

- 1 (1) The net cost to the manufacturer-franchised
2 dealerships for similar information obtained from
3 manufacturers, less any discounts, rebates, or other
4 incentive programs;
- 5 (2) The cost to the manufacturer to prepare and distribute
6 the information, excluding any research and
7 development costs incurred in designing and
8 implementing, upgrading, or altering the onboard
9 computer and its software or any other vehicle part or
10 component; provided that amortized capital costs for
11 the preparation and distribution of the information
12 may be included;
- 13 (3) The price charged by other manufacturers for similar
14 information;
- 15 (4) The price charged by manufacturers for similar
16 information prior to the launch of manufacturer
17 websites;
- 18 (5) The ability of aftermarket technicians or shops to
19 afford the information;
- 20 (6) The means by which the information is distributed;



1 (7) The extent to which the information is used, which
2 includes the number of users, and the frequency,
3 duration, and volume of use; and

4 (8) Inflation.

5 "Franchise agreement" means an oral or written arrangement
6 for a definite or indefinite period during which a manufacturer
7 or distributor grants to a motor vehicle dealer a license to use
8 a trade name, service mark, or related characteristic and in
9 which there is a community of interest in the marketing of new
10 motor vehicles or services related thereto at wholesale, retail,
11 leasing, or otherwise.

12 "Heavy-duty vehicle" means any vehicle having a gross
13 vehicle weight rating of more than fourteen thousand pounds.

14 "Immobilizer system" means an electronic device designed
15 for the sole purpose of preventing the theft of a motor vehicle
16 by preventing the motor vehicle in which it is installed from
17 starting without the correct activation or authorization code.

18 "Independent repair facility" means a person or business
19 operating in the State that is not affiliated with a
20 manufacturer or manufacturer's authorized dealer of motor
21 vehicles, which diagnoses, services, maintains, or repairs motor



1 vehicles or motor vehicle engines; provided that for the
2 purposes of this chapter, a dealer, notwithstanding its
3 affiliation with any manufacturer, shall be considered an
4 independent repair facility for the purposes of those instances
5 when the dealer diagnoses, services, maintains, or repairs motor
6 vehicles or motor vehicle engines that are not affiliated with
7 the dealer's franchise manufacturer.

8 "Manufacturer" means any person or business engaged in the
9 business of manufacturing or assembling new motor vehicles.

10 "Mechanical data" means any vehicle-specific data,
11 including telematics system data, generated, stored in, or
12 transmitted by a motor vehicle used for or otherwise related to
13 the diagnosis, repair, or maintenance of the vehicle.

14 "Motor vehicle" means any self-propelled vehicle to be
15 operated on the public highways.

16 "Owner" means a person or business who owns or leases a
17 motor vehicle registered in the State.

18 "Telematics system" means any system in a motor vehicle
19 that collects information generated by the operation of the
20 vehicle and transmits the information, also known as "telematics



1 system data", using wireless communications to a remote
2 receiving point where it is stored.

3 "Trade secret" means anything tangible or intangible or
4 electronically stored or kept that constitutes, represents,
5 evidences, or records intellectual property, including secret or
6 confidentially held designs, processes, procedures, formulas,
7 inventions or improvements, or secret or confidentially held
8 scientific, technical, merchandising, production, financial,
9 business or management information, or anything within the
10 definition in title 18 United States Code section 1839(3).

11 § -2 **Access by owners of motor vehicles and independent**
12 **repair facilities to motor vehicle manufacturer diagnostic and**
13 **repair information and diagnostic repair tools otherwise made**
14 **available to dealers.** (a) Except as provided in subsection
15 (e), for model year 2002 motor vehicles and thereafter and model
16 year 2013 heavy-duty vehicles and thereafter, a manufacturer of
17 motor vehicles sold in the State shall make available for
18 purchase by owners of motor vehicles manufactured by the
19 manufacturer and by independent repair facilities the same
20 diagnostic and repair information, including repair technical
21 updates, that the manufacturer makes available to its dealers



1 through the manufacturer's internet-based diagnostic and repair
2 information system or other electronically accessible
3 manufacturer's repair information system.

