

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By \_\_\_\_\_

1 AMEND House Bill No. 738, Page 1, Section A, Line 2, by inserting immediately after all of said  
2 line the following:

3  
4 "407.650. As used in sections 407.650 to 407.651, the following terms mean:

5 (1) "Authorized repair provider", an individual or business that has an oral or written  
6 arrangement for a definite or indefinite period in which a manufacturer or distributor transfers to a  
7 separate business organization or individual license to use a trade name, service mark, or relative  
8 characteristic for the purposes of offering repair services under the name of the manufacturer;

9 (2) "Consumer product", any article, or component part thereof, produced or distributed:

10 (a) For sale to a consumer for use in or around a permanent or temporary household or  
11 residence or a school, in recreation, or otherwise; or

12 (b) For the personal use, consumption, or enjoyment by a consumer in or around a  
13 permanent or temporary household or residence or a school, in recreation, or otherwise.

14  
15 Consumer product shall not include any article that is not customarily produced or distributed for  
16 sale to, use or consumption by, or enjoyment of, a consumer. Consumer products shall include, but  
17 not be limited to, aircraft and aircraft products, agricultural products, electronic products, household  
18 products, motor vehicle products, telecommunication products, or watercraft and watercraft  
19 products;

20 (3) "Documentation", manuals, diagrams, reporting output, or service code descriptions  
21 provided to the authorized repair provider for the purposes of repair;

22 (4) "Embedded software", programmable instructions provided on firmware delivered with  
23 certain consumer products for the purposes of product operation, including all relevant patches and  
24 fixes made by the manufacturer for this purpose including, but not limited to, a basic internal  
25 operating system, internal operating system, machine code, assembly code, root code, and  
26 microcode;

27 (5) "Fair and reasonable terms", an equitable price in light of relevant factors including, but  
28 not limited to:

29 (a) The net cost to the authorized repair provider for similar parts obtained from  
30 manufacturers, less any discounts, rebates, or other incentive programs;

31 (b) The cost to the manufacturer for preparing and distributing the parts or product,  
32 excluding any research and development costs incurred in designing and implementing, upgrading,  
33 or altering the product, but including amortized capital costs for the preparation and distribution of  
34 the parts; and

35 (c) The price charged by other manufacturers for similar parts or products;

36 (6) "Independent repair provider", an individual or business operating in the state that is not

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

1 affiliated with a manufacturer or a manufacturer's authorized dealer of a consumer product that is  
 2 engaged in the diagnosis, service, maintenance, or repair of a consumer product. A manufacturer's  
 3 authorized dealer shall be considered an independent repair provider if the dealer engages in the  
 4 diagnosis, service, maintenance, or repair of a consumer product that is not affiliated with the  
 5 manufacturer;

6 (7) "Manufacturer", an individual or business who, in the ordinary course of its business, is  
 7 engaged in the business of selling or leasing new consumer products to consumers or other end  
 8 users and is engaged in the diagnosis, service, maintenance, or repair of that product;

9 (8) "Owner", an individual or business who lawfully acquires a consumer product purchased  
 10 or used in the state;

11 (9) "Remote diagnostics", a remote data transfer function between certain consumer  
 12 products and a provider of repair services, including for purposes of remote diagnostics, settings  
 13 controls, or location identification;

14 (10) "Service parts", replacement parts, either new or used, made available by the  
 15 manufacturer to the authorized repair provider for the purposes of repair;

16 (11) "Trade secret", anything tangible or intangible or electronically stored or kept that  
 17 constitutes, represents, evidences, or records intellectual property including, but not limited to:

18 (a) Secret or confidentially held designs, processes, procedures, formulas, inventions, or  
 19 improvements;

20 (b) Secrets or confidentially held scientific, technical, merchandising, production, financial,  
 21 business, or management information; or

22 (c) Any "trade secret" as that term is defined under paragraph (3) of 18 U.S.C. Section  
 23 1839.

24 407.651. 1. Manufacturers of consumer products sold or used in the state shall:

25 (1) Make available to independent repair facilities or owners of products manufactured by  
 26 the manufacturer diagnostic and repair information, including repair technical updates, diagnostic  
 27 software, service access passwords, updates and corrections to firmware, and related documentation,  
 28 free of charge and in the same manner the manufacturer makes such information available to its  
 29 authorized repair providers; and

30 (2) Make available for purchase by the product owner or the authorized agent of the owner,  
 31 service parts, including updates to the firmware of the parts, for purchase upon fair and reasonable  
 32 terms.

