

House Bill 1663

By: Representative Lim of the 99th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
2 relating to deceptive or unfair practices, so as to provide for the right to repair digital
3 electronic equipment; to provide for related matters; to repeal conflicting laws; and for other
4 purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to
8 deceptive or unfair trade practices, is amended by adding a new part to read as follows:

9 "Part 8

10 10-1-439.5.

11 This part shall be known and may be cited as the 'Digital Right to Repair Act.'

12 10-1-439.6.

13 As used in this part, the term:

(1) 'Authorized repair provider' means an individual or business who is unaffiliated with an original equipment manufacturer and who has an arrangement with the original equipment manufacturer, for a definite or indefinite period, under which the original equipment manufacturer grants to the individual or business a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering the services of diagnosis, maintenance, or repair of digital electronic equipment under the name of the original equipment manufacturer, or other arrangement with the original equipment manufacturer to offer such services on behalf of the original equipment manufacturer. An original equipment manufacturer who offers the services of diagnosis, maintenance, or repair of its own digital electronic equipment, and who does not have an arrangement described in this paragraph with an unaffiliated individual or business, shall be considered an authorized repair provider with respect to such equipment.

(2) 'Digital electronic equipment' means any product that depends for its functioning, in whole or in part, on digital electronics embedded in or attached to the product. Such term shall not include a motor vehicle as defined in Code Section 40-1-1 or any equipment or parts embedded in or attached to a motor vehicle by the original equipment manufacturer.

(3) 'Documentation' means any manual, diagram, reporting output, service code description, schematic, or other guidance or information used in effecting the services of diagnosis, maintenance, or repair of digital electronic equipment.

(4) 'Embedded software' means any programmable instructions provided on firmware delivered with digital electronic equipment, or with a part for such equipment, for purposes of digital electronic equipment operation, including all relevant patches and fixes made by the manufacturer of such equipment or part for these purposes.

(5) 'Fair and reasonable terms' means:

(A) For obtaining a part or tool or documentation at costs and terms that are equivalent to the most favorable costs and terms under which an original equipment manufacturer offers the part, tool, or documentation to an authorized repair provider (i) accounting

41 for any discount, rebate, convenient means of delivery, means of enabling fully restored
42 and updated functionality, rights of use, or other incentive or preference the original
43 equipment manufacturer offers to an authorized repair provider, or any additional cost,
44 burden, or impediment the original equipment manufacturer imposes on an independent
45 repair provider; (ii) not conditioned on or imposing a substantial obligation or
46 restriction that is not reasonably necessary for enabling the owner or independent repair
47 provider to engage in the diagnosis, maintenance, or repair of digital electronic
48 equipment made by or on behalf of the original equipment manufacturer; and (iii) not
49 conditioned on an arrangement described in paragraph (1) of this Code section;

50 (B) For documentation, including any relevant updates, such term also means at no
51 charge, except that, when the documentation is requested in physical printed form, a
52 charge may be included for the reasonable actual costs of preparing and sending the
53 copy; and

54 (C) For software tools, such term also means at no charge and without requiring
55 authorization or internet access, or imposing impediments to access or use, in the course
56 of effecting the diagnosis, maintenance, or repair and enabling full functionality of
57 digital electronic equipment, in a manner that impairs the efficient and cost-effective
58 performance of any of those activities.

59 (6) 'Firmware' means a software program or set of instructions programmed on digital
60 electronic equipment, or on a part for such equipment, to allow the digital electronic
61 equipment or part to communicate within itself or with other computer hardware.

62 (7) 'Independent repair provider' means an individual or business, who does not have an
63 arrangement described in paragraph (1) of this Code section with an original equipment
64 manufacturer, and who is not affiliated with any individual or business who has such an
65 arrangement, and who is engaged in the services of diagnosis, maintenance, or repair of
66 digital electronic equipment, except that an original equipment manufacturer or, with
67 respect to that original equipment manufacturer, an individual or business who has such

an arrangement with that original equipment manufacturer, or who is affiliated with an individual or business who has such an arrangement with that original equipment manufacturer, shall be considered an independent repair provider for purposes of those instances in which it engages in the services of diagnosis, maintenance, or repair of digital electronic equipment that is not manufactured by or sold under the name of that original equipment manufacturer.

