

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

3                                   1st Session of the 58th Legislature (2021)

4 HOUSE BILL 1011

                                  By: Phillips, **Pae** and **Marti**

7                                   AS INTRODUCED

8                   An Act relating to consumer protection; creating the  
9                   Digital Fair Repair Act; defining terms; requiring  
10                  disclosure of certain documentation, parts and tools  
11                  for repairs; providing for enforcement; limiting  
12                  disclosed information; excluding certain industry;  
13                  providing for codification; and providing an  
14                  effective date.

14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15                  SECTION 1.           NEW LAW           A new section of law to be codified  
16                  in the Oklahoma Statutes as Section 799.1 of Title 15, unless there  
17                  is created a duplication in numbering, reads as follows:

18                  This act shall be known and may be cited as the "Digital Fair  
19                  Repair Act".

20                  SECTION 2.           NEW LAW           A new section of law to be codified  
21                  in the Oklahoma Statutes as Section 799.2 of Title 15, unless there  
22                  is created a duplication in numbering, reads as follows:

23                  As used in this act:

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

17           2. "Digital electronic equipment" or "equipment" means any  
18 product that depends for its functioning, in whole or in part, on  
19 digital electronics embedded in or attached to the product;

20           3. "Documentation" means any manual, diagram, reporting output,  
21 service code description, schematic diagram or similar kinds of  
22 information provided to an authorized repair provider for purposes  
23 of its effecting the services of diagnosis, maintenance or repair of  
24 digital electronic equipment;

1           4. "Embedded software" means any programmable instructions  
2 provided on firmware delivered with digital electronic equipment, or  
3 with a part for such equipment, for purposes of equipment operation,  
4 including all relevant patches and fixes made by the manufacturer of  
5 such equipment or part for these purposes;

6           5. "Fair and reasonable terms" for obtaining a part, tool or  
7 documentation means at costs and terms including convenience of  
8 delivery and of enabling functionality, and including rights of use,  
9 equivalent to the most favorable costs and terms offered by the  
10 original equipment manufacturer to an authorized repair provider,  
11 using the net costs that would be incurred by the authorized repair  
12 provider in obtaining an equivalent part or tool or documentation  
13 from the original equipment manufacturer, accounting for any  
14 discounts, rebates or other incentive programs in arriving at the  
15 actual net costs. For documentation, including any relevant  
16 updates, fair and reasonable terms means at no charge, except that,  
17 when the documentation is requested in physical printed form, a  
18 charge may be included for the reasonable actual costs of preparing  
19 and sending the copy;

20           6. "Firmware" means a software program or set of instructions  
21 programmed on digital electronic equipment, or on a part for such  
22 equipment, to allow the equipment or part to communicate with other  
23 computer hardware;

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1           7. "Independent repair provider" means an individual or  
2 business operating in this state who does not have an arrangement  
3 described in paragraph 1 of this section with an original equipment  
4 manufacturer, and who is not affiliated with any individual or  
5 business who has such an arrangement, and who is engaged in the  
6 services of diagnosis, maintenance or repair of digital electronic  
7 equipment, except that an original equipment manufacturer or, with  
8 respect to that original equipment manufacturer, an individual or  
9 business who has such an arrangement with that original equipment  
10 manufacturer or who is affiliated with an individual or business who  
11 has such an arrangement with that original equipment manufacturer,  
12 shall be considered an independent repair provider for purposes of  
13 those instances in which it engages in the services of diagnosis,  
14 maintenance or repair of digital electronic equipment that is not  
15 manufactured by or sold under the name of that original equipment  
16 manufacturer;

17           8. "Manufacturer of motor vehicle equipment" means a business  
18 engaged in the business of manufacturing or supplying components  
19 that are used in the manufacture, maintenance or repair of a motor  
20 vehicle;

21           9. "Motor vehicle" means a vehicle that is designed for  
22 transporting persons or property on a street or highway and is  
23 certified by the manufacturer under all applicable federal safety  
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1 and emissions standards and requirements for distribution and sale  
2 in the United States. Motor vehicle does not include:

- 3 a. a motorcycle, or
- 4 b. a recreational vehicle;

5 10. "Motor vehicle dealer" means an individual or business who,  
6 in the ordinary course of business, is engaged in the business of  
7 selling or leasing new motor vehicles to an individual or business  
8 pursuant to a franchise agreement, has obtained a license under  
9 Section 564 of Title 47 of the Oklahoma Statutes, and is engaged in  
10 the services of diagnosis, maintenance or repair of motor vehicles  
11 or motor vehicle engines pursuant to that franchise agreement;

