

Proposed Substitute House Bill 1392 (H-0795.1)

House Consumer Protection and Business Committee

By Representative Ryu

Original Bill:

- Requires original manufacturers of digital electronic equipment that is sold or used in Washington to make parts, tools, and documentation available on fair and reasonable terms to independent repair providers for diagnosing, maintaining, and repairing digital electronic equipment.
 - Provides for certain exceptions, such as trade secrets and public safety communications equipment.
 - Makes a violation of the Fair Repair Act a violation of the Consumer Protection Act and enforceable by the Attorney General only.
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Proposed Substitute House Bill (H-0795.1) compared to the Original Bill:

- Strikes from the definition of "authorized repair provider" an original manufacturer that offers services of diagnosis, maintenance, or repair of digital electronic equipment manufactured by or on behalf of, sold by, or supplied by the original manufacturer, provided that the original manufacturer does not have an arrangement with an unaffiliated individual or business.
- Modifies the definition of "documentation" by removing security codes and passwords from the list of items considered documentation, and specifies that documentation only includes documents made available by the original manufacturer and intended exclusively for use in diagnosis, maintenance, or repair of digital electronic equipment.
- Modifies the definition of "fair and reasonable terms" by striking two requirements: (1) that parts be provided at costs and terms equivalent to the most favorable costs and terms in which the original manufacturer offers the parts to an authorized repair provider; and (2) that discounts, rebates, convenient and timely means of delivery, means of enabling fully restored and updated functionality, rights of use, or other incentive or preference the original manufacturer offers to an authorized repair provider or any additional cost, burden, or impediment imposed on an owner or independent repair provider is taken into account.
- Permits that parts, tools, and documentation may all be made available by an authorized third-party provider.
- Specifies that only those digital electronic equipment and parts that are manufactured for the first time and first sold or leased on or after July 1, 2023, must be made available to independent repair providers.
- Strikes the requirement that an original manufacturer must make available for purchase to independent repair providers all parts, tools, and documentation that is made available to authorized repair providers.
- Strikes the requirement that an original manufacturer offer tools for sale to independent repair providers upon fair and reasonable terms.
- Adds that original manufacturers are not required to license any intellectual property to an owner or an independent repair provider.
- Permits original manufacturers to offer parts, such as integrated batteries, to independent repair providers or owners preassembled with other parts rather than as individual components, provided that the preassembled parts are functionally equivalent to corresponding parts provided to authorized repair providers.

Staff: Megan Mulvihill

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1 AN ACT Relating to promoting the fair servicing and repair of
2 digital electronic equipment in a safe, secure, reliable, and
3 sustainable manner to increase access to appropriate and affordable
4 digital electronic equipment, support small businesses and jobs, and
5 enhance digital connectivity in Washington state; adding a new
6 chapter to Title 19 RCW; creating a new section; and prescribing
7 penalties.

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

9 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

10 (a) Consumer access to affordable and reliable digital electronic
11 equipment is essential to overcome digital inequities in Washington
12 state and that broader distribution of the information and tools
13 necessary to repair digital electronic equipment will shorten repair
14 times, lengthen the useful lives of electronic equipment, and lower
15 costs for consumers.

16 (b) The COVID-19 pandemic further highlighted the increased and
17 ongoing need for access to digital electronic equipment as consumers
18 increasingly rely on these products to conduct personal and
19 professional business daily.

20 (c) The need for more accessible and affordable repair options is
21 felt more acutely among specific sectors of the population, notably

1 Washington residents in rural areas and people who earn low incomes.
2 Original manufacturer shops or authorized repair providers are often
3 located in urban areas requiring consumers to travel long distances
4 for repair or being without equipment for periods of time.

5 (d) Small, independent businesses play a vital role in
6 Washington's economy. Providing access to information, parts, and
7 tools is essential in contributing to a competitive repair market,
8 allowing small repair shop employees to repair equipment more safely.

9 (e) Certain electronic equipment are comprised of precious metals
10 that are finite and unnecessary early disposal can be avoided with
11 greater accessibility to proper and affordable repair.

