

MODEL DIGITAL REPAIR BILL – CTA/TECHNET

Section 1. Definitions. For the purposes of this bill, the following terms shall have the following meanings:

- (a) “Authorized repair provider” means an individual or business 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 such services on behalf of the original equipment manufacturer.
- (b) “Diagnosis” means the process of identifying the issue or issues that cause digital electronic equipment or equipment to not be in fully working order.
- (c) “Digital electronic equipment” means any hardware product that depends, in whole or in part, on digital electronics embedded in or attached to the product in order for the product to function, for which the original equipment manufacturer makes available tools, parts, and documentation to authorized repair providers
 - (i) “Digital electronic equipment” only includes items sold at retail for personal, household, family, or home office use, and does not include any product sold under a business-to-government or business-to-business contract that is not typically offered for sale directly by a retail seller.
 - (ii) “Digital electronic equipment” does not include:
 - (A) Information technology equipment that is intended for use in critical infrastructure as defined in 42 U.S.C. § 5195c(e).
 - (B) A motor vehicle manufacturer, manufacturer of motor vehicle equipment, or motor vehicle dealer acting in such capacity, or to any product or service of a motor vehicle manufacturer, manufacturer of motor vehicle equipment, or motor vehicle dealer acting in such capacity.
 - (C) A medical device, as defined in this section, or a digital electronic product found in a medical setting including diagnostic, monitoring, or control equipment or any product or service that they offer.
 - (D) A manufacturer, distributor, importer, or dealer of any off-road (non-road) equipment, including but not limited to, farm and utility tractors, farm implements, farm machinery, forestry equipment, industrial equipment, utility equipment, construction equipment, compact construction equipment, mining equipment, turf, yard and

garden equipment, outdoor power equipment (including portable generators), aviation, marine, all-terrain sports and recreational vehicles (including racing vehicles), stand-alone or integrated stationary or mobile internal combustion engines, other power sources (including without limitation, generator sets, electric/battery and fuel cell power), power tools, and any tools, technology, attachments, accessories, components and repair parts for any of the foregoing.

- (E) Commercial and industrial electrical equipment (including power distribution equipment, such as telecommunications network infrastructure, commercial visual display equipment, medium/low voltage switchgear and transformers, power control equipment, such as medium/low voltage motor control and drives, power quality equipment, such as uninterruptable power supplies, remote power panels, power distribution units and static/transfer switches) and any tools, technology, attachments, accessories, components, and repair parts for any of the foregoing.
- (F) An electronic bicycle manufacturer, distributor, importer, retailer, or dealer.
- (G) A home appliance that has a digital electronic product embedded within it, including, but not limited to, refrigerators, ovens, microwaves, air conditioning, heating units, motorized shades, lighting control systems, and security devices or alarm systems, including any related software and components.
- (H) Safety communications equipment, the intended use of which is for emergency response or prevention purposes by an emergency service organization, such as a police, fire, or medical and emergency rescue services agency.
- (I) [A video game console, and its components and peripherals].¹

(iii) “Digital electronic product” only includes products that have a wholesale price to the retailer, or to others outside of direct retail sale, of not less than fifty dollars (\$50).

(d) “Documentation” means any manual, diagram, reporting output, service code description, or similar kind of information, or its equivalent, required for effecting the services of diagnosis, maintenance, or repair of digital electronic equipment, and made available by the original equipment manufacturer to an authorized

¹ Some states (CA and MN) have incorporated an exclusion for video game consoles. CTA is neutral on an exclusion for video game consoles.

repair provider for the purpose of effecting the services of diagnosis, maintenance, or repair of digital electronic equipment manufactured or sold by the original equipment manufacturer.

