

Requested by Representative SOLLMAN

**PROPOSED AMENDMENTS TO
HOUSE BILL 2698**

1 On page 1 of the printed bill, delete lines 4 through 28 and delete pages
2 2 through 4 and insert:

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

4 **“(a) ‘Authorized repair provider’ means:**

5 **“(A) A person that is not affiliated with an original equipment**
6 **manufacturer but that has an agreement or arrangement with the**
7 **original equipment manufacturer under which the original equipment**
8 **manufacturer grants a license to or otherwise permits the person to**
9 **use the original equipment manufacturer’s trade name, service mark**
10 **or other proprietary identification for the purpose of offering the ser-**
11 **vices of diagnosis, maintenance or repair of consumer electronic**
12 **equipment under the name of or on behalf of the original equipment**
13 **manufacturer; or**

14 **“(B) An original equipment manufacturer that engages in the**
15 **business of diagnosing, maintaining and repairing the original equip-**
16 **ment manufacturer’s own equipment, if the original equipment man-**
17 **ufacturer does not have an agreement or arrangement with another**
18 **unaffiliated person that engages in the business of diagnosing, main-**
19 **taining or repairing the original equipment manufacturer’s consumer**
20 **electronic equipment.**

21 **“(b)(A) ‘Consumer electronic equipment’ means a product or a part**

1 of a product that an original equipment manufacturer makes or sup-
2 plies, or that another person makes or supplies on behalf of the ori-
3 ginal equipment manufacturer, and that:

4 “(i) Functions, in whole or in part, using digital electronics that are
5 embedded within or attached to the product;

6 “(ii) Is tangible personal property;

7 “(iii) Is sold, used or otherwise supplied in this state;

8 “(iv) Is generally used for personal, family or household purposes;
9 and

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

12 “(B) ‘Consumer electronic equipment’ does not include a product
13 or equipment that:

14 “(i) A motor vehicle manufacturer or motor vehicle equipment
15 manufacturer makes for use in or as part of a motor vehicle, as de-
16 fined in ORS 801.360, examples of which include a motorized bicycle
17 and off-highway vehicle;

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

20 “(iii) Is made for use in or as part of a vehicle propelled by electric
21 power obtained from overhead trolley wires, but not operated upon
22 rails;

23 “(iv) Has never been available for retail sale to a consumer;

24 “(v) Is a device that the United States Food and Drug Adminis-
25 tration has approved for sale or use;

26 “(vi) Provides heat, ventilation or air conditioning or recharges
27 refrigerant gases;

28 “(vii) Is a system, mechanism or series of mechanisms that gener-
29 ates electrical energy from solar radiation, that stores electrical en-
30 ergy generated from solar radiation or that combines generation and

1 storage of electrical energy derived from solar radiation; or

2 “(viii) Is an energy storage system that stores electrical energy for
3 a period of time and transmits the electrical energy after storage, is
4 interconnected to a distribution or transmission system and is:

5 “(I) Approved by an electric utility; or

6 “(II) Located on the customer’s side of an electric utility meter in
7 accordance with an applicable utility tariff or interconnection agree-
8 ment.

9 “(c) ‘Documentation’ means any diagram, report, reporting output,
10 service code description, schematic, instruction, repair manual, ser-
11 vice manual or other documented guidance for diagnosing, maintain-
12 ing or repairing consumer electronic equipment.

13 “(d) ‘Embedded software’ means programmable instructions that
14 are provided in firmware that is delivered with consumer electronic
15 equipment or with a part for the consumer electronic equipment for
16 the purpose of operating the consumer electronic equipment, including
17 any updates, upgrades, patches and other fixes that the manufacturer
18 of the consumer electronic equipment makes for the purpose of oper-
19 ating the consumer electronic equipment.

20 “(e) ‘Fair and reasonable terms’ means costs and terms that are
21 equivalent to the most favorable costs for and terms under which an
22 original equipment manufacturer offers a part, tool, documentation
23 or other device or implement to an authorized repair provider for the
24 purpose of diagnosing, maintaining or repairing consumer electronic
25 equipment, and that:

26 “(A) Offer the same discount, rebate, convenient means of delivery,
27 means of enabling fully restored and updated functionality, rights of
28 use or other incentive or preference the original equipment manufac-
29 turer offers to any authorized repair provider;

30 “(B) Impose on all of the original equipment manufacturer’s au-

1 **thorized repair providers any additional cost, burden or impediment**
2 **the original equipment manufacturer also imposes on an independent**
3 **repair provider;**

4 **“(C) Do not impose a substantial condition, obligation or restriction**
5 **that is not reasonably necessary to enable an owner or independent**
6 **repair provider to diagnose, maintain or repair consumer electronic**
7 **equipment; and**

8 **“(D) Do not require an owner or independent repair provider to**
9 **become an authorized repair provider or enter into an agreement or**
10 **arrangement described in paragraph (a)(A) of this subsection.**

11 **“(f) ‘Firmware’ means software or a set of instructions prepro-**
12 **grammed in consumer electronic equipment or in a part for consumer**
13 **electronic equipment to allow internal communications within the**
14 **consumer electronic equipment or the part or to allow the consumer**
15 **electronic equipment or the part to communicate with other computer**
16 **hardware.**

17 **“(g) ‘Independent repair provider’ means:**

18 **“(A) A person that:**

19 **“(i) Operates in this state;**

20 **“(ii) Does not have with an original equipment manufacturer an**
21 **arrangement described in paragraph (a)(A) of this subsection;**

22 **“(iii) Is not affiliated with any other person that has an arrange-**
23 **ment with an original equipment manufacturer that is described in**
24 **paragraph (a)(A) of this subsection; and**

25 **“(iv) Engages in the business of diagnosing, maintaining or repair-**
26 **ing consumer electronic equipment; or**

27 **“(B) An original equipment manufacturer, or an authorized repair**
28 **provider for the original equipment manufacturer, when engaging in**
29 **the business of diagnosing, maintaining or repairing consumer elec-**
30 **tronic equipment that the original equipment manufacturer does not**

1 manufacture or sell under the original equipment manufacturer's own
2 name.

