A Bill

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HOUSE BILL

By: Representative D. Whitaker

Filed with: Joint Committee on Advanced Communications and Information Technology pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO ESTABLISH THE DIGITAL FAIR REPAIR ACT; AND
FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE DIGITAL FAIR REPAIR ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 4, Chapter 88, is amended to add an additional subchapter to read as follows:

Subchapter 11 – Digital Fair Repair Act

4-88-1101. Title.
This subchapter shall be known and may be cited as the "Digital Fair Repair Act".

4-88-1102. Definitions.
As used in this subchapter:

(A) "Authorized repair provider" means an individual or business that is unaffiliated with an original equipment manufacturer and that has an authorized repair provider arrangement with the original equipment manufacturer.

(B) "Authorized repair provider" includes an original equipment manufacturer that:
(i) Offers the services of diagnosis, maintenance, or repair of its own digital electronic equipment; and

(ii) Does not have an authorized repair provider arrangement with an independent repair provider;

(2) "Authorized repair provider arrangement" means an arrangement between an authorized repair provider and the original equipment manufacturer, for a definite or indefinite period, under which the original equipment manufacturer grants to the authorized repair provider a license to use a trade name, service mark, or other proprietary identifier to offer the services of diagnosing, maintaining, or repairing digital electronic equipment under the name of the original equipment manufacturer, or other arrangement with the original equipment manufacturer to offer the services on behalf of the original equipment manufacturer;

(3) "Digital electronic equipment" means a product or part that depends for its functioning, in whole or in part, on digital electronics embedded in or attached to the product;

(4) "Documentation" means a manual, diagram, reporting output, service code description, schematic diagram, or another similar kind of information provided to an authorized repair provider to provide the services of diagnosis, maintaining, or repairing digital electronic equipment;

(5) "Embedded software" means any programmable instructions provided on firmware that is delivered with digital electronic equipment, or with a part for digital electronic equipment, for the operation of the equipment, including any relevant patch or fix made by the manufacturer of the digital electronic equipment;

(6)(A) "Fair and reasonable terms" means the terms required to obtain a part, tool, or documentation at cost, including convenience of delivery and rights of use, that is 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, minus any discounts, rebates, or other incentive programs in arriving at the actual net costs.

(B) "Fair and reasonable terms" includes, for documentation purposes, the providing of any relevant updates at no charge, unless the documentation is requested in a physical printed copy for which a
charge may be included for the reasonable, actual costs of preparing and
sending the copy;

(7) "Firmware" means a software program or set of instructions
programmed on digital electronic equipment, or on a part for digital
electronic equipment, that allows the equipment or part to communicate with
other computer hardware;

(8) "Independent repair provider" means an individual or
business operating in this state that:

(A) Does not have an authorized repair provider
arrangement;

(B) Is not affiliated with an individual or business that
has an authorized repair provider arrangement; and

(C)(i) Is engaged in the services of diagnosing,
maintaining, or repairing digital electronic equipment.

(ii) However, an original equipment manufacturer, an
authorized repair provider, or an affiliate of an authorized repair provider
is an independent repair provider when engaged 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;

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

(10)(A) "Motor vehicle" means a self-propelled vehicle designed
for personal or commercial use:

(i) Designed for highway use;

(ii) Subject to registration under § 27-14-701 et
seq.; and

(iii) Certified by the manufacturer under all
applicable federal safety and emissions standards and requirements for
distribution and sale in the United States.

(B) "Motor vehicle" does not include:

(i) A motorcycle;

(ii) A recreational vehicle; or

(iii) A vehicle equipped for habitation;
"Motor vehicle dealer" means an individual or business that:

(A) Is engaged in the business of selling or leasing new motor vehicles to an individual or business under a franchise agreement;

(B) Has obtained a license under § 23-112-301 et seq.; and

(C) Is engaged in the services of diagnosing, maintaining, or repairing motor vehicles or motor vehicle engines under the franchise agreement;

"Motor vehicle manufacturer" means a business engaged in the business of manufacturing or assembling new motor vehicles;

"Original equipment manufacturer" means a business engaged in the business of selling or leasing new digital electronic equipment manufactured by or on behalf of itself to an individual or a business;

"Owner" means an individual or business that owns or leases digital electronic equipment that is purchased or used in this state;

"Part" means a replacement part, new or used, made available by an original equipment manufacturer to service, maintain, or repair digital electronic equipment manufactured or sold by the original equipment manufacturer; and

"Trade secret" means an employer’s trade secrets as defined under the Arkansas Trade Secrets Act, § 4-75-601.

4-88-1103. Requirements – Original equipment manufacturer.

(a)(1) An original equipment manufacturer shall make available documentation, parts, and tools, including any updates to the information or embedded software, to an independent repair provider or an owner of digital electronic equipment manufactured by, on behalf of, or sold by the original equipment manufacturer for the purposes of diagnosis, maintenance, or repair of digital electronic equipment and parts sold or used in this state, on fair and reasonable terms.

(2) This section does not require an original equipment manufacturer to make available a part if the part is no longer available to the original equipment manufacturer.

(b)(1) An original equipment manufacturer shall make available to the owner and to an independent repair provider, on fair and reasonable terms, any special documentation, tools, and parts needed to reset the lock or
locking function that is disabled in the course of diagnosing, maintaining, or repairing equipment that contains an electronic security lock or other security-related function.

(2) The documentation, tools, and parts may be made available through an appropriate secure release system.


(a) A violation of this subchapter is an unfair and deceptive act or practice, as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq.

(b) All remedies, penalties, and authority granted to the Attorney General under the Deceptive Trade Practices Act, § 4-88-101 et seq., shall be available to the Attorney General for the enforcement of this subchapter.

4-88-1105. Limitations.

This subchapter does not:

(1) Require an original equipment manufacturer to disclose 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;

(2) Alter the terms of an authorized repair provider arrangement in force including without limitation the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer under the arrangement, except that terms that purport to waive, avoid, restrict, or limit the original equipment manufacturer’s obligations to comply with this subchapter are void; or

(3) 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 under an authorized repair provider arrangement.

4-88-1106. Exclusions.

This subchapter does not apply to:

(1) A person that is:

(A) A motor vehicle manufacturer;
(B) A manufacturer of motor vehicle equipment; or
(C) A motor vehicle dealer that is acting in the capacity of (1)(A) or (B) of this section; or
(2) Any product or service of:
   (A) A motor vehicle manufacturer;
   (B) A manufacturer of motor vehicle equipment; or
   (C) A motor vehicle dealer that is acting in the capacity of (2)(A) or (B) of this section.

4-88-1107. Applicability.
This subchapter applies to equipment sold or in use on or after January 1, 2020.

SECTION 2. EFFECTIVE DATE. This act is effective on and after January 1, 2020.

Referred by Representative D. Whitaker
Prepared by: ANS/ANS