



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB3061

Introduced 2/19/2021, 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 manufacturers to make parts, tools, and documentation available when digital equipment is under an express warranty. Provides that a violation constitutes an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act. Authorizes enforcement by the Attorney General. Defines terms. Excludes motor vehicle manufacturers. Effective January 1, 2022.

LRB102 13867 JLS 19218 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 Right to Repair Act.

6 Section 5. Definitions. In this Act:

7 "Authorized repair provider" means an individual or  
8 business that is unaffiliated with an original equipment  
9 manufacturer and that 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 that offers the services of diagnosis,  
20 maintenance, or repair of its own digital electronic  
21 equipment, and that does not have an arrangement described in  
22 this subsection with an unaffiliated individual or business,  
23 shall be considered an authorized repair provider with respect

1 to such equipment.

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

5 "Documentation" means any manual, diagram, reporting  
6 output, service code description, schematic, or other guidance  
7 or information used in effecting the services of diagnosis,  
8 maintenance, or repair of digital electronic equipment.

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

15 "Fair and reasonable terms" for obtaining a part or tool  
16 or documentation means at costs and terms that are equivalent  
17 to the most favorable costs and terms under which an original  
18 equipment manufacturer offers the part, tool, or documentation  
19 to an authorized repair provider:

20 (1) accounting for any discount, rebate, convenient  
21 means of delivery, means of enabling fully restored and  
22 updated functionality, rights of use, or other incentive  
23 or preference the original equipment manufacturer offers  
24 to an authorized repair provider, or any additional cost,  
25 burden, or impediment the original equipment manufacturer  
26 imposes on an independent repair provider;

1           (2) that are not conditioned on or imposing a  
2           substantial obligation or restriction that is not  
3           reasonably necessary for enabling the owner or independent  
4           repair provider to engage in the diagnosis, maintenance,  
5           or repair of digital electronic equipment made by or on  
6           behalf of the original equipment manufacturer; and

7           (3) that are not conditioned on an arrangement as an  
8           authorized repair provider.

9           For documentation, including any relevant updates, "fair  
10          and reasonable terms" also means at no charge, except that,  
11          when the documentation is requested in physical printed form,  
12          a charge may be included for the reasonable actual costs of  
13          preparing and sending the copy.

14          For software tools, "fair and reasonable terms" also means  
15          at no charge and without requiring authorization or Internet  
16          access or imposing impediments to access or use in the course  
17          of effecting the diagnosis, maintenance, or repair and  
18          enabling full functionality of digital electronic equipment,  
19          in a manner that impairs the efficient and cost-effective  
20          performance of any of those activities.

21          "Firmware" means a software program or set of instructions  
22          programmed on digital electronic equipment, or on a part for  
23          such equipment, to allow the equipment or part to communicate  
24          within itself or with other computer hardware.

25          "Independent repair provider" means an individual or  
26          business operating in this State that does not have an

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

16 "Manufacturer of motor vehicle equipment" means a business  
17 engaged in the business of manufacturing or supplying  
18 components that are used in the manufacture, maintenance, or  
19 repair of a motor vehicle.

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

26 (1) a motorcycle; or

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

3           "Motor vehicle dealer" means an individual or business  
4           that, in the ordinary course of business, is engaged in the  
5           business of selling or leasing new motor vehicles to an  
6           individual or business pursuant to a franchise agreement, has  
7           obtained a license under the Illinois Vehicle Code, and is  
8           engaged in the services of diagnosis, maintenance, or repair  
9           of motor vehicles or motor vehicle engines pursuant to that  
10          franchise agreement.

11          "Motor vehicle manufacturer" means a business engaged in  
12          the business of manufacturing or assembling new motor  
13          vehicles.

14          "Original equipment manufacturer" means a business engaged  
15          in the business of selling, leasing, or otherwise supplying  
16          new digital electronic equipment manufactured by or on behalf  
17          of itself to any individual or business.

18          "Owner" means an individual or business that owns or  
19          leases digital electronic equipment purchased or used in this  
20          State.

21          "Part" means any replacement part, either new or used,  
22          made available by an original equipment manufacturer for  
23          purposes of effecting the services of maintenance or repair of  
24          digital electronic equipment manufactured by or on behalf of,  
25          sold, or otherwise supplied by the original equipment  
26          manufacturer.

1 "Tools" means any software program, hardware implement, or  
2 other apparatus used for diagnosis, maintenance, or repair of  
3 digital electronic equipment, including software or other  
4 mechanisms that provision, program, or pair a new part,  
5 calibrate functionality, or perform any other function  
6 required to bring the product back to fully functional  
7 condition.

8 "Trade secret" has the meaning ascribed to that term in  
9 the Illinois Trade Secrets Act.

10 Section 10. Availability of parts; requirements.

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

23 (b) For equipment that contains an electronic security  
24 lock or other security-related function, the original  
25 equipment manufacturer shall make available to the owner and

1 to independent repair providers, on fair and reasonable terms,  
2 any special documentation, tools, and parts needed to disable  
3 the lock or function, and to reset it when disabled in the  
4 course of diagnosis, maintenance, or repair of the equipment.  
5 Such documentation, tools, and parts may be made available by  
6 means of an appropriate secure system.

7 (c) When the original equipment manufacturer has made an  
8 express warranty with respect to digital electronic equipment  
9 and the wholesale price of the equipment is \$100 or more, the  
10 manufacturer shall provide such parts, tools, and  
11 documentation as needed to enable the repair of the equipment  
12 during the warranty period, at an equitable price and  
13 convenience of delivery and of enabling functionality, in  
14 light of:

15 (1) the actual cost to the original equipment  
16 manufacturer to prepare and distribute the part, tool, or  
17 documentation, exclusive of any research and development  
18 costs incurred;

19 (2) the ability of owners and independent repair  
20 providers to afford the part, tool, or documentation; and

21 (3) the means by which the part, tool, or  
22 documentation is distributed.

23 Section 15. Enforcement by Attorney General. Violation of  
24 any of the provisions of this Act is an unlawful practice under  
25 the Consumer Fraud and Deceptive Business Practices Act. All



1 remedies, penalties, and authority granted to the Attorney  
2 General by that Act shall be available to him or her for the  
3 enforcement of this Act.

4 Section 20. Limitations.

5 (a) Nothing in this Act shall be construed to require an  
6 original equipment manufacturer to divulge a trade secret to  
7 an owner or an independent service provider except as  
8 necessary to provide documentation, parts, and tools on fair  
9 and reasonable terms.

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

20 Section 25. Exclusions. Nothing in this Act applies to a  
21 motor vehicle manufacturer, manufacturer of motor vehicle  
22 equipment, or motor vehicle dealer acting in that capacity, or  
23 to any product or service of a motor vehicle manufacturer,  
24 manufacturer of motor vehicle equipment, or motor vehicle

1 dealer acting in that capacity.

2 Section 30. Applicability. This Act applies with respect  
3 to equipment sold or in use on or after the effective date of  
4 this Act.

5 Section 99. Effective date. This Act takes effect January  
6 1, 2022.