SYNOPSIS: This bill would enact the Digital Fair Repair Act. The bill would provide for the maintenance and repair of digital electronic equipment by an independent repair provider.
equipment manufacturer, for a definite or indefinite period,
under which the original equipment manufacturer grants to the
individual or business a license to use a trade name, service
mark, or other proprietary identifier for the purposes of
offering the services of diagnosis, maintenance, or repair of
digital electronic equipment under the name of the original
equipment manufacturer, or other arrangement with the original
equipment manufacturer to offer such services on behalf of the
original equipment manufacturer. An original equipment
manufacturer who offers the services of diagnosis,
maintenance, or repair of its own digital electronic
equipment, and who does not have an arrangement described in
this subsection with an unaffiliated individual or business,
shall be considered an authorized repair provider with respect
to the equipment.

(2) DIGITAL ELECTRONIC EQUIPMENT. Any product that
depends for its functioning, in whole or in part, on digital
electronics embedded in or attached to the product.

(3) DOCUMENTATION. Any manual, diagram, reporting
output, service code description, schematic diagram, or
similar kinds of information provided to an authorized repair
provider for purposes of its effecting the services of
diagnosis, maintenance, or repair of digital electronic
equipment.

(4) EMBEDDED SOFTWARE. Any programmable instructions
provided on firmware delivered with digital electronic
equipment, or with a part for the equipment, for purposes of
equipment operation, including all relevant patches and fixes made by the manufacturer of the equipment or part for these purposes.

(5) FAIR AND REASONABLE TERMS. For obtaining a part or tool or documentation, at costs and terms, including convenience of delivery, and including rights of use, equivalent to what is offered by the original equipment manufacturer to an authorized repair provider, using the net costs that would be incurred by an authorized repair provider in obtaining an equivalent part or tool or documentation from the original equipment manufacturer, accounting for any discounts, rebates, or other incentive programs in arriving at the actual net costs. For documentation, including any relevant updates, the term means at no charge, except that, when the documentation is requested in physical printed form, a charge may be included for the reasonable actual costs of preparing and sending the copy.

(6) FIRMWARE. A software program or set of instructions programmed on digital electronic equipment, or on a part for such equipment, to allow the equipment or part to communicate with other computer hardware.

(7) INDEPENDENT REPAIR PROVIDER. An individual or business operating in this state who is engaged in the services of diagnosis, maintenance, and repair of digital electronic equipment and that is not an authorized repair provider or affiliated with an authorized repair provider. The term includes an original equipment manufacturer or an
individual or business that is an authorized repair provider
for the original equipment manufacturer or is affiliated with
an individual or business that is an authorized repair
provider for the original equipment manufacturer or is affiliated with
an individual or business that is an authorized repair
provider for the original equipment manufacturer original
equipment manufacturer, when it engages in the services of
diagnosis, maintenance, or repair of digital electronic
equipment that is not manufactured by or sold under the name
of the original equipment manufacturer.

(8) MANUFACTURER OF MOTOR VEHICLE EQUIPMENT. A
business engaged in the business of manufacturing or supplying
components that are used in the manufacture, maintenance, or
repair of a motor vehicle.

(9) MOTOR VEHICLE. A vehicle that is designed for
transporting persons or property on a street or highway and is
certified by the manufacturer under all applicable federal
safety and emissions standards and requirements for
distribution and sale in the United States. The term does not
include a motorcycle, a recreational vehicle, or an auto home
equipped for habitation.

(10) MOTOR VEHICLE DEALER. An individual or business
that, in the ordinary course of business, is engaged in the
business of selling or leasing new motor vehicles to an
individual or business pursuant to a franchise agreement, is
licensed under state law, and is engaged in the services of
diagnosis, maintenance, or repair of motor vehicles or motor
vehicle engines pursuant to that franchise agreement.
(11) MOTOR VEHICLE MANUFACTURER. A business engaged in the business of manufacturing or assembling new motor vehicles.

(12) ORIGINAL EQUIPMENT MANUFACTURER. A business engaged in the business of selling or leasing new digital electronic equipment manufactured by or on behalf of itself to any individual or business.

(13) OWNER. An individual or business who owns or leases digital electronic equipment purchased or used in this state.

(14) PART. Any replacement part, either new or used, made available by an original equipment manufacturer for purposes of effecting the services of maintenance or repair of digital electronic equipment manufactured or sold by the original equipment manufacturer.

(15) TRADE SECRET. The meaning given it in 18 U.S.C. 1839.

Section 3. Requirements.

(a) An original equipment manufacturer shall make available, for purposes of diagnosis, maintenance, or repair, to any independent repair provider, or to the owner of digital electronic equipment manufactured by or on behalf of, or sold by, the original equipment manufacturer, on fair and reasonable terms, documentation, parts, and tools, inclusive, of any updates to information or embedded software. Nothing in this section requires an original equipment manufacturer to
make available a part if the part is no longer available to
the original equipment manufacturer.

(b) For equipment that contains an electronic
security lock or other security-related function, an original
equipment manufacturer shall make available to the owner and
to independent repair providers, on fair and reasonable terms,
any special documentation, tools, and parts needed to reset
the lock or function when disabled in the course of diagnosis,
maintenance, or repair of the equipment. The documentation,
tools, and parts may be made available through appropriate
secure release systems.

Section 4. Enforcement by Attorney General. A
violation of this act is an unlawful practice under the
Deceptive Trade Practices Act, Chapter 19 of Title 8, Code of
Alabama 1975. All remedies, penalties, and authority granted
to the Attorney General by that act shall be available to him
or her for the enforcement of this act.

Section 5. Limitations.

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

(b) No provision in this act shall be construed to
alter the terms of any arrangement described in subdivision
(1) of Section 2 in force between an authorized repair
provider and an original equipment manufacturer, including,
but not limited to, the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to the arrangement, except that any provision in the terms that purports to waive, avoid, restrict, or limit the original equipment manufacturer’s obligations to comply with this act is void and unenforceable.

(c) Nothing in this act shall be construed to require an original equipment manufacturer or an authorized repair provider to provide to an owner or independent repair provider access to information, other than documentation, that is provided by the original equipment manufacturer to an authorized repair provider of the manufacturer.

Section 6. Exclusions. Nothing in this act applies to a motor vehicle manufacturer, manufacturer of motor vehicle equipment, or motor vehicle dealer acting in that capacity, or to any product or service of a motor vehicle manufacturer, manufacturer of motor vehicle equipment, or motor vehicle dealer acting in that capacity.

Section 7. Applicability. This act applies with respect to equipment sold or in use on or after the effective date of this act.

Section 8. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.