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:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to title 26 to be appropriately designated and to read as follows:

"CHAPTER

STATE RIGHT-TO-REPAIR LAW

§ -1 Definitions. As used in this chapter:

"Authorized repair provider" means an individual or business who is unaffiliated with an original equipment manufacturer and who has an arrangement with the original equipment manufacturer, for a definite or indefinite period, under which the original equipment manufacturer grants to the individual or business a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering the services of diagnosis, maintenance, or repair of digital electronic equipment under the name of the original equipment manufacturer, or other arrangement with the original equipment manufacturer to offer the services on behalf of the
original equipment manufacturer. An original equipment
manufacturer who offers the services of diagnosis, maintenance,
or repair of its own digital electronic equipment, and who does
not have an arrangement described in this definition with an
unaffiliated individual or business, shall be considered an
authorized repair provider with respect to the equipment.

"Digital electronic equipment" or "equipment" means any
product that depends for its functioning, in whole or in part,
upon digital electronics embedded in or attached to the product.

"Documentation" means any manual, diagram, reporting
output, service code description, schematic diagram, or similar
types of information provided to an authorized repair provider
for purposes of its effecting the services of diagnosis,
maintenance, or repair of digital electronic equipment.

"Embedded software" means any programmable instructions
provided on firmware delivered with digital electronic
equipment, or with a part for the equipment, for purposes of
equipment operation, including all relevant patches and fixes
made by the manufacturer of the equipment or part for these
purposes.
"Fair and reasonable terms" for obtaining a part or tool or documentation means at costs and terms, including convenience of delivery, and including rights of use, equivalent to what is offered by the original equipment manufacturer to an authorized repair provider, using the net costs that would be incurred by an authorized repair provider in obtaining an equivalent part or tool or documentation from the original equipment manufacturer, accounting for any discounts, rebates, or other incentive programs in arriving at the actual net costs. For documentation, including any relevant updates, "fair and reasonable terms" means at no charge, except that, when the documentation is requested in physical printed form, a charge may be included for the reasonable actual costs of preparing and sending the copy.

"Firmware" means a software program or set of instructions programmed on digital electronic equipment, or on a part for the equipment, to allow the equipment or part to communicate with other computer hardware.

"Independent repair provider" means an individual or business operating in this State, who does not have an arrangement with an original equipment manufacturer, and who is
not affiliated with any individual or business who has an arrangement, and who is engaged in the services of diagnosis, maintenance, or repair of digital electronic equipment, except that an original equipment manufacturer or, with respect to that original equipment manufacturer, an individual or business who has an arrangement with that original equipment manufacturer, or who is affiliated with an individual or business who has an arrangement with that original equipment manufacturer, shall be considered an independent repair provider for purposes of those instances in which it engages in the services of diagnosis, maintenance, or repair of digital electronic equipment that is not manufactured by or sold under the name of that original equipment manufacturer.

"Manufacturer of motor vehicle equipment" means a business engaged in the business of manufacturing or supplying components that are used in the manufacture, maintenance, or repair of a motor vehicle.

"Motor vehicle" means a vehicle that is designed for transporting persons or property on a street or highway and is certified by the manufacturer under all applicable federal
safety and emissions standards and requirements for distribution and sale in the United States. Motor vehicle does not include:

(1) A motorcycle; or

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

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

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

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

"Owner" means an individual or business who owns or leases digital electronic equipment purchased or used in this State.
"Part" means any replacement part, either new or used, made available by an original equipment manufacturer for purposes of effecting the services of maintenance or repair of digital electronic equipment manufactured or sold by the original equipment manufacturer.

"Trade secret" has the meaning given it in section 482B-2.

§ 2 Requirements. (a) For digital electronic equipment, and parts for the equipment, sold or used in this State, an original equipment manufacturer shall make available, for purposes of diagnosis, maintenance, or repair, to any independent repair provider, or to the owner of digital electronic equipment manufactured by or on behalf of, or sold by, the original equipment manufacturer, on fair and reasonable terms, documentation, parts, and tools, inclusive of any updates to information or embedded software. Nothing in this section requires an original equipment manufacturer to make available a part if the part is no longer available to the original 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 to
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 any product or service of a motor vehicle manufacturer, manufacturer of motor vehicle equipment, or motor vehicle dealer acting in that capacity.
§ 6 Applicability. This chapter shall apply with respect to equipment sold or in use on or after the effective date of this chapter.

SECTION 2. This Act shall take effect upon its approval.
Report Title:
Digital Electronic Equipment; Repairs

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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