4 All content in the manufacturer's repair information system
5 shall be made available to owners and to independent repair
6 facilities in the same form and manner and to the same extent as
7 it is to dealers utilizing the diagnostic and repair information
8 system. Each manufacturer shall provide access to the
9 manufacturer's diagnostic and repair information system for
10 purchase by owners and independent repair facilities on a daily,
11 monthly, and yearly subscription basis and upon fair and
12 reasonable terms.

13 (b) A manufacturer that sells any diagnostic, service, or
14 repair information to an independent repair facility or other
15 third-party provider in a format that is standardized with other
16 manufacturers, and on terms and conditions more favorable than
17 the manner and the terms and conditions by which a dealer
18 obtains the same diagnostic, service, or repair information,
19 shall be prohibited from requiring any dealer to continue
20 purchasing diagnostic, service, or repair information in a
21 proprietary format, unless the proprietary format includes



1 diagnostic, service, repair, or dealership operations
2 information or functionality that is not available in the
3 standardized format.

4 (c) Beginning with model year 2002 motor vehicles and
5 thereafter and model year 2013 heavy-duty vehicles and
6 thereafter, each manufacturer of motor vehicles sold in the
7 State shall make available for purchase by owners and
8 independent repair facilities all diagnostic repair tools
9 incorporating the same diagnostic, repair and wireless
10 capabilities that the manufacturer makes available to its
11 dealers. The tools shall incorporate the same functional repair
12 capabilities that the manufacturer makes available to dealers.
13 Each manufacturer shall offer the tools for sale to owners and
14 to independent repair facilities upon fair and reasonable terms.

15 Any diagnostic tool or information necessary to diagnose,
16 service, or repair a motor vehicle that a manufacturer sells to
17 an independent repair facility in a manner and on terms and
18 conditions more favorable than the manner and the terms and
19 conditions by which a dealer obtains the same diagnostic tool or
20 information necessary to diagnose, service or repair a motor
21 vehicle, shall also be offered to the dealer in the same manner



1 and on the same terms and conditions as provided to the
2 independent repair facility.

3 With respect to a manufacturer that sells to an independent
4 repair facility any diagnostic tool necessary to diagnose,
5 service, or repair a motor vehicle and the diagnostic tool
6 communicates with the vehicle using the same non-proprietary
7 interface used by other manufacturers, the manufacturer
8 delivering such a diagnostic tool shall be prohibited from
9 requiring any dealer from continuing to purchase that
10 manufacturer's proprietary tool and interface, unless such
11 proprietary interface has a capability not available in the non-
12 proprietary interface.

13 Each manufacturer shall provide diagnostic repair
14 information to each aftermarket scan tool company and each
15 third-party service information provider with whom the
16 manufacturer has appropriate licensing, contractual, or
17 confidentiality agreements for the sole purpose of building
18 aftermarket diagnostic tools and third-party service information
19 publications and systems. Once a manufacturer makes the
20 information available pursuant to this section, the manufacturer
21 shall be considered to have satisfied its obligations under this



1 section and thereafter not be responsible for the content and
2 functionality of aftermarket diagnostic tools or service
3 information systems.

4 (d) Beginning with model year 2018, except as provided in
5 subsection (e), manufacturers of motor vehicles sold in the
6 State, including heavy-duty vehicles that are not heavy-duty
7 vehicles built to custom specifications sold in the State for
8 commercial purposes, shall provide access to their onboard
9 diagnostic and repair information system, as required under this
10 section, using an off-the-shelf personal computer with
11 sufficient memory, processor speed, connectivity, and other
12 capabilities as specified by the vehicle manufacturer and:

13 (1) A non-proprietary vehicle interface device that
14 complies with the Society of Automotive Engineers
15 standard J2534, Society of Automotive Engineers J1939,
16 commonly referred to as SAE J2534 and SAE J1939, the
17 International Organization for Standardization
18 standard 22900, commonly referred to as ISO 22900 or
19 any successor to SAE J2534, SAE J1939 or ISO 22900 as
20 may be accepted or published by the Society of



1 Automotive Engineers or the International Organization
2 for Standardization;

3 (2) An onboard diagnostic and repair information system
4 integrated and entirely self-contained within the
5 vehicle, including but not limited to service
6 information systems integrated into an onboard
7 display; or

8 (3) A system that provides direct access to onboard
9 diagnostic and repair information through a non-
10 proprietary vehicle interface, such as ethernet,
11 universal serial bus, or digital versatile disc.

