

JAN 21 2022

S.B. NO. 2690

A BILL FOR AN ACT

RELATING TO THE MODEL STATE RIGHT-TO-REPAIR LAW.

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 STATE RIGHT-TO-REPAIR LAW

6 § -1 Definitions. As used in this chapter:

7 "Authorized repair provider" means an individual or
8 business who is unaffiliated with an original equipment
9 manufacturer and who has an arrangement with the original
10 equipment manufacturer, for a definite or indefinite period,
11 under which the original equipment manufacturer grants to the
12 individual or business a license to use a trade name, service
13 mark, or other proprietary identifier for the purposes of
14 offering the services of diagnosis, maintenance, or repair of
15 digital electronic equipment under the name of the original
16 equipment manufacturer, or other arrangement with the original
17 equipment manufacturer to offer the services on behalf of the



1 original equipment manufacturer. An original equipment
2 manufacturer who offers the services of diagnosis, maintenance,
3 or repair of its own digital electronic equipment, and who does
4 not have an arrangement described in this definition with an
5 unaffiliated individual or business, shall be considered an
6 authorized repair provider with respect to the equipment.

7 "Digital electronic equipment" or "equipment" means any
8 product that depends for its functioning, in whole or in part,
9 upon digital electronics embedded in or attached to the product.

10 "Documentation" means any manual, diagram, reporting
11 output, service code description, schematic diagram, security
12 codes or passwords, or similar kinds of information provided to
13 an authorized repair provider for purposes of its effecting the
14 services of diagnosis, maintenance, or repair of digital
15 electronic equipment.

16 "Fair and reasonable terms" for obtaining a part or tool or
17 documentation means at costs and terms that are equivalent to
18 the most favorable costs and terms under which the original
19 equipment manufacturer offers the part, tool, or documentation
20 to an authorized repair provider accounting for any discount,
21 rebate, convenient and timely means of delivery, means of



1 enabling fully restored and update functionality, rights of use,
2 or other incentive or preference the original equipment
3 manufacturer offers to an authorized repair provider, or any
4 additional cost, burden, or impediment the original equipment
5 manufacturer imposes on an owner or independent repair provider
6 and not conditioned on having an arrangement as described in the
7 definition of "authorized repair provider".

8 "Fair and reasonable documentation" means any relevant
9 updates, at no charge, except that, when the documentation is
10 requested in physical printed form, a charge may be included for
11 the reasonable actual costs of preparing and sending the copy.

12 "Firmware" means a software program or set of instructions
13 programmed on digital electronic equipment, or on a part for the
14 equipment, to allow the equipment or part to communicate with
15 other computer hardware.

16 "Independent repair provider" means, with respect to an
17 original equipment manufacturer, an individual or business
18 operating in the State, who does not have an arrangement as
19 described in the definition of "authorized repair provider" with
20 the original equipment manufacturer, and who is not affiliated
21 with any individual or business who has that arrangement with



1 the original equipment manufacturer, when that individual or
2 business is engaged in the services of diagnosis, maintenance,
3 or repair of digital electronic equipment. "Independent repair
4 provider" includes an original equipment manufacturer or, with
5 respect to that original equipment manufacturer, an individual
6 or business who has an arrangement with the original equipment
7 manufacturer, or who is affiliated with an individual or
8 business who has an arrangement with the original equipment
9 manufacturer, when engaging in the services of diagnosis,
10 maintenance, or repair of digital electronic equipment that is
11 not manufactured by or on behalf of, or sold or otherwise
12 supplied by, the original equipment manufacturer.

13 "Manufacturer of motor vehicle equipment" means a business
14 engaged in the business of manufacturing or supplying components
15 that are used in the manufacture, maintenance, or repair of a
16 motor vehicle.

17 "Motor vehicle" means a vehicle that is designed for
18 transporting persons or property on a street or highway and is
19 certified by the manufacturer under all applicable federal
20 safety and emissions standards and requirements for distribution



1 and sale in the United States. "Motor vehicle" does not
2 include:

3 (1) A motorcycle; or

4 (2) A recreational vehicle or an auto home equipped for
5 habitation.

