

# HOUSE BILL NO. 5985

April 12, 2022, Introduced by Reps. Coleman, Liberati, Sowerby, Garza, Camilleri, Steckloff, Cavanagh, Brixie, Aiyash, Kuppa, Steenland, Young and Yaroach and referred to the Committee on Commerce and Tourism.

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 such services on behalf of  
12      the original equipment manufacturer. An original equipment  
13      manufacturer who offers the services of diagnosis, maintenance, or  
14      repair of its own digital electronic equipment and who 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 any 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 any manual, diagram, reporting  
25      output, 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 any programmable instructions  
29      provided on firmware delivered with digital electronic equipment or

1 with a part for such equipment for purposes of equipment operation,  
2 including all relevant patches and fixes made by the manufacturer  
3 of such 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 the  
17 original equipment manufacturer offers to an authorized repair  
18 provider, or any additional cost, burden, or impediment 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 of the  
14 activities 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 such  
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, who does not have an arrangement described in  
21 subdivision (a) with an original equipment manufacturer, and who is  
22 not affiliated with any person who has such an arrangement, and who  
23 is engaged in the services of diagnosis, maintenance, or repair of  
24 digital electronic equipment, except that an original equipment  
25 manufacturer or, with respect to that original equipment  
26 manufacturer, a person who has such an arrangement with that  
27 original equipment manufacturer or who is affiliated with a person  
28 who has such an arrangement with that original equipment  
29 manufacturer, is considered an independent repair provider for

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

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

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

15 (i) A motorcycle.

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

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

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

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

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

28 (k) "Motor vehicle manufacturer" means a business engaged in  
29 the business of manufacturing or assembling new motor vehicles.

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

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

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

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

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

20       Sec. 3. (1) Except as otherwise provide in this section, for  
21 digital electronic equipment and parts for such equipment, sold or  
22 used in this state, an original equipment manufacturer shall make  
23 available, for the purposes of the diagnosis, maintenance, or  
24 repair of such equipment, to any independent repair provider or to  
25 the owner of the digital electronic equipment manufactured by or on  
26 behalf of, or sold or otherwise supplied by, the original equipment  
27 manufacturer, on fair and reasonable terms, documentation, parts,  
28 and tools, inclusive of any updates to information or embedded  
29 software. This subsection does not require an original equipment

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

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

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

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

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

29 (c) The means by which the documentation, tool, or part is

1 distributed.

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

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

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

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

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

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

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

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