- (e) “Fair and reasonable terms” means making available parts, tools, or documentation as follows:
- (i) With respect to documentation required for repair, that such documentation is made available by the original equipment manufacturer on terms that are not conditioned on an arrangement described in section (1)(a) of this bill, and 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.
 - (ii) With respect to tools, that such tools are made available by the original equipment manufacturer (i) on terms that are not conditioned on an arrangement described in section (1)(a) of this bill, and without any impediments that do not also apply to authorized repair providers to access or use the tool to diagnose, maintain, or repair digital electronic equipment using parts provided by the original equipment manufacturer, and (ii) at no charge for use or operation of such tool, or at costs that are equivalent to the lowest actual cost for which the original equipment manufacturer offers the tool to an authorized repair provider, including any discount, rebate, or other financial incentive offered to an authorized repair provider, and provided that when such tool is requested in physical form, a charge may be included for the reasonable, actual costs of procuring, preparing and sending such tool.
 - (iii) With respect to parts, that such parts are made available by the original equipment manufacturer, either directly or through an authorized distributor or repair provider, subject to the clarification in Section 2(d)(xii) of this bill that parts may be provided as pre-assembled components in certain circumstances, at reasonable costs and on terms under which an OEM offers the part to an authorized repair provider and that are not conditioned on an arrangement described in section (1)(a) of this bill.
 - (iv) Such parts tools, and documentation shall be made available on commercially reasonable terms that are fair to all parties, including the original equipment manufacturer and authorized repair providers.
- (f) “Independent repair provider” means an individual or business operating in this State, that does not have an arrangement described in section (1)(a) of this bill with an original equipment manufacturer, who is not affiliated with any individual or business who has such an arrangement, and who is engaged in the services of diagnosis, maintenance, or repair of digital electronic equipment.

- (g) “Maintenance” means any act necessary to keep currently working digital electronic equipment in fully working order.
- (h) “Medical device” means an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including a component part, or accessory, as defined in the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h), which is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in humans or other animals.
- (i) “Modification” or “modify” means any alteration to digital electronic equipment that is not maintenance and not a repair.
- (j) “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 motor vehicle federal safety and emissions standards and requirements for distribution and sale in the United States.
- (k) "Motor vehicle dealer" means an individual or business who, in the ordinary course of business, is engaged in the business of selling or leasing motor vehicles to an individual or business pursuant to a franchise agreement, has obtained a license under the vehicle and traffic law, and is engaged in the services of diagnosis, maintenance, or repair of motor vehicles or motor vehicle engines pursuant to such franchise agreement.
- (l) "Motor vehicle manufacturer" means a business engaged in the manufacturing or assembling of motor vehicles.
- (m) “Original equipment manufacturer” means any business that, in the normal course of business, is engaged in the business of selling, leasing, or otherwise supplying new digital electronic equipment manufactured by or on behalf of itself, to any individual or business.
- (n) “Owner” means an individual or business that owns or leases digital electronic equipment purchased or used in this State.
- (o) “Part” or “parts” means any replacement part or assembly of parts, either new or used, or their equivalents, made available by an original equipment manufacturer to an authorized repair provider for purposes of effecting the services of maintenance or repair of digital electronic equipment manufactured or sold by the original equipment manufacturer. Part does not include printed circuit board assemblies that may allow device cloning in violation of 18 U.S.C. Section 1029 or other applicable law.
- (p) "Repair" means any act necessary to restore digital electronic equipment or equipment to fully working order. “Repair” does not encompass post-sale

modifications that alter the originally intended functioning of the digital electronic equipment.

- (q) “Tool” means any software program, hardware implement, or other apparatus, or its equivalent, which is made available by an original manufacturer to an authorized repair provider, and that is used for diagnosis, maintenance, or repair of digital electronic equipment manufactured or sold by the original equipment manufacturer, including software or other mechanisms that provide, program, or pair a new part, calibrate functionality, or perform any other function required to repair the original part.
- (r) “Trade secret” means anything tangible or intangible or electronically stored or kept that constitutes, represents, evidences, or records intellectual property, including secret or confidentially held, designs, processes, procedures, formulas, inventions, or improvements, or secret or confidentially held scientific, technical, merchandising, production, financial, business, or management information, or that falls within the meaning of a trade secret given in 18 U.S.C. § 1839.

