

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 869

By: Floyd

AS INTRODUCED

An Act relating to consumer protection; creating the Digital Fair Repair Act; providing short title; defining terms; requiring disclosure of certain documentation, parts, and tools for repairs; limiting disclosed information; excluding certain industry; releasing certain individuals from liability; providing for enforcement; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 772 of Title 15, unless there is created a duplication in numbering, reads as follows:

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 772.1 of Title 15, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Authorized repair provider" means an individual or business who is unaffiliated with an original equipment manufacturer and who

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

15 2. "Diagnosis" means the process of identifying the issue or
16 issues that cause digital electronic equipment or equipment not be
17 in fully working order;

18 3. "Digital electronic equipment" or "equipment" means any
19 product with a value over Ten Dollars (\$10.00), adjusted annual by
20 the rate of change in the Consumer Price Index as reported by the
21 Bureau of Labor Statistics of the United States Department of Labor,
22 that depends for its functioning, in whole or in part, on digital
23 electronics embedded in or attached to the product;

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

6 5. "Fair and reasonable terms" means making available parts,
7 tools, or documentation as follows:

8 a. with respect to documentation, that the documentation
9 is made available by the original equipment
10 manufacturer at no charge, except when the documented
11 is requested in physical printed form, a charge may be
12 included for the reasonable actual costs of preparing
13 sending the copy,

14 b. with respect to tools, that the tools are made
15 available by the original equipment manufacturer at no
16 charge and without requiring authorization or Internet
17 access for use of the tool to diagnose, maintain, or
18 repair and enable full functionality of digital
19 electronic equipment, or in a manner that impairs the
20 efficient and cost-effective performance of any
21 diagnosis, maintenance, or repair, except when such
22 tool is request in physical form, a charge may be
23 included for the reasonable, actual costs of preparing
24 and sending such tool,

1 c. with respect to parts, that such parts are made
2 available by the original equipment manufacturer,
3 either directly or through an authorized repair
4 provider, to independent repair providers and owners
5 at costs and terms that are equivalent to the most
6 favorable costs and terms under which an original
7 equipment manufacturer offers the part to an
8 authorized repair provider and which:

9 (1) accounts for any discount, rebate, convenient and
10 timely means of delivery, means of enabling fully
11 restored and updated functionality, rights of
12 use, or other incentive or preference the
13 original equipment manufacturer offers to an
14 authorized repair provider, or any additional
15 cost, burden, or impediment the original
16 equipment manufacturer imposes on an owner or
17 independent repair provider,

18 (2) is not conditioned on or imposing a substantial
19 obligation on independent repair provider to
20 engage in the diagnosis, maintenance, or repair
21 of digital electronic equipment made by or on
22 behalf of the original equipment manufacturer,
23 and
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1 (3) is not conditioned on an arrangement described in
2 paragraph 1 of this section, and

3 d. such parts, tools, and documentation shall be made
4 available to an authorized repair provider, and shall
5 further be made available by an authorized repair
6 provider to any independent repair provider owner;
7 provided, that the authorized repair provider is
8 contractually and practically permitted by the
9 original equipment manufacturer to sell such parts,
10 tools, and documentation to any independent repair
11 provider or owner, and provided further that such
12 original equipment manufacturer shall not:

13 (1) retaliate against or hinder the ability of any
14 authorized repair provider to sell such parts,
15 tools, or documentation through any means,
16 including advertising restrictions or product
17 allocation limitations unrelated to legitimate
18 product shortages, or

19 (2) condition or impose a substantial obligation or
20 restriction that is not reasonably necessary for
21 enabling the owner or independent repair provider
22 to engage in the diagnosis, maintenance, or
23 repair of digital electronic equipment made by or
24 on behalf of the original equipment manufacturer;

1 6. "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;

8 7. "Maintenance" means any act necessary to keep currently
9 working digital electronic equipment or equipment in fully working
10 order;

11 8. "Manufacturer of motor vehicle equipment" means a business
12 engaged in the business of manufacturing or supplying components
13 that are used in the manufacture, maintenance, or repair of a motor
14 vehicle;

15 9. "Medical device" means an instrument, apparatus, implement,
16 machine, contrivance, implant, or other similar or related article,
17 including a component part, or accessory, as defined in the federal
18 Food, Drug, and Cosmetic Act, 21 USC, Section 321 (h) as amended
19 from time to time, which is intended for use in the diagnosis of
20 disease or other conditions, or in the cure, mitigation, treatment,
21 or prevention of disease, in a person or animal;

22 10. "Modifications" or "modify" means any alteration of digital
23 electronic equipment that is not maintenance and not a repair;

1 11. "Motor vehicle" means the same as provided in Section 562
2 of Title 47 of the Oklahoma Statutes;

3 12. "Motor vehicle dealer" means the same as provided in
4 Section 562 of Title 47 of the Oklahoma Statutes;

5 13. "Motor vehicle manufacturer" means the same as provided in
6 Section 562 of Title 47 of the Oklahoma Statutes;

7 14. "Original equipment manufacturer" means any individual or
8 business engaged in the business of selling or leasing new digital
9 electronic equipment manufactured by or on behalf of itself, to any
10 individual or business;

11 15. "Owner" means an individual or business who owns or leases
12 digital electronic equipment purchased or used in this state;

13 16. "Part" means any replacement part, either new or used, made
14 available by an original equipment manufacturer for purposes of
15 effecting the services of maintenance or repair of digital
16 electronic equipment manufactured or sold by the original equipment
17 manufacturer;

18 17. "Repair" means any act needed to restore digital electronic
19 equipment or equipment to fully working order;

20 18. "Tool" means any software program, hardware implement, or
21 other apparatus used for diagnosis, maintenance, or repair of
22 digital electronic equipment, including software or other mechanisms
23 that provide, program, or pair a part, calibrate functionality, or
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1 program any other function required to bring the equipment or part
2 back to fully functional condition, including any updates; and

3 19. "Trade secret" shall have the same meaning as such term is
4 defined in Section 86 of Title 78 of the Oklahoma Statutes.

