

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2155

By Delegates Willis, J. Cannon, Hornby, Masters, and

Dean

[Introduced February 12, 2025; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §39A-5-1, §39A-5-2, §39A-5-3, §39A-5-4, §39A-5-5, §39A-5-6, and §39A-5-7,
3 relating to the creation of the Electronic Right to Repair Act; promoting consumer choice
4 and competition by requiring manufacturers of digital electronic equipment to make
5 available to owners and independent repair providers, on fair and reasonable terms, the
6 documentation, parts, and tools used to diagnose, maintain, and repair such equipment;
7 providing for a short title, providing for definitions; providing for requirements and
8 limitations; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. ELECTRONIC RIGHT TO REPAIR ACT.

§39A-5-1. Short title.

1 This article shall be cited as the Electronic Right to Repair Act.

§39A-5-2. Definitions.

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

11 (b) "Digital electronic equipment" means any product that depends for its functioning, in
12 whole or in part, on digital electronics embedded in or attached to the product.

13 (c) "Documentation" means any manual, diagram, reporting output, service code

description, schematic diagram, security codes, passwords, or other guidance or information used in effecting the services of diagnosis, maintenance, or repair of digital electronic equipment.

(d) "Fair and reasonable terms" means making available parts, tools or documentation as follows:

(1) Concerning documentation, that such documentation is made available by the original equipment manufacturer at no charge, except that, when the documentation is requested in physical printed form, a charge may be included for the reasonable actual costs of preparing and sending a copy.

(2) Concerning tools, that such tools are made available by the original equipment manufacturer at no charge and without requiring authorization or internet access for the use or operation of such tool, or imposing impediments to access or use of the tools to diagnose, maintain, or repair and enable full functionality of digital electronic equipment, or in a manner that impairs the efficient and cost-effective performance of any such diagnosis, maintenance, or repair, except that, when such tool is requested in physical form, a charge may be included for the reasonable, actual costs of preparing and sending such tool.

(3) Concerning parts, that such parts are made available by the original equipment manufacturer, either directly or through an authorized repair provider, to independent repair providers and owners at costs and terms that are equivalent to the most favorable costs and terms under which an original equipment manufacturer offers the parts to an authorized repair provider and which:

(A) Accounts for any discount, convenient and timely means of delivery, means of enabling fully restored and updated functionality, rights of use, or other incentive and preference the original equipment manufacturer offers to an authorized repair provider, or any additional cost, burden, or impediment the original equipment manufacturer imposes on an owner or independent repair provider.

(B) Is not conditioned on or imposing a substantial obligation or restriction that is not

reasonably necessary for enabling the owner or independent repair provider to engage in the diagnosis, maintenance, or repair of digital electronic equipment made by or on behalf of the original equipment manufacturer; and

(C) Is not conditioned on arrangement as described in paragraph (a) of this subdivision.

(e) "Independent repair provider" means any individual or business operating in the state, that does not have an arrangement described in paragraph (a) of this subdivision with an original equipment manufacturer, and who is engaged in the services of diagnosis, maintenance, or repair of digital electronic equipment.

(f) "Original equipment manufacturer" means any company engaged in the business of selling, leasing, or otherwise supplying digital electronic equipment manufactured by or on behalf of itself, to any individual or business.

(g) "Owner" means an individual or business who owns or leases digital electronic equipment purchased or used in this State.

(h) "Part" means any replacement part, either new or used, made available by the original equipment manufacturer for purposes of effecting the services of maintenance or repair of digital electronic equipment manufactured by or on behalf of, sold or otherwise supplied by the original equipment manufacturer.

(i) "Source code" means any language that is in reference to the programming or "inner workings" of any software or firmware of or for a piece of digital electronic equipment.

(j) "Firmware" means any software that is permanently part of hardware within digital electronic equipment.

(k) "Hardware" has the same meaning as defined in (h) of this subdivision.

(l) "Tools" means any software program, hardware implement, or other object used for diagnosis, maintenance, or repair of digital electronic equipment, including software or other mechanisms that provision, program, or pair a new part, calibrate functionality, or perform any other function required to bring the product back to fully functional condition, including any

66 updates.

67 (m) "Trade secret" has the same meaning as defined in 18 U.S.C § 1839(3).

§39A-5-3.

Requirements.

1 (a) An original equipment manufacturer shall make available to any independent repair
2 provider and owner of digital electronic equipment manufactured by on behalf of, or sold by such
3 original equipment manufacturer, on fair and reasonable terms, any documentation, parts, and
4 tools, required for the diagnosis, maintenance, or repair of such digital electronic equipment and
5 parts for such equipment, inclusive of any updates to information. Such documentation parts and
6 tools shall be made available either directly by such original equipment manufacturer or via an
7 authorized repair provider.

8 (b) For equipment that contains an electronic security lock or other security related
9 function, the original equipment manufacturer shall make available to any owner and independent
10 repair provider, on fair and reasonable terms, any special documentation, tools, and parts needed
11 to access and reset the lock or function when disabled in the course of diagnosis, maintenance, or
12 repair of such equipment. Such documentation, tools, and parts may be made available through
13 appropriate secure release systems.

§39A-5-4.

Limitations.

1 (a) Nothing in this section shall be construed to require an original equipment manufacturer
2 to divulge any trade secrets to any owner or independent repair provider.

3 (b) Nothing in this section shall be construed to alter the terms of any arrangements
4 described in paragraph (a) of subdivision one of this section in force between an authorized repair
5 provider and an original equipment manufacturer, including, but not limited to, the performance or
6 provision of warranty or recall repair work by an authorized repair provider on behalf of an original
7 equipment manufacturer and pursuant to such arrangement, except that any provision in such
8 terms that purports to waive, avoid, restrict or limit the original equipment manufacturer's
9 obligations to comply with this section shall be void and unenforceable.

10 (c) No original equipment manufacturer or authorized repair provider shall be liable for any
11 damage or injury caused to any digital electronic equipment by an independent repair provider or
12 owner which occurs during the course of repair, diagnosis, or maintenance.

§39A-5-5. **Exclusions.**

1 (a) Nothing in this section shall apply to a motor vehicle manufacturer, or motor vehicle
2 dealer acting in such capacity, or to any product or service of a motor vehicle manufacturer, or
3 motor vehicle dealer acting in such capacity.

4 (b) Nothing in this section shall apply to requiring the manufacturer to provide the source
5 code of any:

6 (1) Software, for which the manufacturer would offer to any independent repair provider
7 and/or owner of digital electronic equipment and/or that software is part of digital electronic
8 equipment; or

9 (2) Firmware, that is permanently part of the hardware of digital electronic equipment.

§39A-5-6. **Applicability.**

1 This article applies with respect to equipment sold or in use on or after the effective date of
2 this article.

§39A-5-7. **Effective** **date.**

1 This article shall take effect upon passage.

NOTE: The purpose of this bill is to create the Electronic Right to Repair Act. The bill promotes consumer choice and competition by requiring manufacturers of digital electronic equipment to make available to owners and independent repair providers, on fair and reasonable terms, the documentation, parts, and tools used to diagnose, maintain, and repair such equipment. The bill provides for a short title. The bill provides for definitions. The bill provides for requirements and limitations. Finally, the bill provides for an effective date.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.