33  
 34 Nothing in this section requires the manufacturer to sell service parts if the service parts are no  
 35 longer available to the manufacturer or the authorized repair channel of the manufacturer.

36 2. Manufacturers that sell diagnostic, service, or repair information to an independent repair  
 37 provider or a third-party provider in a format that is standardized with other manufacturers, and on  
 38 terms and conditions more favorable than the manner and the terms and conditions pursuant to  
 39 which an authorized repair provider obtains the same diagnostic, service, or repair information, are  
 40 prohibited from requiring an authorized repair provider to continue purchasing diagnostic, service,  
 41 or repair information in a proprietary format, unless the proprietary format includes diagnostic,  
 42 service, repair, or dealership operations information or functionality that is not available in a  
 43 standardized format.

44 3. Manufacturers of consumer products sold or used in the state shall make available for  
 45 purchase by owners and independent repair facilities all diagnostic repair tools, incorporating the  
 46 same diagnostic repair and remote diagnostic capabilities that the manufacturer makes available to  
 47 its own repair or engineering staff or any authorized repair providers, upon fair and reasonable  
 48 terms.

1       4. Manufacturers that provide repair information to aftermarket tool, diagnostics, or third-  
2 party service information publications and systems have fully satisfied their obligations under this  
3 section and thereafter are not responsible for the content and functionality of aftermarket diagnostic  
4 tools or service information systems.

5       5. Manufacturers of consumer products sold or used in the state for the purposes of  
6 providing security-related functions may not exclude diagnostic, service, and repair information  
7 necessary to reset a security-related electronic function from information provided to owners and  
8 independent repair facilities. If necessary for security purposes, manufacturers may provide  
9 information necessary to reset and unlock system or security-related electronic modules to owners  
10 and independent repair facilities through an appropriate secure data release system.

11       6. Nothing in this section requires the manufacturer to divulge a trade secret.

12       7. Notwithstanding any law or rule to the contrary, this section shall not be read, interpreted,  
13 or construed to abrogate, interfere with, contradict, or alter the terms of an agreement executed  
14 between an authorized repair provider and a manufacturer including, but not limited to, performing  
15 warranty or recall repair work by an authorized repair provider on behalf of a manufacturer pursuant  
16 to the authorized repair agreement. Except in the case of a dispute arising between a manufacturer  
17 and its authorized repair provider related to either party's compliance with an existing repair  
18 agreement, an authorized repair provider has all the rights and remedies provided in this section.

19       8. This section does not require manufacturers or authorized repair providers to provide an  
20 owner or independent repair provider access to nondiagnostic and nonrepair information provided  
21 by a manufacturer to an authorized repair provider pursuant to the terms of an authorizing  
22 agreement.

23       9. (1) An independent repair provider or owner who believes that a manufacturer has failed  
24 to provide information, including documentation, updates to firmware, safety and security  
25 corrections, diagnostics, documentation, or a tool required by this section shall notify the  
26 manufacturer in writing and give the manufacturer thirty days from the time the manufacturer  
27 receives the complaint to cure the failure. If the manufacturer cures the complaint within thirty  
28 days, damages are limited to actual damages in any subsequent litigation.

29       (2) If the manufacturer fails to respond to the notice provided in subdivision (1) of this  
30 subsection or if an independent repair facility or owner is not satisfied with the manufacturer's cure,  
31 the independent repair facility or owner may file a complaint in district court. The complaint shall  
32 include:

33       (a) Written information confirming that the complainant attempted to acquire and use,  
34 through the then-available standard support function provided by the manufacturer, all relevant  
35 diagnostics, tools, service parts, documentation, and updates to embedded software, including  
36 communication with customer assistance via the manufacturer's then-standard process, if made  
37 available by the manufacturer; and

38       (b) Evidence of manufacturer notification as required in subdivision (1) of this subsection.

39       10. The attorney general shall enforce this section."; and  
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41 Further amend said bill by amending the title, enacting clause, and intersectional references  
42 accordingly.