

117TH CONGRESS
2D SESSION

S. _____

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”.

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

4 In the case of digital electronic equipment manufactured by or on behalf of, sold, or otherwise supplied by
5 an original equipment manufacturer, the original equipment manufacturer shall make available, for the purposes
6 of diagnosis, maintenance, or repair of such equipment,
7 to independent repair providers and owners of such equipment on fair and reasonable terms, documentation, parts,
8 and tools, inclusive of any updates.
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10 **SEC. 3. ENFORCEMENT.**

11 (a) **ENFORCEMENT BY THE FEDERAL TRADE COMMISSION.—**

12 (1) **UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—**A violation of section 2 shall be treated as
13 a violation of a rule defining an unfair or deceptive
14 act or practice prescribed under section 18(a)(1)(B)
15 of the Federal Trade Commission Act (15 U.S.C.
16 57a(a)(1)(B)).
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18 (2) **POWERS OF THE COMMISSION.—**

19 (A) **IN GENERAL.—**The Commission shall
20 enforce this Act and any regulations promulgated under this Act in the same manner, by
21 the same means, and with the same jurisdiction, powers, and duties as though all applicable
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1 terms and provisions of the Federal Trade
2 Commission Act (15 U.S.C. 41 et seq.) were in-
3 corporated into and made a part of this Act,
4 and any person who violates this Act or a regu-
5 lation promulgated under this Act shall be sub-
6 ject to the penalties and entitled to the privi-
7 leges and immunities provided in the Federal
8 Trade Commission Act.

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

13 (C) EFFECT ON OTHER LAWS.—Nothing in
14 this Act shall be construed to limit the author-
15 ity of the Commission under any other provi-
16 sion of law.

17 (b) ENFORCEMENT BY STATE ATTORNEYS GEN-
18 ERAL.—

19 (1) IN GENERAL.—If the chief law enforcement
20 officer of a State, or an official or agency designated
21 by a State, has reason to believe that any person has
22 violated or is violating section 2, the attorney gen-
23 eral, official, or agency of the State, in addition to
24 any authority it may have to bring an action in
25 State court under its consumer protection law, may

1 bring a civil action in any appropriate United States
2 district court or in any other court of competent ju-
3 risdiction, including a State court, to—

4 (A) enjoin further such violation by such
5 person;

6 (B) enforce compliance with such section;

7 (C) obtain civil penalties; and

8 (D) obtain damages, restitution, or other
9 compensation on behalf of residents of the
10 State.

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

21 (A) to intervene in the action;

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

24 (C) to file petitions for appeal.

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

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

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

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

19 (1) SECURITY-RELATED FUNCTIONS NOT EX-
20 CLUDED.—For digital electronic equipment that con-
21 tains an electronic security lock or other security-re-
22 lated function, the original equipment manufacturer
23 shall make available to the owner and to inde-
24 pendent repair providers, on fair and reasonable
25 terms, any special documentation, tools, and parts

1 needed to disable the lock or function, and to reset
2 it when disabled in the course of diagnosis, mainte-
3 nance, or repair of the equipment.

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

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

24 (4) NON-APPLICATION TO MOTOR VEHICLE OR
25 MOTOR VEHICLE EQUIPMENT MANUFACTURERS.—

1 Nothing in this Act shall apply to a motor vehicle
2 manufacturer, a manufacturer of motor vehicle
3 equipment, or a motor vehicle dealer, acting in that
4 capacity.

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

9 **SEC. 5. DEFINITIONS.**

10 In this Act, the following definitions apply:

11 (1) AUTHORIZED REPAIR PROVIDER.—

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

16 (i) has an arrangement with the OEM
17 in which the OEM grants to a person li-
18 cense to use a trade name, service mark,
19 or other proprietary identifier for the pur-
20 poses of offering the services of diagnosis,
21 maintenance, or repair of digital electronic
22 equipment under the name of the OEM; or

23 (ii) has an arrangement with the
24 OEM to offer such services on behalf of
25 the OEM.

1 (B) CLARIFICATION.—An OEM that offers
2 the services of diagnosis, maintenance, or repair
3 of digital electronic equipment manufactured by
4 it or on its behalf, or sold or otherwise supplied
5 by the OEM, and who does not have an ar-
6 rangement described in subparagraph (A) with
7 an unaffiliated person with respect to providing
8 such services for such equipment, shall be con-
9 sidered an authorized repair provider with re-
10 spect to such equipment.

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

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

22 (4) FAIR AND REASONABLE TERMS.—The term
23 “fair and reasonable terms”, with respect to a part,
24 tool, or documentation, means at costs and terms
25 that are equivalent to the most favorable costs and

1 terms under which an OEM offers the part, tool, or
2 documentation to an authorized repair provider—

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

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

18 (C) not conditioned on an arrangement de-
19 scribed in paragraph (1)(A).

20 (5) INDEPENDENT REPAIR PROVIDER.—

21 (A) IN GENERAL.—The term “independent
22 repair provider” means with respect to an
23 OEM, a person that is not affiliated with the
24 OEM or with an authorized repair provider of
25 the OEM, when such person is engaged in the

1 diagnosis, maintenance, or repair of digital elec-
2 tronic equipment manufactured by or on behalf
3 of, sold, or otherwise supplied by the OEM.

4 (B) CLARIFICATION.—An OEM or, with
5 respect to that OEM, a person who has an ar-
6 rangement described in paragraph (1)(A) with
7 that OEM, or who is affiliated with a person
8 who has such an arrangement with that OEM,
9 shall be considered an independent repair pro-
10 vider for the purposes of those instances when
11 such OEM or person engages in the diagnosis,
12 service, maintenance, or repair of digital equip-
13 ment that is not manufactured by or sold under
14 the name of that OEM.

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

19 (7) MOTOR VEHICLE.—

20 (A) IN GENERAL.—The term “motor vehi-
21 cle” means a vehicle that is designed for trans-
22 porting persons or property on a street or high-
23 way and is certified by the manufacturer under
24 all applicable Federal safety and emissions

1 standards and requirements for distribution and
2 sale in the United States.

3 (B) EXCLUSIONS.—The term “motor vehi-
4 cle” does not include—

5 (i) a motorcycle; or

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

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

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

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

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

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

24 (10) ORIGINAL EQUIPMENT MANUFACTURER;
25 OEM.—The term “original equipment manufacturer”

1 or “OEM” means any person who is engaged in the
2 business of selling, leasing, or otherwise supplying
3 new digital electronic equipment or parts of equip-
4 ment manufactured by or on behalf of itself, to any
5 person.

6 (11) OWNER.—The term “owner” means a per-
7 son who owns or leases digital electronic equipment.

8 (12) PART.—The term “part” means any re-
9 placement part, either new or used, made available
10 by or to an OEM for purposes of effecting the serv-
11 ices of maintenance or repair of digital electronic
12 equipment manufactured by or on behalf of, sold, or
13 otherwise supplied by the OEM.

14 (13) TOOLS.—The term “tools” means any
15 software program, hardware implement, or other ap-
16 paratus used for diagnosis, maintenance, or repair of
17 digital electronic equipment, including software or
18 other mechanisms that provision, program, or pair a
19 part, calibrate functionality, or perform any other
20 function required to bring the equipment back to
21 fully functional condition.

22 **SEC. 6. EFFECTIVE DATE.**

23 This Act shall take effect 60 days after the date of
24 enactment of this Act and shall apply with respect to

1 equipment sold or in use on or after the effective date of
2 this Act.