House Bill 2698
Sponsored by Representative SOLLMAN, Senators MANNING JR, GOLDEN, Representatives LEIF, NEARMAN
(Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requires original equipment manufacturer to make available to owner of originated equipment or independent repair provider on fair and reasonable terms any part, tool, documentation or other device or implement that original equipment manufacturer makes available to authorized repair provider for purpose of diagnosing, maintaining or repairing originated equipment. 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 or arrangement with the original equipment manufacturer under which the original equipment manufacturer grants a license to or otherwise permits the person to use the original equipment manufacturer's trade name, service mark or other proprietary identification for the purpose of engaging in the business of diagnosing, maintaining or repairing originated equipment; or
(B) An original equipment manufacturer that engages in the business of diagnosing, maintaining and repairing originated equipment, if the original equipment manufacturer does not have an agreement or arrangement with another person that engages in the business of diagnosing, maintaining or repairing the originated equipment.

(b) (A) "Consumer electronic equipment" means a product that an original equipment manufacturer makes or supplies, or that another person makes or supplies on behalf of the original equipment manufacturer, and that:
(i) Functions, in whole or in part, using digital electronics that are embedded within or attached to the product;
(ii) Is tangible personal property;
(iii) Is distributed in commerce;
(iv) Is generally used for personal, family or household purposes; and
(v) Might be, but is not necessarily, capable of attachment to or installation in real property.

(B) "Consumer electronic equipment" does not include a product or equipment that:
(i) A motor vehicle manufacturer or motor vehicle equipment manufacturer makes for use in or as part of a motor vehicle, as defined in ORS 801.360, other than a motorcycle, as
defined in ORS 801.365, a farm tractor, as defined in ORS 801.265, or a recreational vehicle, as defined in ORS 174.101;
(ii) Has an internal combustion engine or an engine that exceeds 25 horsepower;
(iii) Has never been available for retail sale to a consumer;
(iv) Is a device that the United States Food and Drug Administration has approved for sale or use; or
(v) Provides heat, ventilation or air conditioning or recharges refrigerant gases.
(c) “Documentation” means any diagram, report, service code description, schematic or other information that enables a person to diagnose, maintain or repair originated equipment.
(d) “Embedded software” means programmable instructions for operating originated equipment that are provided in firmware that is delivered with or with a part for the originated equipment, including any updates, upgrades, patches or other fixes to the programmable instructions.
(e) “Fair and reasonable terms” means costs and terms that are equivalent to the most favorable costs for and terms under which an original equipment manufacturer offers a part, tool, documentation or other device or implement to an authorized repair provider for the purpose of diagnosing, maintaining or repairing originated equipment, and that:
   (A) Offer the same discount, rebate, convenient means of delivery, means of enabling fully restored and updated functionality, rights of use or other incentive or preference the original equipment manufacturer offers to an authorized repair provider or impose any additional cost, burden or impediment the original equipment manufacturer also imposes on an independent repair provider;
   (B) Do not impose a substantial condition, obligation or restriction that is not reasonably necessary to enable an owner or independent repair provider to diagnose, maintain or repair originated equipment; and
   (C) Do not require an owner or independent repair provider to become an authorized repair provider or enter into an agreement or arrangement described in paragraph (a)(A) of this subsection.
(f) “Firmware” means software or a set of instructions preprogrammed into originated equipment or into a part for originated equipment for the purpose of allowing internal communications within the originated equipment or allowing the originated equipment to communicate with other consumer electronic equipment or other electronic devices.
(g) “Independent repair provider” means:
   (A) A person that engages in the business of diagnosing, maintaining or repairing originated equipment in this state but that is not, and is not affiliated with, an authorized repair provider; or
   (B) An original equipment manufacturer, or an authorized repair provider for the original equipment manufacturer, that engages in the business of diagnosing, maintaining or repairing electronic equipment that is not originated equipment.
(h) “Original equipment manufacturer” means a person that engages in the business of selling, leasing or otherwise supplying to another person new originated equipment.
(i) “Originated equipment” means consumer electronic equipment that an original equipment manufacturer makes or that another person makes on behalf of the original equipment manufacturer.
(j) “Owner” means a person that purchases, leases, owns or uses consumer electronic equipment in this state.

(k) “Part” means a new or used replacement component for originated equipment that an original equipment manufacturer makes available for the purpose of maintaining or repairing the originated equipment.

(L) “Trade secret” has the meaning given that term in ORS 646.461.

(2)(a) An original equipment manufacturer shall make available to an owner or an independent repair provider on fair and reasonable terms any part, tool, embedded software, documentation or other device or implement that the original equipment manufacturer makes available to an authorized repair provider for the purpose of diagnosing, maintaining or repairing originated equipment.

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

(A) Documentation that is available in electronic form is available to an owner or independent repair provider on fair and reasonable terms only if the original equipment manufacturer does not charge for the documentation, except that if the owner or independent repair provider requests a printed copy of the documentation, the original equipment manufacturer may charge the reasonable actual costs of printing and delivery; and

(B) Software tools are available to an owner or independent repair provider on fair and reasonable terms only if the original equipment manufacturer does not charge for the software tools, does not require the owner or independent repair provider to have authorization or Internet access and does not otherwise impose any impediments on an owner’s or independent repair provider’s ability to diagnose, maintain, repair or enable the full functionality of originated equipment.

(c) The original equipment manufacturer shall make available to an owner or independent repair provider on fair and reasonable terms any documentation, tool or part necessary to disable and reset any electronic security lock or other security function in originated equipment that is or must be disabled or that must be reset while diagnosing, maintaining or repairing the originated equipment. The original equipment manufacturer may make the documentation, tool or part available by means of an appropriate secure system.

(3) This section does not:

(a) Require an original equipment manufacturer to disclose a trade secret to an owner or independent service provider except as necessary to provide, on fair and reasonable terms, a part, tool, documentation or other device or implement the owner or independent repair provider needs to diagnose, maintain or repair originated equipment; or

(b) Alter the terms of any agreement or arrangement between an original equipment manufacturer and an authorized repair provider including, but not limited to, the authorized repair provider’s performance or provision of warranty service or recall repair work on the original equipment manufacturer’s behalf under the agreement or arrangement, except that any provision in the agreement or arrangement that purports to waive, restrict or limit the original equipment manufacturer’s compliance with this section is void and unenforceable.

(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.

SECTION 2. Section 1 of this 2021 Act applies to originated equipment that is sold or is in use on or after the effective date of this 2021 Act.

SECTION 3. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.