(8) 'Original equipment manufacturer' means a business engaged in selling, leasing, or otherwise supplying new digital electronic equipment manufactured by or on behalf of itself, to any individual or business.

(9) 'Owner' means an individual or business who owns or leases digital electronic equipment.

(10) 'Part' means any replacement part, either new or used, made available by an original equipment manufacturer for purposes of effecting the services of maintenance or repair of digital electronic equipment manufactured by or on behalf of, sold, or otherwise supplied by the original equipment manufacturer.

(11) 'Tool' means any software program, hardware implement, or other apparatus used for diagnosis, maintenance, or repair of digital electronic equipment, including software or other mechanisms that provision, program, or pair a new part, calibrate functionality, or perform any other function required to bring the product back to fully functional condition.

10-1-439.7.

(a) An original equipment manufacturer shall make available to any independent repair provider, or to the owner of digital electronic equipment, on fair and reasonable terms, any available documentation, part, or tool, inclusive of any updates to information or embedded software, for purposes of diagnosis, maintenance, or repair of digital electronic equipment manufactured by or on behalf of, or sold or otherwise supplied by, the original equipment

manufacturer. Nothing in this subsection shall require an original equipment manufacturer to make available any documentation, part, or tool that is no longer available to the original equipment manufacturer.

(b) For digital electronic equipment that contains an electronic security lock or other security-related function, an original equipment manufacturer shall make available to the owner and to independent repair providers, on fair and reasonable terms, any special documentation, tools, and parts needed to disable the lock or function, and to reset it when disabled in the course of diagnosis, maintenance, or repair of such equipment. Such documentation, tools, and parts may be made available by means of an appropriate secure system.

(c) When an original equipment manufacturer has made an express warranty with respect to digital electronic equipment and the wholesale price of such equipment is \$100.00 or more, the manufacturer shall provide such parts, tools, and documentation as to enable the repair of such equipment during the warranty period, at an equitable price and convenience of delivery and of enabling functionality, in light of:

- (1) The actual cost to the original equipment manufacturer to prepare and distribute the part, tool, or documentation, exclusive of any research and development costs incurred;
- (2) The ability of owners and independent repair providers to afford the part, tool, or documentation; and
- (3) The means by which the part, tool, or documentation is distributed.

10-1-439.8.

Whenever the Attorney General has reason to believe that any person is engaging, has engaged, or is about to engage in any act or practice declared unlawful by this part, the Attorney General shall, upon written request or by his or her own initiative, investigate and, upon finding a probable violation of this part, bring an action in the name of the state against such person to:

(1) Obtain a declaratory judgment that the act or practice violates the provisions of this part;

(2) Enjoin any act or practice that violates the provisions of this part by issuance of a temporary restraining order or preliminary or permanent injunction, without bond, upon the giving of appropriate notice; and

(3) Recover civil penalties of up to \$10,000.00 per violation of this part or any injunction, judgment, or consent order issued or entered into under the provisions of this chapter and reasonable expenses, investigative costs, and attorney's fees.

10-1-439.9.

(a) Nothing in this part shall be construed to require an original equipment manufacturer to divulge a trade secret, as that term is defined in Code Section 10-1-761, to an owner or an independent service provider except as necessary to provide documentation, parts, and tools on fair and reasonable terms.

(b) Nothing in this part shall be construed to alter the terms of any arrangement in force between an authorized repair provider and an original equipment manufacturer, including, but not limited to, the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to such arrangement, except that any provision in such terms that purports to waive, avoid, restrict, or limit the original equipment manufacturer's obligations to comply with this part shall be void and unenforceable."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.