

118TH CONGRESS
2D SESSION

S. _____

To require original equipment manufacturers of digital electronic equipment to make available certain documentation, diagnostic, and repair information to independent repair providers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. LUJÁN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To require original equipment manufacturers of digital electronic equipment to make available certain documentation, diagnostic, and repair information to independent repair providers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Repair Act”.

5 **SEC. 2. REQUIREMENTS FOR ORIGINAL EQUIPMENT MANU-**
6 **FACTURERS.**

7 (a) IN GENERAL.—In the case of digital electronic
8 equipment manufactured by or on behalf of, sold, or other-

1 wise supplied by an original equipment manufacturer, the
2 original equipment manufacturer shall make available, for
3 the purposes of diagnosis, maintenance, or repair of such
4 equipment, to independent repair providers and owners of
5 such equipment on fair and reasonable terms, documenta-
6 tion, parts, and tools, inclusive of any updates.

7 (b) PROHIBITION ON THE USE OF CERTAIN
8 PARTS.—An original equipment manufacturer shall not
9 use parts pairing or any other mechanism to—

10 (1) prevent the installation or functioning of
11 any otherwise-functional part, including a non-man-
12 ufacturer approved replacement part or component;

13 (2) inhibit or reduce the functioning of any
14 part, such that replacement by an independent re-
15 pair provider or the device owner would cause the
16 device to operate with reduced functionality or per-
17 formance;

18 (3) create false, misleading, deceptive, or non-
19 dismissible alerts or warnings about parts;

20 (4) charge additional fees or increased prices
21 for future repairs; or

22 (5) limit who can purchase parts or perform re-
23 pair services.

1 **SEC. 3. ENFORCEMENT.**

2 (a) ENFORCEMENT BY THE FEDERAL TRADE COM-
3 MISSION.—

4 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
5 TICES.—A violation of section 2 shall be treated as
6 a violation of a rule defining an unfair or deceptive
7 act or practice prescribed under section 18(a)(1)(B)
8 of the Federal Trade Commission Act (15 U.S.C.
9 57a(a)(1)(B)).

10 (2) POWERS OF THE COMMISSION.—

11 (A) IN GENERAL.—The Commission shall
12 enforce this Act and any regulations promul-
13 gated under this Act in the same manner, by
14 the same means, and with the same jurisdic-
15 tion, powers, and duties as though all applicable
16 terms and provisions of the Federal Trade
17 Commission Act (15 U.S.C. 41 et seq.) were in-
18 corporated into and made a part of this Act,
19 and any person who violates this Act or a regu-
20 lation promulgated under this Act shall be sub-
21 ject to the penalties and entitled to the privi-
22 leges and immunities provided in the Federal
23 Trade Commission Act.

24 (B) REGULATIONS.—The Commission
25 may, under section 553 of title 5, United States

1 Code, prescribe any regulations it determines
2 necessary to carry out this Act.

3 (C) EFFECT ON OTHER LAWS.—Nothing in
4 this Act shall be construed to limit the author-
5 ity of the Commission under any other provi-
6 sion of law.

7 (b) ENFORCEMENT BY STATE ATTORNEYS GEN-
8 ERAL.—

9 (1) IN GENERAL.—If the chief law enforcement
10 officer of a State, or an official or agency designated
11 by a State, has reason to believe that any person has
12 violated or is violating section 2, the attorney gen-
13 eral, official, or agency of the State, in addition to
14 any authority it may have to bring an action in
15 State court under State law, may bring a civil action
16 in any appropriate United States district court or in
17 any other court of competent jurisdiction, including
18 a State court, to—

19 (A) enjoin further such violation by such
20 person;

21 (B) enforce compliance with such section;

22 (C) obtain civil penalties; and

23 (D) obtain damages, restitution, or other
24 compensation on behalf of residents of the
25 State.

1 (2) NOTICE AND INTERVENTION BY THE
2 FTC.—The attorney general (or other such officer)
3 of a State shall provide prior written notice of any
4 action under paragraph (1) to the Commission and
5 provide the Commission with a copy of the complaint
6 in the action, except in any case in which such prior
7 notice is not feasible, in which case the attorney gen-
8 eral shall serve such notice immediately upon insti-
9 tuting such action. The Commission shall have the
10 right—

11 (A) to intervene in the action;

12 (B) upon so intervening, to be heard on all
13 matters arising therein; and

14 (C) to file petitions for appeal.

