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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1152 Session of  
2021

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INTRODUCED BY DIAMOND, COOK, A. DAVIS, DRISCOLL, GREGORY,  
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MENTZER, MILLARD, MOUL, SAYLOR, SCHMITT, STRUZZI, WHEELAND  
AND ZIMMERMAN, APRIL 12, 2021

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REFERRED TO COMMITTEE ON COMMERCE, APRIL 12, 2021

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AN ACT

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

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

6 Section 1. Short title.

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

9 Section 2. Definitions.

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

13 "Authorized repair provider." The term includes:

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

16 (i) an arrangement with the original equipment  
17 manufacturer, for a definite or indefinite period, under

1           which the original equipment manufacturer grants to the  
2           individual or business a license to use a trade name,  
3           service mark or other proprietary identifier for the  
4           purposes of offering the services of diagnosis,  
5           maintenance or repair of digital electronic equipment  
6           under the name of the original equipment manufacturer; or

7           (ii) some other arrangement with the original  
8           equipment manufacturer to offer the services under  
9           subparagraph (i) on behalf of the original equipment  
10          manufacturer.

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

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

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

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

30          "Fair and reasonable terms." The term includes:

1           (1) For obtaining a part or tool or documentation, at  
2 costs and terms, including convenience of delivery, and  
3 including rights of use, equivalent to the most favorable  
4 costs and terms offered by the original equipment  
5 manufacturer to an authorized repair provider, using the net  
6 costs that would be incurred by the authorized repair  
7 provider in obtaining an equivalent part or tool or  
8 documentation from the original equipment manufacturer,  
9 accounting for any discounts, rebates or other incentive  
10 programs in arriving at the actual net costs.

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

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

20       "Independent repair provider." As follows:

21           (1) The term includes an individual or business that:

22               (i) operates in this Commonwealth;

23               (ii) does not have an arrangement described in the  
24 definition of "authorized repair provider" with an  
25 original equipment manufacturer;

26               (iii) is not affiliated with any individual or  
27 business that has such an arrangement; and

28               (iv) is engaged in the services of diagnosis,  
29 maintenance or repair of digital electronic equipment.

30           (2) An original equipment manufacturer or, with respect

1 to that original equipment manufacturer, an individual or  
2 business that has an arrangement as described in the  
3 definition of "authorized repair provider" with the original  
4 equipment manufacturer, or is affiliated with an individual  
5 or business that has such an arrangement as described in the  
6 definition of "authorized repair provider" with that original  
7 equipment manufacturer, shall be considered an independent  
8 repair provider for purposes of those instances in which it  
9 engages in the services of diagnosis, maintenance or repair  
10 of digital electronic equipment not manufactured by or sold  
11 under the name of that original equipment manufacturer.

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

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

- 21 (1) a motorcycle; or  
22 (2) a recreational vehicle or an auto home equipped for  
23 habitation.

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

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

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

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

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

15 "Trade secret." The term has the meaning given in section  
16 102 of the act of February 14, 2008 (P.L.6, No.3), known as the  
17 Right-to-Know Law.  
18 Section 3. Duties of original equipment manufacturers.

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

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

30 (2) Nothing in this section may be construed to require

1 an original equipment manufacturer to make available a part  
2 if the part is no longer available to the original equipment  
3 manufacturer.

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

6 (1) For equipment that contains an electronic security  
7 lock or other security-related function, the original  
8 equipment manufacturer shall make available to the owner and  
9 to an independent repair provider, on fair and reasonable  
10 terms, any special documentation, tool or part needed to  
11 reset the lock or function when disabled in the course of  
12 diagnosis, maintenance or repair of the digital electronic  
13 equipment.

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

16 Section 4. Enforcement by Attorney General.

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

23 Section 5. Construction.

24 Nothing in this act may be construed to:

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

29 (2) Alter the terms of an arrangement described in the  
30 definition of "authorized repair provider" in section 2 in

1 force between an authorized repair provider and an original  
2 equipment manufacturer, including, but not limited to, the  
3 performance or provision of warranty or recall repair work by  
4 an authorized repair provider on behalf of an original  
5 equipment manufacturer under such arrangement, except that a  
6 provision in the arrangement that purports to waive, avoid,  
7 restrict or limit the original equipment manufacturer's  
8 obligations to comply with this act shall be void and  
9 unenforceable.

10 (3) Require an original equipment manufacturer or an  
11 authorized repair provider to provide to an owner or  
12 independent repair provider access to information, other than  
13 documentation, that is provided by the original equipment  
14 manufacturer to an authorized repair provider under the terms  
15 of an arrangement described in the definition of "authorized  
16 repair provider" except as necessary to comply with section  
17 3.

18 Section 6. Exclusions.

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

24 Section 7. Applicability.

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

27 Section 8. Effective date.

28 This act shall take effect in 60 days.