12 Each manufacturer shall provide access to the same onboard
13 diagnostic and repair information available to its dealers,
14 including technical updates to such onboard systems, through
15 such non-proprietary interfaces as referenced in this
16 subsection. Nothing in this chapter shall be construed to
17 require a dealer to use a non-proprietary vehicle interface
18 specified in this subsection, nor shall this chapter be
19 construed to prohibit a manufacturer from developing a
20 proprietary vehicle diagnostic and reprogramming device;
21 provided that the manufacturer also complies with this



1 subsection, makes this device available to independent repair
2 facilities upon fair and reasonable terms, and otherwise
3 complies with subsection (a).

4 Notwithstanding anything in the preceding paragraph, motor
5 vehicle owners' and independent repair facilities' access to
6 vehicle on-board diagnostic systems shall be standardized and
7 not require any authorization by the manufacturer, directly or
8 indirectly, unless the authorization system for access to
9 vehicle networks and their on-board diagnostic systems is
10 standardized across all makes and models sold in the State and
11 is administered by an entity unaffiliated with a manufacturer.

12 No manufacturer shall be prohibited from making proprietary
13 tools available to dealers if the tools are for a specific
14 specialized diagnostic or repair procedure developed for the
15 sole purpose of a customer service campaign meeting the
16 requirements set out in title 49 Code of Federal Regulations
17 section 579.5, or performance of a specific technical service
18 bulletin or recall after the vehicle was produced, and where
19 original vehicle design was not originally intended for direct
20 interface through a non-proprietary interface as described in
21 this subsection.



1 Provision of the proprietary tools under this subsection
2 shall not constitute a violation of this chapter even if the
3 tools provide functions not available through the interface set
4 forth in this subsection; provided that the proprietary tools
5 are also available to the aftermarket upon fair and reasonable
6 terms. Nothing in this subsection shall authorize manufacturers
7 to exclusively develop proprietary tools, without a non-
8 proprietary equivalent, for diagnostic or repair procedures that
9 fall outside the provisions of this subsection or to otherwise
10 operate in a manner inconsistent with this subsection.

11 (e) Manufacturers of motor vehicles sold in the State may
12 exclude diagnostic, service, and repair information necessary to
13 reset an immobilizer system or security-related electronic
14 modules from information provided to owners and independent
15 repair facilities. If excluded under this subsection, the
16 information necessary to reset an immobilizer system or
17 security-related electronic modules shall be obtained by owners
18 and independent repair facilities through the secure data
19 release model system currently used by the National Automotive
20 Service Task Force or other known, reliable, and accepted
21 systems.



1 (f) Beginning with model year 2022, a manufacturer of
2 motor vehicles sold in the State, including heavy-duty vehicles
3 having a gross vehicle weight rating of more than fourteen
4 thousand pounds, that utilizes a telematics system shall be
5 required to equip such vehicles with an inter-operable,
6 standardized, and open-access platform across all of the
7 manufacturer's makes and models. The platform shall be capable
8 of securely communicating all mechanical data emanating directly
9 from the motor vehicle via direct data connection to the
10 platform. The platform shall be directly accessible by the
11 owner of the vehicle through a mobile-based application and upon
12 the authorization of the vehicle owner, all mechanical data
13 shall be directly accessible by an independent repair facility,
14 limited to the time to complete the repair or for a period of
15 time agreed to by the vehicle owner for the purposes of
16 maintaining, diagnosing, and repairing the motor vehicle.
17 Access shall include the ability to send commands to in-vehicle
18 components if needed for purposes of maintenance, diagnostics
19 and repair.

20 (g) The director of commerce and consumer affairs shall
21 establish for prospective vehicle owners a motor vehicle



1 telematics system notice that includes but is not limited to the
2 following:

- 3 (1) An explanation of motor vehicle telematics and its
4 purposes;
- 5 (2) A description summarizing the mechanical data
6 collected, stored, and transmitted by a telematics
7 system;
- 8 (3) The prospective owner's ability to access the
9 vehicle's mechanical data through a mobile device; and
- 10 (4) An owner's right to authorize an independent repair
11 facility to access the vehicle's mechanical data for
12 vehicle diagnostics, repair, and maintenance purposes.