15 (3) LIMITATION ON STATE ACTION WHILE FED-
16 ERAL ACTION IS PENDING.—If the Commission has
17 instituted a civil action for violation of this Act, no
18 State attorney general, or official or agency of a
19 State, may bring an action under this paragraph
20 during the pendency of that action against any de-
21 fendant named in the complaint of the Commission
22 for any violation of this Act alleged in the complaint.

23 (4) RELATIONSHIP WITH STATE LAW CLAIMS.—
24 If the attorney general of a State has authority to
25 bring an action under State law directed at acts or

1 practices that also violate this Act, the attorney gen-
2 eral may assert the State law claim and a claim
3 under this Act in the same civil action.

4 **SEC. 4. RULES OF CONSTRUCTION, LIMITATIONS, AND NON-**
5 **APPLICATION.**

6 The following rules of construction, limitations, and
7 non-application provisions apply to this Act:

8 (1) SECURITY-RELATED FUNCTIONS NOT EX-
9 CLUDED.—For digital electronic equipment that con-
10 tains an electronic security lock or other security-re-
11 lated function, the original equipment manufacturer
12 shall make available to the owner and to inde-
13 pendent repair providers, on fair and reasonable
14 terms, any special documentation, tools, and parts
15 needed to disable the lock or function, and to reset
16 it when disabled in the course of diagnosis, mainte-
17 nance, or repair of the equipment.

18 (2) PROTECTION OF TRADE SECRETS.—Nothing
19 in this Act shall be construed to require an original
20 equipment manufacturer to divulge a trade secret, as
21 defined in section 1839 of title 18, United States
22 Code, to an owner or an independent repair provider
23 except as necessary to provide documentation, parts,
24 and tools on fair and reasonable terms.

1 (3) TERMS OF AGREEMENT WITH AUTHORIZED
2 REPAIR PROVIDERS.—No provision in this Act shall
3 be construed to abrogate, interfere with, contradict,
4 or alter the terms of any arrangement described in
5 section 5(1)(A), including the performance or provi-
6 sion of warranty or recall repair work by an author-
7 ized repair provider on behalf of an original equip-
8 ment manufacturer pursuant to such arrangement,
9 except that any provision in such terms that pur-
10 ports to waive, avoid, restrict, or limit an OEM’s ob-
11 ligations to comply with this Act shall be void and
12 unenforceable.

13 (4) NON-APPLICATION TO MOTOR VEHICLE OR
14 MOTOR VEHICLE EQUIPMENT MANUFACTURERS.—
15 Nothing in this Act shall apply to a motor vehicle
16 manufacturer, a manufacturer of motor vehicle
17 equipment, or a motor vehicle dealer, acting in that
18 capacity.

19 (5) NON-APPLICATION TO MANUFACTURERS OF
20 MEDICAL DEVICES.—Nothing in this Act shall apply
21 to a manufacturer of a medical device, acting in that
22 capacity.

23 **SEC. 5. DEFINITIONS.**

24 In this Act, the following definitions apply:

25 (1) AUTHORIZED REPAIR PROVIDER.—

1 (A) IN GENERAL.—The term “authorized
2 repair provider” means with respect to an
3 OEM, a person that—

4 (i) has an arrangement with the OEM
5 in which the OEM grants to the person li-
6 cense to use a trade name, service mark,
7 or other proprietary identifier for the pur-
8 poses of offering the services of diagnosis,
9 maintenance, or repair of digital electronic
10 equipment under the name of the OEM; or

11 (ii) otherwise has an arrangement
12 with the OEM to offer such services on be-
13 half of or under contract with the OEM.

14 (B) CLARIFICATION.—An OEM that offers
15 the services of diagnosis, maintenance, or repair
16 of digital electronic equipment manufactured by
17 it or on its behalf, or sold or otherwise supplied
18 by the OEM, shall be considered an authorized
19 repair provider with respect to such equipment.

20 (2) DIGITAL ELECTRONIC EQUIPMENT.—The
21 term “digital electronic equipment” means any prod-
22 uct that depends for its functioning, in whole or in
23 part, on digital electronics embedded in or attached
24 to the product.

1 (3) DOCUMENTATION.—The term “documenta-
2 tion” means any manuals, diagrams, reporting out-
3 put, service code descriptions, schematic, security
4 code or password, or other information used in ef-
5 fecting the services of diagnosis, maintenance, or re-
6 pair of digital electronic equipment.

