

SENATE BILL REPORT

SB 5799

As of January 29, 2020

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: Senators Hasegawa and Nguyen.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/21/20.

Brief Summary of Bill

- Requires digital electronic product (product) manufacturers to make available certain information, equipment, parts, and repair tools to independent repair providers.
- Prohibits product manufacturers from requiring purchase of proprietary information, excluding certain information, or preventing specific functions related to independent repair.
- Prohibits manufacturers of products sold on or after January 1, 2021, from manufacturing products in a way preventing repairs by independent repair providers.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Angela Kleis (786-7469)

Background: The Federal Trade Commission (FTC) is authorized, among other things, to prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. Enforced by the FTC, the Magnuson-Moss Warranty Act generally prohibits manufacturers from conditioning warranty coverage on the use of particular products or services.

Federal copyright laws protect original works of authorship, including artistic works such as computer software. The Digital Millennium Copyright Act prohibits circumvention of technical measures controlling access to copyrighted works. Exemptions are specified, such

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as for a lawfully acquired smartphone, home appliance, or home system when circumvention is necessary to allow diagnosis, maintenance, or repair of such a device or system.

Under state law, a trade secret means information that derives economic value from not being generally known to other persons who can obtain economic value from its disclosure or use and is subject to reasonable efforts to maintain its secrecy. Trade secrets are protected from misappropriation under federal and state law.

The Consumer Protection Act (CPA) prohibits unfair methods of competition or unfair or deceptive practices in the conduct of any trade or commerce. A person injured by a violation of the CPA may bring a civil action for injunctive relief, recovery of actual damages, and reasonable attorneys' fees. Under certain circumstances, the courts may increase awarded damages by up to three times the actual damages sustained. The attorney general is authorized to investigate and prosecute claims under the CPA on behalf of the state or individuals in the state.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Obligations of Original Manufacturers. Original manufacturers of products sold on or after January 1, 2012, in Washington, must make available:

- the same diagnostic and repair information to independent repair providers or product owners (owners) as is made available to authorized repair providers for free or for the same charge; and
- equipment or service parts for purchase by the owner, the owner's authorized agent, or independent repair provider upon fair and reasonable terms.

Each original manufacturer of products sold in the state must make available for purchase to independent repair providers and owners all diagnostic repair tools made available to its own repair staff or any other repair provider. Tools for sale to independent repair providers and owners must be offered on fair and reasonable terms.

Restrictions on Original Manufacturers. Any original manufacturer is prohibited from requiring an authorized repair provider to continue purchasing diagnostic, service, or repair information in a proprietary format, except under certain conditions, if the same information is provided to independent repair providers and owners under more favorable terms and conditions. Original manufacturers may not exclude diagnostic, service, and repair information necessary to reset a security-related electronic function from information provided to an independent repair provider or owners.

Original manufacturers of products sold on or after January 1, 2021, in the state, are prohibited from manufacturing products in such a way as to prevent reasonable diagnostic or repair functions by an independent repair provider, including permanently affixing a battery in a manner that makes it difficult or impossible to remove.

Enforcement. Violations of this act are enforceable under the CPA. In addition to remedies provided by other laws, original manufacturers that violate this act are subject to a civil penalty of \$500 for each violation.

Definitions. Digital electronic product means an electronic device containing a microprocessor originally manufactured for distribution and sale in the United States for general consumer purchase. Digital electronic product includes, but is not limited to, smartphones, electronic reading devices, laptop computers, appliances, and tablets.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: PRO: This is a good small business bill. We are not suggesting to make technology easy to steal but manufacturers should provide technology that can be repaired. People want to be able to repair their devices in order to extend the life of their devices but manufacturers make that difficult. Consumers are able to repair vehicles but cannot repair electronic devices. We should encourage and help consumers to repair their devices to reduce waste and protect the environment.

CON: This bill is in search of a problem that does not exist. Consumers already have a wide range of repair options available to them. Consumers should work with authorized dealers to mitigate safety and security threats. Manufacturers should be able to manage their repair network to address safety and security threats and protect intellectual property. Washington has a robust e-waste program. Similar legislation has not been enacted in any other state.

Persons Testifying: PRO: Senator Bob Hasegawa, Prime Sponsor; Olivia Webb, Press Relations, iFixit; Adrian Avery-Johnson, Bridgetown Electronics Repair; Louis Rossmann, Owner, Rossmann Repair Group Inc; Adelle Pomeroy, Free Geek; Bob Akers, BAN/e-Stewards; Tarah Wheeler, Securepairs; Sally Wolf, Zero Waste Washington; Owen Rubel, Rossmann Repair Group Inc; Senator Christine Rolfes, 23rd Legislative District.

CON: Charlie Brown, Consumer Technology Association; Samantha Kersul, Executive Director Washington and the Northwest, TechNet; Anna Powell, CompTIA; Katheryn Gunter, Director, Entertainment Software Association.

Persons Signed In To Testify But Not Testifying: No one.