

House Bill 2698

Sponsored by Representative SOLLMAN, Senators MANNING JR, GOLDEN, Representatives LEIF, NEARMAN
(Pre-session 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

1
2 Relating to a right to repair consumer electronic equipment; and prescribing an effective date.

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

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

5 (a) **“Authorized repair provider” means:**

6 (A) **A person that is not affiliated with an original equipment manufacturer but that has**
7 **an agreement or arrangement with the original equipment manufacturer under which the**
8 **original equipment manufacturer grants a license to or otherwise permits the person to use**
9 **the original equipment manufacturer’s trade name, service mark or other proprietary iden-**
10 **tification for the purpose of engaging in the business of diagnosing, maintaining or repairing**
11 **originated equipment; or**

12 (B) **An original equipment manufacturer that engages in the business of diagnosing,**
13 **maintaining and repairing originated equipment, if the original equipment manufacturer does**
14 **not have an agreement or arrangement with another person that engages in the business**
15 **of diagnosing, maintaining or repairing the originated equipment.**

16 (b)(A) **“Consumer electronic equipment” means a product that an original equipment**
17 **manufacturer makes or supplies, or that another person makes or supplies on behalf of the**
18 **original equipment manufacturer, and that:**

19 (i) **Functions, in whole or in part, using digital electronics that are embedded within or**
20 **attached to the product;**

21 (ii) **Is tangible personal property;**

22 (iii) **Is distributed in commerce;**

23 (iv) **Is generally used for personal, family or household purposes; and**

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

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

27 (i) **A motor vehicle manufacturer or motor vehicle equipment manufacturer makes for**
28 **use in or as part of a motor vehicle, as defined in ORS 801.360, other than a motorcycle, as**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 defined in ORS 801.365, a farm tractor, as defined in ORS 801.265, or a recreational vehicle,
 2 as defined in ORS 174.101;

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

4 (iii) Has never been available for retail sale to a consumer;

5 (iv) Is a device that the United States Food and Drug Administration has approved for
 6 sale or use; or

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

8 (c) "Documentation" means any diagram, report, service code description, schematic or
 9 other information that enables a person to diagnose, maintain or repair originated equip-
 10 ment.

11 (d) "Embedded software" means programmable instructions for operating originated
 12 equipment that are provided in firmware that is delivered with or with a part for the origi-
 13 nated equipment, including any updates, upgrades, patches or other fixes to the program-
 14 mable instructions.

15 (e) "Fair and reasonable terms" means costs and terms that are equivalent to the most
 16 favorable costs for and terms under which an original equipment manufacturer offers a part,
 17 tool, documentation or other device or implement to an authorized repair provider for the
 18 purpose of diagnosing, maintaining or repairing originated equipment, and that:

19 (A) Offer the same discount, rebate, convenient means of delivery, means of enabling
 20 fully restored and updated functionality, rights of use or other incentive or preference the
 21 original equipment manufacturer offers to an authorized repair provider or impose any ad-
 22 ditional cost, burden or impediment the original equipment manufacturer also imposes on
 23 an independent repair provider;

24 (B) Do not impose a substantial condition, obligation or restriction that is not reasonably
 25 necessary to enable an owner or independent repair provider to diagnose, maintain or repair
 26 originated equipment; and

27 (C) Do not require an owner or independent repair provider to become an authorized re-
 28 pair provider or enter into an agreement or arrangement described in paragraph (a)(A) of
 29 this subsection.

30 (f) "Firmware" means software or a set of instructions preprogrammed into originated
 31 equipment or into a part for originated equipment for the purpose of allowing internal com-
 32 munications within the originated equipment or allowing the originated equipment to com-
 33 municate with other consumer electronic equipment or other electronic devices.

34 (g) "Independent repair provider" means:

35 (A) A person that engages in the business of diagnosing, maintaining or repairing origi-
 36 nated equipment in this state but that is not, and is not affiliated with, an authorized repair
 37 provider; or

38 (B) An original equipment manufacturer, or an authorized repair provider for the original
 39 equipment manufacturer, that engages in the business of diagnosing, maintaining or repair-
 40 ing electronic equipment that is not originated equipment.

41 (h) "Original equipment manufacturer" means a person that engages in the business of
 42 selling, leasing or otherwise supplying to another person new originated equipment.

43 (i) "Originated equipment" means consumer electronic equipment that an original
 44 equipment manufacturer makes or that another person makes on behalf of the original
 45 equipment manufacturer.

1 (j) "Owner" means a person that purchases, leases, owns or uses consumer electronic
2 equipment in this state.

3 (k) "Part" means a new or used replacement component for originated equipment that
4 an original equipment manufacturer makes available for the purpose of maintaining or re-
5 pairing the originated equipment.

6 (L) "Trade secret" has the meaning given that term in ORS 646.461.

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

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

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

18 (B) Software tools are available to an owner or independent repair provider on fair and
19 reasonable terms only if the original equipment manufacturer does not charge for the soft-
20 ware tools, does not require the owner or independent repair provider to have authorization
21 or Internet access and does not otherwise impose any impediments on an owner's or inde-
22 pendent repair provider's ability to diagnose, maintain, repair or enable the full functionality
23 of originated equipment.

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

30 (3) This section does not:

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

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

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

45 (b) A court in appropriate circumstances may award punitive damages to a prevailing

1 **plaintiff in an action under paragraph (a) of this subsection or may provide equitable relief**
2 **the court deems appropriate.**

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

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

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

15 **(e) A plaintiff must commence an action under this subsection within one year after**
16 **discovering a violation of this section.**

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

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

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