

1 HB93  
2 203902-1  
3 By Representative Johnson  
4 RFD: Technology and Research  
5 First Read: 04-FEB-20  
6 PFD: 02/03/2020

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.

A BILL  
TO BE ENTITLED  
AN ACT

To provide for the repair of digital electronic equipment by persons other than the manufacturer or an authorized repair provider of the manufacturer.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act may be cited as the Digital Fair Repair Act.

Section 2. Definitions. As used in this act, the following words have the following meanings:

(1) AUTHORIZED REPAIR PROVIDER. An individual or business who is unaffiliated with an original equipment manufacturer and who has an arrangement with the original

1 equipment manufacturer, for a definite or indefinite period,  
2 under which the original equipment manufacturer grants to the  
3 individual or business a license to use a trade name, service  
4 mark, or other proprietary identifier for the purposes of  
5 offering the services of diagnosis, maintenance, or repair of  
6 digital electronic equipment under the name of the original  
7 equipment manufacturer, or other arrangement with the original  
8 equipment manufacturer to offer such services on behalf of the  
9 original equipment manufacturer. An original equipment  
10 manufacturer who offers the services of diagnosis,  
11 maintenance, or repair of its own digital electronic  
12 equipment, and who does not have an arrangement described in  
13 this subsection with an unaffiliated individual or business,  
14 shall be considered an authorized repair provider with respect  
15 to the equipment.

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

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

25 (4) EMBEDDED SOFTWARE. Any programmable instructions  
26 provided on firmware delivered with digital electronic  
27 equipment, or with a part for the equipment, for purposes of

1 equipment operation, including all relevant patches and fixes  
2 made by the manufacturer of the equipment or part for these  
3 purposes.

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

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

22 (7) INDEPENDENT REPAIR PROVIDER. An individual or  
23 business operating in this state who is engaged in the  
24 services of diagnosis, maintenance, and repair of digital  
25 electronic equipment and that is not an authorized repair  
26 provider or affiliated with an authorized repair provider. The  
27 term includes an original equipment manufacturer or an

1 individual or business that is an authorized repair provider  
2 for the original equipment manufacturer or is affiliated with  
3 an individual or business that is an authorized repair  
4 provider for the original equipment manufacturer original  
5 equipment manufacturer, when it engages in the services of  
6 diagnosis, maintenance, or repair of digital electronic  
7 equipment that is not manufactured by or sold under the name  
8 of the original equipment manufacturer.

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

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

20 (10) MOTOR VEHICLE DEALER. An individual or business  
21 that, in the ordinary course of business, is engaged in the  
22 business of selling or leasing new motor vehicles to an  
23 individual or business pursuant to a franchise agreement, is  
24 licensed under state law, and is engaged in the services of  
25 diagnosis, maintenance, or repair of motor vehicles or motor  
26 vehicle engines pursuant to that franchise agreement.

1 (11) MOTOR VEHICLE MANUFACTURER. A business engaged  
2 in the business of manufacturing or assembling new motor  
3 vehicles.

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

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

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

16 (15) TRADE SECRET. The meaning given it in 18 U.S.C.  
17 1839.

### 18 Section 3. Requirements.

19 (a) An original equipment manufacturer shall make  
20 available, for purposes of diagnosis, maintenance, or repair,  
21 to any independent repair provider, or to the owner of digital  
22 electronic equipment manufactured by or on behalf of, or sold  
23 by, the original equipment manufacturer, on fair and  
24 reasonable terms, documentation, parts, and tools, inclusive,  
25 of any updates to information or embedded software. Nothing  
26 in this section requires an original equipment manufacturer to

1 make available a part if the part is no longer available to  
2 the original equipment manufacturer.

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

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

18 Section 5. Limitations.

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

24 (b) No provision in this act shall be construed to  
25 alter the terms of any arrangement described in subdivision  
26 (1) of Section 2 in force between an authorized repair  
27 provider and an original equipment manufacturer, including,

1 but not limited to, the performance or provision of warranty  
2 or recall repair work by an authorized repair provider on  
3 behalf of an original equipment manufacturer pursuant to the  
4 arrangement, except that any provision in the terms that  
5 purports to waive, avoid, restrict, or limit the original  
6 equipment manufacturer's obligations to comply with this act  
7 is void and unenforceable.

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

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

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

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