

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

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

1 AMEND Senate Bill No. 329, Page 1, Section A, Line 3, by inserting after all of said section and  
2 line the following:

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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,

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1 excluding any research and development costs incurred in designing and implementing, upgrading,  
2 or altering the product, but including amortized capital costs for the preparation and distribution of  
3 the parts; and

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

5 (6) "Independent repair provider", an individual or business operating in the state that is not  
6 affiliated with a manufacturer or a manufacturer's authorized dealer of a consumer product that is  
7 engaged in the diagnosis, service, maintenance, or repair of a consumer product. A manufacturer's  
8 authorized dealer shall be considered an independent repair provider if the dealer engages in the  
9 diagnosis, service, maintenance, or repair of a consumer product that is not affiliated with the  
10 manufacturer;

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

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

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

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

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

23 (a) Secret or confidentially held designs, processes, procedures, formulas, inventions, or  
24 improvements;

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

27 (c) Any "trade secret" as that term is defined under paragraph (3) of 18 U.S.C. Section  
28 1839.

29 407.651. 1. Manufacturers of consumer products sold or used in the state shall:

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

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

38  
39 Nothing in this section requires the manufacturer to sell service parts if the service parts are no  
40 longer available to the manufacturer or the authorized repair channel of the manufacturer.

41 2. Manufacturers that sell diagnostic, service, or repair information to an independent repair

1 provider or a third-party provider in a format that is standardized with other manufacturers, and on  
2 terms and conditions more favorable than the manner and the terms and conditions pursuant to  
3 which an authorized repair provider obtains the same diagnostic, service, or repair information, are  
4 prohibited from requiring an authorized repair provider to continue purchasing diagnostic, service,  
5 or repair information in a proprietary format, unless the proprietary format includes diagnostic,  
6 service, repair, or dealership operations information or functionality that is not available in a  
7 standardized format.

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

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

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

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

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

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

35 9. (1) An independent repair provider or owner who believes that a manufacturer has failed  
36 to provide information, including documentation, updates to firmware, safety and security  
37 corrections, diagnostics, documentation, or a tool required by this section shall notify the  
38 manufacturer in writing and give the manufacturer thirty days from the time the manufacturer  
39 receives the complaint to cure the failure. If the manufacturer cures the complaint within thirty  
40 days, damages are limited to actual damages in any subsequent litigation.

41 (2) If the manufacturer fails to respond to the notice provided in subdivision (1) of this

1 subsection or if an independent repair facility or owner is not satisfied with the manufacturer's cure,  
2 the independent repair facility or owner may file a complaint in district court. The complaint shall  
3 include:

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

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

10 10. The attorney general shall enforce this section."; and

11  
12 Further amend said bill by amending the title, enacting clause, and intersectional references  
13 accordingly.