3 “(h) ‘Original equipment manufacturer’ means a person that en-
4 gages in the business of selling, leasing or otherwise supplying to an-
5 other person new consumer electronic equipment that the person
6 manufactures or has manufactured on the person's behalf.

7 “(i) ‘Owner’ means a person that leases or owns consumer elec-
8 tronic equipment that was purchased or used in this state.

9 “(j) ‘Part’ means a new or used replacement component for con-
10 sumer electronic equipment that an original equipment manufacturer
11 makes available for the purpose of maintaining or repairing consumer
12 electronic equipment that the original equipment manufacturer sells
13 or supplies, or manufactures or has manufactured on the original
14 equipment manufacturer's behalf.

15 “(k) ‘Tool’ means a software program, hardware implement or other
16 apparatus for diagnosing, maintaining or repairing consumer elec-
17 tronic equipment, examples of which include devices or mechanisms
18 that provision, program or pair parts, calibrate functionality or per-
19 form other functions to restore consumer electronic equipment to a
20 fully functional state or condition.

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

22 “(2)(a) An original equipment manufacturer shall make available
23 to an owner or an independent repair provider on fair and reasonable
24 terms any part, tool, embedded software, documentation or other de-
25 vice or implement that the original equipment manufacturer makes
26 available to an authorized repair provider for the purpose of diagnos-
27 ing, maintaining or repairing consumer electronic equipment.

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

29 “(A) Documentation that is available in electronic form is available
30 to an owner or independent repair provider on fair and reasonable

1 terms only if the original equipment manufacturer does not charge for
2 the documentation, except that if the owner or independent repair
3 provider requests a printed copy of the documentation, the original
4 equipment manufacturer may charge the owner or independent repair
5 provider the reasonable actual costs of printing and delivery; and

6 “(B) Software tools are available to an owner or independent repair
7 provider on fair and reasonable terms only if the original equipment
8 manufacturer does not charge for the software tools, does not require
9 the owner or independent repair provider to have authorization or
10 Internet access while diagnosing, maintaining or repairing consumer
11 electronic equipment and does not otherwise impose any impediments
12 on an owner’s or independent repair provider’s ability to diagnose,
13 maintain, repair or enable the full functionality of consumer elec-
14 tronic equipment.

15 “(c) The original equipment manufacturer shall make available to
16 an owner or independent repair provider on fair and reasonable terms
17 any documentation, tool or part necessary to disable and reset any
18 electronic security lock or other security function in consumer elec-
19 tronic equipment that is or must be disabled or that must be reset
20 while or as a result of diagnosing, maintaining or repairing the con-
21 sumer electronic equipment. The original equipment manufacturer
22 may make the documentation, tool or part available by means of an
23 appropriate secure system.

24 “(3) This section does not:

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

30 “(b) Alter the terms of any agreement or arrangement between an

1 original equipment manufacturer and an authorized repair provider
2 including, but not limited to, the authorized repair provider's per-
3 formance or provision of warranty service or recall repair work on the
4 original equipment manufacturer's behalf under the agreement or ar-
5 rangement, except that any provision in the agreement or arrange-
6 ment that purports to waive, restrict or limit the original equipment
7 manufacturer's compliance with this section is void and
8 unenforceable; or

9 “(c) Apply to:

10 “(A) Any of the following items that use, derive power from, supply
11 power to, are components of or constitute an internal combustion en-
12 gine:

13 “(i) An internal combustion engine that is not used in a motor ve-
14 hicle or in a vehicle used solely for competition and is not subject to
15 standards of performance for stationary sources or emission standards
16 for motor vehicles or motor vehicle engines under 42 U.S.C. 7411 and
17 7521;

18 “(ii) A fuel system or other power source for an internal com-
19 bustion engine described in sub-subparagraph (i) of this subparagraph,
20 such as an electric battery or fuel cell;

21 “(iii) Equipment that depends on an internal combustion engine
22 described in sub-subparagraph (i) of this subparagraph for power and
23 any tools, attachments, components, accessories, repair parts or other
24 technology used for the equipment; or

25 “(iv) A vehicle that uses an internal combustion engine described
26 in sub-subparagraph (i) of this subparagraph but that is not a motor
27 vehicle or a vehicle used solely for competition;

28 “(B) A vehicle that uses an internal combustion engine or other
29 power source for propulsion or power generation and is designed to
30 operate on a waterway or in a marine environment;

1 **“(C) A person that manufactures, assembles, distributes, sells or**
2 **imports for resale, maintains, repairs or services an engine, power**
3 **source, equipment or a vehicle described in subparagraphs (A) and (B)**
4 **of this paragraph, or a product or service the person provides in con-**
5 **nection with the engine, power source, equipment or vehicle; or**

6 **“(D) A person that owns, controls, is affiliated with or is an em-**
7 **ployee or agent of a person described in subparagraph (C) of this par-**
8 **agraph.**

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

14 **“(b) A court in appropriate circumstances may award punitive**
15 **damages to a prevailing plaintiff in an action under paragraph (a) of**
16 **this subsection or may provide equitable relief the court deems ap-**
17 **propriate.**

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

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

30 **“(B) A court may not award attorney fees to a prevailing defendant**

1 if the action is a class action under subparagraph (A) of this para-
2 graph.

3 “(e) A plaintiff must commence an action under this subsection
4 within one year after discovering a violation of this section.

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

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

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