
HOUSE BILL 2279

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By Representatives Morris, Cody, Hudgins, Santos, Smith, Lytton, Stanford, Young, Ormsby, Pollet, and Doglio

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

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

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

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

18 (1) "Authorized repair provider" means a person or business: (a)
19 That has an arrangement for a definite or indefinite period with an
20 original manufacturer in which the original manufacturer grants to a

1 person or business a license to use a trade name, service mark, or
2 related characteristic for the purposes of offering repair services
3 under the name of the original manufacturer; or (b) retained by the
4 original manufacturer to provide refurbishing services for the
5 original manufacturer's product or products.

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

11 (3) "Embedded software" means any programmable instructions
12 provided on firmware delivered with the digital electronic product
13 for the purposes of product operation, including all relevant patches
14 and fixes made by the original manufacturer for this purpose
15 including, but not limited to, synonyms "basic internal operating
16 system," "internal operating system," "machine code," "assembly
17 code," "root code," and "microcode."

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

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

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

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

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

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

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

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

37 (h) Inflation.

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

1 (6) "Independent repair provider" means a person or business
2 operating in this state that is not affiliated with an original
3 manufacturer or an original manufacturer's authorized repair
4 provider, which is engaged in the diagnosis, service, maintenance, or
5 repair of digital electronic products. However, for the purposes of
6 this section, an original manufacturer is considered an independent
7 repair provider for purposes of those instances when such an original
8 manufacturer engages in the diagnosis, service, maintenance, or
9 repair of equipment that is not affiliated with the original
10 manufacturer.

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

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

23 (b) Motor vehicle does not include:

24 (i) A motorcycle; or

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

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

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

37 (11) "Original manufacturer" means a person or business who, in
38 the ordinary course of its business, is engaged in the business of
39 selling or leasing new digital electronic products to consumers or

1 other end users, and is engaged in the diagnosis, service,
2 maintenance, or repair of that product.

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

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

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

12 (15) "Trade secret" means anything tangible or intangible or
13 electronically stored or kept that constitutes, represents,
14 evidences, or records intellectual property, including secret or
15 confidentially held designs, processes, procedures, formulas,
16 inventions, or improvements, or secret or confidentially held
17 scientific, technical, merchandising, production, financial,
18 business, or management information, or any other trade secret as
19 defined in 18 U.S.C. Sec. 1839, as that section existed on January 1,
20 2017.

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

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

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

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

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

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

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

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

35 (6) Original manufacturers of digital electronic products sold on
36 or after January 1, 2019, in Washington state are prohibited from
37 designing or manufacturing digital electronic products in such a way
38 as to prevent reasonable diagnostic or repair functions by an
39 independent repair provider. Preventing reasonable diagnostic or

1 repair functions includes permanently affixing a battery in a manner
2 that makes it difficult or impossible to remove.

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

6 (2) Notwithstanding any law or rule to the contrary, no provision
7 in this section may be read, interpreted, or construed to abrogate,
8 interfere with, contradict, or alter the terms of any agreement
9 executed and in force between an authorized repair provider and an
10 original manufacturer including, but not limited to, the performance
11 or provision of warranty or recall repair work by an authorized
12 repair provider on behalf of an original manufacturer pursuant to
13 such an authorized repair agreement, except that any provision in
14 such an authorized repair agreement that purports to waive, avoid,
15 restrict, or limit an original manufacturer's compliance with this
16 section is void and unenforceable.

17 (3) Nothing in this section may be construed to require original
18 manufacturers or authorized repair providers to provide an owner or
19 independent repair provider access to nondiagnostic and repair
20 information by an original manufacturer to an authorized repair
21 provider pursuant to the terms of an authorizing agreement.

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

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

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

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

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

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

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