

117TH CONGRESS  
1ST SESSION

# H. R. 4006

To require original equipment manufacturers of digital electronic equipment to make available certain documentation, diagnostic, and repair information to independent repair providers, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2021

Mr. MORELLE introduced the following bill; which was referred to the  
Committee on Energy and Commerce

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## A BILL

To require original equipment manufacturers of digital electronic equipment to make available certain documentation, diagnostic, and repair information to independent repair providers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Repair Act”.

1 **SEC. 2. REQUIREMENT TO MAKE DIAGNOSTIC, MAINTEN-**  
2 **NANCE, AND REPAIR EQUIPMENT AVAILABLE**  
3 **TO INDEPENDENT REPAIR PROVIDERS.**

4 (a) GENERAL REQUIREMENT.—For digital electronic  
5 equipment sold or used in the United States, an original  
6 equipment manufacturer shall make available, for the pur-  
7 poses of diagnosis, maintenance, or repair of such equip-  
8 ment, to independent repair providers or owners of such  
9 digital electronic equipment manufactured by or on behalf  
10 of, or sold or otherwise supplied by the original equipment  
11 manufacturer, in a timely manner and on fair and reason-  
12 able terms, documentation, parts, and tools, inclusive of  
13 any updates to information or embedded software.

14 (b) ADDITIONAL REQUIREMENTS RELATED TO AN  
15 EXPRESS WARRANTY.—When the OEM has made an ex-  
16 press warranty with respect to digital electronic equipment  
17 and the wholesale price of the equipment is \$100 or more,  
18 the manufacturer shall provide such parts, tools, and doc-  
19 umentation as to enable the repair of the equipment dur-  
20 ing the warranty period, at an equitable price and conven-  
21 ience of delivery and of enabling functionality, in light  
22 of—

23 (1) the actual cost to the OEM to prepare and  
24 distribute the part, tool, or documentation, exclusive  
25 of any research and development costs incurred;

1           (2) the ability of owners and independent repair  
2 providers to afford the part, tool, or documentation;  
3 and

4           (3) the means by which the part, tool, or docu-  
5 mentation is distributed.

6 **SEC. 3. ENFORCEMENT.**

7           (a) ENFORCEMENT BY THE FEDERAL TRADE COM-  
8 MISSION.—

9           (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
10 TICES.—A violation of section 2 shall be treated as  
11 a violation of a rule defining an unfair or deceptive  
12 act or practice prescribed under section 18(a)(1)(B)  
13 of the Federal Trade Commission Act (15 U.S.C.  
14 57a(a)(1)(B)).

15           (2) POWERS OF THE COMMISSION.—

16           (A) IN GENERAL.—The Commission shall  
17 enforce this Act and any regulations promul-  
18 gated under this Act in the same manner, by  
19 the same means, and with the same jurisdic-  
20 tion, powers, and duties as though all applicable  
21 terms and provisions of the Federal Trade  
22 Commission Act (15 U.S.C. 41 et seq.) were in-  
23 corporated into and made a part of this Act,  
24 and any person who violates this Act or a regu-  
25 lation promulgated under this Act shall be sub-

1           ject to the penalties and entitled to the privi-  
2           leges and immunities provided in the Federal  
3           Trade Commission Act.

4           (B) REGULATIONS.—The Commission  
5           may, under section 553 of title 5, United States  
6           Code, prescribe any regulations it determines  
7           necessary to carry out this Act.

8           (C) EFFECT ON OTHER LAWS.—Nothing in  
9           this Act shall be construed in any way to limit  
10          the authority of the Commission under any  
11          other provision of law.

12         (b) ENFORCEMENT BY STATE ATTORNEYS GEN-  
13         ERAL.—

14           (1) IN GENERAL.—If the chief law enforcement  
15          officer of a State, or an official or agency designated  
16          by a State, has reason to believe that any person has  
17          violated or is violating section 2, the attorney gen-  
18          eral, official, or agency of the State, in addition to  
19          any authority it may have to bring an action in  
20          State court under its consumer protection law, may  
21          bring a civil action in any appropriate United States  
22          district court or in any other court of competent ju-  
23          risdiction, including a State court, to—

24           (A) enjoin further such violation by such  
25          person;

1 (B) enforce compliance with such section;

2 (C) obtain civil penalties; and

3 (D) obtain damages, restitution, or other  
4 compensation on behalf of residents of the  
5 State.

