

# House Bill 2688

Sponsored by Representative NOSSE, Senator MANNING JR; Representatives ALONSO LEON, DOHERTY, GORSEK, MARSH, POWER, SALINAS, SANCHEZ, SCHOUTEN, WILDE, WITT (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 digital electronic equipment or independent repair provider on fair and reasonable terms any part, tool, service manual or other device, implement or information that original equipment manufacturer makes available to authorized repair provider for purpose of diagnosing, maintaining or repairing digital electronic equipment that original equipment manufacturer makes or supplies. Provides that violation of Act is unlawful trade practice under Unlawful Trade Practices Act.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to a right to repair digital electronic equipment; creating new provisions; amending ORS  
3 646.607; and prescribing an effective date.

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

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

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

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

13 (B) **An original equipment manufacturer that engages in the business of diagnosing,**  
14 **maintaining and repairing digital electronic equipment that the original manufacturer makes**  
15 **or supplies, if the original equipment manufacturer does not have an agreement with another**  
16 **person that engages in the business of diagnosing, maintaining or repairing the digital elec-**  
17 **tronic equipment.**

18 (b) **“Digital electronic equipment” means a product that functions on the basis of digital**  
19 **electronics that are embedded in or attached to the product.**

20 (c) **“Embedded software” means programmable instructions provided in firmware that is**  
21 **delivered with or as part of digital electronic equipment for the purpose of operating the**  
22 **digital electronic equipment, including any updates, upgrades, patches or other fixes to the**  
23 **programmable instructions.**

24 (d) **“Fair and reasonable terms” means costs and terms that are equivalent to the costs**  
25 **for and terms under which an original manufacturer offers a part, tool, service manual or**  
26 **other device, implement or information to an authorized repair provider for the purpose of**  
27 **diagnosing, maintaining or repairing digital electronic equipment that the original equipment**  
28 **manufacturer makes or supplies, and that:**

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

3 (B) Account for any discount, rebate or incentive the original equipment manufacturer  
 4 offers to an authorized repair provider.

5 (e) “Firmware” means software or a set of instructions preprogrammed into or made a  
 6 part of digital electronic equipment for the purpose of allowing the digital electronic equip-  
 7 ment to communicate with other digital electronic equipment.

8 (f) “Independent repair provider” means:

9 (A) A person that engages in the business of diagnosing, maintaining or repairing digital  
 10 electronic equipment but that does not have an agreement with, and is not affiliated with a  
 11 person that has an agreement with, an original equipment manufacturer that is the same  
 12 as or similar to an agreement the original equipment manufacturer has with an authorized  
 13 repair provider; or

14 (B) An original equipment manufacturer that engages in the business of diagnosing,  
 15 maintaining or repairing digital electronic equipment solely with respect to digital electronic  
 16 equipment that the original equipment manufacturer does not manufacture or supply.

17 (g) “Original equipment manufacturer” means a person that engages in the business of  
 18 making and selling, leasing or otherwise supplying new digital electronic equipment to an-  
 19 other person.

20 (h) “Owner” means a person that purchases, leases or owns digital electronic equipment  
 21 in this state.

22 (i) “Part” means a new or used replacement component for digital electronic equipment  
 23 that an original equipment manufacturer makes available for the purpose of maintaining or  
 24 repairing digital electronic equipment that the original equipment manufacturer makes or  
 25 supplies.

26 (j) “Service manual” means any diagram, report, service code description, schematic, or  
 27 other documentation or information that an original equipment manufacturer provides to  
 28 an authorized repair provider for the purpose of diagnosing, maintaining or repairing digital  
 29 electronic equipment that the original equipment manufacturer makes or supplies.

30 (2)(a) An original equipment manufacturer shall make available to an owner or an inde-  
 31 pendent repair provider on fair and reasonable terms any part, tool, service manual or other  
 32 device, implement or information that the original equipment manufacturer makes available  
 33 to an authorized repair provider for the purpose of diagnosing, maintaining or repairing  
 34 digital electronic equipment that the original equipment manufacturer makes or supplies.

