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## A BILL FOR AN ACT

RELATING TO MOBILE DEVICES.

**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 title 26 to be appropriately designated  
3 and to read as follows:

4                               **"CHAPTER**

5                               **MOBILE DEVICE RIGHT TO REPAIR ACT**

6       **§ -1 Short title.** This chapter may be cited as the  
7 "Mobile Device Right to Repair Act".

8       **§ -2 Definitions.** For the purposes of this chapter:

9       "Authorized repair provider" means an individual or  
10 business who is unaffiliated with an original equipment  
11 manufacturer but has a temporary or indefinite business  
12 arrangement or licensing agreement with the original equipment  
13 manufacturer to provide diagnostic, maintenance, or repair  
14 services. For the purposes of this chapter, an original  
15 equipment manufacturer that provides diagnostic, maintenance, or  
16 repair services for its own electronics-enabled mobile equipment  
17 and does not have an arrangement for these purposes with an



1 unaffiliated individual or business, shall be considered an  
2 authorized repair provider for this equipment.

3 "Documentation" means any manual, diagram, reporting  
4 output, service code description, schematic, or other guidance  
5 information used to diagnose, maintain, or repair electronics-  
6 enabled mobile equipment.

7 "Electronics-enabled mobile equipment" or "equipment" means  
8 any portable product designed for individual use that can  
9 connect to the internet and depends for its functioning, in  
10 whole or in part, on embedded or attached digital electronics.

11 "Electronics-enabled mobile equipment" includes, but is not  
12 limited to, cell phones, tablets, laptop computers, and watches,  
13 but does not include products having internal combustion  
14 engines, motor vehicles, or products not offered for consumer  
15 retail sale.

16 "Embedded software" means any programmable instructions  
17 provided on firmware that is delivered with the electronics-  
18 enabled mobile equipment or with a part for this equipment for  
19 the purposes of operating the equipment. "Embedded software"  
20 includes all relevant firmware patches and fixes made by the  
21 original manufacturer of the equipment or part.



1 "Fair and reasonable terms" means costs and terms  
2 equivalent to the most favorable costs and terms offered to  
3 authorized repair providers; provided that:

4 (1) The cost at which a tool or part is offered may  
5 account for any discount, rebate, means of delivery,  
6 means of restoring or updating equipment  
7 functionality, right of use, or any other incentive or  
8 preference the original equipment manufacturer offers  
9 to an authorized repair provider or any additional  
10 cost, burden, or impediment the original equipment  
11 manufacturer imposes on an independent repair  
12 provider;

13 (2) Original equipment manufacturers shall not impose any  
14 substantial obligations or restrictions on owners or  
15 independent repair providers that are not reasonably  
16 necessary to enable the owner or independent repair  
17 provider to diagnose, maintain, or repair the  
18 electronics-enabled mobile equipment;

19 (3) The availability of any documentation, tools, or parts  
20 needed to diagnose, maintain, or repair the equipment



1 shall not be conditioned on the recipient being an  
2 authorized repair provider;

3 (4) Documentation, including any relevant updates, shall  
4 be offered at no cost if an electronic copy is  
5 requested and at only a reasonable preparation and  
6 shipping cost if a physical copy is requested; and

7 (5) Software tools shall be offered at no cost and in a  
8 manner that does not require special authorization or  
9 internet access or impose any impediment to access or  
10 use that prevents an owner or independent repair  
11 provider from diagnosing, maintaining, or repairing  
12 the equipment.

13 "Firmware" means a software program or set of instructions  
14 programmed into electronics-enabled mobile equipment, or into a  
15 part for the equipment, that allows the equipment to operate or  
16 to communicate with other computer hardware.

17 "Independent repair provider" means an individual or  
18 business that diagnoses, maintains, or repairs electronics-  
19 enabled mobile equipment in the State and is not acting as or  
20 affiliated with an authorized repair provider; provided that an  
21 authorized repair provider for an original equipment



1 manufacturer may be considered an independent repair provider  
2 when diagnosing, maintaining, or repairing equipment sold or  
3 provided by another equipment manufacturer.

4 "Original equipment manufacturer" means a business that  
5 sells, leases, or supplies electronics-enabled mobile equipment  
6 manufactured by the business or on its behalf.

7 "Part" means any new or used replacement part made  
8 available by an original equipment manufacturer to maintain or  
9 repair electronics-enabled mobile equipment.

10 "Tools" means any software program, hardware implement, or  
11 other apparatus used to diagnose, maintain, or repair  
12 electronics-enabled mobile equipment, including software or  
13 other mechanisms that program or pair a new part, calibrate  
14 functionality, or perform any other task needed to return the  
15 equipment to a fully functioning condition.

16 "Trade secret" has the same meaning as defined in section  
17 482B-2.

18 **§ -3 Requirements.** (a) For all electronics-enabled  
19 mobile equipment and equipment parts sold and used in the State,  
20 the original equipment manufacturer shall make available to  
21 equipment owners and independent repair providers, on fair and



1 reasonable terms, any documentation, tools, and parts needed to  
2 diagnose, maintain or repair the equipment; provided that this  
3 subsection shall not apply if the documentation, tool, or part  
4 is no longer available to the original equipment manufacturer.

5 (b) For equipment that contains an electronic security  
6 lock or other security-related function, the original equipment  
7 manufacturer shall make available to owners and independent  
8 repair providers, on fair and reasonable terms, any  
9 documentation, tools, or parts needed to disable the lock or  
10 security function and to reset it after the equipment has been  
11 diagnosed, maintained, or repaired. The documentation, tools,  
12 or parts may be made available by means of an appropriately  
13 secure delivery system.

14 (c) When the original equipment manufacturer has made an  
15 express warranty with respect to electronics-enabled mobile  
16 equipment and the wholesale price of the equipment is greater  
17 than \$100, the manufacturer shall make available to owners and  
18 independent repair providers, at a reasonable price, the  
19 documentation, tools, and parts needed to repair the equipment  
20 during the warranty period. The price shall account for the:



(1) Actual cost to the original equipment manufacturer to prepare and distribute the part, tool, or documentation, exclusive of any research and development costs;

(2) Affordability of the part, tool, or documentation for owners and independent repair providers;

(3) Means by which the part, tool, or documentation is distributed.

**§ -4 Limitations.** (a) Nothing in this chapter shall be construed to require an original equipment manufacturer to divulge a trade secret to owners or independent repair providers, except as necessary to provide documentation, tools, and parts on fair and reasonable terms.

(b) Nothing in this chapter shall be construed to alter the terms of any arrangement or licensing agreement between an authorized repair provider and an original equipment manufacturer, including the right of the authorized repair provider to perform or provide warranty or recall services; provided that any terms of the arrangement or licensing agreement that purport to waive, avoid, restrict, or limit the



1 original equipment manufacturer's obligation to comply with this  
2 chapter shall be void and unenforceable.

3       **§ -5 Enforcement.** Violation of any provision of this  
4 chapter shall be a violation pursuant to section 480-2."

5       SECTION 2. This Act shall take effect upon its approval;  
6 provided that this Act shall apply to all equipment sold or in  
7 use on or after the effective date of this Act.

8

INTRODUCED BY:



JAN 22 2021



# H.B. NO. 415

**Report Title:**

Mobile Device Right to Repair Act; Manufacturers; Owners;  
Independent Repair Providers

**Description:**

Requires original manufacturers of certain electronics-enabled mobile equipment sold or used in the State to make available to owners and independent repair providers, on fair and reasonable terms, the documentation, tools, and parts needed to diagnose, maintain, or repair the equipment.

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