

JAN 17 2019

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# A BILL FOR AN ACT

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RELATING TO DIGITAL ELECTRONIC EQUIPMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1         SECTION 1. The Hawaii Revised Statutes is amended by  
2         adding a new chapter to be appropriately designated and to read  
3         as follows:

4    "CHAPTER

5    FAIR DIGITAL ELECTRONIC EQUIPMENT REPAIR ACT

6         §    -1   Definitions. As used in this chapter, unless the  
7         context otherwise requires:

8             "Authorized repair provider" means:

- 9             (1) A person licensed by an original equipment  
10             manufacturer to use a trade name, service mark, or  
11             related characteristic to offer repair services under  
12             the name of the original equipment manufacturer; or
- 13             (2) A person contracted by an original equipment  
14             manufacturer to provide refurbishing services for  
15             products manufactured by the manufacturer.

16         "Embedded software", also known as basic internal operating  
17         system, internal operating system, machine code, assembly code,



1 root code, or microcode, means any programmable instructions  
2 provided on firmware delivered with equipment for equipment  
3 operation, including all relevant software updates made by the  
4 original equipment manufacturer.

5 "Equipment" means a digital electronic device, or a part  
6 thereof, that is originally manufactured for distribution or  
7 sale in the United States.

8 "Firmware" means a software program or set of instructions  
9 programmed on equipment that enables the equipment to  
10 communicate with other computer devices.

11 "Independent repair provider" means a person operating in  
12 this State who is:

13 (1) Not affiliated with an original equipment manufacturer  
14 or an original equipment manufacturer's authorized  
15 repair provider; and

16 (2) Engaged in the diagnosis, service, maintenance, or  
17 repair of equipment;

18 provided that an original equipment manufacturer shall be  
19 considered an independent repair provider if the original  
20 equipment manufacturer diagnoses, services, maintains, or



1 repairs equipment that is not manufactured by the original  
2 equipment manufacturer.

3 "Medical device" means equipment that is intended for use  
4 in the diagnosis, treatment, or prevention of disease in humans  
5 or animals.

6 "Original equipment manufacturer" means a person who, in  
7 the ordinary course of business, sells or leases new equipment  
8 to any person and diagnoses, services, maintains, or repairs  
9 equipment.

10 "Owner" means a person who owns or leases equipment  
11 purchased or used in the State.

12 "Part" or "service part" means any new or used component  
13 made available by an original equipment manufacturer to an  
14 authorized repair provider to repair equipment.

15 "Remote diagnostics" means any transfer of data relating to  
16 settings controls or location identification between equipment  
17 and a provider of repair services.

18 "Trade secret" means anything tangible or intangible or  
19 electronically stored or kept that constitutes, represents,  
20 evidences, or records intellectual property, including secret or  
21 confidentially held designs, processes, procedures, formulas,



1 inventions, or improvements, or secret or confidentially held  
2 scientific, technical, merchandising, production, financial,  
3 business, or management information.

4 § -2 **Inapplicability of chapter.** This chapter shall not  
5 apply to:

- 6 (1) A manufacturer, as defined in section 437-1.1, or a  
7 product or service of a manufacturer;
- 8 (2) A motor vehicle repair dealer, as defined in section  
9 437B-1;
- 10 (3) A motor vehicle mechanic, as defined in section 437B-  
11 1; or
- 12 (4) A dealer, as defined in section 437-1.1.

13 § -3 **Availability of diagnostic and repair information**  
14 **and service parts; format.** (a) An original equipment  
15 manufacturer of equipment and parts sold or used in the State  
16 shall:

- 17 (1) In a timely manner, make available to independent  
18 repair providers or owners of equipment manufactured  
19 by the original equipment manufacturer, diagnostic and  
20 repair information, including repair technical  
21 updates, schematic diagrams, updates, corrections to



1 embedded software, and safety and security patches;  
2 provided that:

3 (A) Diagnostic and repair information shall be made  
4 available at no charge or for no more than what  
5 the original equipment manufacturer would charge  
6 to make the same information available to an  
7 authorized repair provider; and

8 (B) Diagnostic and repair information shall be made  
9 available in the same format that the original  
10 equipment manufacturer would use to make the same  
11 information available to an authorized repair  
12 provider; and

13 (2) Make available for purchase by the owner, the owner's  
14 authorized agent, or an independent repair provider,  
15 equipment or service parts, inclusive of any updates  
16 to the embedded software of the equipment or parts;  
17 provided that an original equipment manufacturer shall not be  
18 required to make equipment or service parts available for  
19 purchase if the parts are no longer available to the original  
20 equipment manufacturer or the authorized repair provider of the  
21 original equipment manufacturer.



