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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 73  
135<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Blessing

Logan Briggs, Attorney

### SUMMARY

- Requires manufacturers of certain digital electronic equipment to provide documentation, tools, and parts to independent repair providers and owners as necessary for diagnosis, maintenance, and repair of that equipment.
- Defines “digital electronic equipment” as a product that depends on digital electronics for its functioning and is valued over \$10 (adjusted for inflation), but explicitly excludes motor vehicles, farming and forestry equipment, and medical devices.
- Requires manufacturers to make documentation and tools available free of charge or at the actual cost of producing them in physical form.
- Requires manufacturers to make parts available at the most favorable costs and terms under which the manufacturer offers the parts to an authorized repair provider.
- Creates a cause of action for a person aggrieved by a manufacturer that fails to provide documentation, tools, or parts under fair and reasonable terms, as required by the bill.
- Specifies that a manufacturer is not liable for damages caused by an independent repair provider or owner during diagnosis, maintenance, or repairs of digital electronic equipment.

### DETAILED ANALYSIS

#### Digital Fair Repair Act

The bill requires persons engaged in the business of selling, leasing, or supplying digital electronic equipment sold or used in Ohio (“original equipment manufacturers”) to make available any documentation, parts, and tools necessary for diagnosis, maintenance, or repairs of that equipment. This includes providing any updates to information or embedded software and, if the equipment contains an electronic security lock or other similar function, any documentation, tools, and parts needed to disable and reset the lock or function. In particular,

March 6, 2023

the bill requires the documentation, parts, and tools to be made available under fair and reasonable terms to both independent repair providers and owners of the equipment.<sup>1</sup>

Under the bill, “owner” includes both an owner and lessor of digital electronic equipment. The bill defines an “independent repair provider” as a person that does not have an authorized repair provider arrangement and that is engaged in the services of diagnosis, maintenance, or repair of digital electronic equipment. By contrast, an “authorized repair provider” is a person that has an arrangement with the original equipment manufacturer under which the manufacturer grants to the person a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering diagnosis, maintenance, or repair services under the name of the original equipment manufacturer, or other arrangement with the original equipment manufacturer to offer such services on its behalf.<sup>2</sup>

## **Digital electronic equipment**

The bill applies only to digital electronic equipment sold or used in Ohio 120 days after the bill’s effective date. It defines “digital electronic equipment” as any product that has a value over \$10, depends for its functioning, in whole or in part, on digital electronics embedded in or attached to the product, and that is not a motor vehicle. The bill requires the Director of Commerce to annually adjust the value threshold above which a product may qualify as digital electronic equipment. The adjustment will occur in November, or as soon as practicable thereafter, every year beginning after the effective date of the bill. It is based on the cumulative percentage change in the Consumer Price Index (all items, all urban consumers) prepared by the United States Bureau of Labor Statistics for the 12-month period ending on the immediately preceding September 30. The resulting amount, rounded to the nearest one cent, applies as the value threshold to the following calendar year.

For example, if the value threshold for Year A was \$10 and the Consumer Price Index for the one-year period ending on September 30 of Year A showed a cumulative percentage change of a 3% increase, then the Director of Commerce would multiply \$10 by 1.03. As such, the value threshold for the following Year B would be \$10.30.

The bill requires the Director of Commerce to publish the adjusted value threshold and the dates to which it applies on a website maintained by the Department of Commerce.<sup>3</sup>

## **Fair and reasonable terms**

### **Documentation**

Under the bill, “documentation” means any manual, diagram, reporting output, service code description, schematic, security code, password, or other guidance or information used in

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<sup>1</sup> R.C. 1350.02.

<sup>2</sup> R.C. 1350.01 (A), (F), and (K).

<sup>3</sup> R.C. 1350.01(C), 1350.011, and 1350.05(I).

effecting the services of diagnosis, maintenance, or repair of digital electronic equipment or its parts.

The bill requires an original equipment manufacturer to provide documentation to independent repair providers and equipment owners at no charge. However, if the independent repair provider or owner requests the documentation in physical printed form, the original equipment manufacturer may charge a fee for the reasonable, actual costs of preparing and sending the documentation.<sup>4</sup>

## **Tools**

The bill defines “tool” to mean any software program, hardware implement, or other apparatus used for diagnosis, maintenance, or repair of digital electronic equipment or its parts. This includes software or other mechanisms that provide, program, or pair a part, calibrate functionality, or perform any other function required to bring the equipment or part back to a fully functional condition, including any updates.

The bill requires an original equipment manufacturer to provide tools to independent repair providers and equipment owners at no charge. However, when the independent repair provider or owner requests a tool in physical form, the original equipment manufacturer may charge a fee for the reasonable, actual costs of preparing and sending the tool.

