

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

5 "Equipment" means a digital electronic device, or a part
6 thereof, that is originally manufactured for distribution or
7 sale in the United States.

8 "Firmware" means a software program or set of instructions
9 programmed on equipment that enables the equipment to
10 communicate with other computer devices.

11 "Independent repair provider" means a person operating in
12 this State who is:

13 (1) Not affiliated with an original equipment manufacturer
14 or an original equipment manufacturer's authorized
15 repair provider; and

16 (2) Engaged in the diagnosis, service, maintenance, or
17 repair of equipment;

18 provided that an original equipment manufacturer shall be
19 considered an independent repair provider if the original
20 equipment manufacturer diagnoses, services, maintains, or



1 repairs equipment that is not manufactured by the original
2 equipment manufacturer.

3 "Medical device" means equipment that is intended for use
4 in the diagnosis, treatment, or prevention of disease in humans
5 or animals.

6 "Original equipment manufacturer" means a person who in the
7 ordinary course of business sells or leases new equipment to any
8 person and diagnoses, services, maintains, or repairs equipment.

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

11 "Part" or "service part" means any new or used component
12 made available by an original equipment manufacturer to an
13 authorized repair provider to repair equipment.

14 "Remote diagnostics" means any transfer of data relating to
15 settings controls or location identification between equipment
16 and a provider of repair services.

17 "Trade secret" means anything tangible or intangible or
18 electronically stored or kept that constitutes, represents,
19 evidences, or records intellectual property, including secret or
20 confidentially held designs, processes, procedures, formulas,
21 inventions, or improvements, or secret or confidentially held



1 scientific, technical, merchandising, production, financial,
2 business, or management information.

3 § -2. **Applicability of chapter.** This chapter shall not
4 apply to:

5 (1) A manufacturer, as defined in section 437-1.1, or a
6 product or service of a manufacturer;

7 (2) A motor vehicle repair dealer, as defined in section
8 437B-1;

9 (3) A motor vehicle mechanic, as defined in section 437B-
10 1; or

11 (4) A dealer, as defined in section 437-1.1.

12 § -3 **Availability of diagnostic and repair information;**

13 **service parts.** (a) An original equipment manufacturer of
14 equipment and parts sold or used in the State shall:

15 (1) In a timely manner, make available to independent
16 repair providers or owners of equipment manufactured
17 by the original equipment manufacturer, diagnostic and
18 repair information, including repair technical
19 updates, schematic diagrams, updates, corrections to
20 embedded software, and safety and security patches;
21 provided that:



- 1 (A) Diagnostic and repair information shall be made
2 available at no charge or for no more than what
3 the original equipment manufacturer would charge
4 to make the same information available to an
5 authorized repair provider; and
- 6 (B) Diagnostic and repair information shall be made
7 available in the same format that the original
8 equipment manufacturer would use to make the same
9 information available to an authorized repair
10 provider; and
- 11 (2) Make available for purchase by the owner, the owner's
12 authorized agent, or an independent repair provider,
13 equipment or service parts, inclusive of any updates
14 to the embedded software of the equipment or parts;
15 provided that an original equipment manufacturer shall not be
16 required to make equipment or service parts available for
17 purchase if the parts are no longer available to the original
18 equipment manufacturer or the authorized repair provider of the
19 original equipment manufacturer.
- 20 (b) Any original equipment manufacturer that sells or
21 offers for sale any diagnostic, service, or repair documentation



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

12 § -4 Availability of diagnostic tools. Each original
13 equipment manufacturer of equipment sold or used in this State
14 shall offer for sale to owners and independent repair providers
15 all diagnostic repair tools, incorporating the same diagnostic,
16 repair, and remote diagnostics capabilities that the original
17 equipment manufacturer makes available to its own repair or
18 engineering staff or an authorized repair provider.

19 § -5 Fair and reasonable terms. (a) The terms of any
20 sale of diagnostic, service, or repair documentation or
21 diagnostic repair tools to an owner or independent repair



1 provider pursuant to sections -3 or -4 shall be fair and
2 reasonable.

3 (b) For the purposes of this section, "fair and
4 reasonable" means an equitable price considering relevant
5 factors, including:

6 (1) The net cost to the authorized repair provider for
7 similar information or tools obtained from an original
8 equipment manufacturer, less any discounts, rebates,
9 or other incentive programs;

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

17 (3) The price charged by other original equipment
18 manufacturers for similar information or tools;

19 (4) The price charged by the original equipment
20 manufacturer for similar information or tools prior to



- 1 the launch of original equipment manufacturer
- 2 websites;
- 3 (5) The ability of owners or independent repair providers
- 4 to afford the information or tools;
- 5 (6) The means by which the information or tools are
- 6 distributed;
- 7 (7) The extent to which the information or tools are used,
- 8 including the number of users, and frequency,
- 9 duration, and volume of use; and
- 10 (8) Inflation.

11 § -6 **Third party providers.** An original equipment
12 manufacturer that provides diagnostic repair documentation to
13 third party diagnostic tool manufacturers, diagnostics
14 manufacturers, or service information publications shall be
15 deemed to have fully satisfied its obligations under sections
16 -3 and -4 and shall not be responsible for the content and
17 functionality of the diagnostic tools, diagnostics, or service
18 information publications offered or sold by those third party
19 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 2. 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 3. This Act shall take effect upon its approval.

2

INTRODUCED BY:

 (OR)

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H.B. NO. 1649

Report Title:

Unfair and Deceptive Trade Practices; Repairs; Digital
Electronic Equipment

Description:

Requires original equipment manufacturers of digital electronic devices to make diagnostic and repair information available to device owners and independent repair providers.

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