

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

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, or similar
12 kinds of information provided to an authorized repair provider
13 for purposes of its effecting the services of diagnosis,
14 maintenance, or repair of digital electronic equipment.

15 "Embedded software" means any programmable instructions
16 provided on firmware delivered with digital electronic
17 equipment, or with a part for the equipment, for purposes of
18 equipment operation, including all relevant patches and fixes
19 made by the manufacturer of the equipment or part for these
20 purposes.



1 "Fair and reasonable terms" for obtaining a part, tool, or
2 documentation means at costs and terms, including convenience of
3 delivery and rights of use, equivalent to what is offered by the
4 original equipment manufacturer to an authorized repair
5 provider, using the net costs that would be incurred by an
6 authorized repair provider in obtaining an equivalent part,
7 tool, or documentation from the original equipment manufacturer,
8 accounting for any discounts, rebates, or other incentive
9 programs in arriving at the actual net costs. For
10 documentation, including any relevant updates, "fair and
11 reasonable terms" means at no charge, except that, when the
12 documentation is requested in physical printed form, a charge
13 may be included for the reasonable actual costs of preparing and
14 sending the copy.

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

19 "Independent repair provider" means an individual or
20 business operating in the State, who:



1 (1) Does not have an arrangement with an original
2 equipment manufacturer;
3 (2) Is not affiliated with any individual or business who
4 has an arrangement; and
5 (3) Is engaged in the services of diagnosis, maintenance,
6 or repair of digital electronic equipment,
7 except that an original equipment manufacturer or, with respect
8 to that original equipment manufacturer, an individual or
9 business who has an arrangement with that original equipment
10 manufacturer, or who is affiliated with an individual or
11 business who has an arrangement with that original equipment
12 manufacturer, shall be considered an independent repair provider
13 for purposes of those instances in which it engages in the
14 services of diagnosis, maintenance, or repair of digital
15 electronic equipment that is not manufactured by or sold under
16 the name of that original equipment manufacturer.

17 "Manufacturer of motor vehicle equipment" means a business
18 engaged in the business of manufacturing or supplying components
19 that are used in the manufacture, maintenance, or repair of a
20 motor vehicle.



1 "Motor vehicle" means a vehicle that is designed for
2 transporting persons or property on a street or highway and is
3 certified by the motor vehicle manufacturer under all applicable
4 federal safety and emissions standards and requirements for
5 distribution and sale in the United States.

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 the State.



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

6 "Trade secret" has the same meaning as defined in section
7 482B-2.

8 § -2 Requirements. (a) For digital electronic
9 equipment, and parts for the equipment, sold or used in the
10 State, an original equipment manufacturer shall make available;
11 for purposes of diagnosis, maintenance, or repair; to any
12 independent repair provider or owner of digital electronic
13 equipment manufactured by or on behalf of; or sold by; the
14 original equipment manufacturer; on fair and reasonable terms;
15 documentation, parts, and tools, inclusive of any updates to
16 information or embedded software. Nothing in this section
17 requires an original equipment manufacturer to make available a
18 part if the part is no longer available to the original
19 equipment manufacturer.

20 (b) For equipment that contains an electronic security
21 lock or other security-related function, the original equipment



1 manufacturer shall make available to the owner and independent
2 repair providers, on fair and reasonable terms, any special
3 documentation, tools, and parts needed to reset the lock or
4 function when disabled in the course of diagnosis, maintenance,
5 or repair of the equipment. The documentation, tools, and parts
6 may be made available through appropriate secure release
7 systems.

8 **§ -3 Enforcement by attorney general.** Violation of any
9 of the provisions of this chapter shall be deemed an unfair
10 practice under section 480-2. All remedies, penalties, and
11 authority granted to the attorney general by chapter 480 shall
12 be available to the attorney general in the enforcement of this
13 chapter.

14 **§ -4 Limitations.** (a) Nothing in this chapter shall be
15 construed to require an original equipment manufacturer to
16 divulge a trade secret to an owner or an independent service
17 provider except as necessary to provide documentation, parts,
18 and tools on fair and reasonable terms.

19 (b) No provision in this chapter shall be construed to
20 alter the terms of any arrangement in force between an
21 authorized repair provider and an original equipment



1 manufacturer, including the performance or provision of warranty
2 or recall repair work by an authorized repair provider on behalf
3 of an original equipment manufacturer pursuant to the
4 arrangement, except that any provision in terms that purports to
5 waive, avoid, restrict, or limit the original equipment
6 manufacturer's obligations to comply with this chapter shall be
7 void and unenforceable.

8 (c) Nothing in this chapter shall be construed to require
9 an original equipment manufacturer or an authorized repair
10 provider to provide to an owner or independent repair provider
11 access to information, other than documentation, that is
12 provided by the original equipment manufacturer to an authorized
13 repair provider pursuant to the terms of the arrangement between
14 the authorized repair provider and the original equipment
15 manufacturer.

16 § -5 Exclusions. Nothing in this chapter shall apply to
17 a:

18 (1) Motor vehicle manufacturer, manufacturer of motor
19 vehicle equipment, or motor vehicle dealer acting in
20 that capacity or to any product or service of a motor
21 vehicle manufacturer, manufacturer of motor vehicle



1 equipment, or motor vehicle dealer acting in that
2 capacity;

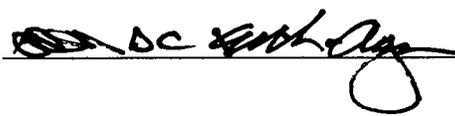
3 (2) Manufacturer, distributor, importer, or dealer of any
4 off-road equipment, including but not limited to all-
5 terrain sports and recreational vehicles, racing
6 vehicles, motorcycles, and heavy construction
7 equipment; and

8 (3) Manufacturer, distributor, importer, or dealer of any
9 medical equipment valued at \$100,000, or more that is
10 used in the treatment, monitoring, or diagnosis of a
11 patient.

12 § -6 **Applicability.** This chapter shall apply with
13 respect to equipment sold or in use on or after the effective
14 date of this chapter."

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

16

INTRODUCED BY: 



S.B. NO. 1105

Report Title:

Digital Electronic Equipment; Right-to-Repair; Exclusions

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. Excludes certain manufacturers, dealers, distributors, and importers of certain motor vehicles or motor vehicle equipment, all-terrain sports vehicles and motorcycles, heavy construction equipment, and medical equipment valued at or over \$100,000.

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