
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 to
2 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 sell to
6 consumers and independent repair shops the parts, diagnostic
7 software, and tools needed to fix their products. The
8 legislature further finds that at least twelve states have
9 considered right to repair laws over the past few years.
10 Without the enactment of these laws, consumers must rely on the
11 manufacturer for repairs.

12 The legislature further finds that Hawaii's geographic
13 isolation magnifies the importance of resilience and self-
14 reliance, and the ability to repair electronic equipment rather
15 than replacing the equipment would benefit the State's local
16 economy and allow residents to save money and reduce waste.



1 (2) A person contracted by an original equipment
2 manufacturer to provide refurbishing services for
3 products manufactured by the manufacturer.

4 "Embedded software", also known as basic internal operating
5 system, internal operating system, machine code, assembly code,
6 root code, or microcode, means any programmable instructions
7 provided on firmware delivered with equipment for equipment
8 operation, including all relevant software updates made by the
9 original equipment manufacturer.

10 "Equipment" means a digital electronic device, or a part
11 thereof, that is originally manufactured for distribution or
12 sale in the United States.

13 "Firmware" means a software program or set of instructions
14 programmed on equipment that enables the equipment to
15 communicate with other computer devices.

16 "Independent repair provider" means a person operating in
17 the State who is:

18 (1) Not affiliated with an original equipment manufacturer
19 or an original equipment manufacturer's authorized
20 repair provider; and



1 (2) Engaged in the diagnosis, service, maintenance, or
2 repair of equipment;
3 provided that an original equipment manufacturer shall be
4 considered an independent repair provider if the original
5 equipment manufacturer diagnoses, services, maintains, or
6 repairs equipment that is not manufactured by the original
7 equipment manufacturer.

8 "Medical device" means equipment that is intended for use
9 in the diagnosis, treatment, or prevention of disease in humans
10 or animals.

11 "Original equipment manufacturer" means a person who in the
12 ordinary course of business sells or leases new equipment to any
13 person and diagnoses, services, maintains, or repairs that
14 equipment.

15 "Owner" means a person who owns or leases equipment that is
16 purchased or used in the State.

17 "Part" or "service part" means any new or used component
18 made available by an original equipment manufacturer to an
19 authorized repair provider to repair equipment.



1 "Remote diagnosis" means any transfer of data relating to
2 settings, controls, or location identification between equipment
3 and a provider of repair services.

4 "Trade secret" means all forms and types of financial,
5 business, scientific, technical, economic, or engineering
6 information, including patterns, plans, compilations, program
7 devices, formulas, designs, prototypes, methods, techniques,
8 processes, procedures, programs, or codes, whether tangible or
9 intangible, and whether or how stored, compiled, or memorialized
10 physically, electronically, graphically, photographically, or in
11 writing; provided that:

- 12 (1) The owner has taken reasonable measures to keep the
13 information secret; and
14 (2) The information derives independent economic value,
15 actual or potential, from not being generally known
16 to, and not being readily ascertainable through proper
17 means by, another person who can obtain economic
18 values from the disclosure or use of the information.

19 § -2 **Applicability of chapter.** This chapter shall not
20 apply to:



H.B. NO. 226

- 1 (1) A manufacturer as defined in section 437-1.1, or a
- 2 product or service of a manufacturer;
- 3 (2) A dealer as defined in section 437-1.1;
- 4 (3) A motor vehicle repair dealer as defined in section
- 5 437B-1; or
- 6 (4) A motor vehicle mechanic as defined in section 437B-1.

7 **§ -3 Availability of diagnostic and repair information.**

8 (a) An original equipment manufacturer of equipment and parts
9 sold or used in the State shall:

10 (1) In a timely manner, make available to independent
11 repair providers or owners of equipment manufactured
12 by the original equipment manufacturer, diagnostic and
13 repair information, including repair technical
14 updates, schematic diagrams, updates, corrections to
15 embedded software, and safety and security patches;
16 provided that diagnostic and repair information shall
17 be made available:

18 (A) At no charge or for no more than what the
19 original equipment manufacturer would charge to
20 make the same information available to an
21 authorized repair provider; and



1 (B) In the same format that the original equipment
2 manufacturer would use to make the same
3 information available to an authorized repair
4 provider; and

5 (2) Make available for purchase by the owner, the owner's
6 authorized agent, or an independent repair provider,
7 equipment or service parts, inclusive of any updates
8 to the embedded software or the equipment or parts;
9 provided that an original equipment manufacturer shall not be
10 required to make equipment or service parts available for
11 purchase if the parts are no longer available to the original
12 equipment manufacturer or the authorized repair provider of the
13 original equipment manufacturer.

