

Legislative Analysis



DIGITAL EQUIPMENT REPAIR ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4562 (proposed substitute H-1)

Sponsor: Rep. Kevin Coleman

Committee: Regulatory Reform

Complete to 9-12-23

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4562 would create the Digital Equipment Repair Act, which would require documentation, parts, and tools for certain electronic equipment to be made available to the owners of the equipment and independent repair providers.

The bill would require *original equipment manufacturers* that manufacture *digital electronic equipment* sold or used in Michigan to make *documentation, parts, and tools* (including any updates to information or *embedded software*) available to *independent repair providers* or to the *owners* of the digital electronic equipment on *fair and reasonable terms* for the purposes of diagnosis, maintenance, or repair of the equipment. It would not apply to parts that are no longer available to the original equipment manufacturer. (See “Definitions,” below, for the definitions of bold and italicized terms for purposes of the bill.)

If the equipment contains an *electronic security lock* or *other security related function*, the manufacturer would be required to make available, on fair and reasonable terms, any special documentation, tools, and parts needed to disable the lock or function and reset it if it is disabled in the course of the diagnosis, maintenance, or repair of the equipment. The documentation, tools, and parts could be made available through an appropriate secure system.

If the original equipment manufacturer had made an express warranty with respect to a piece of digital electronic equipment with a wholesale price of \$100 or more, the manufacturer would be required to make documentation, tools, and parts available to independent repair providers and the owners of the equipment to enable the repair of equipment during the warranty period under fair and reasonable terms, convenience of delivery, and of means-enabling functionality. The manufacturer would also be required to take all of the following into account:

- The actual cost to the original equipment manufacturer to prepare and distribute the documentation, tool, or part, exclusive of any research and development costs incurred.
- The ability of independent repair providers and owners to afford the documentation, tool, or part.
- The means by which the documentation, tool, or part is distributed.

Penalties and remedies

Violations of the bill would be prosecuted by the prosecutor of the county where the violation occurred or by the attorney general and would be punishable by a civil fine of up to \$500.

A person aggrieved by a violation could bring a civil action against the person who violated the bill to recover actual damages and attorney fees.

Exceptions

The bill would not require an original equipment manufacturer to divulge a trade secret to an independent service provider or owner except as necessary to provide documentation, parts, and tools on fair and reasonable terms.

The bill would not alter the terms of any arrangement between an *authorized repair provider* and an original equipment manufacturer, including a performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to the arrangement. A provision of an arrangement that purports to waive, avoid, restrict, or limit the original equipment manufacturer's obligations to comply with the bill would be void and unenforceable.

The bill would not apply to any of the following people, if acting in those capacities:

- A *motor vehicle manufacturer, manufacturer of motor vehicle equipment, or motor vehicle dealer*.
- A manufacturer or distributor of a *medical device*.
- A manufacturer, dealer, distributor, integrator, installer, or monitoring service provider of a *security device or alarm system*.

Further, the bill would not apply to any of the following products, services or equipment.

- A product or service of a motor vehicle manufacturer, manufacturer of motor vehicle equipment, or motor vehicle dealer.
- A product or service of a manufacturer or distributor of a medical device.
- A product that is manufactured for use in a medical setting, including any diagnostic, monitoring, or control equipment.
- A security device or alarm system.
- Any agricultural equipment.
- Any home appliance, including a refrigerator, oven, microwave, air conditioning unit, or heating unit.

Definitions

Authorized repair provider would mean a person that is unaffiliated with an original equipment manufacturer and that has an arrangement with the original equipment manufacturer, for a definite or indefinite period, under which the original equipment manufacturer grants to the person a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering the services of diagnosis, maintenance, or repair of digital electronic equipment under the name of the original equipment manufacturer, or has another arrangement with the original equipment manufacturer to offer the services on behalf of the original equipment manufacturer. An original equipment manufacturer that offers the services of diagnosis, maintenance, or repair of its own digital electronic equipment and that does not have an arrangement described above with an unaffiliated person would be considered an authorized repair provider with respect to this equipment.

Digital electronic equipment would mean a product that depends, for its functioning, in whole or in part, on digital electronics embedded in or attached to the product.

Documentation would mean a manual, diagram, reporting output, service code description, schematic, or other guidance or information used in effectuating the services of diagnosis, maintenance, or repair of digital electronic equipment.

Embedded software would mean programmable instructions provided on **firmware** delivered with digital electronic equipment or with a part for the equipment for purposes of equipment operation, including all relevant patches and fixes made by the manufacturer of the equipment or part for these purposes.

Fair and reasonable terms would mean costs and terms to which all of the following apply:

- For obtaining a part, tool, or documentation:
 - Either of the following, as applicable:
 - The terms are equivalent to the most favorable costs and terms under which an original equipment manufacturer offers the part, tool, or documentation to an authorized repair provider.
 - If an original equipment manufacturer does not offer the part, tool, or documentation to an authorized repair provider, the terms are at an equitable price.
 - The terms account for any discount, rebate, convenient means of delivery, means of enabling fully restored and updated functionality, rights of use, or other incentive or preference that the original equipment manufacturer offers to an authorized repair provider, or any additional cost, burden, or impediment that the original equipment manufacturer imposes on an independent repair provider or owner.
 - The terms are not conditioned on or do not impose a substantial obligation or restriction that is not reasonably necessary for enabling the independent repair provider or owner to engage in the diagnosis, maintenance, or repair of digital electronic equipment made by or on behalf of the original equipment manufacturer.
 - The terms are not conditioned on an arrangement as described in the definition of authorized repair provider.
- For obtaining documentation:
 - For documentation that is requested in non-printed, non-physical form, the documentation must be provided at no charge to the requestor.
 - For documentation that is requested in printed, physical form, the documentation may be provided at a charge that only accounts for the reasonable, actual costs of the preparation and sending of a copy of the documentation.
- For software tools, the costs and terms must include that the tools must be provided at no charge to a requestor and, in the course of effectuating the diagnosis, maintenance, or repair and enabling full functionality of digital electronic equipment, the tools must be provided without requiring authorization or internet access or imposing impediments to access or use in a manner that impairs the efficient and cost-effective performance of any activity described in this subparagraph.