6 (2) NOTICE AND INTERVENTION BY THE  
7 FTC.—The attorney general (or other such officer)  
8 of a State shall provide prior written notice of any  
9 action under paragraph (1) to the Commission and  
10 provide the Commission with a copy of the complaint  
11 in the action, except in any case in which such prior  
12 notice is not feasible, in which case the attorney gen-  
13 eral shall serve such notice immediately upon insti-  
14 tuting such action. The Commission shall have the  
15 right—

16 (A) to intervene in the action;

17 (B) upon so intervening, to be heard on all  
18 matters arising therein; and

19 (C) to file petitions for appeal.

20 (3) LIMITATION ON STATE ACTION WHILE FED-  
21 ERAL ACTION IS PENDING.—If the Commission has  
22 instituted a civil action for violation of this Act, no  
23 State attorney general, or official or agency of a  
24 State, may bring an action under this paragraph  
25 during the pendency of that action against any de-

1        defendant named in the complaint of the Commission  
2        for any violation of this Act alleged in the complaint.

3            (4) RELATIONSHIP WITH STATE LAW CLAIMS.—

4        If the attorney general of a State has authority to  
5        bring an action under State law directed at acts or  
6        practices that also violate this Act, the attorney gen-  
7        eral may assert the State law claim and a claim  
8        under this Act in the same civil action.

9        **SEC. 4. RULES OF CONSTRUCTION, LIMITATIONS, AND NON-**  
10        **APPLICATION.**

11        The following rules of construction, limitations, and  
12        non-application provision apply to this Act:

13            (1) SECURITY-RELATED FUNCTIONS NOT EX-  
14        CLUDED.—For equipment that contains an elec-  
15        tronic security lock or other security-related func-  
16        tion, the original equipment manufacturer shall  
17        make available to the owner and to independent re-  
18        pair providers, on fair and reasonable terms, any  
19        special documentation, tools, and parts needed to  
20        disable the lock or function, and to reset it when dis-  
21        abled in the course of diagnosis, maintenance, or re-  
22        pair of the equipment. Such documentation, tools,  
23        and parts may be made available to owners and  
24        independent repair facilities through appropriate se-  
25        cure data release systems.

1           (2) PROTECTION OF TRADE SECRETS.—Nothing  
2 in this Act shall be construed to require an original  
3 equipment manufacturer to divulge a trade secret, as  
4 defined in section 1839 of title 18, United States  
5 Code, to an owner or an independent repair provider  
6 except as necessary to provide documentation, parts,  
7 and tools on fair and reasonable terms.

8           (3) TERMS OF AGREEMENT WITH AUTHORIZED  
9 REPAIR PROVIDERS.—Notwithstanding any law, rule  
10 or regulation to the contrary, no provision in this  
11 Act shall be construed to abrogate, interfere with,  
12 contradict or alter the terms of any arrangement de-  
13 scribed in section 5(1)(A), including the performance  
14 or provision of warranty or recall repair work by an  
15 authorized repair provider on behalf of an original  
16 equipment manufacturer pursuant to such arrange-  
17 ment, except that any provision in such terms that  
18 purports to waive, avoid, restrict or limit an OEM's  
19 obligations to comply with this Act shall be void and  
20 unenforceable.

21           (4) NON-APPLICATION TO MOTOR VEHICLE OR  
22 MOTOR VEHICLE EQUIPMENT MANUFACTURERS.—  
23 Nothing in this Act shall apply to a motor vehicle  
24 manufacturer, a manufacturer of motor vehicle

1 equipment, or a motor vehicle dealer, acting in that  
2 capacity.

3 (5) NON-APPLICATION TO MANUFACTURERS OF  
4 MEDICAL DEVICES.—Nothing in this Act shall apply  
5 to a manufacturer of a medical device, acting in that  
6 capacity.

7 **SEC. 5. DEFINITIONS.**

8 In this Act, the following definitions apply:

9 (1) The term “authorized repair provider”  
10 means—

11 (A) with respect to an OEM, a person or  
12 business that is unaffiliated with the OEM and  
13 that has an arrangement with the OEM for a  
14 definite or indefinite period in which the OEM  
15 grants to a person or business license to use a  
16 trade name, service mark or other proprietary  
17 identifier for the purposes of offering the serv-  
18 ices of diagnosis, maintenance, or repair of dig-  
19 ital electronic equipment under the name of the  
20 OEM, or other arrangement with the OEM to  
21 offer such services on behalf of the OEM; or

22 (B) an OEM that offers the services of di-  
23 agnosis, maintenance, or repair of digital elec-  
24 tronic equipment manufactured by it or on its  
25 behalf, and who does not have an arrangement



1           described in subparagraph (A) with an unaffili-  
2           ated individual or business with respect to pro-  
3           viding such services, shall be considered an au-  
4           thorized repair provider with respect to such  
5           equipment.

