



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2026

by Rep. Michelle Mussman

SYNOPSIS AS INTRODUCED:

New Act

Creates the Digital Fair Repair Act. Provides that original equipment manufacturers shall: (i) make available to any independent repair provider or owner of equipment manufactured by the original equipment manufacturer the same diagnostic and repair documentation in the same manner as that information is made available to the manufacturer's authorized repair providers; and (ii) make available for purchase by the owner, his or her authorized agent, or any independent repair provider parts, inclusive of any updates to the embedded software of the parts, upon fair and reasonable terms. Requires original equipment manufacturers to make available for purchase by owners and independent repair providers 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 an authorized repair provider. Requires an independent repair provider that purchases or acquires embedded software or service parts to notify the owner of the equipment in writing of certain warranties prior to performing any services on digital electronic equipment. Provides that, with one exception, an authorized provider shall have all the rights and remedies provided under the Act. Authorizes the Attorney General to seek to enjoin violations and to recover civil penalties. Requires the Attorney General to establish an outreach program to inform the public of rights under the Act. Defines terms. Excludes motor vehicle manufacturers. Provides for recovery of damages and attorney's fees. Provides for the protection of trade secrets. Effective January 1, 2020.

LRB101 05140 TAE 50152 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Digital Fair Repair Act.

6 Section 5. Definitions. In this Act:

7 "Authorized repair provider" means a person or a business
8 that has an arrangement for a definite or indefinite period in
9 which an original equipment manufacturer grants to a separate
10 business organization or individual a license to use a trade
11 name, service mark, or related characteristic for the purposes
12 of offering repair services under the name of the original
13 equipment manufacturer.

14 "Digital electronic equipment" or "equipment" means a part
15 or equipment originally manufactured for distribution and sale
16 in the United States.

17 "Documentation" means any manuals, diagrams, reporting
18 output, or service code descriptions provided to the authorized
19 repair providers for purposes of effecting repair.

20 "Embedded software" means any programmable instructions
21 provided on firmware delivered with the equipment or part for
22 the purposes of equipment operation, including all relevant
23 patches and fixes made by the manufacturer for this purpose,

1 including, but not limited to, a basic internal operating
2 system, an internal operating system, a machine code, an
3 assembly code, a root code, and a microcode.

4 "Fair and reasonable terms" means an equitable price in
5 light of relevant factors, including, but not limited to:

6 (1) the net cost to the authorized repair provider for
7 similar information obtained from an original equipment
8 manufacturer, less any discounts, rebates, or other
9 incentive programs;

10 (2) the cost to the original equipment manufacturer for
11 preparing and distributing the information, excluding any
12 research and development costs incurred in designing and
13 implementing, upgrading, or altering the product, but
14 including amortized capital costs for the preparation and
15 distribution of the information;

16 (3) the price charged by other original equipment
17 manufacturers for similar information;

18 (4) the price charged by original equipment
19 manufacturers for similar information prior to the launch
20 of original equipment manufacturer web sites;

21 (5) the ability of aftermarket technicians or shops to
22 afford the information;

23 (6) the means by which the information is distributed;

24 (7) the extent to which the information is used, which
25 includes the number of users, and frequency, duration, and
26 volume of use; and

1 (8) inflation.

2 "Firmware" means a software program or set of instructions
3 programmed on a hardware device to allow the device to
4 communicate with other computer hardware.

5 "Independent repair provider" means a person or business
6 operating in this State that is not affiliated with an original
7 equipment manufacturer or an original equipment manufacturer's
8 authorized repair provider, that is engaged in the diagnosis,
9 service, maintenance, or repair of equipment, except that an
10 original equipment manufacturer shall be considered an
11 independent repair provider for purposes of those instances
12 when the original equipment manufacturer engages in the
13 diagnosis, service, maintenance, or repair of digital
14 equipment that is not affiliated with the original equipment
15 manufacturer.

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

22 (1) a motorcycle;

23 (2) a recreational off-highway vehicle; or

24 (3) a recreational vehicle or an auto home equipped for
25 habitation.

26 "Motor vehicle dealer" means a person or business who, in

1 the ordinary course of business, is engaged in the business of
2 selling or leasing new motor vehicles to a person or business
3 pursuant to a franchise agreement, has obtained a license under
4 the Illinois Vehicle Code, and is engaged in the diagnosis,
5 service, maintenance, or repair of motor vehicles or motor
6 vehicle engines pursuant to that franchise agreement.