12 (2) Therefore, the legislature intends to broaden access to the
13 information and tools necessary to repair digital electronic
14 equipment in a safe, secure, reliable, and sustainable manner,
15 thereby increasing access to appropriate and affordable digital
16 electronic equipment, supporting small businesses and jobs, and
17 making it easier for all residents of Washington state to connect
18 digitally.

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

22 (1) "Authorized repair provider" means an individual or business
23 that is unaffiliated with an original manufacturer and that has an
24 arrangement with the original manufacturer to use the original
25 manufacturer's trade name, service mark, or other proprietary
26 identifier for the purpose of offering the services of diagnosis,
27 maintenance, or repair of digital electronic equipment under the name
28 of the original manufacturer, or that has an arrangement with the
29 original manufacturer under which the individual or business offers
30 the services of diagnosis, maintenance, or repair of digital
31 electronic equipment on behalf of the original manufacturer.

32 (2) "Diagnosis" means the process of identifying the issue or
33 issues that cause digital electronic equipment to not be in fully
34 working order.

35 (3) "Digital electronic equipment" or "equipment" means a desktop
36 computer, laptop computer, tablet computer, cell phone, or smart
37 phone containing a microprocessor and originally manufactured for
38 distribution and sale in the United States for general consumer
39 purchase.

1 (4) "Documentation" means any manual, diagram, reporting output,
2 service code description, schematic diagram, or similar kinds of
3 information, or their equivalent, which is made available by an
4 original manufacturer and intended exclusively for use in effecting
5 the services of diagnosis, maintenance, or repair of digital
6 electronic equipment.

7 (5) "Fair and reasonable terms" means making parts, tools, and
8 documentation used in effecting the services of diagnosis,
9 maintenance, or repair of digital electronic equipment available as
10 follows:

11 (a) Parts for such equipment must be made available by the
12 original manufacturer, either directly or through an authorized
13 repair provider or authorized third-party provider, to independent
14 repair providers and owners at reasonable costs and terms, and which:

15 (i) Are not conditioned on or imposing a substantial obligation
16 or restriction that is not reasonably necessary for enabling the
17 owner or independent repair provider to engage in the diagnosis,
18 maintenance, or repair of digital electronic equipment made by or on
19 behalf of the original manufacturer; and

20 (ii) Are not conditioned on an arrangement described in
21 subsection (1) of this section.

22 (b) Tools for such equipment must be made available by the
23 original manufacturer or authorized third-party provider:

24 (i) Without requiring authorization for use or operation of the
25 tools;

26 (ii) Without imposing impediments to access or use of the tools
27 to diagnose, maintain, or repair and enable full functionality of
28 digital electronic equipment;

29 (iii) In a manner that does not impair the efficient and cost-
30 effective performance of any such diagnosis, maintenance, or repair;
31 and

32 (iv) At no charge, except for the reasonable, actual costs of
33 preparing and sending tools that are requested in physical form.

34 (c) Documentation for such equipment must be made available by
35 the original manufacturer or authorized third-party provider at no
36 charge, except for the reasonable, actual costs of preparing and
37 sending documentation that is requested in printed form.

38 (d) Parts, tools, and documentation for such equipment that are
39 made available to an authorized repair provider shall further be made
40 available by an authorized repair provider to any independent repair

1 provider or owner, provided that such authorized repair provider is
2 contractually and practically permitted by the original manufacturer
3 to sell such parts, tools, and documentation to any independent
4 repair provider or owner, and provided further that such original
5 manufacturer shall not:

6 (i) Retaliate against or hinder the ability of any authorized
7 repair provider to sell such parts, tools, or documentation through
8 any means, including advertising restrictions or product allocation
9 limitations unrelated to legitimate product shortages; or

10 (ii) Condition or impose a substantial obligation or restriction
11 that is not reasonably necessary for enabling the owner or
12 independent repair provider to engage in the diagnosis, maintenance,
13 or repair of digital electronic equipment made by or on behalf of the
14 original manufacturer.

