

SENATE BILL NO. 686

January 11, 2024, Introduced by Senators MCCANN, GEISS, SHINK, SANTANA, CHANG and RUNESTAD and referred to the Committee on Regulatory Affairs.

A bill to require certain manufacturers of certain digital electronic equipment to make diagnostic, maintenance, and repair parts, tools, and documentation available to independent repair providers and owners of that equipment; to provide remedies; to prescribe civil sanctions; and to provide for the powers and duties of certain state and local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "digital electronic
2 equipment repair act".

1 Sec. 2. As used in this act:

2 (a) "Authorized repair provider" means a person that is
3 unaffiliated with an original equipment manufacturer and that has
4 an arrangement with the original equipment manufacturer, for a
5 definite or indefinite period, under which the original equipment
6 manufacturer grants to the person a license to use a trade name,
7 service mark, or other proprietary identifier for the purposes of
8 offering the services of diagnosis, maintenance, or repair of
9 digital electronic equipment under the name of the original
10 equipment manufacturer, or has another arrangement with the
11 original equipment manufacturer to offer the services on behalf of
12 the original equipment manufacturer. An original equipment
13 manufacturer that offers the services of diagnosis, maintenance, or
14 repair of its own digital electronic equipment and that does not
15 have an arrangement described in this subdivision with an
16 unaffiliated person is considered an authorized repair provider
17 with respect to the equipment described in this subdivision.

18 (b) "Digital electronic equipment" means a product that
19 depends, for its functioning, in whole or in part, on digital
20 electronics embedded in or attached to the product. Digital
21 electronic equipment includes agricultural equipment that depends,
22 for its function, in whole or in part, on digital electronics
23 embedded in or attached to the equipment.

24 (c) "Documentation" means a manual, diagram, reporting output,
25 service code description, schematic, or other guidance or
26 information used in effectuating the services of diagnosis,
27 maintenance, or repair of digital electronic equipment.

28 (d) "Embedded software" means programmable instructions
29 provided on firmware delivered with digital electronic equipment or

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

4 (e) "Fair and reasonable terms" means costs and terms to which
5 all of the following apply:

6 (i) For obtaining a part, tool, or documentation:

7 (A) Either of the following, as applicable:

8 (I) Are equivalent to the most favorable costs and terms under
9 which an original equipment manufacturer offers the part, tool, or
10 documentation to an authorized repair provider.

11 (II) If an original equipment manufacturer does not offer the
12 part, tool, or documentation to an authorized repair provider, are
13 at an equitable price.

14 (B) Account for any discount, rebate, convenient means of
15 delivery, means of enabling fully restored and updated
16 functionality, rights of use, or other incentive or preference that
17 the original equipment manufacturer offers to an authorized repair
18 provider, or any additional cost, burden, or impediment that the
19 original equipment manufacturer imposes on an independent repair
20 provider or owner.

21 (C) Are not conditioned on or do not impose a substantial
22 obligation or restriction that is not reasonably necessary for
23 enabling the independent repair provider or owner to engage in the
24 diagnosis, maintenance, or repair of digital electronic equipment
25 made by or on behalf of the original equipment manufacturer.

26 (D) Are not conditioned on an arrangement described in
27 subdivision (a).

28 (ii) For obtaining documentation:

29 (A) For documentation that is requested in non-printed, non-

1 physical form, the documentation must be provided at no charge to
2 the requestor.

3 (B) For documentation that is requested in printed, physical
4 form, the documentation may be provided at a charge that only
5 accounts for the reasonable, actual costs of the preparation and
6 sending of a copy of the documentation.

7 (iii) For software tools, the costs and terms must include that
8 the tools must be provided at no charge to a requestor and, in the
9 course of effectuating the diagnosis, maintenance, or repair and
10 enabling full functionality of digital electronic equipment, the
11 tools must be provided without requiring authorization or internet
12 access or imposing impediments to access or use in a manner that
13 impairs the efficient and cost-effective performance of any
14 activity described in this subparagraph.

15 (f) "Firmware" means a software program or set of instructions
16 programmed on digital electronic equipment or on a part for the
17 equipment to allow the equipment or part to communicate within
18 itself or with other computer hardware.

19 (g) "Independent repair provider" means a person operating in
20 this state, that does not have an arrangement described in
21 subdivision (a) with an original equipment manufacturer, and that
22 is not affiliated with a person that has an arrangement described
23 in subdivision (a), and that is engaged in the services of
24 diagnosis, maintenance, or repair of digital electronic equipment,
25 except that an original equipment manufacturer or, with respect to
26 that original equipment manufacturer, a person that has an
27 arrangement described in subdivision (a) with that original
28 equipment manufacturer or that is affiliated with a person that has
29 an arrangement described in subdivision (a) with that original

1 equipment manufacturer, is considered an independent repair
2 provider for purposes of those instances in which it engages in the
3 services of diagnosis, maintenance, or repair of digital electronic
4 equipment that are not manufactured by or sold under the name of
5 that original equipment manufacturer.

6 (h) "Manufacturer of motor vehicle equipment" means a business
7 engaged in the business of manufacturing or supplying components
8 that are used in the manufacture, maintenance, or repair of a motor
9 vehicle.

10 (i) "Motor vehicle" means a vehicle that is designed for
11 transporting individuals or property on a street or highway and is
12 certified by the manufacturer under all applicable federal safety
13 and emissions standards and requirements for distribution and sale
14 in the United States. Motor vehicle does not include both of the
15 following:

16 (i) A motorcycle.

17 (ii) A recreational vehicle or an auto home equipped for
18 habitation.