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

36 (A) A part, tool, service manual or other device, implement or information must be the  
 37 most recent or most appropriate part, tool, service manual, device, implement or information  
 38 necessary to best effect the needed diagnosis, maintenance or repair; and

39 (B) A service manual that is available in electronic form is available to an owner or in-  
 40 dependent repair provider on fair and reasonable terms only if the original equipment man-  
 41 ufacturer does not charge for the service manual, except that if the owner or independent  
 42 repair provider requests a printed copy of the service manual, the original equipment man-  
 43 ufacturer may charge the actual costs of printing and delivery.

44 (c) The original equipment manufacturer shall make available to an owner or independent  
 45 repair provider on fair and reasonable terms any special documentation, tools or parts nec-

1 **essary to disable and reset any electronic security lock or other security function in the**  
 2 **digital electronic equipment that must be disabled or reset to allow the diagnosis, mainte-**  
 3 **nance or repair or to allow the digital electronic equipment to function properly. The original**  
 4 **equipment manufacturer may provide the special documentation, tool or part available by**  
 5 **means of a secure system.**

6 **(3) This section does not:**

7 **(a) Require an original equipment manufacturer to disclose a trade secret to an owner**  
 8 **or independent service provider except as necessary to provide a part, tool, service manual**  
 9 **or other device, implement or information the owner or independent repair provider needs**  
 10 **to diagnose, maintain or repair digital electronic equipment the original equipment man-**  
 11 **ufacturer makes or supplies;**

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

18 **(c) Require an original equipment manufacturer or authorized repair provider to provide**  
 19 **an owner, independent repair provider or prosecuting attorney with any information about**  
 20 **an agreement between the original equipment manufacturer and authorized repair provider**  
 21 **other than information that is necessary to determine whether the original equipment**  
 22 **manufacturer is complying with this section.**

23 **(4) An original equipment manufacturer that violates this section engages in an unlawful**  
 24 **trade practice under ORS 646.607.**

25 **(5) This section does not apply to a manufacturer of or dealer in motor vehicles, as de-**  
 26 **defined in ORS 801.360, or a manufacturer of or dealer in equipment for motor vehicles or to**  
 27 **a product or service that a manufacturer of or dealer in motor vehicles makes or supplies.**

28 **SECTION 2.** ORS 646.607 is amended to read:

29 646.607. A person engages in an unlawful trade practice if in the course of the person's business,  
 30 vocation or occupation the person:

31 (1) Employs any unconscionable tactic in connection with selling, renting or disposing of real  
 32 estate, goods or services, or collecting or enforcing an obligation;

33 (2) Fails to deliver all or any portion of real estate, goods or services as promised, and at a  
 34 customer's request, fails to refund money that the customer gave to the person to purchase the  
 35 undelivered real estate, goods or services and that the person does not retain pursuant to any right,  
 36 claim or defense the person may assert in good faith. This subsection does not create a warranty  
 37 obligation and does not apply to a dispute over the quality of real estate, goods or services delivered  
 38 to a customer;

39 (3) Violates ORS 401.965 (2);

40 (4) Violates a provision of ORS 646A.725 to 646A.750;

41 (5) Violates ORS 646A.530;

42 (6) Employs a collection practice that is unlawful under ORS 646.639;

43 (7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or 86.732 (1) or (2);

44 (8) Violates ORS 646A.093;

45 (9) Violates a provision of ORS 646A.600 to 646A.628;

1 (10) Violates ORS 646A.808 (2);

2 (11) Violates ORS 336.184; [*or*]

3 (12) Publishes on a website related to the person's business, or in a consumer agreement related  
4 to a consumer transaction, a statement or representation of fact in which the person asserts that  
5 the person, in a particular manner or for particular purposes, will use, disclose, collect, maintain,  
6 delete or dispose of information that the person requests, requires or receives from a consumer and  
7 the person uses, discloses, collects, maintains, deletes or disposes of the information in a manner  
8 that is materially inconsistent with the person's statement or representation[.]; **or**

9 **(13) Violates section 1 of this 2019 Act.**

10 **SECTION 3. Section 1 of this 2019 Act and the amendments to ORS 646.607 by section 2**  
11 **of this 2019 Act apply to digital electronic equipment that is sold or is in use on or after the**  
12 **effective date of this 2019 Act.**

13 **SECTION 4. This 2019 Act takes effect on the 91st day after the date on which the 2019**  
14 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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