THE SENATE
THIRTIETH LEGISLATURE, 2019
STATE OF HAWAII

S.B. NO. 425
JAN 18 2019

A BILL FOR AN ACT

RELATING TO FAIR DIGITAL ELECTRONIC EQUIPMENT REPAIR.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the goal of "right
to repair" laws is to make it possible for consumers to repair
broken electronic equipment, such as computers, smart phones,
and appliances, by requiring manufacturers to make repair
manuals and other information publicly available and to sell to
consumers and independent repair shops the parts, diagnostic
software, and tools needed to fix their products. At least
twelve states have considered right to repair laws over the past
few years. Without the enactment of these laws, consumers must
rely on the manufacturer for any repairs. To address this
concern, the legislature concludes that it is appropriate to
ensure that consumers have the ability to repair their own
devices or pay an independent shop to repair their devices.
The legislature intends that motor vehicle manufacturers be
excluded from the scope of this Act.

The purpose of this Act is to establish fair right to
repair laws in the State for digital electronic equipment.
SECTION 2. The Hawaii Revised Statutes is amended by
adding a new chapter to be appropriately designated and to read
as follows:

"CHAPTER

FAIR DIGITAL ELECTRONIC EQUIPMENT REPAIR ACT

§ -1 Definitions. As used in this chapter, unless the
close context otherwise requires:

"Authorized repair provider" means:

(1) A person licensed by an original equipment
manufacturer to use a trade name, service mark, or
related characteristic to offer repair services under
the name of the original equipment manufacturer; or

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

"Embedded software", also known as basic internal operating
system, internal operating system, machine code, assembly code,
root code, or microcode means any programmable instructions
provided on firmware delivered with equipment for equipment
operation, including all relevant software updates made by the
original equipment manufacturer.
"Equipment" means a digital electronic device, or a part thereof, that is originally manufactured for distribution or sale in the United States.

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

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

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

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

provided that an original equipment manufacturer shall be considered an independent repair provider if the original equipment manufacturer diagnoses, services, maintains, or repairs equipment that is not manufactured by the original equipment manufacturer.

"Medical device" means equipment that is intended for use in the diagnosis, treatment, or prevention of disease in humans or animals.
"Original equipment manufacturer" means a person who in the ordinary course of business sells or leases new equipment to any person and diagnoses, services, maintains, or repairs that equipment.

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

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

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

"Trade secret" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing; provided that:
(1) The owner thereof has taken reasonable measures to keep the information secret; and

(2) The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

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

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

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

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

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

§ -3 Availability of diagnostic and repair information; service parts. (a) An original equipment manufacturer of equipment and parts sold or used in the State shall:

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

(A) Diagnostic and repair information shall be made available at no charge or for no more than what the original equipment manufacturer would charge to make the same information available to an authorized repair provider; and

(B) Diagnostic and repair information shall be made available in the same format that the original equipment manufacturer would use to make the same information available to an authorized repair provider; and

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

(b) Any original equipment manufacturer that sells or
offers for sale any diagnostic, service, or repair documentation
to any independent repair provider or to any owner in a format
that is standardized with other original equipment manufacturers
and upon terms that are more favorable than the terms under
which the original equipment manufacturer sells or offers for
sale the same diagnostic, service, or repair documentation to an
authorized repair provider, shall be prohibited from requiring
any authorized repair provider to continue purchasing
diagnostic, service, or repair documentation in a proprietary
format, unless the proprietary format includes diagnostic,
service, or repair documentation or functionality that is not
available in the standardized format.

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

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

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

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

(2) The cost to the original equipment manufacturer for
preparing and distributing the information or tools,
excluding any research and development costs incurred
in designing and implementing, upgrading, or altering
the product, but including amortized capital costs for
the preparation and distribution of the information or
tools;
(3) The price charged by other original equipment manufacturers for similar information or tools;

(4) The price charged by the original equipment manufacturer for similar information or tools prior to the launch of original equipment manufacturer websites;

(5) The means by which the information or tools are distributed;

(6) The extent to which the information or tools are used, including the number of users, and frequency, duration, and volume of use; and

(7) Inflation.

§ -6 Third party providers. An original equipment manufacturer that provides diagnostic repair documentation to third party diagnostic tool manufacturers, diagnostics manufacturers, or service information publications shall be deemed to have fully satisfied its obligations under sections -3 and -4 and shall not be responsible for the content and functionality of the diagnostic tools, diagnostics, or service information publications offered or sold by those third party manufacturers.
§ 7 Security functions. An original equipment manufacturer of equipment or parts sold or used in this State for security-related functions shall not exclude diagnostic, service, and repair information necessary to reset a security-related electronic function from the information provided to owners and independent repair providers pursuant to this chapter. An original equipment manufacturer may provide the information necessary to reset an immobilizer system or a security-related electronic module to owners and independent repair providers through an appropriate secure data release system.

§ 8 Limitations. Nothing in this chapter shall be construed to:

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

(2) Abrogate, interfere with, contradict, or alter the terms of any agreement 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; provided
that any provision of an agreement that waives,

avoids, restricts, or limits an original equipment

manufacturer's compliance with this section shall be

held void and unenforceable;

(3) Require an original equipment manufacturer or

authorized repair provider to provide an owner or

independent repair provider access to non-diagnostic

and repair information provided by an original

equipment manufacturer to an authorized repair

provider pursuant to the terms of an authorizing

agreement; or

(4) Require a manufacturer of a medical device to comply

with any provision in this chapter that conflicts with

the Federal Food, Drug, and Cosmetic Act, as may be

amended.

§ 9 Enforcement. A violation of this chapter shall be
deemed an unfair or deceptive act or practice under section

480-2."

SECTION 3. This Act does not affect rights and duties that

matured, penalties that were incurred, and proceedings that were

begun before its effective date.
SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: [Signature]

S.B. NO. 425
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 device owners and independent repair providers.

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