6           (2) The term “digital electronic equipment”  
7           means any product that depends for its functioning,  
8           in whole or in part, on digital electronics embedded  
9           in or attached to the product.

10          (3) The term “documentation” means any  
11          manuals, diagrams, reporting output, service code  
12          descriptions, schematic, or other guidance or other  
13          information used in effecting the services of diag-  
14          nosis, maintenance, or repair of digital electronic  
15          equipment.

16          (4) The term “embedded software” means any  
17          programmable instructions provided on firmware de-  
18          livered with digital electronic equipment, or with a  
19          part for such equipment, for the purposes of equip-  
20          ment operation, including all relevant patches and  
21          fixes made by the manufacturer of such equipment  
22          or part for this purpose.

23          (5) The term “fair and reasonable terms”, with  
24          respect to a part, tool, or documentation, means at  
25          costs and terms that are equivalent to the most fa-

1 vorable costs and terms under which an OEM offers  
2 the part, tool, or documentation to an authorized re-  
3 pair provider—

4 (A) accounting for any discount, rebate,  
5 convenient means of delivery, means of enabling  
6 fully restored and updated functionality, rights  
7 of use, or other incentive or preference the  
8 OEM offers to an authorized repair provider, or  
9 any additional cost, burden, or impediment the  
10 OEM imposes on an independent repair pro-  
11 vider;

12 (B) not conditioned on or imposing a sub-  
13 stantial obligation or restriction that is not rea-  
14 sonably necessary for enabling the owner or  
15 independent repair provider to engage in the di-  
16 agnosis, maintenance, or repair of digital elec-  
17 tronic equipment made by or on behalf of the  
18 OEM; and

19 (C) not conditioned on an arrangement de-  
20 scribed in section 5(1)(a).

21 (6) The term “firmware” means a software pro-  
22 gram or set of instructions programmed on digital  
23 electronic equipment, or on a part for such equip-  
24 ment, to allow the equipment or part to commu-  
25 nicate within itself or with other computer hardware.

1           (7) The term “independent repair provider”  
2 means with respect to an OEM, a person that is not  
3 affiliated with the OEM or with an authorized repair  
4 provider of the OEM, which is engaged in the diag-  
5 nosis, maintenance, or repair of digital electronic  
6 equipment, except that an OEM or, with respect to  
7 that OEM, a person who has such an arrangement  
8 with that OEM, or who is affiliated with a person  
9 who has such an arrangement with that OEM, shall  
10 be considered an independent repair provider for the  
11 purposes of those instances when such OEM or per-  
12 son engages in the diagnosis, service, maintenance,  
13 or repair of digital equipment that is not manufac-  
14 tured by or sold under the name of that OEM.

15           (8) The term “medical device” has the meaning  
16 given the term “device” under section 201(h) of the  
17 Federal Food, Drug and Cosmetic Act (21 U.S.C.  
18 321(h)).

19           (9) The term “original equipment manufac-  
20 turer” or “OEM” means any person who, in the or-  
21 dinary course of its business, is engaged in the busi-  
22 ness of selling, leasing, or otherwise supplying new  
23 digital electronic equipment or parts of equipment  
24 manufactured by or on behalf of itself, to any indi-  
25 vidual or business.

1           (10) The term “owner” means a person who  
2 owns or leases a digital electronic equipment.

3           (11) The term “part” means any replacement  
4 parts, either new or used, made available by an  
5 OEM for purposes of effecting the services of main-  
6 tenance or repair of digital electronic equipment  
7 manufactured by or on behalf of, sold or otherwise  
8 supplied by the OEM.

9           (12) The term “tools” means any software pro-  
10 gram, hardware implement, or other apparatus used  
11 for diagnosis, maintenance, or repair of digital elec-  
12 tronic equipment, including software or other mecha-  
13 nisms that provision, program, or pair a new part,  
14 calibrate functionality, or perform any other func-  
15 tion required to bring the equipment back to fully  
16 functional condition.

17 **SEC. 6. EFFECTIVE DATE.**

18           This Act shall take effect 60 days after the date of  
19 enactment of this Act and shall apply with respect to  
20 equipment sold or in use on or after the effective date of  
21 this Act.

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