per-
21 formance;

22 (3) create false, misleading, deceptive, or non-
23 dismissible alerts or warnings about parts;

24 (4) charge additional fees or increased prices
25 for future repairs; or

1 (5) limit who can purchase parts or perform re-
2 pair services.

3 SEC. 3. ENFORCEMENT.

4 (a) ENFORCEMENT BY THE FEDERAL TRADE COM-
5 MISSION.—

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

12 (2) POWERS OF THE COMMISSION.—

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

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

5 (C) EFFECT ON OTHER LAWS.—Nothing in
6 this Act shall be construed to limit the author-
7 ity of the Commission under any other provi-
8 sion of law.

9 (b) ENFORCEMENT BY STATE ATTORNEYS GEN-
10 ERAI.—

21 (A) enjoin further such violation by such
22 person;

23 (B) enforce compliance with such section;

24 (C) obtain civil penalties; and

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

14 (A) to intervene in the action;
15 (B) upon so intervening, to be heard on all
16 matters arising therein; and
17 (C) to file petitions for appeal.

1 (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.

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

8 APPLICATION.

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

22 (2) PROTECTION OF TRADE SECRETS.—Nothing
23 in this Act shall be construed to require an original
24 equipment manufacturer to divulge a trade secret, as
25 defined in section 1839 of title 18, United States

1 Code, to an owner or an independent repair provider
2 except as necessary to provide documentation, parts,
3 and tools on fair and reasonable terms.

4 (3) TERMS OF AGREEMENT WITH AUTHORIZED
5 REPAIR PROVIDERS.—No provision in this Act shall
6 be construed to abrogate, interfere with, contradict,
7 or alter the terms of any arrangement described in
8 section 6(1)(A), including the performance or provi-
9 sion of warranty or recall repair work by an auth-
10 orized repair provider on behalf of an original equip-
11 ment manufacturer pursuant to such arrangement,
12 except that any provision in such terms that pur-
13 ports to waive, avoid, restrict, or limit an OEM's ob-
14 ligations to comply with this Act shall be void and
15 unenforceable.

16 (4) NON-APPLICATION TO MOTOR VEHICLE OR
17 MOTOR VEHICLE EQUIPMENT MANUFACTURERS.—
18 Nothing in this Act shall apply to a motor vehicle
19 manufacturer, a manufacturer of motor vehicle
20 equipment, or a motor vehicle dealer, acting in that
21 capacity.

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

(6) NON-APPLICATION TO MANUFACTURERS OF
OFF-ROAD OR NON-ROAD VEHICLES.—Nothing in
this Act shall apply to any manufacturer, dis-
tributor, importer, or dealer of an off-road or non-
road vehicle, acting in that capacity, including with-
out limitation, aircraft, motorcycles, marine vessels,
all terrain sports vehicles, utility terrain vehicles,
recreational vehicles, and racing vehicles.

17 SEC. 5. LIMITATION OF LIABILITY.

18 (a) DAMAGE RESULTING FROM REPAIR.—No origi-
19 nal equipment manufacturer or authorized repair provider
20 shall be liable for any damage or injury to any digital elec-
21 tronic equipment, person, or property that occurs as a re-
22 sult of repair, diagnosis, maintenance, or modification per-
23 formed by an independent repair provider or owner, or any
24 other use by an independent repair provider or owner of

1 parts, tools, or documentation provided by an original
2 equipment manufacturer, including with respect to any—

3 (1) indirect, incidental, special, or consequential

4 damages;

5 (2) loss of data, privacy, or profits; or

6 (3) inability to use, or reduced functionality of,

7 the digital electronic equipment.

8 (b) NO WARRANTY FOR INDEPENDENT REPAIR PRO-

9 VIDERS OR OWNERS.—An original equipment manufac-

10 turer shall not be required to warrant any repairs provided

11 by independent repair providers or owners.

12 (c) IMPROPER USE OF PERSONAL DATA.—No origi-

13 national equipment manufacturer shall be liable for improper

14 use of personal data or any data privacy or security breach

15 in connection with repair, diagnosis, maintenance, or

16 modification performed by an independent repair provider

17 or owner.

18 SEC. 6. DE

19 In this Act, the following definitions apply:

20 (1) AUTHORIZED REPAIR PROVIDER.—

21 (A) IN GENERAL.—The term “authorized

22 repair provider" means with respect to an

23 OEM, a person that—

24 (i) has an arrangement with the OEM

25 in which the OEM grants to the person li-

9 (B) CLARIFICATION.—An OEM that offers
10 the services of diagnosis, maintenance, or repair
11 of digital electronic equipment manufactured by
12 it or on its behalf, or sold or otherwise supplied
13 by the OEM, shall be considered an authorized
14 repair provider with respect to such equipment.

7 (A) accounting for any discount, rebate,
8 convenient and timely means of delivery, means
9 of enabling fully restored and updated
10 functionality, rights of use, or other incentive or
11 preference the OEM offers to an authorized re-
12 pair provider, and for any additional cost, bur-
13 den, or impediment the OEM imposes on an
14 owner or independent repair provider;

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

(C) not conditioned on an arrangement described in paragraph (1)(A).

24 (5) INDEPENDENT REPAIR PROVIDER.—

9 (B) CLARIFICATION.—An OEM or, with
10 respect to that OEM, a person who has an ar-
11 rangement described in paragraph (1)(A) with
12 that OEM, or who is affiliated with a person
13 who has such an arrangement with that OEM,
14 shall be considered an independent repair pro-
15 vider for the purposes of those instances when
16 such OEM or person engages in the diagnosis,
17 service, maintenance, or repair of digital equip-
18 ment that is not manufactured by or on behalf
19 of, sold, or otherwise supplied by that OEM.

20 (6) MEDICAL DEVICE.—The term “medical de-
21 vice” has the meaning given the term “device”
22 under section 201(h) of the Federal Food, Drug and
23 Cosmetic Act (21 U.S.C. 321(h)).

1 porting persons or property on a street or highway
2 and is certified by the manufacturer under all appli-
3 cable Federal safety and emissions standards and re-
4 quirements for distribution and sale in the United
5 States.

6 (8) MOTOR VEHICLE DEALER.—The term
7 “motor vehicle dealer” means a person who—

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

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

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

18 (9) MOTOR VEHICLE MANUFACTURER.—The
19 term “motor vehicle manufacturer” means a person
20 engaged in the business of manufacturing or assem-
21 bling new motor vehicles.

22 (10) ORIGINAL EQUIPMENT MANUFACTURER;
23 OEM.—The term “original equipment manufacturer”
24 or “OEM” means a person who is engaged in the
25 business of selling, leasing, or otherwise supplying

1 new digital electronic equipment or parts of equipment
2 manufactured by or on behalf of itself, to any
3 person.

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

6 (12) PART.—The term “part” means any replacement part, either new or used, made available
7 by or to an OEM for purposes of effecting the services of maintenance or repair of digital electronic
8 equipment manufactured by or on behalf of, sold, or
9 otherwise supplied by the OEM.

10 (13) PARTS PAIRING.—The term “parts pairing” means, with respect to a part, the practice of
11 employing software to identify component parts
12 through the use of a unique identifier.

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

1 **SEC. 7. EFFECTIVE DATE.**

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