

# ASSEMBLY, No. 589

## STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**Assemblyman RALPH R. CAPUTO**

**District 28 (Essex)**

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**District 7 (Burlington)**

**Co-Sponsored by:**

**Assemblywoman Jasey, Assemblyman Peterson, Assemblywoman Reynolds-Jackson, Assemblymen Holley and DiMaio**

**SYNOPSIS**

Fair Repair Act"; concerns repairs to certain consumer electronics.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 12/11/2018)**

1 AN ACT concerning the repair of certain consumer products and  
2 supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. As used in this act:

8 “Authorized repair provider” means a person having an  
9 arrangement for a definite or indefinite period in which an original  
10 equipment manufacturer grants the use of a trade name, service  
11 mark, or related characteristic for the purposes of offering repair  
12 services under the name of the original equipment manufacturer.  
13 An “authorized repair provider” includes an authorized subcontract  
14 repair or refurbishment facility having such an agreement.

15 “Diagnostic, service, or repair documentation” includes  
16 schematic diagrams, repair technical updates, and updates and  
17 corrections to embedded software.

18 “Embedded software” means any programmable instructions  
19 provided on firmware delivered with the equipment for the purposes  
20 of equipment operation, including all relevant patches and fixes  
21 made by the original equipment manufacturer for this purpose,  
22 including, but not limited to, a basic internal operating system, an  
23 internal operating system, a machine code, an assembly code, a root  
24 code, and a microcode.

25 “Equipment” means digital electronic equipment or a part for the  
26 equipment originally manufactured for distribution and sale in this  
27 State.

28 “Fair and reasonable terms” means an equitable price in light of  
29 relevant factors including, but not limited to: (1) the net cost to the  
30 authorized repair provider for similar information obtained from an  
31 original equipment manufacturer, less any discounts, rebates, or  
32 other incentive programs; (2) the cost to the original equipment  
33 manufacturer for preparing and distributing the information,  
34 excluding any research and development costs incurred in designing  
35 and implementing, upgrading, or altering the product, but including  
36 amortized capital costs for the preparation and distribution of the  
37 information; (3) the price charged by another original equipment  
38 manufacturer for similar information; (4) the price charged by an  
39 original equipment manufacturer for similar information prior to the  
40 launch of an original equipment manufacturer website; (5) the  
41 ability of aftermarket technicians or shops to afford the information;  
42 (6) the means by which the information is distributed; (7) the extent  
43 to which the information is used, which includes the number of  
44 users, and frequency, duration, and volume of use; and (8) inflation.

45 “Firmware” means a software program or set of instructions  
46 programmed on a hardware device to allow the device to  
47 communicate with other computer hardware.

1       “Independent repair provider” means a person operating in this  
2 State without affiliation to an original equipment manufacturer or  
3 an authorized repair provider, which is engaged in the diagnosis,  
4 service, maintenance, or repair of equipment, except that an original  
5 equipment manufacturer shall be considered an independent repair  
6 provider for purposes of those instances when an original  
7 equipment manufacturer engages in the diagnosis, service,  
8 maintenance, or repair of equipment that is not affiliated with the  
9 original equipment manufacturer.

10       “Motor vehicle” means the same as defined in R.S.39:1-1, except  
11 that it excludes a motorcycle and recreation vehicle.

12       “Motor vehicle dealer” means a “dealer” as defined in R.S.39:1-  
13 1.

14       “Motor vehicle manufacturer” means a “manufacturer” as  
15 defined in R.S.39:1-1.

16       “Original equipment manufacturer” means any person who, in  
17 the ordinary course of its business, is engaged in the business of  
18 selling or leasing new equipment and is engaged in the diagnosis,  
19 service, maintenance, or repair of equipment.

20       “Owner” means a person who owns or leases equipment  
21 purchased or used in this State.

22       “Part” means any replacement part, either new or used, made  
23 available by the original equipment manufacturer to an authorized  
24 repair provider for purposes of effecting repair.

25       “Trade secret” means the same as defined in section 2 of  
26 P.L.2011, c.161 (C.56:15-2).

27

28       2. a. An original equipment manufacturer of equipment sold,  
29 offered for sale, or used in this State shall make available:

30       (1) to any independent repair provider or owner of equipment  
31 manufactured by the original equipment manufacturer, the same  
32 diagnostic, service, or repair documentation for no charge or in the  
33 same manner and in the same timeframe as the original equipment  
34 manufacturer makes diagnostic, service, or repair documentation  
35 available to its authorized repair providers; and

36       (2) for purchase by the owner, an authorized agent, or any  
37 independent repair provider, equipment or service parts, inclusive  
38 of any updates to the embedded software of the equipment, under  
39 fair and reasonable terms.

40       An original equipment manufacturer shall not be required to sell  
41 equipment or service parts if the parts are no longer available to the  
42 original equipment manufacturer or an authorized repair provider.

43       b. An original equipment manufacturer that sells diagnostic,  
44 service, or repair documentation to an independent repair provider  
45 or an owner in a format that is standardized with other original  
46 equipment manufacturers, and on terms and conditions more  
47 favorable than those in which the authorized repair provider obtains  
48 the same documentation, shall be prohibited from requiring an

1 authorized repair provider to continue purchasing the  
2 documentation in a proprietary format unless the proprietary format  
3 includes diagnostic, service, or repair documentation or  
4 functionality that is not available in a standardized format.

