

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 452

BY ENVIRONMENT, ENERGY AND TECHNOLOGY COMMITTEE

AN ACT

1 RELATING TO THE RIGHT TO REPAIR ELECTRONIC EQUIPMENT; AMENDING TITLE 48,
2 IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 19, TITLE 48, IDAHO CODE,
3 TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE FOR THE RIGHT TO
4 REPAIR, TO PROVIDE FOR THE PURCHASE OF DIAGNOSTIC AND REPAIR TOOLS, TO
5 PROVIDE FOR THE SALE OF CERTAIN SECURITY-RELATED EQUIPMENT, TO PRO-
6 VIDE FOR NONAPPLICABILITY TO TRADE SECRETS, TO PROVIDE AN EXEMPTION
7 FOR NONDIAGNOSTIC INFORMATION, TO PROVIDE FOR CERTAIN NOTIFICATIONS TO
8 OWNERS, AND TO PROVIDE FOR VIOLATIONS.
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Title 48, Idaho Code, be, and the same is hereby amended
12 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
13 ter 19, Title 48, Idaho Code, and to read as follows:

14 CHAPTER 19
15 IDAHO RIGHT TO REPAIR ACT

16 48-1901. SHORT TITLE. This chapter shall be known and may be cited as
17 the "Idaho Right to Repair Act."

18 48-1902. DEFINITIONS. As used in this chapter:

19 (1) "Authorized repair provider" means a business that has an arrange-
20 ment with an original equipment manufacturer that grants the business li-
21 cense to use a trade name, service mark, or related characteristic for the
22 purposes of offering repair services under the name of the original equip-
23 ment manufacturer.

24 (2) (a) "Digital electronic equipment" means any product that depends
25 for its functioning, in whole or in part, on digital electronics embed-
26 ded in or attached to the product.

27 (b) The following products are exempt from the definition of "digital
28 electronic equipment":

29 (i) A motor vehicle or truck pursuant to the memorandum of un-
30 derstanding between the automotive aftermarket industry associ-
31 ation, the coalition for auto repair equality, the alliance of
32 automobile manufacturers, and the association of global automak-
33 ers dated January 15, 2014, and the memorandum of understanding
34 between the commercial vehicle solutions network, the truck and
35 engine manufacturers association, the equipment and tool in-
36 stitute, the auto care association, and heavy duty aftermarket
37 Canada, dated August 12, 2015, that collectively provide for new
38 car and truck manufacturers to make service literature and func-
39 tional parts, including tools, available to independent repair
40 facilities. Provided, however, that if either or both memoranda

1 of understanding referenced in this subsection are withdrawn, al-
2 lowed to expire, or renegotiated to provide less favorable terms
3 for consumers, then motor vehicles or trucks within the scope of
4 such expired or renegotiated memoranda of understanding shall no
5 longer be exempt from the provisions of this chapter.

6 (ii) Any other product covered by an industry that, after July 1,
7 2020, adopts a comprehensive memorandum of understanding, such as
8 those identified in subparagraph (i) of this paragraph, that pro-
9 vides for all original equipment manufacturers in such industry
10 to make service literature and functional parts, including tools
11 and diagnostic equipment, available to independent repair facili-
12 ties. This exemption shall apply only during the effective date of
13 any such applicable memorandum of understanding.

14 (3) "Embedded software" means any programmable instructions provided
15 on firmware included with digital electronic equipment for the purpose of
16 equipment operation, including all patches and fixes to that software that
17 are offered or included by the original equipment manufacturer for this pur-
18 pose.

19 (4) "Fair and reasonable terms" means a price for digital electronic
20 equipment, information, or tools that is fair and reasonable based on the
21 following factors:

22 (a) The net cost to the authorized repair provider for similar digital
23 electronic equipment, information, or tools obtained from an original
24 equipment manufacturer, less any discounts, rebates, or other incen-
25 tive programs;

26 (b) The cost to the original equipment manufacturer of preparing and
27 distributing the digital electronic equipment, information, or tools,
28 excluding any research and development costs incurred in designing and
29 implementing, upgrading, or altering the product, but including amor-
30 tized capital costs for the preparation and distribution of the digital
31 electronic equipment, information, or tools;

32 (c) The price charged by other original equipment manufacturers for
33 similar digital electronic equipment, information, or tools;

34 (d) The price charged by other original equipment manufacturers for
35 similar digital electronic equipment, information, or tools prior to
36 the launch of original equipment manufacturer websites;

37 (e) The ability of aftermarket technicians or shops to afford the digi-
38 tal electronic equipment, information, or tools;

39 (f) The means by which the digital electronic equipment, information,
40 or tools are distributed;

41 (g) The extent to which the digital electronic equipment, information,
42 or tools are used, including the number of users and frequency, dura-
43 tion, and volume of use; and

44 (h) Inflation.

45 (5) "Independent repair provider" means a business operating in Idaho
46 that is engaged in the diagnosis, service, maintenance, or repair of digital
47 electronic equipment and that is not affiliated with:

48 (a) The original equipment manufacturer of digital electronic equip-
49 ment; or

50 (b) The original equipment manufacturer's authorized repair provider.