14 (b) Any original equipment manufacturer that sells or
15 offers for sale any diagnostic, service, or repair documentation
16 to any independent repair provider or to any owner in a format
17 that is standardized with other original equipment manufacturers
18 and upon terms that are more favorable than the terms under
19 which the original equipment manufacturer sells or offers for
20 sale the same diagnostic, service, or repair documentation to an
21 authorized repair provider, shall be prohibited from requiring



1 diagnostic, service, or repair documentation in a proprietary
2 format, unless the proprietary format includes diagnostic,
3 service, or repair documentation or functionality that is not
4 available in the standardized format.

5 **§ -4 Availability of diagnostic tools.** Each original
6 equipment manufacturer of equipment sold or used in the State
7 shall offer for sale to owners and independent repair providers
8 all diagnostic repair tools, incorporating the same diagnostic,
9 repair, and remote diagnosis capabilities that the original
10 equipment manufacturer makes available to its own repair or
11 engineering staff or an authorized repair provider.

12 **§ -5 Fair and reasonable terms.** (a) The terms of any
13 sale of diagnostic, service, or repair documentation or
14 diagnostic repair tools to an owner or independent repair
15 provider pursuant to sections -3 or -4 shall be fair and
16 reasonable.

17 (b) For the purposes of this section, "fair and
18 reasonable" means an equitable price considering relevant
19 factors, including:

20 (1) The net cost to the authorized repair provider for
21 similar information or tools obtained from an original



- 1 equipment manufacturer, less any discounts, rebates,
2 or other incentive programs;
- 3 (2) The cost to the original equipment manufacturer for
4 preparing and distributing the information or tools,
5 excluding any research and development costs incurred
6 in designing and implementing, upgrading, or altering
7 the product, but including amortized capital costs for
8 the preparation and distribution of the information or
9 tools;
- 10 (3) The price charged by other original equipment
11 manufacturers for similar information or tools;
- 12 (4) The price charged by the original manufacturer for
13 similar information or tools prior to the launch of
14 original equipment manufacturer websites;
- 15 (5) The means by which the information or tools are
16 distributed;
- 17 (6) The extent to which the information or tools are used,
18 including the number of users, and frequency,
19 duration, and volume of use; and
- 20 (7) Inflation.



1 § -6 **Third party providers.** An original equipment
2 manufacturer that provides diagnostic repair documentation to
3 third party diagnostic tool manufacturers, diagnostics
4 manufacturers, or service information publications shall be
5 deemed to have fully satisfied its obligations under sections
6 -3 and -4 and shall not be responsible for the content and
7 functionality of the diagnostic tools, diagnostics, or service
8 information publications offered or sold by the third party
9 manufacturers.

10 § -7 **Security functions.** An original equipment
11 manufacturer of equipment or parts sold or used in the State for
12 security-related functions shall not exclude diagnostic,
13 service, and repair information necessary to reset a security-
14 related electronic function from the information provided to
15 owners and independent repair providers pursuant to this
16 chapter. An original equipment manufacturer may provide the
17 information necessary to reset an immobilizer system or a
18 security-related electronic module to owners and independent
19 repair providers through an appropriate secure data release
20 system.



1 § -8 **Limitations.** Nothing in this chapter shall be
2 construed to:

3 (1) Require an original equipment manufacturer to divulge
4 a trade secret;

5 (2) Abrogate, interfere with, contradict, or alter the
6 terms of any agreement between an authorized repair
7 provider and an original equipment manufacturer,
8 including the performance or provision of warranty or
9 recall repair work by an authorized repair provider on
10 behalf of an original equipment manufacturer; provided
11 that any provision of an agreement that waives,
12 avoids, restricts, or limits an original equipment
13 manufacturer's compliance with this section shall be
14 held void and unenforceable;

15 (3) Require an original equipment manufacturer or
16 authorized repair provider to provide an owner or
17 independent repair provider access to non-diagnostic
18 and repair information provided by an original
19 equipment manufacturer to an authorized repair
20 provider pursuant to the terms of an authorizing
21 agreement; or



H.B. NO. 226

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

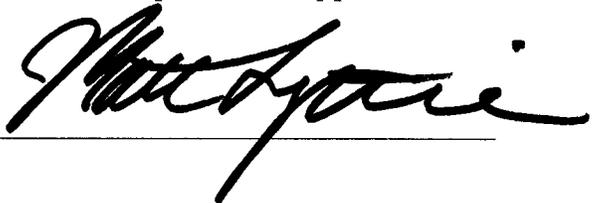
5 § -9 **Enforcement.** A violation of this chapter shall be
6 deemed an unfair or deceptive act or practice under section
7 480-2."

8 SECTION 3. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

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

12

INTRODUCED BY:



JAN 21 2021



H.B. NO. 226

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 owners of equipment manufactured by the original equipment manufacturer 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.