13 The notice form shall provide for the prospective owner's
14 signature certifying that the prospective owner has read the
15 telematics system notice.

16 (h) When selling or leasing motor vehicles containing a
17 telematics system, a dealer shall provide the motor vehicle
18 telematics system notice to the prospective owner, obtain the
19 prospective owner's signed certification that the prospective
20 owner has read the notice, and provide a copy of the signed
21 notice to the prospective owner.



1 A dealer's failure to comply with this subsection shall be
2 grounds for any action by the licensing authority relative to
3 the dealer's license, up to and including revocation.

4 § -3 **Protection of manufacturer trade secrets.** Nothing
5 in this chapter shall be construed to require a manufacturer to
6 divulge a trade secret.

7 § -4 **Construction of chapter with other laws or**
8 **franchise agreements.** Notwithstanding any law to the contrary,
9 nothing in this chapter shall be construed to abrogate,
10 interfere with, contradict, or alter the terms of any franchise
11 agreement executed and in force between a dealer and a
12 manufacturer, including but not limited to the performance or
13 provision of warranty or recall repair work by a dealer on
14 behalf of a manufacturer pursuant to such franchise agreement;
15 provided that any provision in a franchise agreement that
16 purports to waive, avoid, restrict, or limit a manufacturer's
17 compliance with this chapter shall be void and unenforceable.

18 § -5 **Access to non-diagnostic and repair information not**
19 **required.** Nothing in this chapter shall be construed to require
20 manufacturers or dealers to provide an owner or independent
21 repair facility access to non-diagnostic and repair information



1 provided by a manufacturer to a dealer or by a dealer to a
2 manufacturer pursuant to the terms of a franchise agreement.

3 § -6 Remedies for violation of chapter. (a) In
4 addition to any other remedies that may be available, any
5 violation of this chapter shall be deemed to be unfair
6 competition and a restraint of trade under chapter 480.

7 (b) An independent repair facility or owner that believes
8 that a manufacturer has failed to provide information or a tool
9 required by this chapter shall notify the manufacturer, in
10 writing, through the National Automotive Service Task Force
11 Service Information Request process, or its successor
12 organization or process, and give the manufacturer thirty days
13 from the time the manufacturer receives the complaint to cure
14 the failure. If the manufacturer cures the complaint within the
15 time period, damages shall be limited to actual damages in any
16 subsequent litigation.

17 (c) If a manufacturer fails to respond to the notice
18 provided pursuant to subsection (b), or if an independent repair
19 facility or owner is not satisfied with the manufacturer's cure,
20 the independent repair facility or owner may file a complaint in



1 the circuit court or, if applicable, in the federal district
2 court for the district of Hawaii.

3 The complaint shall include but not be limited to:

4 (1) Written information confirming that the complainant
5 has visited the relevant manufacturer website and
6 attempted to effect a proper repair utilizing
7 information provided on the website, including
8 communication with customer assistance via the
9 manufacturer's toll-free call-in assistance, if made
10 available by the manufacturer;

11 (2) Written information confirming that the complainant
12 has obtained and utilized the relevant manufacturer's
13 scan or diagnostic tool necessary for the repair; and

14 (3) Evidence of manufacturer notification as set out in
15 subsection (b).

16 (d) Except in the case of a dispute arising between a
17 franchisor manufacturer and its franchisee dealer related to
18 either party's compliance with an existing franchise agreement,
19 a dealer shall have all the rights and remedies provided in this
20 chapter, including but not limited to exercising the rights and
21 remedies allowed an independent repair facility.



1 (e) Notwithstanding subsections (b) and (c), any owner or
2 independent repair facility authorized by an owner who has been
3 denied access to mechanical data in violation of sections
4 - 2(d)(1) or (f) may initiate a civil action seeking any
5 remedies under law. Each denial of access in violation of these
6 sections shall be compensable by an award of treble damages or
7 \$10,000, whichever amount is greater."

8 SECTION 2. 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 3. This Act shall take effect upon its approval.

12

INTRODUCED BY:

Karl Rhoad



S.B. NO. 795

Report Title:

Automotive Repair; Right to Repair

Description:

Provides access by owners of motor vehicles and independent repair facilities to motor vehicle manufacturer diagnostic and repair information and diagnostic repair tools otherwise made available to dealers.

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