

HOUSE BILL REPORT

HB 2279

As Reported by House Committee On:
Technology & Economic Development

Title: An act relating to fair servicing and repair of digital electronic products.

Brief Description: Concerning the fair servicing and repair of digital electronic products.

Sponsors: Representatives Morris, Cody, Hudgins, Santos, Smith, Lytton, Stanford, Young, Ormsby, Pollet, Doglio and Gregerson.

Brief History:

Committee Activity:

Technology & Economic Development: 1/9/18, 1/24/18 [DPS].

Brief Summary of Substitute Bill

- Requires digital electronic product manufacturers to make available certain information, parts, and tools related to independent repair.
- Prohibits digital electronic product manufacturers from requiring the purchase of certain proprietary information, excluding certain information, or preventing certain functions related to independent repair.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Morris, Chair; Kloba, Vice Chair; Tarleton, Vice Chair; Smith, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Doglio, Fey, Hudgins, Manweller, Santos, Slatter, Steele, Wylie and Young.

Minority Report: Without recommendation. Signed by 3 members: Representatives Harmsworth, McDonald and Nealey.

Staff: Lily Smith (786-7175).

Background:

Digital Electronic Products.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Consumer products increasingly include microprocessors with software controls. Software can now perform functions previously performed by mechanical components such as switches or gears. Software can also enable additional product functions. The replacement of mechanical components with software affects the information and materials needed for repair of those products.

Laws Relating to Unauthorized use of Certain Information and Materials.

State law prohibits the manufacture of an article or product while using stolen or misappropriated information technology, where it is in competition with an article or product otherwise manufactured. Trade secrets are information that an owner takes reasonable steps to keep secret and that have independent economic value from not being known or readily accessible. Trade secrets are protected from misappropriation under state and federal law.

Federal copyright law applies to original tangible works that express ideas, such as certain software. Copyright law does not apply to ideas, methods, or processes. An owner of a copyright for an original work has the exclusive rights to copy, distribute, and adapt that work. A person may not circumvent technology that controls access to work protected by copyright. There are exceptions to copyright protection for the fair use of a work and for copying a computer program for purposes of maintenance or repair of a machine.

Consumer Protection Act.

The state Consumer Protection Act (CPA) prohibits unfair or deceptive acts or practices in trade or commerce. A private person or the Attorney General may bring a civil action to enforce the provisions of the CPA. A person or entity found to have violated the CPA is subject to treble damages and attorney's fees.

Summary of Substitute Bill:

Original digital electronic product manufacturers are required to make available:

- the same diagnostic and repair information to independent repair providers or the product owner as is made available to authorized repair providers;
- equipment or service parts for purchase by the product owner, owner's agent, or independent repair provider; and
- diagnostic repair tools for purchase by owners and independent repair providers with the same capabilities as made available to the manufacturer's staff or authorized repair providers.

Equipment, service parts, and diagnostic repair tools made available for purchase must be offered on fair and reasonable terms.

Original digital electronic product manufacturers are prohibited from:

- requiring the purchase of repair-related documentation in a proprietary format in certain circumstances;
- designing or manufacturing products to prevent reasonable diagnostic or repair functions by an independent repair provider; or

- excluding diagnostic, service, and repair information necessary to reset a security-related electronic function from information provided to owners and repair facilities of equipment or parts providing security-related functions.

A violation of the act is enforceable under the Consumer Protection Act, chapter 19.86 RCW, and subject to a civil penalty of \$500.

"Digital electronic product" is a handheld or portable electronic device containing a microprocessor and flat panel computer monitor originally manufactured for distribution and sale in the United States for general consumer purchase. It includes but is not limited to, smartphones, electronic reading devices, laptop computers, and tablets.

The provisions do not apply to the following:

- manufacturers, dealers, products and services of:
 - motor vehicles;
 - non-road engines, equipment, or vehicles; or
 - stationary engines, equipment, or vehicles; and
- manufacturers or distributors of medical devices, or of digital electronic products or embedded software manufactured for use in a medical setting.

Substitute Bill Compared to Original Bill:

Exclusions are added for the following:

- manufacturers, dealers, products and services of:
 - non-road engines, equipment, or vehicles, or
 - stationary engines, equipment, or vehicles; and
- manufacturers or distributors of medical devices, or of digital electronic products or embedded software manufactured for use in a medical setting.

The definition of "digital electronic product" is modified to specifically apply to handheld or portable devices manufactured for general consumer purchase.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Supporting independent repair supports reuse and can keep electronic products out of disposal and recycling systems. Manufacturers can interfere with your phones to prevent repair. Independent repairers are qualified and provide a benefit to consumers, particularly where authorized repairers are not conveniently located. Independent repairers contribute to local economies, schools, and nonprofits, create small businesses, and promote

market competition. Embedded code may be proprietary, but copyright law allows circumvention in order to repair. Promoting repair results in energy savings and environmental benefits by preventing new manufacturing, and reduces exposure to toxic waste.

(Opposed) Manufacturers would be forced to reveal intellectual property and effectively make it publicly available. Cyber attacks have become a major threat and this bill would provide cyber criminals with access to sensitive information about devices and network, subjecting Washingtonians to hackers. Research and development in technology, a major driver in the state economy, would be stifled. Manufacturing, one of the highest multipliers of jobs, would be limited, resulting in loss of jobs. Similar bills have not been successful in any other state, and passage here would make Washington a lone wolf. This may violate the dormant commerce clause. Third-party tinkering could make owners think they are getting the same device back, but it no longer has the same safeguards.

Persons Testifying: (In support) Representative Morris, prime sponsor; Brian Engelhard, Phone Love; Daniel Bartholomew, Free Geek; Scott Barker, 3R Technology; Brad Dow, Dow Computers, Inc.; Elise Orlick, WashPIRG; Glenn McLoughlin, iDoctor Cell Phone and Tablet Repair; and Sally Wolf, Zero Waste Washington.

(Opposed) Eric Wareham, Western Equipment Dealers Association; Tom McBride, CompTIA; Joanie Deutsch, TechNet; and Bob Battles, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.