

As Introduced

**135th General Assembly
Regular Session
2023-2024**

S. B. No. 73

Senator Blessing

A BILL

To enact sections 1350.01, 1350.011, 1350.02, 1
1350.03, 1350.04, and 1350.05 of the Revised 2
Code to enact the Digital Fair Repair Act. 3

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

Section 1. That sections 1350.01, 1350.011, 1350.02, 4
1350.03, 1350.04, and 1350.05 of the Revised Code be enacted to 5
read as follows: 6

Sec. 1350.01. As used in this chapter: 7

(A) "Authorized repair provider" means a person that has 8
an arrangement with the original equipment manufacturer under 9
which the original equipment manufacturer grants to the person a 10
license to use a trade name, service mark, or other proprietary 11
identifier for the purposes of offering diagnosis, maintenance, 12
or repair of digital electronic equipment under the name of the 13
original equipment manufacturer, or other arrangement with the 14
original equipment manufacturer to offer such services on behalf 15
of the original equipment manufacturer. 16

"Authorized repair provider" includes an original 17
equipment manufacturer that offers the services of diagnosis, 18
maintenance, or repair of its own digital electronic equipment, 19

and that, with respect to such digital electronic equipment, 20
does not have an arrangement described in the preceding 21
paragraph. 22

(B) "Diagnosis" means the process of identifying any 23
issues that cause digital electronic equipment or parts for such 24
equipment to not be in fully working order. 25

(C) "Digital electronic equipment" means any product that 26
has a value over ten dollars, adjusted annually in the manner 27
described in section 1350.011 of the Revised Code, that depends 28
for its functioning, in whole or in part, on digital electronics 29
embedded in or attached to the product, and that is not a motor 30
vehicle, as defined in section 4501.01 of the Revised Code. 31

(D) "Documentation" means any manual, diagram, reporting 32
output, service code description, schematic, security code, 33
password, or other guidance or information used in effecting the 34
services of diagnosis, maintenance, or repair of digital 35
electronic equipment or parts for such equipment. 36

(E) "Fair and reasonable terms" means making available 37
parts, tools, or documentation that satisfy the conditions set 38
forth in section 1350.03 of the Revised Code. 39

(F) "Independent repair provider" means a person in this 40
state that does not have an authorized repair provider 41
arrangement described in division (A) of this section and that 42
is engaged in the services of diagnosis, maintenance, or repair 43
of digital electronic equipment. 44

(G) "Maintenance" means any act necessary to keep 45
currently working digital electronic equipment or parts for such 46
equipment in fully working order. 47

(H) "Medical device" means an instrument, apparatus, 48

implement, machine, contrivance, implant, or other similar or 49
related article, including any component, part, or accessory, 50
that is intended for use in the diagnosis of disease or other 51
conditions, or in the cure, mitigation, treatment, or prevention 52
of disease, in humans or animals. "Medical device" does not 53
include general wellness products intended to maintain or 54
encourage a healthy lifestyle and that are unrelated to the 55
diagnosis, cure, mitigation, prevention, or treatment of a 56
disease or condition. 57

(I) "Modifications" or "modify" means any alteration to 58
digital electronic equipment that is not maintenance and not a 59
repair. 60

(J) "Original equipment manufacturer" means a person that, 61
in the normal course of business, is engaged in the business of 62
selling, leasing, or otherwise supplying digital electronic 63
equipment manufactured by or on behalf of itself, to any person. 64

(K) "Owner" means a person that owns or leases digital 65
electronic equipment purchased or used in this state. 66

(L) "Part" means any piece or component that is essential 67
to the full functionality of digital electronic equipment, 68
including any auxiliary attachments that improve the 69
performance, safety, operation, or efficiency of such equipment. 70

(M) "Repair" means any act needed to restore digital 71
electronic equipment or parts for such equipment to fully 72
working order. 73

(N) "Tool" means any software program, hardware implement, 74
or other apparatus used for diagnosis, maintenance, or repair of 75
digital electronic equipment or parts for such equipment. 76

"Tool" includes software or other mechanisms that provide, 77

program, or pair a part; calibrate functionality; or perform any 78
other function required to bring the equipment or part back to a 79
fully functional condition, including any updates. 80