Section 2. Requirements for original equipment manufacturers.

- (a) For digital electronic equipment that is manufactured for the first time, and first sold or used in the State, on or after the date that is one year after this bill becomes law, an original equipment manufacturer shall make available to any independent repair provider and owner of digital electronic equipment manufactured by or on behalf of or sold by such original equipment manufacturer, on fair and reasonable terms, any documentation, parts, and tools, or their equivalents, that are required for the diagnosis, maintenance, or repair of such digital electronic equipment and that the original equipment manufacturer makes available to an authorized repair provider.
 - (i) Such documentation, parts, and tools may be made available either directly by an original equipment manufacturer or via an authorized repair provider or an authorized third-party provider, though nothing in this bill requires third-party providers (including authorized repair providers) themselves to provide such parts, tools, and documentation.
 - (ii) Such documentation, parts, and tools may be further made available by an authorized repair provider to any independent repair provider or owner, provided that such authorized repair provider is contractually and practically permitted by the original equipment manufacturer to sell such parts, tools, and documentation to any independent repair provider or owner.
- (b) Such parts, tools, and documentation shall be made available within one year after the first sale of the digital electronic product in [name of State].

- (c) The obligations in this bill apply only to parts, tools, and documentation provided to authorized repair providers for diagnosis, maintenance, and repair of digital electronic equipment outside of the original equipment manufacturer's warranty, and do not encompass parts, tools, and documentation provided by the original equipment manufacturer only for in-warranty repairs.
- (d) Notwithstanding any other provision of this bill, nothing in this bill shall:
 - (i) Require an original equipment manufacturer to provide or make available a part, tool, or documentation to any repair provider or owner, if:
 - (A) the part, tool, or documentation is not, or is no longer, provided by the original equipment manufacturer or made available to authorized repair providers of the original equipment manufacturer, including where the original equipment manufacturer performs related repairs solely in-house or through a corporate affiliate;
 - (B) the part, tool, or documentation is no longer available to the original equipment manufacturer;
 - (C) the documentation or tool is used by the original manufacturer itself only to perform, at no cost, diagnostic services virtually through telephone, internet, chat, email, or other similar means that do not involve the manufacturer physically handling the customer's equipment, unless the manufacturer also makes the documentation or tool available to an individual or business that is unaffiliated with the manufacturer.
 - (ii) Require an original equipment manufacturer to divulge any trade secret, including documentation that includes, but is not limited to, schematics and bill of materials involving printed motherboards, or license any intellectual property, including copyrights or patents, to any independent repair provider or owner.
 - (iii) Require an original equipment manufacturer or an authorized repair provider to provide an independent repair provider or owner any information, other than "documentation" as defined herein, that is provided by the original equipment manufacturer to an authorized repair provider.
 - (iv) Require an original equipment manufacturer or authorized repair provider to make available any parts, tools or documentation for the purposes of modifying or making modifications to any digital electronic equipment.