15 (6) "Independent repair provider" means an individual or business
16 that obtains and maintains a repair certification and engages in the
17 services of diagnosis, maintenance, or repair of digital electronic
18 equipment in this state without an arrangement with the original
19 manufacturer of such equipment as described in subsection (1) of this
20 section or an affiliation with an authorized repair provider for such
21 equipment. "Independent repair provider" also means an original
22 manufacturer or an original manufacturer's authorized repair provider
23 that obtains and maintains a repair certification and engages in the
24 services of diagnosis, maintenance, or repair of digital electronic
25 equipment that is not manufactured by or on behalf of, sold by, or
26 supplied by such original manufacturer.

27 (7) "Maintenance" means any act necessary to keep currently
28 working digital electronic equipment in fully working order.

29 (8) "Modifications" or "modify" means any alteration to digital
30 electronic equipment that is not maintenance or repair.

31 (9) "Original manufacturer" means an individual or business that,
32 in the normal course of business, is engaged in the business of
33 selling or leasing digital electronic equipment manufactured by or on
34 behalf of itself.

35 (10) "Owner" means an individual or business that owns or leases
36 digital electronic equipment purchased or leased in this state.

37 (11) "Part" means any replacement part, either new or used, or
38 its equivalent, which is made available by an original manufacturer
39 to an authorized repair provider for purposes of effecting the

1 services of maintenance or repair of digital electronic equipment
2 manufactured or sold by the original manufacturer.

3 (12) "Repair" means any act needed to restore digital electronic
4 equipment or equipment to fully working order.

5 (13) "Repair certification" means a valid and up-to-date
6 certification issued by an appropriate third-party certification
7 entity, which certifies that the repair provider possesses the
8 technical competence and financial assurance necessary for the
9 performance of safe, secure, and reliable repair of digital
10 electronic equipment to which the certification applies. Eligible
11 certifications include CompTIA's A+ certification, CTIA's wireless
12 industry service excellence certification, additional certifications
13 deemed eligible by the original manufacturer, and additional
14 certifications established as eligible by the department of commerce.

15 (14) "Tool" means any software program, hardware implement, or
16 other apparatus, or its equivalent, which is made available by an
17 original manufacturer to an authorized repair provider, and that is
18 used for diagnosis, maintenance, or repair of digital electronic
19 equipment, including software or other mechanisms that provide,
20 program, or pair a part, calibrate functionality, or perform any
21 other function required to bring the equipment or part back to fully
22 functional condition, including any updates.

23 (15) "Trade secret" means anything tangible or intangible or
24 electronically stored or kept that constitutes, represents,
25 evidences, or records intellectual property, including secret or
26 confidentially held designs, processes, procedures, formulas,
27 inventions, or improvements, or secret or confidentially held
28 scientific, technical, merchandising, production, financial,
29 business, or management information, or any other trade secret as
30 defined in 18 U.S.C. Sec. 1839, as that section existed on January 1,
31 2017.

32 NEW SECTION. **Sec. 3.** (1) Effective January 1, 2024, an original
33 manufacturer of digital electronic equipment and parts for such
34 equipment that are manufactured for the first time and first sold or
35 leased in this state on or after July 1, 2023, shall make available
36 to any independent repair provider and owner, on fair and reasonable
37 terms, any parts, tools, and documentation required for the
38 diagnosis, maintenance, or repair of such equipment and parts for
39 such equipment. Such parts, tools, and documentation shall be made

1 available either directly by the original manufacturer or via an
2 authorized repair provider or authorized third-party provider. For
3 equipment that contains an electronic security lock or other
4 security-related function, the original manufacturer shall make
5 available to any independent repair provider or owner, on fair and
6 reasonable terms, any special parts, tools, and documentation needed
7 to access and reset the lock or function when disabled in the course
8 of diagnosis, maintenance, or repair of such equipment. Such parts,
9 tools, and documentation may be made available through appropriate
10 secure release systems.

11 (2) Nothing in this chapter requires the original manufacturer to
12 sell parts if the parts are no longer available to the authorized
13 repair provider of the original manufacturer.

