

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2535 Session of 2024

INTRODUCED BY MULLINS, PISCIOTTANO, WEBSTER, HILL-EVANS, McANDREW, MADDEN, GALLAGHER, HOHENSTEIN, McNEILL, BRENNAN, FIEDLER, VENKAT, SANCHEZ, KENYATTA, KHAN, JAMES, DALEY, GREEN, GUENST, SHUSTERMAN, MUNROE, OTTEN, GILLEN, WAXMAN, HOWARD, PIELLI, SALISBURY, FRANKEL AND HANBIDGE, AUGUST 15, 2024

AS REPORTED FROM COMMITTEE ON COMMERCE, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 1, 2024

AN ACT

1 Requiring manufacturers of digital electronic equipment to make
2 available to owners and independent repair providers, on fair
3 and reasonable terms, documentation, parts and tools used to
4 diagnose, maintain and repair digital electronic equipment;
5 and imposing a penalty.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Right-to-
10 Repair Act.

11 Section 2. Definitions.

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

15 "Authorized repair provider." As follows:

16 (1) An individual or business entity that has an
17 arrangement with the OEM under which the OEM grants to the

1 individual or business entity a license to use a trade name,
2 service mark or other proprietary identifier for the purposes
3 of offering the services of diagnosis, maintenance or repair
4 of equipment under the name of the OEM or other arrangement
5 with the OEM to offer the services on behalf of the OEM.

6 (2) An OEM that offers the services of diagnosis,
7 maintenance or repair of the OEM's own equipment and who does
8 not have an arrangement described under paragraph (1) with an
9 unaffiliated individual or business.

10 "Diagnosis." The process of identifying the issue that
11 causes digital electronic equipment to not be in full working
12 order.

13 "Digital electronic equipment." A product manufactured for
14 the first time, and first sold or used in this Commonwealth, on
15 or after July 1, 2021, and that depends for its functioning, in
16 whole or in part, on digital electronics embedded in or attached
17 to the product.

18 "Documentation." A manual, diagram, reporting output,
19 service code description, schematic diagram or other information
20 used in effecting the services of diagnosis, maintenance or
21 repair of equipment.

22 "Fair and reasonable terms." Terms that make documentation,
23 tools or parts available as follows:

24 (1) With respect to documentation, that the
25 documentation is made available by the OEM at no charge,
26 except that when the documentation is requested in physical
27 printed form, a charge may be included for the reasonable,
28 actual costs of preparing and sending the copy.

29 (2) With respect to tools, that the tools are made
30 available by the OEM at no charge and without imposing

1 impediments to access or use of the tools to diagnose,
2 maintain or repair and enable full functionality of a device,
3 or in a manner that impairs the efficient and cost-effective
4 performance of the diagnosis, maintenance or repair, except
5 that, when the tool is requested in physical form, a charge
6 may be included for the reasonable, actual costs of preparing
7 and sending the tool.

8 (3) With respect to parts, that the parts are made
9 available by the OEM, either directly or through an
10 authorized repair provider, to independent repair providers
11 and owners at costs and terms that are equivalent to the most
12 reasonable costs and terms under which an OEM offers the
13 parts to an authorized repair provider and which:

14 (i) Accounts for any:

15 (A) discount, rebate, convenient and timely
16 means of delivery, means of enabling fully restored
17 and updated functionality, rights of use or other
18 incentive and preference the OEM offers to an
19 authorized repair provider; or

20 (B) additional cost, burden or impediment the
21 OEM imposes on an owner or independent repair
22 provider.

23 (ii) Is not conditioned on or imposing a substantial
24 obligation or restriction that is not reasonably
25 necessary for enabling the owner or independent repair
26 provider to engage in the diagnosis, maintenance or
27 repair of equipment made by or on behalf of the OEM.

28 (iii) Is not conditioned on an arrangement described
29 under paragraph (1) of the definition of "authorized
30 repair provider."

1 "Independent repair provider." An individual or business
2 entity operating in this Commonwealth that is not an authorized
3 repair provider and that is engaged in the services of
4 diagnosis, maintenance or repair of equipment.

5 "Maintenance." An act necessary to keep currently working
6 digital electronic equipment in full working order.

7 "Medical device." An instrument apparatus, implement,
8 machine, contrivance, implant or other similar or related
9 article, including a component part or accessory, including a
10 device as defined under 21 U.S.C. § 321(h) (relating to
11 definitions; generally), which is intended for use in the
12 diagnosis of disease or other condition, or in the cure,
13 mitigation, treatment or prevention of disease in humans or
14 other animals.

15 "Motor vehicle." A vehicle that is designed for transporting
16 individuals or property on a street or highway and is certified
17 by the motor vehicle manufacturer under all applicable Federal
18 safety and emissions standards and requirements for distribution
19 and sale in the United States.