7 "Motor vehicle manufacturer" means a person or business
8 engaged in the business of manufacturing or assembling new
9 motor vehicles.

10 "Original equipment manufacturer" means a person or
11 business who, in the ordinary course of its business, is
12 engaged in the business of selling or leasing new digital
13 electronic equipment or parts of equipment to any person or
14 business and is engaged in the diagnosis, service, maintenance,
15 or repair of digital electronic equipment or parts of such
16 equipment.

17 "Owner" means a person or business who owns or leases a
18 digital electronic product purchased or used in this State.

19 "Service parts" or "parts" means any replacement part,
20 either new or used, made available by the original equipment
21 manufacturer to the authorized repair provider for purposes of
22 effecting repair.

23 "Trade secret" means (1) anything tangible or intangible or
24 electronically stored or kept that constitutes, represents,
25 evidences, or records intellectual property, including secret
26 or confidentially held designs, processes, procedures,

1 formulas, inventions, or improvements, (2) secret or
2 confidentially held scientific, technical, merchandising,
3 production, financial, business, or management information, or
4 (3) any other trade secret as defined in 18 U.S.C. 1839 as that
5 Section existed on January 1, 2016.

6 Section 10. Requirements.

7 (a) For equipment and parts sold and used in this State,
8 the original equipment manufacturer of the equipment and parts
9 shall:

10 (1) make available to any independent repair provider
11 or owner of products manufactured by the original equipment
12 manufacturer diagnostic and repair documentation,
13 including repair technical updates and updates and
14 corrections to embedded software, for no charge or in the
15 same manner and in the same time frame as the original
16 equipment manufacturer makes that diagnostic and repair
17 documentation, including repair technical updates and
18 updates and corrections to embedded software, available to
19 its authorized repair provider; and

20 (2) make available for purchase by the owner, his or
21 her authorized agent, or any independent repair provider,
22 parts, inclusive of any updates to the embedded software of
23 the parts, upon fair and reasonable terms.

24 Nothing in this Section requires the original equipment
25 manufacturer to sell equipment or service parts if the parts

1 are no longer available to the original equipment manufacturer
2 or the authorized repair provider of the original equipment
3 manufacturer.

4 (b) An original equipment manufacturer that sells any
5 diagnostic, service, or repair documentation to any
6 independent repair provider or to any owner in a format that is
7 standardized with other original equipment manufacturers, and
8 on terms and conditions more favorable than the manner and the
9 terms and conditions pursuant to which the authorized repair
10 provider obtains the same diagnostic, service, or repair
11 documentation, shall be prohibited from requiring an
12 authorized repair provider to continue purchasing diagnostic,
13 service, or repair documentation in a proprietary format,
14 unless such proprietary format includes diagnostic, service,
15 or repair documentation or functionality that is not available
16 in such standardized format.

17 (c) An original equipment manufacturer of equipment sold or
18 used in this State shall make available for purchase by owners
19 and independent repair providers all diagnostic repair tools
20 incorporating the same diagnostic, repair, and remote
21 communications capabilities that the original equipment
22 manufacturer makes available to its own repair or engineering
23 staff or an authorized repair provider.

24 An original equipment manufacturer shall offer such tools
25 for sale to an owner and independent repair provider upon fair
26 and reasonable terms. An original equipment manufacturer that

1 provides diagnostic repair documentation to aftermarket
2 diagnostic tool manufacturers, diagnostics providers, or
3 service information publications and systems shall have fully
4 satisfied its obligations under this Section and thereafter not
5 be responsible for the content and functionality of such
6 aftermarket diagnostic tools, diagnostics, or service
7 information systems.

8 (d) Original equipment manufacturer equipment or parts
9 sold or used in this State for the purpose of providing
10 security-related functions may not exclude diagnostic,
11 service, and repair documentation necessary to reset a
12 security-related electronic function from information provided
13 to an owner or independent repair provider. If excluded under
14 this Act, the documentation necessary to reset an immobilizer
15 system or security-related electronic module shall be obtained
16 by an owner or independent repair provider through the
17 appropriate secure data release systems.