14 (3) Any original manufacturer that sells any parts, tools, and
15 documentation to any independent repair provider in a format that is
16 standardized with other original manufacturers, and on terms and
17 conditions more favorable than the manner and the terms and
18 conditions pursuant to which the authorized repair provider obtains
19 the same diagnostic, maintenance, or repair documentation, is
20 prohibited from requiring any authorized repair provider to continue
21 purchasing diagnostic or repair documentation in a proprietary
22 format, unless the proprietary format includes diagnostic,
23 maintenance, or repair documentation or functionality that is not
24 available in such a standardized format.

25 (4) Original manufacturer equipment or parts sold or leased in
26 this state for the purpose of providing security-related functions
27 may not exclude diagnostic, maintenance, and repair information
28 necessary to reset a security-related electronic function from
29 information provided to owners and independent repair providers. If
30 excluded under this subsection, the information necessary to reset an
31 immobilizer system or security-related electronic module may be
32 obtained by owners and independent repair providers through the
33 appropriate secure data release systems.

34 NEW SECTION. **Sec. 4.** (1) Nothing in this chapter shall be
35 construed to require an original manufacturer to divulge a trade
36 secret or license any intellectual property to an owner or to an
37 independent repair provider, except as necessary to provide parts,
38 tools, and documentation on fair and reasonable terms.

1 (2) Nothing in this chapter shall be construed to alter the terms
2 of any arrangement described in section 2(1) of this act in force
3 between an authorized repair provider and an original manufacturer
4 including, but not limited to, the performance or provision of
5 warranty or recall repair work by an authorized repair provider on
6 behalf of an original manufacturer pursuant to such arrangement,
7 except that any provision in such terms that purports to waive,
8 avoid, restrict, or limit the original manufacturer's obligations to
9 comply with this section shall be void and unenforceable.

10 (3) Nothing in this chapter shall be construed to require an
11 original manufacturer or an authorized repair provider to provide to
12 an owner or independent repair provider access to information, other
13 than documentation, that is provided by the original manufacturer to
14 an authorized repair provider pursuant to the terms of an arrangement
15 described in section 2(1) of this act.

16 (4) Nothing in this chapter shall be construed to require an
17 original manufacturer or authorized repair provider to make available
18 any parts, tools, or documentation for the purposes of modifying or
19 making modifications to any digital electronic equipment.

20 (5) Nothing in this chapter shall be construed to require an
21 original manufacturer or authorized repair provider to make available
22 any parts, tools, or documentation required for the diagnosis,
23 maintenance, or repair of public safety communications equipment, the
24 intended use of which is for emergency response or prevention
25 purposes by an emergency service organization such as a police, fire,
26 or emergency medical services agency.

27 (6) Nothing in this chapter shall prevent an original
28 manufacturer from offering parts, such as integrated batteries, to
29 independent repair providers or owners preassembled with other parts
30 rather than as individual components, provided that the preassembled
31 parts that are provided to independent repair providers or owners are
32 functionally equivalent to corresponding parts provided to authorized
33 repair providers.

34 NEW SECTION. **Sec. 5.** (1) Original manufacturers and authorized
35 repair providers shall not be liable for services performed by
36 independent repair providers, including damage to digital electronic
37 equipment that occurs during repairs conducted by independent repair
38 providers, including any indirect, incidental, special, or
39 consequential damages; any loss of data, privacy, or profits; or any

1 inability to use, or reduced functionality of, the digital electronic
2 equipment resulting from diagnosis, maintenance, repair, or
3 modification.

4 (2) The original manufacturer does not warrant any services
5 provided by independent repair providers.

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

14 (2) This chapter may be enforced solely by the attorney general
15 under the consumer protection act, chapter 19.86 RCW.

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

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

20 NEW SECTION. **Sec. 9.** If specific funding for the purposes of
21 this act, referencing this act by bill or chapter number, is not
22 provided by June 30, 2023, in the omnibus appropriations act, this
23 act is null and void.

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