H-2517.1

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**SECOND SUBSTITUTE HOUSE BILL 1810**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Gregerson, Chase, Ryu, Berry, Taylor, Fitzgibbon, Cody, Macri, Peterson, Ramel, Paul, Simmons, Bergquist, Valdez, Pollet, Stonier, Ormsby, Harris-Talley, Kloba, and Frame)

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

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

NEW SECTION. **Sec.**  The legislature finds that access to appropriate and affordable digital electronic products is necessary to overcome digital inequities in Washington state and that broader distribution of the information and tools necessary to repair digital electronic products will shorten repair times and lower costs for consumers.

The legislature further finds that the COVID-19 pandemic has made the need for devices even more critical as people rely on digital electronic devices to submit unemployment claims, join telehealth appointments, attend work and school, connect with family and friends, and generally access services from the safety of their home. The legislature recognizes that people will continue to need digital electronic products to function for the foreseeable future.

The legislature further finds that low-income and black Washingtonians face disproportionate barriers to accessing internet in their homes. Recent census household pulse survey data shows that a computer is rarely or never available for children's educational use in 59 percent of households experiencing poverty and 80 percent of black households in Washington state. Also, electronic product manufacturer shops or licensed repair shops can often be in urban areas, requiring rural consumers to travel long distances for repair.

The legislature further finds that independent repair businesses provide an important source of employment and contribute to a competitive repair market. In addition, these small business employees can more safely repair devices when appropriate parts and information are readily accessible.

The legislature further finds that digital electronic products are comprised of precious metals that are finite and unnecessary early disposal can be avoided with proper repair.

Therefore, the legislature intends to broaden access to the information and tools necessary to repair digital electronic products in a safe, secure, reliable, and sustainable manner, thereby increasing access to appropriate and affordable digital electronic products, supporting small businesses and jobs, and making it easier for all residents of Washington state to connect digitally.

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

(1) "Authorized repair provider" means a person or business that has an arrangement for a definite or indefinite period with an original manufacturer, in which the original manufacturer grants to a person or business a license to use a trade name, service mark, or related characteristic for the purposes of offering repair services under the name of the original manufacturer.

(2) "Digital electronic product" means a desktop computer, laptop computer, tablet computer, cell phone, or smart phone containing a microprocessor and originally manufactured for distribution and sale in the United States for general consumer purchase.

(3) "Documentation" means any manual, diagram, reporting output, service code description, schematic, if applicable, or other guidance or information, or its equivalent, which is made available by an original manufacturer to an authorized repair provider and that is intended for use in providing the services of diagnosis or repair of digital electronic equipment.

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

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

(a) The net cost to the authorized repair provider for documentation, parts and tools obtained from an original manufacturer, less any discounts, rebates, or other incentive programs;

(b) The cost to the original manufacturer for preparing and distributing the documentation, parts and tools, excluding any research and development costs incurred in designing and implementing, upgrading, or altering the software or product, but including amortized capital costs for the preparation and distribution of the documentation, parts and tools;

(c) The price charged by other original manufacturers for similar documentation, parts and tools;

(d) The price charged by original manufacturers for similar documentation, parts and tools prior to the launch of original manufacturer websites;

(e) The ability of aftermarket technicians or shops to afford the documentation, parts and tools;

(f) The means by which the documentation, parts and tools is distributed;

(g) The extent to which the documentation, parts and tools is used, which includes the number of users, and frequency, duration, and volume of use; and

(h) Inflation.

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

(7) "Independent repair provider" means a person or business operating in this state that is not affiliated with an original manufacturer or an original manufacturer's authorized repair provider, which is engaged in the diagnosis, service, maintenance, or repair of digital electronic products and which possesses a repair certification. However, for the purposes of this section, an original manufacturer may be considered an independent repair provider for purposes of those instances when such an original manufacturer engages in the diagnosis, service, maintenance, or repair of equipment that is not affiliated with the original manufacturer and obtains and maintains the required certification.

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

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

(b) Motor vehicle does not include:

(i) A motorcycle; or

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

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

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

(12) "Nonroad engine" means an internal combustion engine, including the fuel system, that is not: (a) Used in a motor vehicle or a vehicle used solely for competition; or (b) subject to the standards of performance for new stationary sources or the emissions standards for new motor vehicles or new motor vehicle engines promulgated under the clean air act, (42 U.S.C. Secs. 7411 and 7521).