Under the bill, an original equipment manufacturer may not require authorization or internet access for the use or operation of the tool. The bill also prohibits an original equipment manufacturer from impeding access to, or use of, a tool needed to diagnose, maintain, or repair and enable full functionality of digital electronic equipment or parts for the equipment. More generally, an original equipment manufacturer cannot impair the efficient and cost-effective performance of any diagnosis, maintenance, or repair of digital electronic equipment by an independent repair provider or equipment owner.<sup>5</sup>

## **Parts**

Under the bill, “part” means any piece or component that is essential to the full functionality of digital electronic equipment, including any auxiliary attachments that improve the performance, safety, operation, or efficiency of such equipment.

The bill requires an original equipment manufacturer to provide parts to independent repair providers and equipment owners at costs and terms that are equivalent to the most favorable costs and terms under which the manufacturer offers the parts to an authorized repair provider. However, if a part is no longer available to the original equipment manufacturer, then the manufacturer is not required to make that part available.

The cost and terms at which parts are provided to independent repair providers and owners must account for any discount, rebate, convenient and timely means of delivery, means

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<sup>4</sup> R.C. 1301.01(D) and 1350.03(A).

<sup>5</sup> R.C. 1350.01(N) and 1350.03(B).

of enabling fully restored and updated functionality, right of use, or other incentive or preference the original equipment manufacturer offers to an authorized repair provider. The costs and terms may also account for any reasonable, actual costs, burdens, or impediments the original equipment manufacturer incurs to provide the part to the owner or to an independent repair provider.

The original equipment manufacturer may not include any condition or substantial obligation or restriction that is not reasonably necessary for enabling the independent repair provider or owner to engage in the diagnosis, maintenance, or repair of the equipment, and may not condition these costs and terms on an authorized repair provider arrangement.<sup>6</sup>

## Exclusions

The bill sets forth following exclusions to the requirement that original equipment manufacturers provide documentation, parts, and tools to independent repair providers and owners:

- Documentation, tools, and parts needed to unlock or reset an electronic security lock or other similar function may be made available by a means of an appropriate secure system.<sup>7</sup>
- An original equipment manufacturer is not required to divulge a trade secret to any owner or independent service provider, except as necessary to provide documentation, parts, and tools on fair and reasonable terms.<sup>8</sup>
- An original equipment manufacturer is not required to alter the terms of any authorized repair provider arrangement, unless it contains a provision that waives, avoids, restricts, or limits the original equipment manufacturer's obligations under the bill.
- An original equipment manufacturer is not required to provide access to information that is provided to an authorized repair provider under the terms of its arrangement, except information that is necessary for the diagnosis, maintenance, or repair of digital electronic equipment.
- An original equipment manufacturer is not required to make available any parts, tools, or documentation for the purposes of modifying digital electronic equipment or for the

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<sup>6</sup> R.C. 1350.01(L), 1350.02(A), and 1350.03(C).

<sup>7</sup> R.C. 1350.02.

<sup>8</sup> The bill does not define "trade secret," but the Uniform Trade Secrets Act, adopted in R.C. 1333.61, not in the bill, defines a trade secret as information, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, if that information derives independent economic value from not being generally known by other people who can obtain economic value from it, and is the subject efforts that are reasonable under the circumstances to maintain its secrecy.

diagnosis, maintenance, or repair of such equipment in a manner that is in violation of federal law.

- The bill does not apply to a motor vehicle manufacturer, manufacturer of motor vehicle equipment, motor vehicle dealer acting in that capacity, or to any product or service of those entities.
- The bill does not apply to a medical device or other digital electronic product that are found in a medical setting, primarily and customarily used in the cure, mitigation, treatment, or prevention of disease in humans or animals, and that are generally not useful for other purposes. This would include specialized medical equipment, but would not include a cell phone or laptop being used by a medical professional during diagnosis or treatment, because they are generally useful for other purposes.
- The bill does not apply to a manufacturer or dealer of farming or forestry equipment acting in that capacity, or to any product or service of that manufacturer or dealer.<sup>9</sup>

## **Liability**

The bill specifies that no original equipment manufacturer or authorized repair provider is liable for any damage or injury to digital electronic equipment by an independent repair provider or an equipment owner that occurs during the course of repair, diagnosis, maintenance, or modification of the equipment. By undertaking a repair, diagnosis, maintenance, or modification, the repair provider or owner assumes any risk of resulting damage. This includes:

- Indirect, incidental, special, or consequential damages;
- Loss of data, privacy, or profits; and
- Inability to use, or reduced functionality of, the digital electronic equipment.<sup>10</sup>

## **Penalties**

Failure by an original equipment manufacturer to provide documentation, tools, or parts as required by the bill is an unfair or deceptive act or practice under the Consumer Sales Practices Law. The bill creates a cause of action for any person injured by such a violation and vests the Attorney General with the same powers and remedies available in the Consumer Sales Practices Law to enforce these provisions.<sup>11</sup>

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<sup>9</sup> R.C. 1350.05.

<sup>10</sup> R.C. 1350.04(B).

<sup>11</sup> R.C. 1350.04(A).

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## HISTORY

Action	Date
Introduced	02-28-23

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