5 c. An original equipment manufacturer of equipment sold,  
6 offered for sale, or used in this State shall make available for  
7 purchase by independent repair providers and owners all diagnostic  
8 repair tools incorporating the same diagnostic, repair, and remote  
9 communications capabilities that the original equipment  
10 manufacturer makes available to its own repair or engineering staff  
11 or any authorized repair provider. Each original equipment  
12 manufacturer shall offer tools for sale to an independent repair  
13 provider or owner under fair and reasonable terms.

14 An original equipment manufacturer that provides diagnostic,  
15 service, or repair documentation to aftermarket diagnostic tool  
16 manufacturers, diagnostics providers, or service information  
17 publications and systems shall have fully satisfied its obligations  
18 under this subsection and shall not be responsible for the content  
19 and functionality of aftermarket diagnostic tools, diagnostics, or  
20 service information systems.

21 d. Original equipment manufacturer equipment sold, offered  
22 for sale or used in this State for the purpose of providing security-  
23 related functions shall not exclude diagnostic, service, and repair  
24 documentation necessary to reset a security-related electronic  
25 function from information provided to an independent repair  
26 provider or owner.

27  
28 3. A violation of section 2 of P.L. , c. (C. ) (pending  
29 before the Legislature as this bill) is an unlawful practice and a  
30 violation of P.L.1960, c.39 (C.56:8-1 et seq.).

31  
32 4. Nothing in P.L. , c. (C. ) (pending before the  
33 Legislature as this bill) shall be:

34 a. construed to require an original equipment manufacturer to  
35 divulge a trade secret;

36 b. construed to require original equipment manufacturers or  
37 authorized repair providers to provide an owner or independent  
38 repair provider access to non-diagnostic documentation provided by  
39 an original equipment manufacturer to an authorized repair provider  
40 pursuant to the terms of an authorizing agreement; or

41 c. read, interpreted, or construed to abrogate, interfere with,  
42 contradict, or alter the terms of any agreement executed and in force  
43 between an authorized repair provider and an original equipment  
44 manufacturer including, but not limited to, the performance or  
45 provision of warranty or recall repair work by an authorized repair  
46 provider on behalf of an original equipment manufacturer pursuant  
47 to an authorized repair agreement, except that any provision in an  
48 authorized repair agreement that purports to waive, avoid, restrict,

1 or limit an original equipment manufacturer's compliance with this  
2 section shall be void and unenforceable.

3

4 5. Nothing in P.L. , c. (C. ) (pending before the  
5 Legislature as this bill) shall apply to motor vehicle manufacturers,  
6 any product or service of a motor vehicle manufacturer, or motor  
7 vehicle dealers.

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9 6. This act shall take effect immediately and shall be  
10 retroactive to equipment sold or offered for sale on or after July 1,  
11 2012.

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#### STATEMENT

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16 This bill, to be known and cited as the “Fair Repair Act,”  
17 establishes fair repair practices for digital electronic equipment,  
18 such as mobile phones, tablets, and other common consumer  
19 electronic devices.

20 Under the bill, an original equipment manufacturer of equipment  
21 sold, offered for sale, or used in this State is required to make  
22 available to independent repair providers or equipment owners:

23 (1) the same diagnostic, service, or repair documentation for no  
24 charge or in the same manner and in the same timeframe as the  
25 original equipment manufacturer makes it available to authorized  
26 repair providers; and

27 (2) equipment or service parts, inclusive of any updates to the  
28 embedded software of the equipment, for purchase under fair and  
29 reasonable terms.

30 The bill prohibits an original equipment manufacturer that sells  
31 diagnostic, service, or repair documentation to an independent  
32 repair provider or an owner in a format that is standardized with  
33 other original equipment manufacturers and on terms and conditions  
34 more favorable than those in which an authorized repair provider  
35 obtains the same documentation, from requiring an authorized  
36 repair provider to continue purchasing the documentation in a  
37 proprietary format unless the proprietary format includes  
38 diagnostic, service, or repair documentation or functionality that is  
39 not available in a standardized format.

40 The bill also requires each original equipment manufacturer of  
41 equipment sold, offered for sale, or used in this State to make  
42 available for purchase by independent repair providers and owners  
43 all diagnostic repair tools incorporating the same diagnostic, repair,  
44 and remote communications capabilities that the original equipment  
45 manufacturer makes available to its own repair or engineering staff  
46 or any authorized repair provider. An original equipment  
47 manufacturer is required to offer tools for sale to an independent  
48 repair provider or owner under fair and reasonable terms.

1 Under the bill, an original equipment manufacturer providing  
2 diagnostic, service, or repair documentation to aftermarket  
3 diagnostic tool manufacturers, diagnostics providers, or service  
4 information publications and systems is not responsible for the  
5 content and functionality of aftermarket diagnostic tools,  
6 diagnostics, or service information systems.

7 In addition, original equipment manufacturers are not to exclude  
8 diagnostic, service, and repair documentation necessary to reset a  
9 security-related electronic function from information provided to an  
10 owner or independent repair provider.

11 The bill makes violations of these provisions unlawful practices  
12 under the consumer fraud act. An unlawful practice under the  
13 consumer fraud act is punishable by a monetary penalty of not more  
14 than \$10,000 for a first offense and not more than \$20,000 for any  
15 subsequent offense. In addition, violations may result in cease and  
16 desist orders issued by the Attorney General, the assessment of  
17 punitive damages, and the awarding of treble damages and costs to  
18 the injured party.

19 The bill does not apply to motor vehicles, vehicle manufacturers,  
20 or vehicle dealers. The bill's provisions are retroactive to  
21 equipment sold or offered for sale on or after July 1, 2012.