Sec. 1350.011. In November, or as soon as practicable 81
thereafter, each year that begins after the effective date of 82
this section, the director of commerce shall increase or 83
decrease the value threshold above which a product may qualify 84
as digital electronic equipment by multiplying the value 85
threshold that applies for that year by the cumulative 86
percentage change in the consumer price index (all items, all 87
urban consumers) prepared by the bureau of labor statistics of 88
the United States department of labor for the twelve-month 89
period ending on the immediately preceding thirtieth day of 90
September. The amount resulting from the computation, rounded to 91
the nearest one cent, applies to the following calendar year. 92

The director shall publish on a web site maintained by the 93
department of commerce the adjusted amount and the dates to 94
which that amount applies. 95

Sec. 1350.02. (A) (1) For digital electronic equipment and 96
parts sold or used in this state, an original equipment 97
manufacturer shall make available for purposes of diagnosis, 98
maintenance, or repair any documentation, parts, and tools, 99
including any updates to information or embedded software, to 100
both of the following on fair and reasonable terms: 101

(a) Any independent repair provider; 102

(b) The owner of digital electronic equipment manufactured 103
by or on behalf of, or sold or otherwise supplied by, the 104
original equipment manufacturer. 105

(2) Nothing in division (A) (1) of this section requires an 106

original equipment manufacturer to make available a part that is 107
no longer available to the original equipment manufacturer. 108

(3) The documentation, parts, and tools described in 109
division (A)(1) of this section shall be made available either 110
directly by the original equipment manufacturer or by an 111
authorized repair provider. 112

(B) For digital electronic equipment that contains an 113
electronic security lock or other security-related function, the 114
original equipment manufacturer shall make available to the 115
owner and to independent repair providers, on fair and 116
reasonable terms, any special documentation, tools, and parts 117
needed to disable the lock or function, and to reset it when 118
disabled in the course of diagnosis, maintenance, or repair of 119
the digital electronic equipment. Such documentation, tools, and 120
parts may be made available by means of an appropriate secure 121
system. 122

Sec. 1350.03. (A) With respect to documentation required 123
to be made available under section 1350.02 of the Revised Code, 124
the original equipment manufacturer shall make such 125
documentation available at no charge, except that, when the 126
documentation is requested in physical printed form, the 127
original equipment manufacturer may charge for the reasonable, 128
actual costs of preparing and sending the documentation. 129

(B) With respect to tools required to be made available 130
under section 1350.02 of the Revised Code, the original 131
equipment manufacturer shall make such tools available, as 132
follows: 133

(1) At no charge, except that, when the tool is requested 134
in physical form, the original equipment manufacturer may charge 135

<u>for the reasonable, actual costs of preparing and sending the</u>	136
<u>tool;</u>	137
<u>(2) Without requiring authorization or internet access for</u>	138
<u>use or operation of the tool;</u>	139
<u>(3) Without imposing impediments to the access or use of</u>	140
<u>the tool to diagnose, maintain, or repair and enable full</u>	141
<u>functionality of digital electronic equipment or parts for such</u>	142
<u>equipment;</u>	143
<u>(4) Without impairing the efficient and cost-effective</u>	144
<u>performance of any such diagnosis, maintenance, or repair.</u>	145
<u>(C) With respect to parts required to be made available</u>	146
<u>under section 1350.02 of the Revised Code, the original</u>	147
<u>equipment manufacturer shall make such parts available, either</u>	148
<u>directly or through an authorized repair provider, to</u>	149
<u>independent repair providers and owners at costs and terms that</u>	150
<u>are equivalent to the most favorable costs and terms under which</u>	151
<u>an original equipment manufacturer offers the part to an</u>	152
<u>authorized repair provider, provided such costs and terms:</u>	153
<u>(1) Account for any discount, rebate, convenient and</u>	154
<u>timely means of delivery, means of enabling fully restored and</u>	155
<u>updated functionality, right of use, or other incentive or</u>	156
<u>preference the original equipment manufacturer offers to an</u>	157
<u>authorized repair provider;</u>	158
<u>(2) Account for any reasonable, actual costs, burdens, or</u>	159
<u>impediments the original equipment manufacturer incurs to</u>	160
<u>provide the part to the owner or to an independent repair</u>	161
<u>provider;</u>	162
<u>(3) Exclude any condition or substantial obligation or</u>	163
<u>restriction that is not reasonably necessary for enabling the</u>	164

owner or independent repair provider to engage in the diagnosis, 165
maintenance, or repair of the digital electronic equipment made 166
by or on behalf of the original equipment manufacturer; 167

