

**101ST GENERAL ASSEMBLY****State of Illinois****2019 and 2020****SB2088**

Introduced 2/15/2019, by Sen. Laura Fine

SYNOPSIS AS INTRODUCED:

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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, with one exception, an authorized provider shall have all the rights and remedies provided under the Act. Provides for enforcement by the Attorney General. 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. Amends the Consumer Fraud and Deceptive Business Practices Act to incorporate a violation of the Digital Fair Repair Act as a violation of that Act. Effective January 1, 2020.

LRB101 09559 JLS 54657 b

FISCAL NOTE ACT
MAY APPLY**A BILL FOR**

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 (a) "Authorized repair provider" means an individual or
8 business who is unaffiliated with an original equipment
9 manufacturer and who has an arrangement with the original
10 equipment manufacturer, for a definite or indefinite period,
11 under which the original equipment manufacturer grants to the
12 individual or business a license to use a trade name, service
13 mark, or other proprietary identifier for the purposes of
14 offering the services of diagnosis, maintenance, or repair of
15 digital electronic equipment under the name of the original
16 equipment manufacturer, or other arrangement with the original
17 equipment manufacturer to offer such services on behalf of the
18 original equipment manufacturer. An original equipment
19 manufacturer who offers the services of diagnosis,
20 maintenance, or repair of its own digital electronic equipment,
21 and who does not have an arrangement described in this
22 subsection with an unaffiliated individual or business, shall
23 be considered an authorized repair provider with respect to

1 such equipment.

2 (b) "Digital electronic equipment" or "equipment" means
3 any product that depends for its functioning, in whole or in
4 part, on digital electronics embedded in or attached to the
5 product.

6 (c) "Documentation" means any manual, diagram, reporting
7 output, service code description, schematic diagram, or
8 similar kinds of information provided to an authorized repair
9 provider for purposes of its effecting the services of
10 diagnosis, maintenance, or repair of digital electronic
11 equipment.

12 (d) "Embedded software" means any programmable
13 instructions provided on firmware delivered with digital
14 electronic equipment, or with a part for such equipment, for
15 purposes of equipment operation, including all relevant
16 patches and fixes made by the manufacturer of such equipment or
17 part for these purposes.

18 (e) "Fair and reasonable terms" for obtaining a part or
19 tool or documentation means at costs and terms, including
20 convenience of delivery, and including rights of use,
21 equivalent to what is offered by the original equipment
22 manufacturer to an authorized repair provider, using the net
23 costs that would be incurred by an authorized repair provider
24 in obtaining an equivalent part or tool or documentation from
25 the original equipment manufacturer, accounting for any
26 discounts, rebates, or other incentive programs in arriving at

1 the actual net costs. For documentation, including any relevant
2 updates, "fair and reasonable terms" means at no charge, except
3 that, when the documentation is requested in physical printed
4 form, a charge may be included for the reasonable actual costs
5 of preparing and sending the copy.

6 (f) "Firmware" means a software program or set of
7 instructions programmed on digital electronic equipment, or on
8 a part for such equipment, to allow the equipment or part to
9 communicate with other computer hardware.

10 (g) "Independent repair provider" means an individual or
11 business operating in this State, who does not have an
12 arrangement described in subsection (a) with an original
13 equipment manufacturer, and who is not affiliated with any
14 individual or business who has such an arrangement, and who is
15 engaged in the services of diagnosis, maintenance, or repair of
16 digital electronic equipment, except that an original
17 equipment manufacturer or, with respect to that original
18 equipment manufacturer, an individual or business who has such
19 an arrangement with that original equipment manufacturer, or
20 who is affiliated with an individual or business who has such
21 an arrangement with that original equipment manufacturer,
22 shall be considered an independent repair provider for purposes
23 of those instances in which it engages in the services of
24 diagnosis, maintenance, or repair of digital electronic
25 equipment that is not manufactured by or sold under the name of
26 that original equipment manufacturer.

1 (h) "Manufacturer of motor vehicle equipment" means a
2 business engaged in the business of manufacturing or supplying
3 components that are used in the manufacture, maintenance, or
4 repair of a motor vehicle.

5 (i) "Motor vehicle" means a vehicle that is designed for
6 transporting persons or property on a street or highway and is
7 certified by the manufacturer under all applicable federal
8 safety and emissions standards and requirements for
9 distribution and sale in the United States. "Motor vehicle"
10 does not include:

11 (1) a motorcycle; or

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

14 (j) "Motor vehicle dealer" means an individual or business
15 who, in the ordinary course of business, is engaged in the
16 business of selling or leasing new motor vehicles to an
17 individual or business pursuant to a franchise agreement, has
18 obtained a license under the Illinois Vehicle Code, and is
19 engaged in the services of diagnosis, maintenance, or repair of
20 motor vehicles or motor vehicle engines pursuant to that
21 franchise agreement.

22 (k) "Motor vehicle manufacturer" means a business engaged
23 in the business of manufacturing or assembling new motor
24 vehicles.

25 (l) "Original equipment manufacturer" means a business
26 engaged in the business of selling or leasing new digital

1 electronic equipment manufactured by or on behalf of itself, to
2 any individual or business.

3 (m) "Owner" means an individual or business who owns or
4 leases digital electronic equipment purchased or used in this
5 State.

6 (n) "Part" means any replacement part, either new or used,
7 made available by an original equipment manufacturer for
8 purposes of effecting the services of maintenance or repair of
9 digital electronic equipment manufactured or sold by the
10 original equipment manufacturer.

