
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-3126.1/18

ATTY/TYPIST: ML:akl

BRIEF DESCRIPTION: Concerning the fair servicing and repair of digital electronic products.

AN ACT Relating to fair servicing and repair of digital electronic products; adding a new chapter to Title 19 RCW; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** The legislature finds that digital electronic product manufacturers are restricting fair servicing and repair of their devices, to the detriment of consumers' access to advanced electronics. The legislature intends to broaden access to the information and tools necessary for repair of digital electronic products, thereby reducing unnecessary early disposal of those products, increasing consumer control over their own devices, and supporting a competitive repair market and the increased availability of remanufactured or repaired advanced electronics to create lower cost entry points for consumers to own advanced electronics.

NEW SECTION. **Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authorized repair provider" means a person or business: (a) That has an arrangement for a definite or indefinite period with an original manufacturer in which the original manufacturer grants to a person or business a license to use a trade name, service mark, or related characteristic for the purposes of offering repair services under the name of the original manufacturer; or (b) retained by the original manufacturer to provide refurbishing services for the original manufacturer's product or products.

(2) "Embedded software" means any programmable instructions provided on firmware delivered with the digital electronic product for the purposes of product operation, including all relevant patches and fixes made by the original manufacturer for this purpose including, but not limited to, synonyms "basic internal operating

system," "internal operating system," "machine code," "assembly code," "root code," and "microcode."

(3) "Digital electronic product" means a part or machine containing a microprocessor and flat panel computer monitor originally manufactured for distribution and sale in the United States. Digital electronic product includes handheld portable devices.

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

(a) The net cost to the authorized repair provider for similar information obtained from an original manufacturer, less any discounts, rebates, or other incentive programs;

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

(c) The price charged by other original manufacturers for similar information;

(d) The price charged by original manufacturers for similar information prior to the launch of original manufacturer web sites;

(e) The ability of aftermarket technicians or shops to afford the information;

(f) The means by which the information is distributed;

(g) The extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use; and

(h) Inflation.

(5) "Firmware" means a software program or set of instructions programmed on a hardware device to allow the device to communicate with other computer hardware.

(6) "Independent repair provider" means a person or business operating in this state that is not affiliated with an original manufacturer or an original manufacturer's authorized repair provider, which is engaged in the diagnosis, service, maintenance,

or repair of digital electronic products. However, for the purposes of this section, an original manufacturer is considered an independent repair provider for purposes of those instances when such an original manufacturer engages in the diagnosis, service, maintenance, or repair of equipment that is not affiliated with the original manufacturer.

(7) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including a component part, or accessory, as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 321 (h)), as amended, that is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals.

(8) (a) "Motor vehicle" means any vehicle that is designed for transporting persons or property on a street or highway and is certified by the motor vehicle manufacturer under all applicable federal safety and emissions standards and requirements for distribution and sale in the United States.

(b) Motor vehicle does not include:

(i) A motorcycle; or

(ii) A recreational vehicle or manufactured home equipped for habitation.

(9) "Motor vehicle dealer" means any person or business who, in the ordinary course of business, is engaged in the business of selling or leasing new motor vehicles to a person or business pursuant to a franchise agreement, who has obtained a license under the motor vehicle industry regulation act, and who is engaged in the diagnosis, service, maintenance, or repair of motor vehicles or motor vehicle engines pursuant to such a franchise agreement.

(10) "Motor vehicle manufacturer" means any person or business engaged in the business of manufacturing or assembling new motor vehicles.

(11) "Original manufacturer" means a person or business who, in the ordinary course of its business, is engaged in the business of

selling or leasing new digital electronic products to consumers or other end users, and is engaged in the diagnosis, service, maintenance, or repair of that product.

(12) "Owner" means a person or business who owns or leases a digital electronic product purchased or used in this state.

(13) "Part" or "service part" means any replacement part, either new or used, made available by the original manufacturer to the authorized repair provider for purposes of effecting repair.

(14) "Remote diagnostic" means any remote data transfer function between a digital electronic product and the provider of repair services, including for the purposes of remote diagnostics, settings controls, or location identification.

(15) "Trade secret" means anything tangible or intangible or electronically stored or kept that constitutes, represents, evidences, or records intellectual property, including secret or confidentially held designs, processes, procedures, formulas, inventions, or improvements, or secret or confidentially held scientific, technical, merchandising, production, financial, business, or management information, or any other trade secret as defined in 18 U.S.C. Sec. 1839, as that section existed on January 1, 2017.

