

DRAFT

SUMMARY

Requires original equipment manufacturer to make available to owner of consumer electronic equipment or independent repair provider on fair and reasonable terms any part, tool, service manual or other device or implement that original equipment manufacturer makes available to authorized repair provider for purpose of diagnosing, maintaining or repairing consumer electronic equipment that original equipment manufacturer makes or supplies. Provides that person who suffers ascertainable loss of money or property has right to bring action to recover damages for violation of provisions of Act.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to a right to repair consumer electronic equipment; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) “Authorized repair provider” means:

(A) A person that is not affiliated with an original equipment manufacturer but that has an agreement with the original equipment manufacturer under which the original equipment manufacturer grants the person a license to use a trade name, service mark or other proprietary identification or grants other authority to the person to engage in the business of diagnosing, maintaining or repairing consumer electronic equipment the original equipment manufacturer makes or supplies; or

(B) An original equipment manufacturer that engages in the business of diagnosing, maintaining and repairing consumer electronic

1 equipment that the original manufacturer makes or supplies, if the
2 original equipment manufacturer does not have an agreement with
3 another person that engages in the business of diagnosing, maintain-
4 ing or repairing the consumer electronic equipment.

5 (b)(A) “Consumer electronic equipment” means a product that:

6 (i) Functions, in whole or in part, on the basis of digital electronics
7 that are embedded within or attached to the product;

8 (ii) Is tangible personal property;

9 (iii) Is distributed in commerce;

10 (iv) Is generally used for personal, family or household purposes;
11 and

12 (v) Might be, but is not necessarily, capable of attachment to or
13 installation in real property.

14 (B) “Consumer electronic equipment” does not include a product
15 or equipment that:

16 (i) A motor vehicle manufacturer or motor vehicle equipment
17 manufacturer makes;

18 (ii) Has an internal combustion engine or an engine that exceeds
19 25 horsepower;

20 (iii) Is not available for retail sale to a consumer;

21 (iv) Is a device that the United States Food and Drug Adminis-
22 tration has approved for sale or use; or

23 (v) Provides heat, ventilation or air conditioning or recharges
24 refrigerant gases.

25 (c) “Embedded software” means programmable instructions for op-
26 erating consumer electronic equipment that are provided in firmware
27 that is delivered with or as a part for the consumer electronic equip-
28 ment, including any updates, upgrades, patches or other fixes to the
29 programmable instructions.

30 (d) “Fair and reasonable terms” means costs and terms that are
31 equivalent to the costs for and terms under which an original man-

1 **ufacturer offers a part, tool, service manual or other device or imple-**
2 **ment to an authorized repair provider for the purpose of diagnosing,**
3 **maintaining or repairing consumer electronic equipment that the ori-**
4 **ginal equipment manufacturer makes or supplies, and that:**

5 **(A) Include any license, right or authorization a person would need**
6 **to use the part, tool, service manual, device or implement; and**

7 **(B) Account for any discount, rebate, convenient means of delivery**
8 **or other incentive the original equipment manufacturer offers to an**
9 **authorized repair provider or any additional cost or other burden the**
10 **original equipment manufacturer imposes on an independent repair**
11 **provider.**

12 **(e) “Firmware” means software or a set of instructions prepro-**
13 **grammed into or made a part of consumer electronic equipment for**
14 **the purpose of allowing internal communications within the consumer**
15 **electronic equipment or allowing the consumer electronic equipment**
16 **to communicate with other consumer electronic equipment.**

17 **(f) “Independent repair provider” means:**

18 **(A) A person that engages in the business of diagnosing, maintain-**
19 **ing or repairing consumer electronic equipment in this state but that**
20 **does not have an agreement with, and is not affiliated with a person**
21 **that has an agreement with, an original equipment manufacturer that**
22 **is the same as or similar to an agreement the original equipment**
23 **manufacturer has with an authorized repair provider; or**

24 **(B) An original equipment manufacturer, or an authorized repair**
25 **provider for the original equipment manufacturer, that engages in the**
26 **business of diagnosing, maintaining or repairing consumer electronic**
27 **equipment that the original equipment manufacturer does not manu-**
28 **facture or supply.**

29 **(g) “Original equipment manufacturer” means a person that en-**
30 **gages in the business of selling, leasing or otherwise supplying to an-**
31 **other person new consumer electronic equipment that the person**

1 makes or has made on the person's behalf.

2 (h) "Owner" means a person that purchases, leases or owns con-
3 sumer electronic equipment in this state.

4 (i) "Part" means a new or used replacement component for con-
5 sumer electronic equipment that an original equipment manufacturer
6 makes available for the purpose of maintaining or repairing consumer
7 electronic equipment that the original equipment manufacturer makes
8 or supplies.