1           (b) Any original equipment manufacturer that sells or  
2 offers for sale any diagnostic, service, or repair documentation  
3 to any independent repair provider or to any owner in a format  
4 that is standardized with other original equipment manufacturers  
5 and upon terms that are more favorable than the terms under  
6 which the original equipment manufacturer sells or offers for  
7 sale the same diagnostic, service, or repair documentation to an  
8 authorized repair provider, shall be prohibited from requiring  
9 any authorized repair provider to continue purchasing  
10 diagnostic, service, or repair documentation in a proprietary  
11 format, unless the proprietary format includes diagnostic,  
12 service, or repair documentation or functionality that is not  
13 available in the standardized format.

14           § -4 **Availability of diagnostic tools.** Each original  
15 equipment manufacturer of equipment sold or used in this State  
16 shall offer for sale to owners and independent repair providers  
17 all diagnostic repair tools, incorporating the same diagnostic,  
18 repair, and remote diagnostics capabilities that the original  
19 equipment manufacturer makes available to its own repair or  
20 engineering staff or an authorized repair provider.



1           §   -5 Fair and reasonable terms. (a) The terms of any  
2 sale of diagnostic, service, or repair documentation or  
3 diagnostic repair tools to an owner or independent repair  
4 provider pursuant to sections   -3 or   -4 shall be fair and  
5 reasonable.

6           (b) For the purposes of this section, "fair and  
7 reasonable" means provided at an equitable price considering  
8 relevant factors, including:

9           (1) The net cost to the authorized repair provider for  
10 similar information or tools obtained from an original  
11 equipment manufacturer, less any discounts, rebates,  
12 or other incentive programs;

13           (2) The cost to the original equipment manufacturer for  
14 preparing and distributing the information or tools,  
15 excluding any research and development costs incurred  
16 in designing and implementing, upgrading, or altering  
17 the product, but including amortized capital costs for  
18 the preparation and distribution of the information or  
19 tools;

20           (3) The price charged by other original equipment  
21 manufacturers for similar information or tools;



- 1           (4) The price charged by the original equipment  
2           manufacturer for similar information or tools prior to  
3           the launch of original equipment manufacturer  
4           websites;
- 5           (5) The ability of owners or independent repair providers  
6           to afford the information or tools;
- 7           (6) The means by which the information or tools are  
8           distributed;
- 9           (7) The extent to which the information or tools are used,  
10          including the number of users, and frequency,  
11          duration, and volume of use; and
- 12          (8) Inflation.

13          §   -6 **Third party providers.** An original equipment  
14 manufacturer that provides diagnostic repair documentation to  
15 third party diagnostic tool manufacturers, diagnostics  
16 manufacturers, or service information publications shall be  
17 deemed to have fully satisfied its obligations under sections  
18       -3 and       -4 and shall not be responsible for the content and  
19 functionality of the diagnostic tools, diagnostics, or service  
20 information publications offered or sold by those third party  
21 manufacturers.





1           §   -7   **Security functions.**  An original equipment  
2 manufacturer of equipment or parts sold or used in this State  
3 for security-related functions shall not exclude diagnostic,  
4 service, and repair information necessary to reset a security-  
5 related electronic function from the information provided to  
6 owners and independent repair providers pursuant to this  
7 chapter.  An original equipment manufacturer may provide the  
8 information necessary to reset an immobilizer system or a  
9 security-related electronic module to owners and independent  
10 repair providers through an appropriate secure data release  
11 system.

12           §   -8   **Limitations.**  Nothing in this chapter shall be  
13 construed to:

- 14           (1)  Require an original equipment manufacturer to divulge  
15               a trade secret;
- 16           (2)  Abrogate, interfere with, contradict, or alter the  
17               terms of any agreement between an authorized repair  
18               provider and an original equipment manufacturer,  
19               including the performance or provision of warranty or  
20               recall repair work by an authorized repair provider on  
21               behalf of an original equipment manufacturer; provided



1           that any provision of an agreement that waives,  
2           avoids, restricts, or limits an original equipment  
3           manufacturer's compliance with this section shall be  
4           held void and unenforceable;

5           (3) Require an original equipment manufacturer or  
6           authorized repair provider to provide an owner or  
7           independent repair provider access to non-diagnostic  
8           and repair information provided by an original  
9           equipment manufacturer to an authorized repair  
10          provider pursuant to the terms of an authorizing  
11          agreement; or

12          (4) Require a manufacturer of a medical device to comply  
13          with any provision in this chapter that conflicts with  
14          the Federal Food, Drug, and Cosmetic Act, as may be  
15          amended.

16          § -9 **Enforcement.** A violation of this chapter shall be  
17          deemed an unfair or deceptive act or practice under section  
18          480-2."

19          SECTION 2. This Act does not affect rights and duties that  
20          matured, penalties that were incurred, and proceedings that were  
21          begun before its effective date.



# S.B. NO. 89

1 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: Michelle Kidani (br)



# S.B. NO. 89

**Report Title:**

Unfair and Deceptive Trade Practices; Repairs; Digital  
Electronic Equipment

**Description:**

Requires original equipment manufacturers of digital electronic devices to make diagnostic and repair information available to device owners and independent repair providers.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