(4) Not be conditioned on an arrangement described in 168
division (A) of section 1350.01 of the Revised Code. 169

Sec. 1350.04. (A) Subject to division (B) of this section, 170
a violation of section 1350.02 of the Revised Code is an unfair 171
or deceptive act or practice in violation of section 1345.02 of 172
the Revised Code. A person injured by a violation of section 173
1350.02 of the Revised Code has a cause of action and is 174
entitled to the same relief available to a consumer under 175
section 1345.09 of the Revised Code. All powers and remedies 176
available to the attorney general to enforce sections 1345.01 to 177
1345.13 of the Revised Code are available to the attorney 178
general to enforce section 1350.02 of the Revised Code. 179

(B) No original equipment manufacturer or authorized 180
repair provider shall be liable for any damage or injury caused 181
to any digital electronic equipment by an independent repair 182
provider or owner that occurs during the course of repair, 183
diagnosis, maintenance, or modification of the digital 184
electronic equipment, including: 185

(1) Indirect, incidental, special, or consequential 186
damages; 187

(2) Loss of data, privacy, or profits; 188

(3) Inability to use, or reduced functionality of, the 189
digital electronic equipment. 190

Sec. 1350.05. (A) Nothing in this chapter shall be 191
construed to require an original equipment manufacturer to 192
divulge a trade secret to any owner or independent service 193

provider except as necessary to provide documentation, parts, 194
and tools on fair and reasonable terms. 195

(B)(1) Except as provided in division (B)(2) of this 196
section, nothing in this chapter shall be construed to alter the 197
terms of any authorized repair provider arrangement described in 198
division (A) of section 1350.01 of the Revised Code in force 199
between an authorized repair provider and an original equipment 200
manufacturer, including the performance or provision of warranty 201
or recall repair work by an authorized repair provider on behalf 202
of an original equipment manufacturer pursuant to such 203
arrangement. 204

(2) Any provision in the terms of an authorized repair 205
provider arrangement described in division (A) of section 206
1350.01 of the Revised Code that waives, avoids, restricts, or 207
limits the original equipment manufacturer's obligations to 208
comply with this chapter is void and unenforceable. 209

(C) Nothing in this chapter shall be construed to require 210
an original equipment manufacturer or an authorized repair 211
provider to provide to any owner or independent repair provider 212
access to information, other than documentation, that is 213
provided by the original equipment manufacturer to an authorized 214
repair provider pursuant to the terms of an arrangement 215
described in division (A) of section 1350.01 of the Revised 216
Code. 217

(D) Nothing in this chapter shall be construed to require 218
an original equipment manufacturer or authorized repair provider 219
to make available any parts, tools, or documentation for the 220
purposes of modifying or making modifications to any digital 221
electronic equipment. 222

(E) Nothing in this chapter shall be construed to require 223
an original equipment manufacturer or authorized repair provider 224
to make available any parts, tools, or documentation required 225
for the diagnosis, maintenance, or repair of digital electronic 226
equipment in a manner that is inconsistent with or in violation 227
of any federal law. 228

(F) Nothing in this chapter applies to a motor vehicle 229
manufacturer, manufacturer of motor vehicle equipment, or motor 230
vehicle dealer acting in that capacity, or to any product or 231
service of a motor vehicle manufacturer, manufacturer of motor 232
vehicle equipment, or motor vehicle dealer acting in that 233
capacity. 234

(G) Nothing in this chapter applies to a medical device or 235
other digital electronic products found in a medical setting 236
that are primarily and customarily used in the cure, mitigation, 237
treatment, or prevention of disease in humans or animals and 238
that are generally not useful for other purposes. 239

(H) Nothing in this chapter applies to a manufacturer or 240
dealer of farming or forestry equipment acting in that capacity, 241
or to any product or service of a manufacturer or dealer of 242
farming or forestry equipment acting in that capacity. 243

(I) This chapter applies after the one hundred twentieth 244
day following the effective date of this section. 245

Section 2. Chapter 1350. of the Revised Code may be cited 246
as the "Digital Fair Repair Act." 247