AN ACT

Providing for duties of original equipment manufacturers relating to diagnosis, maintenance and repair of digital electronic equipment and for enforcement by Attorney General.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Digital Fair Repair Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Authorized repair provider." The term includes:

(1) An individual or business that is unaffiliated with an original equipment manufacturer and has:

   (i) an arrangement with the original equipment manufacturer, for a definite or indefinite period, under which the original equipment manufacturer grants to the
individual or business a 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 original equipment manufacturer; or
(ii) some other arrangement with the original
equipment manufacturer to offer the services under
subparagraph (i) on behalf of the original equipment
manufacturer.

(2) An original equipment manufacturer that offers the
services of diagnosis, maintenance or repair of its own
digital electronic equipment and does not have an arrangement
described under paragraph (1) with an unaffiliated individual
or business, with respect to the equipment.

"Digital electronic equipment." A product that depends for
its functioning, in whole or in part, on digital electronics
embedded in or attached to the product.

"Documentation." A manual, diagram, reporting output,
service code description, schematic diagram or similar kind of
information provided to an authorized repair provider for
purposes of effecting the services of diagnosis, maintenance or
repair of digital electronic equipment by the authorized repair
provider.

"Embedded software." Programmable instructions provided on
firmware delivered with digital electronic equipment or with a
part for such equipment for purposes of equipment operation,
including all relevant patches and fixes made by the
manufacturer of the equipment or part for such purposes.

"Fair and reasonable terms." The term includes:
(1) For obtaining a part or tool or documentation, at
costs and terms, including convenience of delivery, and including rights of use, equivalent to the most favorable costs and terms offered by the original equipment manufacturer to an authorized repair provider, using the net costs that would be incurred by the authorized repair provider in obtaining an equivalent part or tool or documentation from the original equipment manufacturer, accounting for any discounts, rebates or other incentive programs in arriving at the actual net costs.

(2) In addition to the requirements under paragraph (1), for documentation, including any relevant updates, at no charge, except that, when the documentation is requested in physical printed form, a charge may be included for the reasonable actual costs of preparing and sending the copy.

"Firmware." A software program or set of instructions programmed on digital electronic equipment or on a part for such equipment to allow the equipment or part to communicate with other computer hardware.

"Independent repair provider." As follows:

(1) The term includes an individual or business that:
   (i) operates in this Commonwealth;
   (ii) does not have an arrangement described in the definition of "authorized repair provider" with an original equipment manufacturer;
   (iii) is not affiliated with any individual or business that has such an arrangement; and
   (iv) is engaged in the services of diagnosis, maintenance or repair of digital electronic equipment.

(2) An original equipment manufacturer or, with respect to that original equipment manufacturer, an individual or
business that has an arrangement as described in the
definition of "authorized repair provider" with the original
equipment manufacturer, or is affiliated with an individual
or business that has such an arrangement as described in the
definition of "authorized repair provider" with that original
equipment manufacturer, shall be considered an independent
repair provider for purposes of those instances in which it
engages in the services of diagnosis, maintenance or repair
of digital electronic equipment not manufactured by or sold
under the name of that original equipment manufacturer.

"Manufacturer of motor vehicle equipment." A business
engaged in the business of manufacturing or supplying components
used in the manufacture, maintenance or repair of a motor
vehicle.

"Motor vehicle." A vehicle designed for transporting persons
or property on a street or highway and certified by the
manufacturer under all applicable Federal safety and emissions
standards and requirements for distribution and sale in the
United States. The term does not include:

   (1) a motorcycle; or

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

"Motor vehicle dealer." An individual or business that in
the ordinary course of business is engaged in the business of
selling or leasing new motor vehicles to an individual or
business under a franchise agreement, has obtained a license
from the Commonwealth and is engaged in the services of
diagnosis, maintenance or repair of motor vehicles or motor
vehicle engines under the franchise agreement.

"Motor vehicle manufacturer." A business engaged in the
business of manufacturing or assembling new motor vehicles.

"Original equipment manufacturer." A business engaged in the
business of selling or leasing new digital electronic equipment
manufactured by or on behalf of itself to an individual or
business.

"Owner." An individual or business that owns or leases
digital electronic equipment purchased or used in this
Commonwealth.

"Part." A replacement part, either new or used, made
available by an original equipment manufacturer for purposes of
effecting the services of maintenance or repair of digital
equipment manufactured or sold by the original
equipment manufacturer.

"Trade secret." The term has the meaning given in section
102 of the act of February 14, 2008 (P.L.6, No.3), known as the
Right-to-Know Law.

Section 3. Duties of original equipment manufacturers.

(a) Digital electronic equipment being diagnosed, maintained
or repaired.--

(1) For digital electronic equipment, and parts for
digital electronic equipment, sold or used in this
Commonwealth, an original equipment manufacturer shall make
available, for the purposes of diagnosis, maintenance or
repair to an independent repair provider or to the owner of
digital electronic equipment manufactured by or on behalf of
or sold by the original equipment manufacturer on fair and
reasonable terms, any documentation, part or tool, including
any update to information or embedded software.

(2) Nothing in this section may be construed to require
an original equipment manufacturer to make available a part
if the part is no longer available to the original equipment manufacturer.

(b) Digital electronic equipment with electronic security locks.--

(1) 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 an independent repair provider, on fair and reasonable terms, any special documentation, tool or part needed to reset the lock or function when disabled in the course of diagnosis, maintenance or repair of the digital electronic equipment.

(2) The documentation, tool or part may be made available through an appropriate secure release system.

Section 4. Enforcement by Attorney General.

A violation of a provision of this act is an unlawful practice under the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law. All remedies, penalties and authority granted to the Attorney General by that act shall be available to the Attorney General for the enforcement of this act.

Section 5. Construction.

Nothing in this act may be construed to:

(1) Require an original equipment manufacturer to divulge a trade secret to an owner or an independent repair provider, except as necessary to provide any documentation, part or tool on fair and reasonable terms.

(2) Alter the terms of an arrangement described in the definition of "authorized repair provider" in section 2 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 under such arrangement, except that a provision in the arrangement that purports to waive, avoid, restrict or limit the original equipment manufacturer's obligations to comply with this act shall be void and unenforceable.

(3) Require an original equipment manufacturer or an authorized repair provider to provide to an owner or independent repair provider access to information, other than documentation, that is provided by the original equipment manufacturer to an authorized repair provider under the terms of an arrangement described in the definition of "authorized repair provider" except as necessary to comply with section 3.

Section 6. Exclusions.

Nothing in this act applies to a motor vehicle manufacturer, manufacturer of motor vehicle equipment or motor vehicle dealer, acting in that capacity, or to a product or service of a motor vehicle manufacturer, manufacturer of motor vehicle equipment or motor vehicle dealer, acting in that capacity.

Section 7. Applicability.

This act applies with respect to equipment sold or in use on or after the effective date of this act.

Section 8. Effective date.

This act shall take effect in 60 days.