5 SECTION 3. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 772.2 of Title 15, unless there
7 is created a duplication in numbering, reads as follows:

8 A. For digital electronic equipment, and parts for such
9 equipment, sold or used in this state, an original equipment
10 manufacturer shall make available to any independent repair provider
11 and owner of digital electronic equipment manufacturer by or on
12 behalf of or sold by such original equipment manufacturer, on fair
13 and reasonable terms, any documentation, parts, and tools required
14 for the diagnosis, maintenance, or repair of such digital electronic
15 equipment and parts for the equipment. The documentation, parts,
16 and tools shall be made available either directly by such original
17 equipment manufacturer or by an authorized repair provider.

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

1 Such documentation, tools, and parts may be made available through
2 appropriate secure release systems.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 772.3 of Title 15, unless there
5 is created a duplication in numbering, reads as follows:

6 Nothing in this act shall be construed to:

7 1. Require an original equipment manufacturer to divulge a
8 trade secret to an owner or an independent repair provider except as
9 necessary to provide documentation, parts, and tools on fair and
10 reasonable terms;

11 2. Alter the terms of any arrangement described in paragraph 1
12 of Section 2 of this act in force between an authorized repair
13 provider and an original equipment manufacturer, including, but not
14 limited to, the performance or provision of warranty or recall
15 repair work by an authorized repair provider on behalf of an
16 original equipment manufacturer pursuant to such arrangement, except
17 that any provision in such terms that purports to waive, avoid,
18 restrict, or limit the original equipment manufacturer's obligations
19 to comply with this act shall be void and unenforceable;

20 3. Require an original equipment manufacturer or an authorized
21 repair provider to provide to an owner or independent repair
22 provider access to information, other than documentation, that is
23 provided by the original equipment manufacturer to an authorized
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1 repair provider pursuant to the terms of an arrangement described in
2 paragraph 1 of Section 2 of this act;

3 4. Require an original equipment manufacturer or authorized
4 repair provider to make available any parts, tools, or documentation
5 for the purpose of modifying or making modifications to any digital
6 electronic equipment;

7 5. Require an original equipment manufacturer or authorized
8 repair provider to make available any parts, tools, or documentation
9 required for the diagnosis, maintenance, or repair of public safety
10 communications equipment, the intended use of which is for emergency
11 response or prevention purposes by an emergency service organization
12 such as a police, fire, or emergency medical services agency;

13 6. Require any original equipment manufacturer or authorized
14 repair provider to make available any parts, tools, or documentation
15 required for the diagnosis, maintenance, or repair of digital
16 electronic equipment in a manner that is inconsistent with or in
17 violation of any federal law, such as gaming and entertainment
18 consoles, related software, and components; or

19 7. Require any original equipment manufacturer or authorized
20 repair provider to make available any parts, tools, or documentation
21 required for the diagnosis, maintenance, or repair of any home
22 applicant that has a digital electronic product embedded within it
23 including, but not limited to, refrigerators, ovens, microwaves, air
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1 conditioning and heating units, including any related software and
2 components.

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 772.4 of Title 15, unless there
5 is created a duplication in numbering, reads as follows:

6 Nothing in this act shall apply to:

7 1. A motor vehicle manufacturer, manufacturer of motor vehicle
8 equipment, or motor vehicle dealer acting in that capacity, or to
9 any product or service of a motor vehicle manufacturer, manufacturer
10 of motor vehicle equipment, or motor vehicle dealer acting in that
11 capacity;

12 2. A medical device or a digital electronic product found in a
13 medical setting including diagnostic, monitoring, or control
14 equipment or any product or service that may be offered; or

15 3. A manufacturer, distributor, importer, or dealer of any off-
16 road equipment including, but not limited to, farm and utility
17 tractors, farm implements, farm machinery, forestry equipment,
18 industrial equipment, utility equipment, construction equipment, and
19 any tools, technology, attachments, accessories, components, and
20 repair parts for any equipment pursuant to this paragraph.

21 SECTION 6. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 772.5 of Title 15, unless there
23 is created a duplication in numbering, reads as follows:

1 No original equipment manufacturer or authorized repair provider
2 shall be liable for any damage or injury caused to any digital
3 electronic equipment by an independent repair provider, or owner
4 which occurs during the course of repair, diagnosis, maintenance, or
5 modification including, but not limited to, any indirect,
6 incidental, special, or consequential damages, any loss of data,
7 privacy, or profits, any inability to use, or reduced functionality
8 of, the digital electronic equipment.

9 SECTION 7. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 772.6 of Title 15, unless there
11 is created a duplication in numbering, reads as follows:

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

17 SECTION 8. This act shall become effective November 1, 2023.

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