

JAN 18 2019

A BILL FOR AN ACT

RELATING TO FAIR DIGITAL ELECTRONIC EQUIPMENT REPAIR.

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

1 SECTION 1. The legislature finds that the goal of "right
2 to repair" laws is to make it possible for consumers to repair
3 broken electronic equipment, such as computers, smart phones,
4 and appliances, by requiring manufacturers to make repair
5 manuals and other information publicly available and to sell to
6 consumers and independent repair shops the parts, diagnostic
7 software, and tools needed to fix their products. At least
8 twelve states have considered right to repair laws over the past
9 few years. Without the enactment of these laws, consumers must
10 rely on the manufacturer for any repairs. To address this
11 concern, the legislature concludes that it is appropriate to
12 ensure that consumers have the ability to repair their own
13 devices or pay an independent shop to repair their devices.

14 The legislature intends that motor vehicle manufacturers be
15 excluded from the scope of this Act.

16 The purpose of this Act is to establish fair right to
17 repair laws in the State for digital electronic equipment.



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



1 "Equipment" means a digital electronic device, or a part
2 thereof, that is originally manufactured for distribution or
3 sale in the United States.

4 "Firmware" means a software program or set of instructions
5 programmed on equipment that enables the equipment to
6 communicate with other computer devices.

7 "Independent repair provider" means a person operating in
8 this State who is:

- 9 (1) Not affiliated with an original equipment manufacturer
10 or an original equipment manufacturer's authorized
11 repair provider; and
12 (2) Engaged in the diagnosis, service, maintenance, or
13 repair of equipment;

14 provided that an original equipment manufacturer shall be
15 considered an independent repair provider if the original
16 equipment manufacturer diagnoses, services, maintains, or
17 repairs equipment that is not manufactured by the original
18 equipment manufacturer.

19 "Medical device" means equipment that is intended for use
20 in the diagnosis, treatment, or prevention of disease in humans
21 or animals.



1 "Original equipment manufacturer" means a person who in the
2 ordinary course of business sells or leases new equipment to any
3 person and diagnoses, services, maintains, or repairs that
4 equipment.

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

7 "Part" or "service part" means any new or used component
8 made available by an original equipment manufacturer to an
9 authorized repair provider to repair equipment.

10 "Remote diagnostics" means any transfer of data relating to
11 settings controls or location identification between equipment
12 and a provider of repair services.

13 "Trade secret" means all forms and types of financial,
14 business, scientific, technical, economic, or engineering
15 information, including patterns, plans, compilations, program
16 devices, formulas, designs, prototypes, methods, techniques,
17 processes, procedures, programs, or codes, whether tangible or
18 intangible, and whether or how stored, compiled, or memorialized
19 physically, electronically, graphically, photographically, or in
20 writing; provided that:



- 1 (1) The owner thereof has taken reasonable measures to
- 2 keep the information secret; and
- 3 (2) The information derives independent economic value,
- 4 actual or potential, from not being generally known
- 5 to, and not being readily ascertainable through proper
- 6 means by, another person who can obtain economic value
- 7 from the disclosure or use of the information.

8 **§ -2 Applicability of chapter.** This chapter shall not
9 apply to:

- 10 (1) A manufacturer, as defined in section 437-1.1, or a
- 11 product or service of a manufacturer;
- 12 (2) A motor vehicle repair dealer, as defined in section
- 13 437B-1;
- 14 (3) A motor vehicle mechanic, as defined in section 437B-
- 15 1; or
- 16 (4) A dealer, as defined in section 437-1.1.

17 **§ -3 Availability of diagnostic and repair information;**
18 **service parts.** (a) An original equipment manufacturer of
19 equipment and parts sold or used in the State shall:

- 20 (1) In a timely manner, make available to independent
- 21 repair providers or owners of equipment manufactured



1 by the original equipment manufacturer, diagnostic and
2 repair information, including repair technical
3 updates, schematic diagrams, updates, corrections to
4 embedded software, and safety and security patches;
5 provided that:

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

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

16 (2) Make available for purchase by the owner, the owner's
17 authorized agent, or an independent repair provider,
18 equipment or service parts, inclusive of any updates
19 to the embedded software of the equipment or parts;
20 provided that an original equipment manufacturer shall not be
21 required to make equipment or service parts available for



1 purchase if the parts are no longer available to the original
2 equipment manufacturer or the authorized repair provider of the
3 original equipment manufacturer.

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

17 **§ -4 Availability of diagnostic tools.** Each original
18 equipment manufacturer of equipment sold or used in this State
19 shall offer for sale to owners and independent repair providers
20 all diagnostic repair tools, incorporating the same diagnostic,
21 repair, and remote diagnostics capabilities that the original



1 equipment manufacturer makes available to its own repair or
2 engineering staff or an authorized repair provider.

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

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

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

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



- 1 (3) The price charged by other original equipment
- 2 manufacturers for similar information or tools;
- 3 (4) The price charged by the original equipment
- 4 manufacturer for similar information or tools prior to
- 5 the launch of original equipment manufacturer
- 6 websites;
- 7 (5) The means by which the information or tools are
- 8 distributed;
- 9 (6) 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 (7) 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 3. 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.

1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY: Kal Rhoads



Report Title:

Digital Electronic Equipment Repairs; Right to Repair

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.

