
**Innovation, Technology & Economic
Development Committee**

HB 1342

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

Sponsors: Representatives Hudgins, Morris, Stanford, Kloba and Wylie.

Brief Summary of 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 proprietary information, excluding certain information, or preventing specified functions related to independent repair.

Hearing Date: 2/5/19

Staff: Yelena Baker (786-7301).

Background:

Digital electronic products.

Consumer products increasingly include software that performs functions previously performed by mechanical components and that enables additional product functions. The replacement of mechanical components with software affects the information and materials needed for repair of these products.

Laws Related to Unauthorized Use of Certain Information and Materials.

State law prohibits the manufacture of an article or product in competition with other articles or products while using stolen or misappropriated information technology.

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.

A trade secret is information that derives independent economic value from not being known or readily accessible and that an owner takes reasonable steps to keep secret. Trade secrets are protected from misappropriation under state and federal laws.

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.

The Digital Millennium Copyright Act (DMCA) makes it illegal to circumvent the access controls and technical protection measures that prevent copying or modification of most software-controlled products. Several exemptions exist, including the recently added exemptions that apply to owners or owner-designated third parties for circumvention necessary to allow the diagnosis, maintenance, or repair of lawfully acquired smart devices, home appliances, or home systems.

Consumer Protection Laws.

At the federal level, consumer rights are protected by several statutes, including the Magnuson-Moss Warranty Act of 1975, which largely prohibits companies from voiding a consumer's warranty or denying warranty coverage solely because the consumer allows an independent third party (not authorized by the company) to perform service on the product. A manufacturer's claim that creates a false impression that a warranty would be void due to the use of unauthorized parts or service may constitute a deceptive practice prohibited by the Federal Trade Commission Act of 1914.

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 Bill:

"Digital electronic product" is defined to mean a handheld or portable electronic device containing a microprocessor and a flat panel computer monitor originally manufactured for distribution and sale in the United States for general consumer purchase. Examples include smartphones, electronic reading devices, laptop computers, and tablets.

Original digital electronic product manufacturers are required to make available:

- the same diagnostic and repair information to independent repair providers or the product owners as is made available to authorized repair providers;
- equipment or service parts for purchase by product owners, owners' agents, or independent repair providers; and
- diagnostic repair tools for purchase by product 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 not required to sell equipment or service parts that are no longer available to the manufacturers.

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 independent repair providers; or
- excluding diagnostic, service, and repair information necessary to reset a security-related electronic function from information provided to product owners and independent repair providers.

Original digital electronic product manufacturers are not required to reveal trade secrets or to provide product owners and independent repair providers with nondiagnostic and repair information made available to authorized repair providers.

The provisions above 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.

Violations of these provisions are enforceable under the Consumer Protection Act and subject to a civil penalty of \$500.

Appropriation: None.

Fiscal Note: Requested on January 31, 2019.

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