20 "Motor vehicle manufacturer." An individual or business
21 entity operating as a manufacturer, as defined under 75 Pa.C.S.
22 § 102 (relating to definitions).

23 "Original equipment manufacturer" or "OEM." An individual or
24 business entity engaged in the selling, leasing or supplying of
25 new equipment manufactured by or on behalf of itself to an
26 individual or business entity.

27 "Owner." An individual or business entity that owns or
28 leases equipment purchased or used in this Commonwealth.

29 "Part." A new or used replacement part made available by or
30 to an OEM for the purpose of effecting the maintenance or repair

1 of equipment manufactured by or on behalf of, sold or supplied
2 by the OEM.

3 "Parts pairing." A manufacturer's practice of using software
4 to identify component parts through a unique identifier.

5 "SECURITY AND LIFE SAFETY SYSTEMS AND EQUIPMENT." A PRODUCT <--
6 DESIGNED TO PREVENT, DETECT, PROTECT AGAINST OR RESPOND TO
7 SECURITY INCIDENTS OR SAFETY HAZARDS IMPACTING INDIVIDUALS OR
8 PROPERTY, INCLUDING, BUT NOT LIMITED TO:

9 (1) A FIRE ALARM.

10 (2) A MEDICAL ALERT.

11 (3) INTRUSION DETECTION.

12 (4) VIDEO SECURITY.

13 (5) AN ACCESS CONTROL SYSTEM OR DEVICE.

14 "Tool." A software program, hardware implement or other
15 apparatus used for diagnosis, maintenance or repair of
16 equipment, including software or other mechanisms that:

17 (1) provision, program or pair a new part;

18 (2) calibrate functionality; or

19 (3) perform any other function required to make the
20 product fully functional, including any updates.

21 "Trade secret." As defined under 18 Pa.C.S. § 3930 (relating
22 to theft of trade secrets).

23 "Updates." Recommended corrections or adjustments to parts,
24 tools or information that are created and distributed by the OEM
25 and used in offering the services of diagnosis, maintenance or
26 repair of digital electronic equipment.

27 "Video game console." A computing device or system and the
28 components and peripherals that are primarily used by consumers
29 for playing video games. The term does not include a general or
30 all-purpose computer such as a desktop computer, laptop, tablet

1 or cell phone.

2 Section 3. Provision.

3 For equipment and parts for the equipment that are sold or
4 used in this Commonwealth:

5 (1) An OEM shall make available, on fair and reasonable
6 terms, documentation, parts and tools required for the
7 purpose of diagnosis, maintenance or repair, including
8 updates to information, to an independent repair provider or
9 to the owner of the equipment manufactured by or on behalf of
10 or sold or supplied by the OEM. The documentation, parts and
11 tools reference may be made available either directly by an
12 OEM or via an authorized repair provider or authorized third-
13 party provider.

14 (2) Nothing under this subsection shall require an OEM
15 to make available parts or tools if the parts or tools are no
16 longer available to the OEM.

17 (3) For digital electronic equipment manufactured for
18 the first time and first sold or used in this Commonwealth
19 after July 1, 2021, an OEM may not use parts pairing to:

20 (i) Prevent or inhibit an independent repair
21 provider or an owner from installing or enabling the
22 function of an otherwise functional replacement part or a
23 component of digital electronic equipment, including a
24 replacement part or component, that the OEM has not
25 approved.

26 (ii) Reduce the functionality or performance of
27 digital electronic equipment.

28 (iii) Cause digital electronic equipment to display
29 misleading alerts or warnings about unidentified parts
30 which the owner cannot immediately dismiss.

1 Section 4. Civil penalty.

2 (a) Violation.--A person that violates a provision of this
3 act shall be subject to a civil penalty of not less than \$1,000
4 nor more than \$10,000 for each violation. A penalty imposed
5 under this section shall be paid to the Commonwealth.

6 (b) Enforcement.--The Attorney General shall institute a
7 proceeding to recover the civil penalty provided under
8 subsection (a) against any person liable to the Commonwealth for
9 the penalty.

10 Section 5. Limitations and exclusions.

11 (a) Limitations.--Nothing in this act shall:

12 (1) Require an OEM to disclose a trade secret except as
13 necessary to provide, on fair and reasonable terms, any
14 documentation, tool, part or other device or implement used
15 to diagnose, maintain, repair or update digital electronic
16 equipment.

17 (2) Alter the terms of an arrangement in force between
18 an authorized repair provider and an OEM, including the
19 performance or provision of warranty or recall repair work by
20 an authorized repair provider on behalf of an OEM and
21 pursuant to the arrangement, except that a provision in the
22 terms that purports to waive, avoid, restrict or limit the
23 OEM's obligations to comply with this section shall be void
24 and unenforceable.