7 (4) FAIR AND REASONABLE TERMS.—The term
8 “fair and reasonable terms”, with respect to a part,
9 tool, or documentation, means at costs and terms
10 that are equivalent to the most favorable costs and
11 terms under which an OEM offers the part, tool, or
12 documentation to an authorized repair provider—

13 (A) accounting for any discount, rebate,
14 convenient and timely means of delivery, means
15 of enabling fully restored and updated
16 functionality, rights of use, or other incentive or
17 preference the OEM offers to an authorized re-
18 pair provider, or any additional cost, burden, or
19 impediment the OEM imposes on an owner or
20 independent repair provider;

21 (B) not conditioned on or imposing a sub-
22 stantial obligation or restriction that is not rea-
23 sonably necessary for enabling the owner or
24 independent repair provider to engage in the di-
25 agnosis, maintenance, or repair of digital elec-

1 tronic equipment made by or on behalf of the
2 OEM; and

3 (C) not conditioned on an arrangement de-
4 scribed in paragraph (1)(A).

5 (5) INDEPENDENT REPAIR PROVIDER.—

6 (A) IN GENERAL.—The term “independent
7 repair provider” means with respect to an
8 OEM, a person that is not affiliated with the
9 OEM or with an authorized repair provider of
10 the OEM, when such person is engaged in the
11 diagnosis, maintenance, or repair of digital elec-
12 tronic equipment manufactured by or on behalf
13 of, sold, or otherwise supplied by the OEM.

14 (B) CLARIFICATION.—An OEM or, with
15 respect to that OEM, a person who has an ar-
16 rangement described in paragraph (1)(A) with
17 that OEM, or who is affiliated with a person
18 who has such an arrangement with that OEM,
19 shall be considered an independent repair pro-
20 vider for the purposes of those instances when
21 such OEM or person engages in the diagnosis,
22 service, maintenance, or repair of digital equip-
23 ment that is not manufactured by or on behalf
24 of, sold, or otherwise supplied by that OEM.

1 (6) MEDICAL DEVICE.—The term “medical de-
2 vice” has the meaning given the term “device”
3 under section 201(h) of the Federal Food, Drug and
4 Cosmetic Act (21 U.S.C. 321(h)).

5 (7) MOTOR VEHICLE.—

6 (A) IN GENERAL.—The term “motor vehi-
7 cle” means a vehicle that is designed for trans-
8 porting persons or property on a street or high-
9 way and is certified by the manufacturer under
10 all applicable Federal safety and emissions
11 standards and requirements for distribution and
12 sale in the United States.

13 (B) EXCLUSIONS.—The term “motor vehi-
14 cle” does not include—

15 (i) a motorcycle; or

16 (ii) a recreational vehicle or an auto
17 home equipped for habitation.

18 (8) MOTOR VEHICLE DEALER.—The term
19 “motor vehicle dealer” means a person who—

20 (A) is engaged in the business of selling or
21 leasing new motor vehicles to another person
22 pursuant to a franchise agreement;

23 (B) has obtained a license to engage in
24 such business under the applicable State law;
25 and

1 (C) is engaged in the services of diagnosis,
2 maintenance, or repair of motor vehicles or
3 motor vehicle engines pursuant to such fran-
4 chise agreement.

5 (9) MOTOR VEHICLE MANUFACTURER.—The
6 term “motor vehicle manufacturer” means a person
7 engaged in the business of manufacturing or assem-
8 bling new motor vehicles.

9 (10) ORIGINAL EQUIPMENT MANUFACTURER;
10 OEM.—The term “original equipment manufacturer”
11 or “OEM” means any person who is engaged in the
12 business of selling, leasing, or otherwise supplying
13 new digital electronic equipment or parts of equip-
14 ment manufactured by or on behalf of itself, to any
15 person.

16 (11) OWNER.—The term “owner” means a per-
17 son who owns or leases digital electronic equipment.

18 (12) PART.—The term “part” means any re-
19 placement part, either new or used, made available
20 by or to an OEM for purposes of effecting the serv-
21 ices of maintenance or repair of digital electronic
22 equipment manufactured by or on behalf of, sold, or
23 otherwise supplied by the OEM.

24 (13) PARTS PAIRING.—The term “parts pair-
25 ing” means, with respect to a part, the practice of

1 employing software to identify component parts
2 through the use of a unique identifier.

3 (14) TOOL.—The term “tool” means any soft-
4 ware program, hardware implement, or other appa-
5 ratus used for diagnosis, maintenance, or repair of
6 digital electronic equipment, including software or
7 other mechanisms that provision, program, or pair a
8 part, calibrate functionality, or perform any other
9 function required to bring the equipment back to
10 fully functional condition.

11 **SEC. 6. EFFECTIVE DATE.**

12 This Act shall take effect 60 days after the date of
13 enactment of this Act and shall apply with respect to
14 equipment sold or in use on or after the effective date of
15 this Act.