19 (j) "Motor vehicle dealer" means a person to which all of the
20 following apply:

21 (i) In the ordinary course of business, is engaged in the
22 business of selling or leasing new motor vehicles to a person
23 pursuant to a franchise agreement.

24 (ii) Has obtained a license under section 248 of the Michigan
25 vehicle code, 1949 PA 300, MLC 257.248.

26 (iii) Is engaged in the services of diagnosis, maintenance, or
27 repair of motor vehicles or motor vehicle engines pursuant to the
28 franchise agreement described in subparagraph (i).

29 (k) "Motor vehicle manufacturer" means a business engaged in

1 the business of manufacturing or assembling new motor vehicles.

2 (l) "Original equipment manufacturer" means a business engaged
3 in the business of selling, leasing, or otherwise supplying new
4 digital electronic equipment manufactured by or on behalf of itself
5 to a person.

6 (m) "Owner" means a person that owns or leases digital
7 electronic equipment purchased or used in this state.

8 (n) "Part" means a replacement part, either new or used, made
9 available by an original equipment manufacturer for purposes of
10 effecting the services of the maintenance or repair of digital
11 electronic equipment manufactured by or on behalf of, or sold or
12 otherwise supplied by the original equipment manufacturer.

13 (o) "Tool" means a software program, hardware implement, or
14 other apparatus used for the diagnosis, maintenance, or repair of
15 digital electronic equipment, including, but not limited to,
16 software or other mechanisms that provision, program, or pair a new
17 part, calibrate functionality, or perform any other function
18 required to bring the product back to fully functional condition.

19 (p) "Trade secret" means that term as defined in section 2 of
20 the uniform trade secrets act, 1998 PA 448, MCL 445.1902.

21 Sec. 3. (1) Except as otherwise provide in this section, for
22 digital electronic equipment and parts for the equipment, sold or
23 used in this state, an original equipment manufacturer shall make
24 available, for the purposes of the diagnosis, maintenance, or
25 repair of the equipment, to any independent repair provider or to
26 the owner of the digital electronic equipment manufactured by or on
27 behalf of, or sold or otherwise supplied by, the original equipment
28 manufacturer, on fair and reasonable terms, documentation, parts,
29 and tools, inclusive of any updates to information or embedded

1 software. This subsection does not require an original equipment
2 manufacturer to make available a part if the part is no longer
3 available to the original equipment manufacturer.

4 (2) Except as otherwise provided in this section, for digital
5 electronic equipment that contains an electronic security lock or
6 other security-related function, the original equipment
7 manufacturer shall make available to independent repair providers
8 and the owner, on fair and reasonable terms, any special
9 documentation, tools, and parts needed to disable the lock or
10 function and to reset it when disabled in the course of the
11 diagnosis, maintenance, or repair of the equipment. The
12 documentation, tools, and parts described in this subsection may be
13 made available by means of an appropriate secure system.

14 (3) Except as otherwise provided in this section, when the
15 original equipment manufacturer has made an express warranty with
16 respect to digital electronic equipment and the wholesale price of
17 the equipment is \$100.00 or more, the original equipment
18 manufacturer shall provide documentation, tools, and parts to
19 independent repair providers and owners as to enable the repair of
20 the equipment during the warranty period under fair and reasonable
21 terms, convenience of delivery, and of means enabling
22 functionality, and shall take into account all of the following in
23 providing the documentation, tools, and parts under this
24 subsection:

25 (a) The actual cost to the original equipment manufacturer to
26 prepare and distribute the documentation, tool, or part, exclusive
27 of any research and development costs incurred.

28 (b) The ability of independent repair providers and owners to
29 afford the documentation, tool, or part.

1 (c) The means by which the documentation, tool, or part is
2 distributed.

3 Sec. 4. (1) A person that violates this act may be ordered to
4 pay a civil fine of not more than \$500.00. A violation of this act
5 may be prosecuted by the prosecutor of the county in which the
6 violation occurred, or by the attorney general.

7 (2) An individual aggrieved by a violation of this act may
8 bring a civil action against the person that violated this act and
9 may recover actual damages and attorney fees.

10 Sec. 5. (1) This act does not require an original equipment
11 manufacturer to divulge a trade secret to an independent service
12 provider or owner except as necessary to provide documentation,
13 parts, and tools on fair and reasonable terms as required under
14 this act.

15 (2) Except as otherwise provided in this subsection, this act
16 does not alter the terms of any arrangement described in section
17 2(a) between an authorized repair provider and an original
18 equipment manufacturer, including, but not limited to, a
19 performance or provision of warranty or recall repair work by an
20 authorized repair provider on behalf of an original equipment
21 manufacturer pursuant to the arrangement. A provision of an
22 arrangement described in section 2(a) that purports to waive,
23 avoid, restrict, or limit the original equipment manufacturer's
24 obligations to comply with this act is void and unenforceable.

25 Sec. 6. This act does not apply to a motor vehicle
26 manufacturer, manufacturer of motor vehicle equipment, or motor
27 vehicle dealer, acting in that capacity, or to any product or
28 service of a motor vehicle manufacturer, manufacturer of motor
29 vehicle equipment, or motor vehicle dealer, acting in that

1 capacity.

2 Sec. 7. (1) This act applies with respect to digital
3 electronic equipment sold or in use on or after the effective date
4 of this act.

5 (2) This act applies to only an agreement that takes effect or
6 is extended, renewed, or modified after the effective date of this
7 act.

8 Enacting section 1. This act takes effect 90 days after the
9 date it is enacted into law.