25 (3) Authorize a person to alter equipment in a manner
26 that the equipment operates in violation of an environmental,
27 safety or other law.

28 (4) Hold an OEM liable for damage or injury caused by an
29 independent repair provider or owner which occurs during the
30 course of the repair, diagnosis or maintenance, including

1 indirect, incidental, special or consequential damage, loss
2 of data, privacy or profits or liability to use or reduce
3 functionality of the equipment.

4 (5) Require an OEM to warrant repairs provided by
5 independent repair providers or owners.

6 (6) Require an OEM to provide documentation or tools
7 that the OEM uses to perform, at no cost, diagnostic services
8 virtually through telephone, Internet, chat, email or other
9 similar means that do not involve the OEM physically handling
10 the digital electronic equipment, unless the OEM also makes
11 the documentation or tools available to an individual or
12 business that is unaffiliated with the OEM.

13 (7) Require an OEM to provide documentation or tools
14 used exclusively by the OEM for diagnosis, maintenance or
15 repairs completed by machines that operate on several digital
16 electronic equipment products simultaneously if the OEM makes
17 available to owners and independent repair providers
18 sufficient alternative documentation and tools to effect the
19 diagnosis, maintenance or repair of the digital electronic
20 equipment.

21 (8) Require an OEM to provide or make available source
22 code.

23 (9) Invalidate or alter the terms of any agreement
24 between an OEM and an authorized repair provider, including
25 the performance or provision of warranty or recall repair
26 work by an authorized repair provider on behalf of an OEM
27 pursuant to an authorized repair agreement, except that any
28 provision in an authorized repair agreement that purports to
29 waive, avoid, restrict or limit an original manufacturer's
30 compliance with this act shall be void and unenforceable.

1 (b) Exclusions.--Nothing under this act shall apply to:

2 (1) a motor vehicle manufacturer or a manufacturer of
3 motor vehicle equipment, acting in their capacity as a motor
4 vehicle manufacturer or a manufacturer of motor vehicle
5 equipment;

6 (2) a manufacturer or distributor of a medical device or
7 a digital electronic product or embedded software
8 manufactured for use in a medical setting, including
9 diagnostic, monitoring or control equipment, or a product or
10 service that the manufacturer or distributor of a medical
11 device offers; ~~or~~ <--

12 (3) a manufacturer, distributor, importer or dealer of:

13 (i) off-road equipment, including farm and utility
14 tractors, farm implements and farm machinery;

15 (ii) forestry equipment;

16 (iii) industrial equipment;

17 (iv) utility equipment;

18 (v) construction equipment;

19 (vi) road-building equipment;

20 (vii) compact construction equipment;

21 (viii) mining equipment;

22 (ix) turf, yard and garden equipment;

23 (x) outdoor power equipment, including portable
24 generators;

25 (xi) marine, all-terrain sports and recreational
26 vehicles, including racing vehicles;

27 (xii) stand-alone or integrated stationary or mobile
28 internal combustion engines or other power sources,
29 including generator sets, electric/battery and fuel cell
30 power;

1 (xiii) tools, technology, attachments, accessories,
2 components and repair parts for any of the foregoing; and <--

3 (xiv) safety communications equipment, the intended
4 use of which is for emergency response or prevention
5 purposes by an emergency service organization such as a
6 police, fire or medical and emergency rescue services
7 agency-; AND <--

8 (XV) SECURITY AND LIFE SAFETY SYSTEMS AND EQUIPMENT;

9 OR

10 (4) AN OEM THAT PROVIDES TO THE OWNER OF EQUIPMENT
11 MANUFACTURED BY OR ON BEHALF OF, SOLD OR SUPPLIED BY THE OEM,
12 AT NO CHARGE TO THE OWNER:

13 (I) REIMBURSEMENT OF THE COST OF THE EQUIPMENT; OR

14 (II) EQUIVALENT OR BETTER, READILY AVAILABLE
15 REPLACEMENT EQUIPMENT.

16 (c) Construction.--Nothing in this act shall be construed
17 to:

18 (1) Require an OEM or authorized repair provider to make
19 available parts, tools or documentation required for the
20 diagnosis, maintenance or repair of a video game console and
21 its components and peripherals.

22 (2) Require an OEM to make available special
23 documentation, tools and parts that would disable or override
24 privacy or antitheft security measures set by the owner of
25 the product.

26 (3) Alter any federally recognized copyright protection
27 or patent rights granted to the OEM.

28 (4) PROHIBIT A PERSON FROM REPLACING THE BATTERY IN A <--
29 RESIDENTIAL SMOKE DETECTOR.

30 Section 6. Effective date.

1 This act shall take effect in 180 days.