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

14 12. "Original equipment manufacturer" means a business engaged  
15 in the business of selling or leasing new digital electronic  
16 equipment manufactured by or on behalf of itself, to any individual  
17 or business;

18 13. "Owner" means an individual or business who owns or leases  
19 digital electronic equipment purchased or used in this state;

20 14. "Part" means any replacement part, either new or used, made  
21 available by an original equipment manufacturer for purposes of  
22 effecting the services of maintenance or repair of digital  
23 electronic equipment manufactured or sold by the original equipment  
24 manufacturer; and

1       15. "Trade secret" shall have the same meaning as such term is  
2 defined in Section 86 of Title 78 of the Oklahoma Statutes.

3       SECTION 3.       NEW LAW       A new section of law to be codified  
4 in the Oklahoma Statutes as Section 799.3 of Title 15, unless there  
5 is created a duplication in numbering, reads as follows:

6       A. For digital electronic equipment, and parts for such  
7 equipment, sold or used in this state, an original equipment  
8 manufacturer shall make available, for purposes of diagnosis,  
9 maintenance or repair, to any independent repair provider, or to the  
10 owner of digital electronic equipment manufactured by or on behalf  
11 of, or sold by, the original equipment manufacturer, on fair and  
12 reasonable terms, documentation, parts and tools, inclusive of any  
13 updates to information or embedded software. Nothing in this  
14 section requires an original equipment manufacturer to make  
15 available a part if the part is no longer available to the original  
16 equipment manufacturer.

17       B. For equipment that contains an electronic security lock or  
18 other security-related function, the original equipment manufacturer  
19 shall make available to the owner and to independent repair  
20 providers, on fair and reasonable terms, any special documentation,  
21 tools and parts needed to reset the lock or function when disabled  
22 in the course of diagnosis, maintenance or repair of the equipment.  
23 Such documentation, tools and parts may be made available through  
24 appropriate secure release systems.

1 SECTION 4. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 799.4 of Title 15, unless there  
3 is created a duplication in numbering, reads as follows:

4 Violation of any of the provisions of this act is an unlawful  
5 practice under the Consumer Protection Act in Section 751 et seq. of  
6 Title 15 of the Oklahoma Statutes. All remedies, penalties and  
7 authority granted to the Attorney General by that act shall be  
8 available for the enforcement of this act.

9 SECTION 5. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 799.5 of Title 15, unless there  
11 is created a duplication in numbering, reads as follows:

12 A. Nothing in this act shall be construed to require an  
13 original equipment manufacturer to divulge a trade secret to an  
14 owner or an independent repair provider except as necessary to  
15 provide documentation, parts and tools on fair and reasonable terms.

16 B. No provision in this act shall be construed to alter the  
17 terms of any arrangement described in paragraph 1 of Section 2 of  
18 this act in force between an authorized repair provider and an  
19 original equipment manufacturer, including, but not limited to, the  
20 performance or provision of warranty or recall repair work by an  
21 authorized repair provider on behalf of an original equipment  
22 manufacturer pursuant to such arrangement, except that any provision  
23 in such terms that purports to waive, avoid, restrict or limit the  
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1 original equipment manufacturer's obligations to comply with this  
2 act shall be void and unenforceable.

3 C. Nothing in this act shall be construed to require an  
4 original equipment manufacturer or an authorized repair provider to  
5 provide to an owner or independent repair provider access to  
6 information, other than documentation, that is provided by the  
7 original equipment manufacturer to an authorized repair provider  
8 pursuant to the terms of an arrangement described in paragraph 1 of  
9 Section 2 of this act.

10 SECTION 6. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 799.6 of Title 15, unless there  
12 is created a duplication in numbering, reads as follows:

13 Nothing in this act applies to a motor vehicle manufacturer,  
14 manufacturer of motor vehicle equipment, or motor vehicle dealer  
15 acting in that capacity, or to any product or service of a motor  
16 vehicle manufacturer, manufacturer of motor vehicle equipment, or  
17 motor vehicle dealer acting in that capacity.

18 SECTION 7. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section 799.7 of Title 15, unless there  
20 is created a duplication in numbering, reads as follows:

21 This act applies with respect to equipment sold or in use on or  
22 after the effective date of this act.

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SECTION 8. This act shall become effective November 1, 2021.

COMMITTEE REPORT BY: COMMITTEE ON TECHNOLOGY, dated 02/10/2021 - DO  
PASS, As Coauthored.