9 (j) "Service manual" means any diagram, report, service code de-
10 scription, schematic or other documentation or information that an
11 original equipment manufacturer provides to an authorized repair
12 provider for the purpose of diagnosing, maintaining or repairing con-
13 sumer electronic equipment that the original equipment manufacturer
14 makes or supplies.

15 (2)(a) An original equipment manufacturer shall make available to
16 an owner or an independent repair provider on fair and reasonable
17 terms any part, tool, embedded software, service manual or other de-
18 vice or implement that the original equipment manufacturer makes
19 available to an authorized repair provider for the purpose of diagnos-
20 ing, maintaining or repairing consumer electronic equipment that the
21 original equipment manufacturer makes or supplies.

22 (b) For the purposes of paragraph (a) of this subsection:

23 (A) A part, tool, service manual or other device or implement must
24 be the most appropriate part, tool, service manual, device or imple-
25 ment necessary to best effect the needed diagnosis, maintenance or
26 repair; and

27 (B) A service manual that is available in electronic form is available
28 to an owner or independent repair provider on fair and reasonable
29 terms only if the original equipment manufacturer does not charge for
30 the service manual, except that if the owner or independent repair
31 provider requests a printed copy of the service manual, the original

1 equipment manufacturer may charge the reasonable actual costs of
2 printing and delivery.

3 (c) The original equipment manufacturer shall make available to
4 an owner or independent repair provider on fair and reasonable terms
5 any special documentation, tool or part necessary to disable and reset
6 any electronic security lock or other security function in the con-
7 sumer electronic equipment that must be disabled or reset while di-
8 agnosing, maintaining or repairing the consumer electronic
9 equipment. The original equipment manufacturer may provide the
10 special documentation, tool or part available by means of an appro-
11 priate secure system.

12 (3) This section does not:

13 (a) Require an original equipment manufacturer to disclose a trade
14 secret to an owner or independent service provider except as necessary
15 to provide a part, tool, service manual or other device or implement
16 the owner or independent repair provider needs to diagnose, maintain
17 or repair consumer electronic equipment the original equipment
18 manufacturer makes or supplies;

19 (b) Alter the terms of any agreement between an original equip-
20 ment manufacturer and an authorized repair provider including, but
21 not limited to, the authorized repair provider's performance or pro-
22 vision of warranty service or recall repair work on the original equip-
23 ment manufacturer's behalf under the agreement, except that any
24 provision in the agreement that purports to waive, restrict or limit the
25 original equipment manufacturer's compliance with this section is
26 void and unenforceable; or

27 (c) Require an original equipment manufacturer or authorized re-
28 pair provider to provide an owner, independent repair provider or
29 prosecuting attorney with any information about an agreement be-
30 tween the original equipment manufacturer and authorized repair
31 provider other than information that is necessary to determine

whether the original equipment manufacturer is complying with this section.

(4)(a) A person that suffers an ascertainable loss of money or property, real or personal, as a result of an original equipment manufacturer's failure to comply with this section may bring an action in a court of this state to recover the greater of the person's actual damages or statutory damages of \$1,000.

(b) A court in appropriate circumstances may award punitive damages to a prevailing plaintiff in an action under paragraph (a) of this subsection or may provide equitable relief the court deems appropriate.

(c) A court may award reasonable attorney fees and costs at trial and on appeal to a plaintiff that prevails in an action under paragraph (a) of this subsection. The court may award attorney fees and costs to a prevailing defendant only if the court finds that an objectively reasonable basis for bringing the action or asserting the ground for the appeal did not exist.

(d)(A) A class action may be maintained under this subsection in accordance with ORCP 32. In a class action under this subsection a plaintiff may recover statutory damages on behalf of class members only if the plaintiff establishes that the members have suffered an ascertainable loss of money or property as a result of the defendant's reckless or knowing violation of the provisions of this section.

(B) A court may not award attorney fees to a prevailing defendant if the action is a class action under subparagraph (A) of this paragraph.

(e) A plaintiff must commence an action under this subsection within one year after discovering a violation of this section. Notwithstanding this limitation, a prosecuting attorney's initiation of an action to prevent, restrain or punish a violation of this section, while the action is pending, tolls the limitation for every private action un-

1 **der this subsection that a plaintiff intends to base, in whole or in part,**
2 **on any matter set forth in the prosecuting attorney's complaint.**

3 **SECTION 2.** Section 1 of this 2021 Act applies to consumer elec-
4 **tronic equipment that is sold or is in use on or after the effective date**
5 **of this 2021 Act.**

6 **SECTION 3. This 2021 Act takes effect on the 91st day after the date**
7 **on which the 2021 regular session of the Eighty-first Legislative As-**
8 **sembly adjourns sine die.**

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