- (v) Require any original equipment manufacturer or authorized repair provider to make available any parts, tools, or documentation in a manner that is inconsistent with or in violation of any federal or state law.
- (vi) Require an original equipment manufacturer to make available parts, tools, or documentation to an independent repair provider or owner that would disable, reset, or override electronic security locks or other security-related measures or functions, or disable or override anti-theft security measures set by the owner of the digital electronic equipment.
- (vii) Prevent original equipment manufacturers from restricting access to certain secure parts of a device from independent repair provider or owner access, provided that it does not prevent independent repair providers from completing repairs that can be completed by authorized repair providers.
- (viii) Prevent original equipment manufacturers from requiring remote authorization or an internet connection before independent repair providers or owners may use such parts or tools.
- (ix) Prevent an original equipment manufacturer from establishing reasonable training and certification programs for repair providers and requiring ongoing certification to these programs as a condition for receiving parts, tools, and documentation.
- (x) Prevent an original equipment manufacturer from requiring that independent repair providers and owners agree to reasonable commercial terms, including disclosures regarding the use of non-genuine or used parts.
- (xi) Abrogate, interfere with, contradict, or alter the terms of any agreement between an original equipment manufacturer and an authorized repair provider, including, but not limited to, the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to such an authorized repair agreement, except that any provision in such an authorized repair agreement that purports to waive, avoid, restrict, or limit an original manufacturer's compliance with this bill shall be void and unenforceable.
- (xii) Prevent an original equipment manufacturer from providing parts, such as integrated batteries, to independent repair providers or owners pre-assembled with other parts rather than as individual components, provided that those pre-assembled parts or their equivalents are also available to authorized repair providers.
- (xiii) Require an original equipment manufacturer to provide parts, tools, or documentation for any product where reconditioning or repair of the product is prohibited by law, regulation, or building or electrical code.

- (xiv) Require an original equipment manufacturer to provide or make available source code.
 - (xv) Require an original equipment manufacturer to provide parts, tools, or documentation for repair of digital electronic equipment critical to the safety of life or health of individuals, or for repairs that could threaten the safety of life or health of individuals, including repairs to digital electronic equipment with internal switch-mode power supplies.
 - (xvi) Require an original equipment manufacturer to provide documentation or tools used exclusively by the original equipment manufacturer for diagnosis, maintenance or repairs completed by machines that operate on several digital electronic equipment products simultaneously or otherwise for purposes of large scale efficiency, if the original equipment manufacturer makes available to owners and independent repair providers sufficient alternative documentation and tools to effect the diagnosis, maintenance, or repair of the digital electronic equipment.
 - (xvii) Apply to a product that was originally made available for sale by the original equipment manufacturer before the effective date of this bill.
- (e) This bill shall not apply if the manufacturer provides to the original purchaser either one of the following:
- (i) a reimbursement; or
 - (ii) equivalent or better, readily available replacement digital electronic equipment at a price that is no more than the total cost of the sum of the parts.

Section 3. Limitation of liability.

- (a) No original equipment manufacturer or authorized repair provider shall be liable for any damage or injury to any digital electronic equipment, person, or property that occurs as a result of repair, diagnosis, maintenance, or modification performed by an independent repair provider or owner, or any other use of parts, tools, or documentation provided by an original equipment manufacturer, including but not limited to, any indirect, incidental, special or consequential damages; any loss of data, privacy or profits; or any inability to use, or reduced functionality of, the digital electronic equipment.
- (b) No original equipment manufacturer shall be liable under this bill for any act that is reasonably necessary to protect user privacy, security, or digital safety.
- (c) Original equipment manufacturers shall not be required to warrant any repairs provided by independent repair providers or owners.

- (d) No original equipment manufacturer shall be liable for improper use of personal data or any data privacy or security breach in connection with repair, diagnosis, maintenance, or modification performed by an independent repair provider or owner.

Section 4. Notice and consumer bill of rights.

