

HB 449 - AS INTRODUCED

2021 SESSION

21-0677

05/10

HOUSE BILL                **449**

AN ACT                    relative to the repair of home appliances.

SPONSORS:              Rep. Luneau, Merr. 10

COMMITTEE:            Commerce and Consumer Affairs

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ANALYSIS

This bill requires home appliance manufacturers to make available to appliance owners and repair providers certain repair-related documentation, parts, and tools. The failure to do so would be a violation of the consumer protection act.

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Explanation:            Matter added to current law appears in ***bold italics***.  
                         Matter removed from current law appears ~~in brackets and struckthrough~~.  
                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

*In the Year of Our Lord Two Thousand Twenty One*

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

IV. “Embedded software” means any programmable instructions provided on firmware delivered with a home appliance, or with a part for such appliance, for purposes of appliance operation, including all relevant patches and fixes made by the manufacturer of such appliance or part for these purposes.

1 V. "Fair and reasonable terms" for obtaining a part or tool or documentation means at costs  
2 and terms that are equivalent to the most favorable costs and terms under which an original  
3 appliance manufacturer offers the part, tool, or documentation to an authorized repair provider:

4 (a) Including any license, right or authorization a person would need to use the  
5 equipment, part, tool, or documentation; and

6 (b) Accounting for any discount, rebate, convenient means of delivery, means of enabling  
7 fully restored and updated functionality, rights of use, or other incentive or preference the original  
8 appliance manufacturer offers to an authorized repair provider or any additional cost, burden, or  
9 impediment the original equipment manufacturer imposes on an independent repair provider, or

10 (c) Where there is no authorized repair provider and the original manufacturer has  
11 made an express warranty with respect to an appliance, and the appliance's wholesale price is \$100  
12 or more, "fair and reasonable terms" means for a period of 10 years at an equitable price and  
13 convenience of delivery in light of:

14 (1) The actual cost to the original appliance manufacturer to prepare and distribute  
15 the part, tool, or documentation, exclusive of any research and development costs incurred; and

16 (2) The ability of owners and independent repair providers to afford the part, tool, or  
17 documentation; and

18 (3) The means by which the part, tool, or documentation is distributed.

19 (d) For documentation, including any relevant updates, "fair and reasonable terms"  
20 means at no charge, except that, when the documentation is requested in physical printed form, a  
21 charge may be included for the reasonable actual costs of preparing and sending the copy.

22 (e) For software tools, "fair and reasonable terms" includes at no charge and without  
23 requiring further authentication or Internet access in the course of diagnosis, maintenance, repair,  
24 or of enabling full functionality of home appliances.

25 (f) "Fair and reasonable terms" also means not conditioned on an agreement with the  
26 original appliance manufacturer that has the effect of placing a substantial cost, restriction, burden,  
27 penalty, or impediment on the owner or independent repair provider, or that requires exclusivity.

28 VI. "Firmware" means a software program or set of instructions programmed on a home  
29 appliance, or on a part for such appliance, to allow the appliance or part to communicate with other  
30 computer hardware.

31 VII. "Independent repair provider" means an individual or business operating in this state,  
32 who does not have an arrangement described in paragraph I with an original appliance  
33 manufacturer, and who is not affiliated with any individual or business who has such an  
34 arrangement, and who is engaged in the services of diagnosis, maintenance, or repair of home  
35 appliances, except that an original appliance manufacturer or, with respect to that original  
36 appliance manufacturer, an individual or business who has such an arrangement with that original  
37 appliance manufacturer, or who is affiliated with an individual or business who has such an

1 arrangement with that original appliance manufacturer, shall be considered an independent repair  
2 provider for purposes of those instances in which it engages in the services of diagnosis,  
3 maintenance, or repair of home appliances that are not manufactured by or sold under the name of  
4 that original appliance manufacturer.

5 VIII. "Original appliance manufacturer" means a business engaged in the business of selling  
6 or leasing new home appliances manufactured by or on behalf of itself, to any individual or business.

7 IX. "Owner" means an individual or business who owns or leases home appliances  
8 purchased or used in this state.

9 X. "Part" means any replacement part, either new or used, made available by an original  
10 appliance manufacturer for purposes of effecting the services of maintenance or repair of home  
11 appliances manufactured or sold by the original appliance manufacturer.

12 XI. "Tools" means any software programs, hardware implements, or other apparatus used  
13 for diagnosis, maintenance, or repair of home appliances, including software or other mechanisms  
14 that provision, program, or pair a new part, calibrate functionality, or perform any other function  
15 required to bring the product back to fully functional condition.

16 XII. "Trade secret" has the same meaning as in RSA 350-B:1, IV.

17 358-T:3 Requirements.

18 I. For home appliances, and parts for such appliances, sold or used in this state, an original  
19 appliance manufacturer shall make available, for purposes of diagnosis, maintenance, or repair of  
20 such appliances, to any independent repair provider, or to the owner of home appliances  
21 manufactured by or on behalf of, or sold by, the original appliance manufacturer, on fair and  
22 reasonable terms, documentation, parts, and tools, inclusive of any updates to information or  
23 embedded software. Nothing in this section requires an original appliance manufacturer to make  
24 available a part if the part is no longer available to the original appliance manufacturer.

25 II. For home appliances that contain an electronic security lock or other security-related  
26 function, the original appliance manufacturer shall make available to the owner and to independent  
27 repair providers, on fair and reasonable terms, any special documentation, tools, and parts needed to  
28 reset the lock or function when disabled in the course of diagnosis, maintenance, or repair of the  
29 home appliance. Such documentation, tools, and parts may be made available through appropriate  
30 secure release systems.

31 358-T:4 Remedies; Enforcement by Attorney General. Any violation of the provisions of this  
32 chapter is an unfair or deceptive act or practice within the meaning of RSA 358-A:2. Any right,  
33 remedy, or power set forth in RSA 358-A, including the enforcement authority granted to the  
34 attorney general under RSA 358-A, may be used to enforce the provisions of this chapter.

35 358-T:5 Limitations.

1           I. Nothing in this chapter shall be construed to require an original appliance manufacturer  
2 to divulge a trade secret to an owner or an independent service provider except as necessary to  
3 provide documentation, parts, and tools on fair and reasonable terms.

4           II. No provision in this chapter shall be construed to alter the terms of any arrangement  
5 described in RSA 358-T:2, I in force between an authorized repair provider and an original appliance  
6 manufacturer, including, but not limited to, the performance or provision of warranty or recall repair  
7 work by an authorized repair provider on behalf of an original appliance manufacturer pursuant to  
8 such arrangement, except that any provision in such terms that purports to waive, avoid, restrict, or  
9 limit the original appliance manufacturer's obligations to comply with this chapter shall be void and  
10 unenforceable.

11           III. Nothing in this chapter shall be construed to require an original appliance manufacturer  
12 or an authorized repair provider to provide to an owner, or independent repair provider access to  
13 information, other than documentation and tools, that is provided by the original appliance  
14 manufacturer to an authorized repair provider pursuant to the terms of an arrangement described in  
15 RSA 358-T:2, I.

16           2 Applicability. RSA 358-T, as inserted by section 1 of this act, applies with respect to home  
17 appliances sold or in use on or after the effective date of this act.

18           3 Effective date. This act shall take effect on January 1, 2022.