6 "Motor vehicle dealer" means an individual or business who,
7 in the ordinary course of business, is engaged in the business
8 of selling or leasing new motor vehicles to an individual or
9 business pursuant to a franchise agreement, has obtained a
10 license under section 437-2, and is engaged in the services of
11 diagnosis, maintenance, or repair of motor vehicles or motor
12 vehicle engines pursuant to that franchise agreement.

13 "Motor vehicle manufacturer" means a business engaged in
14 the business of manufacturing or assembling new motor vehicles.

15 "Original equipment manufacturer" means a business engaged
16 in the business of selling or leasing new digital electronic
17 equipment manufactured by or on behalf of itself, to any
18 individual or business.

19 "Owner" means an individual or business who owns or leases
20 digital electronic equipment purchased or used in this State.



1 "Part" means any replacement part, either new or used, made
2 available by or to an original equipment manufacturer for
3 purposes of effecting the services of maintenance or repair of
4 digital electronic equipment manufactured by or on behalf of,
5 sold or otherwise supplied by the original equipment
6 manufacturer.

7 "Tool" means any software program, hardware implement, or
8 other apparatus used for diagnosis, maintenance, or repair of
9 digital electronic equipment, including software or other
10 mechanisms that provision, program, or pair a part, calibrate
11 functionality, or perform any other function required to bring
12 the product back to fully functional condition.

13 "Trade secret" shall have the same meaning as that term is
14 defined in section 482B-2.

15 § -2 Requirements. (a) An original equipment
16 manufacturer shall, for digital electronic equipment, or parts
17 for that equipment, manufactured by it or on its behalf, or sold
18 or otherwise supplied by it, and sold or used in the State, make
19 available to owners of the equipment and to independent repair
20 providers, on fair and reasonable terms, documentation, parts,
21 and tools, inclusive of any updates, for purposes of diagnosis,



1 maintenance, or repair of that equipment. Nothing in this
2 section requires an original equipment manufacturer to make
3 available a part if the part is no longer available to the
4 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 the owner and independent
8 repair providers, on fair and reasonable terms, any special
9 documentation, tools, and parts needed to reset the lock or
10 function when disabled.

11 § -3 Enforcement by attorney general. Violation of any
12 of the provisions of this chapter shall be deemed an unfair or
13 deceptive act or practice under section 480-2. All remedies,
14 penalties, and authority granted to the attorney general by
15 chapter 480 shall be available to the attorney general in the
16 enforcement of this chapter.

17 § -4 Limitations. (a) Nothing in this chapter shall be
18 construed to require an original equipment manufacturer to
19 divulge a trade secret to an owner or an independent service
20 provider except as necessary to provide documentation, parts,
21 and tools on fair and reasonable terms.



1 (b) Nothing in this chapter shall be construed to alter
2 the terms of any arrangement described in section -2(a) in
3 force between an authorized repair provider and an original
4 equipment manufacturer, including the performance or provision
5 of warranty or recall repair work by an authorized repair
6 provider on behalf of an original equipment manufacturer
7 pursuant to the arrangement, except that any provision in terms
8 that purports to waive, avoid, restrict, or limit the original
9 equipment manufacturer's obligations to comply with this chapter
10 shall be void and unenforceable.

11 § -5 **Exclusions.** Nothing in this chapter shall apply to
12 a motor vehicle manufacturer, manufacturer of motor vehicle
13 equipment, or motor vehicle dealer acting in that capacity or to
14 any product or service of a motor vehicle manufacturer,
15 manufacturer of motor vehicle equipment, or motor vehicle dealer
16 acting in that capacity.

17 § -6 **Applicability.** This chapter shall apply with
18 respect to equipment sold or in use on or after the effective
19 date of this chapter."

20



1 SECTION 2. This Act shall take effect upon its approval.

2

INTRODUCED BY:

Bennette E. Misalucha



S.B. NO. 2690

Report Title:

Digital Electronic Equipment; Repairs; Original Equipment
Manufacturers; Independent Repair Providers

Description:

Requires original equipment manufacturers of digital electronic equipment to make documentation, parts, and tools available to independent repair providers and owners for the purposes of diagnosis, maintenance, and repair on fair and reasonable terms.

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