1 (6) "Original equipment manufacturer" means a business that, in the or-
2 dinary course of its business, is engaged in selling or leasing new digital
3 electronic equipment or parts of equipment to an individual or business in
4 Idaho and is engaged in the diagnosis, service, maintenance, or repair of
5 that equipment.

6 (7) "Owner" means an individual or business that owns or leases a digi-
7 tal electronic product purchased or used in Idaho.

8 (8) "Service parts" means any replacement parts for digital electronic
9 equipment, either new or used, made available by the original equipment man-
10 ufacturer to an authorized repair provider for repairing the digital elec-
11 tronic equipment.

12 (9) "Trade secret" means anything tangible or intangible or electroni-
13 cally stored or kept that constitutes, represents, evidences, or records in-
14 tellectual property, including secret or confidentially held designs, pro-
15 cesses, procedures, formulas, inventions, or improvements or secret or con-
16 fidentially held scientific, technical, merchandising, production, finan-
17 cial, business, or management information, or anything within the defini-
18 tion of "trade secret" under 18 U.S.C. 1839(3), as in effect on January 1,
19 2020.

20 48-1903. RIGHT TO REPAIR. An original equipment manufacturer of digi-
21 tal electronic equipment sold or used in Idaho shall:

22 (1) Make available diagnostic and repair information, including tech-
23 nical updates for repairs and updates and corrections to embedded software,
24 to an independent repair provider or an owner at no charge or in the same man-
25 ner as the original equipment manufacturer makes such information available
26 to its authorized repair provider; and

27 (2) Make service parts, including updates to the embedded software of
28 the service parts, available for purchase upon fair and reasonable terms by
29 an owner, the owner's authorized agent, or an independent repair provider
30 working on the digital electronic equipment.

31 48-1904. PURCHASE OF DIAGNOSTIC AND REPAIR TOOLS. An original equip-
32 ment manufacturer of equipment sold or used in Idaho shall make available
33 for purchase by owners and independent repair providers all diagnostic re-
34 pair tools incorporating the same diagnostic, repair, and remote communica-
35 tions capabilities that the original equipment manufacturer makes available
36 to its own repair or engineering staff or any authorized repair provider. An
37 original equipment manufacturer shall offer the tools for sale to owners and
38 to independent repair providers upon fair and reasonable terms. An origi-
39 nal equipment manufacturer that provides diagnostic repair information to
40 aftermarket tool, diagnostics, or third-party service information publica-
41 tions and systems is not responsible for the content and functionality of
42 aftermarket tool, diagnostics, or third-party service information publica-
43 tions not provided by the original equipment manufacturer.

44 48-1905. SALE OF EQUIPMENT USED FOR SECURITY-RELATED FUNC-
45 TIONS. Original equipment manufacturer equipment or parts sold or used
46 in Idaho for the purpose of providing security-related functions must
47 include diagnostic, service, and repair information necessary to reset a

1 security-related electronic function with information provided to owners
2 and independent repair facilities, or the original equipment manufacturer
3 shall make that information obtainable by owners and independent repair
4 facilities through the appropriate secure data release systems.

5 48-1906. NONAPPLICABILITY TO TRADE SECRETS. This chapter may not be
6 construed to require an original equipment manufacturer to divulge a trade
7 secret.

8 48-1907. EXEMPTION FOR NONDIAGNOSTIC AND REPAIR INFORMATION. This
9 chapter may not be interpreted to abrogate, interfere with, contradict,
10 or alter the terms of an agreement executed and in force between an autho-
11 rized repair provider and an original equipment manufacturer, including
12 but not limited to the performance or provision of warranty or recall repair
13 work by an authorized repair provider on behalf of an original equipment
14 manufacturer pursuant to an authorized repair agreement, except that any
15 provision in the agreement that purports to waive, avoid, restrict, or limit
16 an original equipment manufacturer's compliance with this chapter is void
17 and unenforceable.

18 48-1908. NOTIFICATION TO OWNERS. An independent repair provider that
19 purchases or acquires embedded software or service parts shall, prior to
20 performing any services on digital electronic equipment, notify the owner of
21 the equipment in writing that:

22 (1) The independent repair provider is not an authorized repair
23 provider for the digital electronic equipment;

24 (2) The owner should review the terms and conditions of the warranty for
25 the digital electronic equipment and that repairs not performed by an autho-
26 rized repair provider could affect the terms and conditions of the warranty;

27 (3) A warrantor cannot require that only parts manufactured by the
28 original equipment manufacturer be used with the product in order to retain
29 the warranty;

30 (4) A warrantor is required to demonstrate that a defect or damage was
31 caused by the independent repair provider in order to affect the warranty;
32 and

33 (5) A warrantor is governed by the federal Magnuson-Moss warranty-fed-
34 eral trade commission improvement act.

35 48-1909. VIOLATIONS. A violation of this chapter constitutes a viola-
36 tion of the Idaho consumer protection act, chapter 6, title 48, Idaho Code.