- (a) Before repairing digital electronic equipment, independent repair providers shall provide to any customer, and publish on their website and the place of business, a written notice that contains the following information:
 - (i) The independent repair provider is not an authorized repair provider for the digital electronic equipment;
 - (ii) The consumer should review the terms and conditions of any warranty for the digital electronic equipment, as repairs not performed by an authorized repair provider may affect the warranty;
 - (iii) Warranties for consumer products are governed by the federal Magnuson-Moss Warranty Act (15 U.S.C. ch. 50 § 2301), which gives consumers rights and protections that apply over conflicting provisions in the warranty;
 - (iv) Under the Magnuson-Moss Warranty Act, a warranty cannot require that maintenance and repairs be performed only by an authorized repair provider;
 - (v) Under the Magnuson-Moss Warranty Act, if damage to equipment is shown to be caused by equipment not offered or sold by the original equipment manufacturer or by faulty repair performed by a non-authorized repair provider, that damage may not be covered by the warranty, but the warranty may otherwise remain in effect; and
 - (vi) All required disclosures as outlined in Section 4(b) below.
- (b) Consumer bill of rights. The below requirements shall apply to all independent repair providers that conduct repairs of digital electronic equipment covered by this bill using documentation, tools, or parts provided by original equipment manufacturers pursuant to this bill.
 - (i) Independent repair providers are required, prior to the repair of such digital electronic equipment, to disclose to consumers in writing and obtain a written acknowledgment of the following:
 - a. For each instance of service provided, what parts, if any, were not provided or produced by the original equipment manufacturer, the name of the parts provider, and any complaints about the quality of

- such parts that the independent repair provider knows or has reason to know;
- b. If used parts are to be used during the repair, the duration and type of the part's previous use;
 - c. The total anticipated cost of the repair, including the itemized cost of parts and labor;
 - d. Whether the technician performing the repair is certified or has completed training to repair such digital electronic equipment, including whether the technician has undergone training required by the original equipment manufacturer to ensure safe and effective repairs;
 - e. Whether the repair procedure is in compliance with any applicable building or electrical code;
 - f. That there is a risk of damage to digital electronic equipment during the repair, including but not limited to damage to battery life or software functionality;
 - g. That there is a risk of physical harm to the consumer from an improper repair, including but not limited to increased risk of digital electronic equipment fire from faulty battery installation; and.
 - h. Any exposure of the consumer's personal data that may be involved in the repair, including access to personal data by independent repair provider's staff, and the protections that the independent repair provider will take to safeguard personal data.
- (ii) Independent repair providers are required to keep documentation of all repairs, including whether such repairs involved parts not provided or produced by original equipment manufacturers, and provide such documentation to consumers once repairs are completed.
 - (iii) Independent repair providers are required to submit, to any publicly accessible registry of such repairs, certain data regarding all digital electronic equipment repairs performed without original equipment manufacturer authorization. Such data must include the make, model, serial number, date of repair service, and summary of service performed, but not any personal data regarding the consumer.
 - a. As an alternative to compliance with this Section 4(b)(iii), for any repair performed by an independent repair provider without original equipment manufacturer authorization, independent repair providers must permanently attach a notice of repair containing their own brand

name to the digital electronic equipment, with the brand name in a size no smaller than the brand of the original equipment manufacturer.

Section 5. Enforcement.

- (a) The Attorney General shall have exclusive authority to enforce the provisions of this bill. Subject to Section 5(b), the Attorney General may initiate an action in the name of the State to seek an injunction to restrain any violations of this bill, and seek to obtain any relief that the Attorney General is authorized to obtain under [State UDAP statute].
- (b) Prior to initiating any action under this bill against any individual or business, the Attorney General shall provide the individual or business 30 days' written notice identifying the specific provisions of this bill the Attorney General alleges have been or are being violated. If within the 30-day period the individual or business cures the noticed violation and provides the Attorney General an express written statement that the alleged violations have been cured and that no such further violations shall occur, no action shall be initiated against the individual or business. Written notice by the Attorney General shall be delivered by certified mail and by first-class mail with proof of mailing. If an individual or business continues to violate this chapter following this cure period or breaches an express written statement provided to the Attorney General under this Section 5(b), the Attorney General may initiate an action as described in Section 5(a).
- (c) Nothing in this bill shall be construed to create an individual or private right of action, or to provide the basis for, or be subject to, an individual or private right of action for violations of any parts of this bill, including under any other law.

Section 6. Effective date. This bill shall take effect one year after it shall have become a law and shall apply only to digital electronic equipment that was manufactured for the first time, and first sold or used in the State, on or after the date that is one year after this bill becomes law.