NEW SECTION. **Sec. 3.** (1) Original manufacturers of digital electronic products sold on or after January 1, 2012 in Washington state must make available:

(a) To independent repair providers or owners of digital electronic products manufactured by the original manufacturer the same diagnostic and repair information, including repair technical updates, schematic diagrams, updates, corrections to embedded software, and safety and security patches timely, and for no charge or for the same charge and in the same format the original manufacturer makes available to its authorized repair provider and subcontract repair of refurbishment facilities; and

(b) For purchase by the owner, the owner's authorized agent, or independent repair provider, equipment or service parts, inclusive of any updates to the embedded software of the equipment or parts, upon fair and reasonable terms.

(2) Nothing in this section requires the original manufacturer to sell equipment or service parts if the parts are no longer available to the original manufacturer or the authorized repair provider of the original manufacturer.

(3) Any original manufacturer that sells any diagnostic, service, or repair documentation to any independent repair provider or to any owner in a format that is standardized with other original manufacturers, and on terms and conditions more favorable than the manner and the terms and conditions pursuant to which the authorized repair provider obtains the same diagnostic, service, or repair documentation, is prohibited from requiring any authorized repair provider to continue purchasing diagnostic, service, or repair documentation in a proprietary format, unless the proprietary format includes diagnostic, service, or repair documentation or functionality that is not available in such a standardized format.

(4) (a) Each original manufacturer of digital electronic products sold or used in the state must make available for purchase by owners and independent repair providers all diagnostic repair tools incorporating the same diagnostic, repair, and remote diagnostic capabilities that the original manufacturer makes available to its own repair or engineering staff or any authorized repair provider.

(b) Each original manufacturer must offer such tools for sale to owners and independent repair providers upon fair and reasonable terms. Each original manufacturer that provides diagnostic repair documentation to aftermarket diagnostic tools, diagnostics, or third party service information publications and systems has fully satisfied its obligations under this section and thereafter is not responsible for the content and functionality of such aftermarket diagnostic tools, diagnostics, or service information systems.

(5) Original manufacturer equipment or parts sold or used in this state for the purpose of providing security-related functions may not exclude diagnostic, service, and repair information necessary to reset a security-related electronic function from information provided to owners and independent repair facilities. If excluded under this subsection, the information necessary to reset an immobilizer system or security-related electronic module may be obtained by owners and independent repair facilities through the appropriate secure data release systems.

(6) Original manufacturers of digital electronic products sold on or after January 1, 2019 in Washington state are prohibited from designing or manufacturing digital electronic products in such a way as to prevent reasonable diagnostic or repair functions by an independent repair provider. Preventing reasonable diagnostic or repair functions includes permanently affixing a battery in a manner that makes it difficult or impossible to remove.

NEW SECTION. **Sec. 4.** (1) Nothing in this chapter may be construed to require an original manufacturer to divulge a trade secret.

(2) Notwithstanding any law or rule to the contrary, no provision in this section may be read, interpreted, or construed to abrogate, interfere with, contradict, or alter the terms of any agreement executed and in force between an authorized repair provider and an original 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 manufacturer pursuant to such an authorized repair agreement, except that any provision in such an authorized repair agreement that purports to waive, avoid, restrict, or limit an original manufacturer's compliance with this section is void and unenforceable.

(3) Nothing in this section may be construed to require original manufacturers or authorized repair providers to provide an owner or

independent repair provider access to nondiagnostic and repair information by an original manufacturer to an authorized repair provider pursuant to the terms of an authorizing agreement.

NEW SECTION. **Sec. 5.** (1) Nothing in this section applies to motor vehicle manufacturers, any product or service of a motor vehicle manufacturer, or motor vehicle dealers.

(2) Nothing in this section requires a manufacturer of a medical device to implement any provision of this section that is not permitted under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or any other federal law, rule, or regulation that supersedes this section.

NEW SECTION. **Sec. 6.** (1) The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) In addition to any other remedies provided by law, including under the consumer protection act, chapter 19.86 RCW, any original manufacturer that violates any provision of this chapter is subject to a civil penalty in the amount of five hundred dollars for each act in violation of this chapter. All penalties imposed under this section must be paid to the state treasury and credited to the general fund.

NEW SECTION. **Sec. 7.** This chapter may be known and cited as the fair repair act.

NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute a new chapter in Title 19 RCW.

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