Firmware would mean a software program or set of instructions programmed on digital electronic equipment or on a part for the equipment to allow the equipment or part to communicate within itself or with other computer hardware.

Independent repair provider would mean a person operating in this state that does not have an arrangement described to be an authorized repair provider with an original equipment manufacturer, that is not affiliated with a person that has such an arrangement, and that is engaged in the services of diagnosis, maintenance, or repair of digital electronic equipment, except that an original equipment manufacturer or, with respect to that original equipment manufacturer, a person that has an arrangement to be an authorized with that original equipment manufacturer or that is affiliated with a person that has such an arrangement with that original equipment manufacturer, would be considered an independent repair provider for purposes of those instances in which it engages in the services of diagnosis, maintenance, or repair of digital electronic equipment that are not manufactured by or sold under the name of that original equipment manufacturer.

Manufacturer of motor vehicle equipment would mean a business engaged in the business of manufacturing or supplying components that are used in the manufacture, maintenance, or repair of a **motor vehicle**.

Medical device would mean medical device as that term is defined by the federal Food, Drug, and Cosmetic Act.¹

Motor vehicle would mean a vehicle that is designed for transporting individuals or property on a street or highway and is certified by the manufacturer under all applicable federal safety and emissions standards and requirements for distribution and sale in the United States. It would not include either of the following:

- A motorcycle.
- A recreational vehicle or an auto home equipped for habitation.

Motor vehicle dealer would mean a person to which all of the following apply:

- In the ordinary course of business, the person is engaged in the business of selling or leasing new motor vehicles to a person pursuant to a franchise agreement.
- The person has obtained a license under section 248 of the Michigan Vehicle Code.²
- The person is engaged in the services of diagnosis, maintenance, or repair of motor vehicles or motor vehicle engines under the franchise agreement described above.

Motor vehicle manufacturer would mean a business engaged in the business of manufacturing or assembling new motor vehicles.

Original equipment manufacturer would mean a business engaged in the business of selling, leasing, or otherwise supplying new digital electronic equipment manufactured by or on behalf of itself to a person.

Owner would mean a person that owns or leases digital electronic equipment purchased or used in Michigan.

Part would mean a replacement part, either new or used, made available by an original equipment manufacturer for purposes of effecting the services of the maintenance or repair of

¹ <https://www.law.cornell.edu/uscode/text/21/301>

² MCL 257.248

digital electronic equipment manufactured by or on behalf of, or sold or otherwise supplied by the original equipment manufacturer.

Security device or alarm system would mean either of the following:

- A central station alarm system.
- Any equipment that is used to do any of the following:
 - Prevent, detect, protect against, or respond to a fire, carbon monoxide risk, fall, medical alert, or security incident.
 - Control access to any residential commercial, or governmental property, service, or information.

Tool would mean a software program, hardware implement, or other apparatus used for the diagnosis, maintenance, or repair of digital electronic equipment, including, but not limited to, 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.

Trade secret would mean information, including a formula, pattern, compilation, program, device, method, technique, or process, that is both of the following:

- Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Effective Date and applicability

The bill would take effect 90 days after the date is enacted into law.

The bill would apply to digital electronic equipment sold or in use on or after its effective date. It would only apply to an agreement that takes effect or is extended, renewed, or modified after the effective date.

FISCAL IMPACT:

House Bill 4562 would have an indeterminate fiscal impact on the state and on local units of government. A person that violates provisions of the Digital Electronic Equipment Repair Act may be ordered to pay a civil fine of not more than \$500. Revenue collected from the payment of civil infraction penalties is used to support public and county law libraries. Under section 8827(4) of the Revised Judicature Act, \$10 of the civil fine would be deposited into the state's Justice System Fund, so revenue to the state would be increased. Justice System Fund revenue supports various justice-related endeavors in the judicial branch, the Departments of State Police, Corrections, Health and Human Services, and Treasury, and the Legislative Retirement System. Because there is no practical way to determine the number of violations that will occur under provisions of the bill, an estimate of the amount of additional revenue the state or to public and county law libraries cannot be made. Also, under provisions of the bill, an individual aggrieved by a violation of the act may bring a civil action. The fiscal impact on local court systems would depend on how this provision affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables

such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

The Department of Attorney General (AG) and county prosecutor offices may experience an increase of caseloads related to the bill to the extent of the number of persons who are aggrieved by violations of the bill take civil action. It is anticipated that the AG and county prosecutor offices will be able to absorb any increase in caseloads resulting from the bill with ongoing staff and funding. If existing AG staff is not sufficient to comply with the bill, additional state costs of approximately \$120,000 annually for any additional administrative FTE position and \$185,000 for any additional attorney FTE position may be required.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.