

JAN 21 2022

S.B. NO. 2330

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. "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 manufacturer under all applicable federal
4 safety and emissions standards and requirements for distribution
5 and sale in the United States. Motor vehicle does not include:

6 (1) A motorcycle; or

7 (2) A recreational vehicle or an auto home equipped for
8 habitation.

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

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

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



1 "Owner" means an individual or business who owns or leases
2 digital electronic equipment purchased or used in the State.

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

8 "Trade secret" has the same meaning as defined in section
9 482B-2.

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



(b) For equipment that contains an electronic security lock or other security-related function, the original equipment manufacturer shall make available to the owner and independent repair providers, on fair and reasonable terms, any special documentation, tools, and parts needed to reset the lock or function when disabled in the course of diagnosis, maintenance, or repair of the equipment. The documentation, tools, and parts may be made available through appropriate secure release systems.

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

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



(b) No provision in this chapter shall be construed to alter the terms of any arrangement in force between an authorized repair provider and an original equipment manufacturer, including the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to the arrangement, except that any provision in terms that purports to waive, avoid, restrict, or limit the original equipment manufacturer's obligations to comply with this chapter shall be void and unenforceable.

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

§ -5 Exclusions. Nothing in this chapter shall apply to a motor vehicle manufacturer, manufacturer of motor vehicle equipment, or motor vehicle dealer acting in that capacity or to



1 any product or service of a motor vehicle manufacturer,
2 manufacturer of motor vehicle equipment, or motor vehicle dealer
3 acting in that capacity.

4 § -6 **Applicability.** This chapter shall apply with
5 respect to equipment sold or in use on or after the effective
6 date of this chapter."

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

8

INTRODUCED BY:





S.B. NO. 2330

Report Title:

Digital Electronic Equipment; Right-to-Repair

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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