11 (o) "Trade secret" has the meaning given it in 18 U.S.C.
12 1839.

13 Section 10. Requirements.

14 (a) For digital electronic equipment, and parts for such
15 equipment, sold or used in this State, an original equipment
16 manufacturer shall make available, for purposes of diagnosis,
17 maintenance, or repair, to any independent repair provider, or
18 to the owner of digital electronic equipment manufactured by or
19 on behalf of, or sold by, the original equipment manufacturer,
20 on fair and reasonable terms, documentation, parts, and tools,
21 inclusive of any updates to information or embedded software.
22 Nothing in this Section requires an original equipment
23 manufacturer to make available a part if the part is no longer
24 available to the original equipment manufacturer.

25 (b) For equipment that contains an electronic security lock

1 or other security-related function, the original equipment
2 manufacturer shall make available to the owner and to
3 independent repair providers, on fair and reasonable terms, any
4 special documentation, tools, and parts needed to reset the
5 lock or function when disabled in the course of diagnosis,
6 maintenance, or repair of the equipment. Such documentation,
7 tools, and parts may be made available through appropriate
8 secure release systems.

9 Section 15. Enforcement by Attorney General. Violation of
10 any of the provisions of this Act is an unlawful practice under
11 the Consumer Fraud and Deceptive Business Practices Act. All
12 remedies, penalties, and authority granted to the Attorney
13 General by that Act shall be available to him or her for the
14 enforcement of this Act.

15 Section 20. Limitations.

16 (a) Nothing in this Act shall be construed to require an
17 original equipment manufacturer to divulge a trade secret to an
18 owner or an independent service provider except as necessary to
19 provide documentation, parts, and tools on fair and reasonable
20 terms.

21 (b) No provision of this Act shall be construed to alter
22 the terms of any arrangement described in subsection (a) of
23 Section 5 in force between an authorized repair provider and an
24 original equipment manufacturer, including, but not limited

1 to, the performance or provision of warranty or recall repair
2 work by an authorized repair provider on behalf of an original
3 equipment manufacturer pursuant to such arrangement, except
4 that any provision in such terms that purports to waive, avoid,
5 restrict, or limit the original equipment manufacturer's
6 obligations to comply with this Act shall be void and
7 unenforceable.

8 (c) Nothing in this Act shall be construed to require an
9 original equipment manufacturer or an authorized repair
10 provider to provide to an owner or independent repair provider
11 access to information, other than documentation, that is
12 provided by the original equipment manufacturer to an
13 authorized repair provider pursuant to the terms of an
14 arrangement described in subsection (a) of Section 5.

15 Section 25. Exclusions. Nothing in this Act applies to a
16 motor vehicle manufacturer, manufacturer of motor vehicle
17 equipment, or motor vehicle dealer acting in that capacity, or
18 to any product or service of a motor vehicle manufacturer,
19 manufacturer of motor vehicle equipment, or motor vehicle
20 dealer acting in that capacity.

21 Section 30. Applicability. This Act applies with respect to
22 equipment sold or in use on or after the effective date of this
23 Act.

1 Section 90. The Consumer Fraud and Deceptive Business
2 Practices Act is amended by changing Section 2Z as follows:

3 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

4 Sec. 2Z. Violations of other Acts. Any person who knowingly
5 violates the Automotive Repair Act, the Automotive Collision
6 Repair Act, the Digital Fair Repair Act, the Home Repair and
7 Remodeling Act, the Dance Studio Act, the Physical Fitness
8 Services Act, the Hearing Instrument Consumer Protection Act,
9 the Illinois Union Label Act, the Installment Sales Contract
10 Act, the Job Referral and Job Listing Services Consumer
11 Protection Act, the Travel Promotion Consumer Protection Act,
12 the Credit Services Organizations Act, the Automatic Telephone
13 Dialers Act, the Pay-Per-Call Services Consumer Protection
14 Act, the Telephone Solicitations Act, the Illinois Funeral or
15 Burial Funds Act, the Cemetery Oversight Act, the Cemetery Care
16 Act, the Safe and Hygienic Bed Act, the Illinois Pre-Need
17 Cemetery Sales Act, the High Risk Home Loan Act, the Payday
18 Loan Reform Act, the Mortgage Rescue Fraud Act, subsection (a)
19 or (b) of Section 3-10 of the Cigarette Tax Act, subsection (a)
20 or (b) of Section 3-10 of the Cigarette Use Tax Act, the
21 Electronic Mail Act, the Internet Caller Identification Act,
22 paragraph (6) of subsection (k) of Section 6-305 of the
23 Illinois Vehicle Code, Section 11-1431, 18d-115, 18d-120,
24 18d-125, 18d-135, 18d-150, or 18d-153 of the Illinois Vehicle
25 Code, Article 3 of the Residential Real Property Disclosure

1 Act, the Automatic Contract Renewal Act, the Reverse Mortgage
2 Act, Section 25 of the Youth Mental Health Protection Act, the
3 Personal Information Protection Act, or the Student Online
4 Personal Protection Act commits an unlawful practice within the
5 meaning of this Act.

6 (Source: P.A. 99-331, eff. 1-1-16; 99-411, eff. 1-1-16; 99-642,
7 eff. 7-28-16; 100-315, eff. 8-24-17; 100-416, eff. 1-1-18;
8 100-863, eff. 8-14-18.)

9 Section 99. Effective date. This Act takes effect January
10 1, 2020.

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Statutes amended in order of appearance

3

New Act

4

815 ILCS 505/2Z

from Ch. 121 1/2, par. 262Z