18 Section 15. Notice to consumers. An independent repair
19 provider that purchases or acquires embedded software or
20 service parts shall, prior to performing any services on
21 digital electronic equipment, notify the owner of the equipment
22 in writing that:

23 (1) consumers should review the terms and conditions of
24 the warranty for such digital electronic equipment as
25 repairs not performed by an authorized repair provider

1 could affect the terms and conditions of the warranty;

2 (2) warrantors cannot require that only branded parts
3 be used with the product in order to retain the warranty;

4 (3) warrantors must demonstrate that a defect or damage
5 was caused by independent repair to affect the warranty;

6 (4) warranties are governed by the federal
7 Magnuson-Moss Warranty Act; and

8 (5) the independent repair provider is not an
9 authorized repair provider for such digital electronic
10 equipment.

11 Section 20. Rights of authorized repair provider. Except in
12 the instance of a dispute arising between an original equipment
13 manufacturer and its authorized repair provider related to
14 either party's compliance with an existing authorized repair
15 agreement, an authorized repair provider shall have all the
16 rights and remedies provided in this Act.

17 Section 25. Duties of Attorney General. The Attorney
18 General shall develop, establish, and implement a public
19 outreach program directed at independent repair providers,
20 consumers, and digital electronic original equipment
21 manufacturers to inform them of their rights and
22 responsibilities pursuant to this Act. The public outreach
23 shall include brochures, consumer guides, posters, or any
24 combination thereof and be made available to consumers and

1 other stakeholders by any means deemed appropriate by such
2 division and may include internet, radio, and print
3 advertising. The public outreach may also identify and recruit
4 individuals or trade organizations to assist in distributing
5 this information and materials. The public outreach shall begin
6 no later than the 30th day after the effective date of this
7 Act.

8 Section 30. Injunctions.

9 (a) Whenever the Attorney General believes from
10 satisfactory evidence that any person, firm, corporation,
11 association, or agent or employee thereof has engaged in or is
12 about to engage in any act or practice that is a violation of
13 this Act, the Attorney General may bring an action in the
14 manner provided under the Consumer Fraud and Deceptive Business
15 Practices Act to enjoin the unlawful act or practice and to
16 obtain restitution of any moneys or property obtained directly
17 or indirectly by the unlawful act or practice.

18 (b) Before bringing an action under this Section, the
19 Attorney General shall give the person against whom such
20 proceeding is contemplated notice by certified mail and an
21 opportunity to show in writing within 5 business days after
22 receipt of notice why proceedings should not be instituted,
23 unless the Attorney General finds, in any case seeking
24 preliminary relief, that to give such notice and opportunity is
25 not in the public interest.

1 (c) In connection with any proposed proceeding under this
2 Section, the Attorney General is authorized to take proof and
3 make a determination of the relevant facts and issue subpoenas.

4 Section 35. Limitations.

5 (a) Nothing in this Act shall be construed to require an
6 original equipment manufacturer to divulge a trade secret.

7 (b) No provision in this Act shall be read, interpreted, or
8 construed to abrogate, interfere with, contradict, or alter the
9 terms of any agreement executed and in force between an
10 authorized repair provider and an original equipment
11 manufacturer, including, but not limited to, the performance or
12 provision of warranty or recall repair work by an authorized
13 repair provider on behalf of an original equipment manufacturer
14 pursuant to such authorized repair agreement, except that any
15 provision in such an authorized repair agreement that purports
16 to waive, avoid, restrict, or limit an original equipment
17 manufacturer's compliance with this Section shall be void and
18 unenforceable.

19 (c) Nothing in this Act shall be construed to require an
20 original equipment manufacturer or an authorized repair
21 provider to provide an owner or independent repair provider
22 access to non-diagnostic and repair documentation provided by
23 an original equipment manufacturer to an authorized repair
24 provider pursuant to the terms of an authorizing agreement.

1 Section 40. Exclusions. Nothing in this Act applies to
2 motorcycle equipment, equipment for recreational off-highway
3 vehicles, motor vehicle manufacturers, any product or service
4 of a motor vehicle manufacturer, or motor vehicle dealers.

5 Section 45. Penalty. Any person, firm, corporation, or
6 association or agent or employee thereof who engages in any act
7 or practice that is a violation of this Act is liable for a
8 civil penalty of not more than \$500 for each violation, which
9 may be recovered in a civil action brought by the Attorney
10 General.

11 Section 50. Applicability. This Act applies to equipment
12 sold or in use on or after the effective date of this Act.

13 Section 99. Effective date. This Act takes effect January
14 1, 2020.