(13) "Nonroad engine, nonroad equipment, or nonroad vehicle dealer" means any person who is engaged in the sale or the distribution of new nonroad engines, new nonroad equipment, or new nonroad vehicles to the ultimate purchaser.

(14) "Nonroad engine, nonroad equipment, or nonroad vehicle manufacturer" means any person engaged in the manufacturing or assembling of new nonroad engines, new nonroad equipment, or new nonroad vehicles, or importing such engines, equipment, or vehicles for resale, or who acts for and is under the control of any such person in connection with the distribution of new nonroad engines, new nonroad equipment, or new nonroad vehicles, but does not include any dealer with respect to new nonroad engines, new nonroad equipment, or new nonroad vehicles received by the dealer in commerce.

(15) "Nonroad equipment" means equipment that is powered by a nonroad engine and that is not a motor vehicle, a vehicle used solely for competition, or a nonroad vehicle.

(16) "Nonroad vehicle" means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

(17) "Original manufacturer" means a person or business who, in the ordinary course of its business, is engaged in the business of selling or leasing new digital electronic products that are manufactured by that person or business to consumers or other end users, and is engaged in the diagnosis, service, maintenance, or repair of that product.

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

(19) "Part" or "service part" means any replacement part, either new or used, or its equivalent, which is made available by the original manufacturer to an authorized repair provider for purposes of effecting repair of the original manufacturer's digital electronic equipment.

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

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

(22) "Stationary engine" means an internal combustion engine that is not used in a motor vehicle, a vehicle used solely for competition, a nonroad vehicle, or nonroad equipment.

(23) "Stationary engine or stationary equipment dealer" means any person who is engaged in the sale or the distribution of new stationary engines or new stationary equipment to the ultimate purchaser.

(24) "Stationary engine or stationary equipment manufacturer" means any person engaged in the manufacturing or assembling of new stationary engines or new stationary equipment, or importing such engines or equipment for resale, or who acts for and is under the control of any such person in connection with the distribution of new stationary engines or new stationary equipment, but does not include any dealer with respect to new stationary engines or new stationary equipment received by the dealer in commerce.

(25) "Stationary equipment" means equipment that is powered by a stationary engine and that is not a motor vehicle, a vehicle used solely for competition, a nonroad vehicle, or nonroad equipment.

(26) "Tool" means any software program, hardware implement, or other apparatus, or its equivalent, which is made available by an original manufacturer to an authorized repair provider, and that is used for diagnosis, or repair of the original manufacturer's digital electronic equipment, including software or other mechanisms that provision, program, or pair a new part, calibrate functionality, or perform any other function required to bring the product back to fully functional condition.

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

NEW SECTION. **Sec.**  (1) Original manufacturers of digital electronic products sold in Washington state must make available:

(a) To independent repair providers of digital electronic products manufactured by the original manufacturer the documentation, parts and tools, including corrections to embedded software, and safety and security patches on fair and reasonable terms that the original manufacturer makes available to its authorized repair provider, effective January 1, 2023; and

(b) For purchase by the owner, documentation, parts, tools, inclusive of any updates to the embedded software of the equipment or parts, upon fair and reasonable terms, except where the diagnosis, maintenance, or repair of such products presents a reasonably foreseeable risk of property damage or personal injury, effective January 1, 2024.

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

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

(4)(a) Each original manufacturer of digital electronic products sold or used in the state must make available for purchase by independent repair providers all documentation, parts, and tools that the original manufacturer makes available to its own authorized repair providers.

(b) Each original manufacturer must offer tools for sale to independent repair providers upon fair and reasonable terms. Each original manufacturer that provides tools has fully satisfied its obligations under this section and thereafter is not responsible for the content and functionality of such tools.

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

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

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

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

NEW SECTION. **Sec.**  (1) Original manufacturers shall not be liable for repairs provided by independent repair providers, including damage to digital electronic products that occur during repairs conducted by independent repair providers, including any indirect, incidental, special, or consequential damages; any loss of data, privacy, or profits; or any inability to use, or reduced functionality of the digital electronic products resulting from repair.

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

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

(2) Nothing in this chapter applies to:

(a) Nonroad engine, nonroad equipment, or nonroad vehicle manufacturers, any product or service of a nonroad engine, nonroad equipment, or nonroad vehicle manufacturer, or nonroad engine, nonroad equipment, or nonroad vehicle dealers; or

(b) Stationary engine or stationary equipment manufacturers, any product or service of a stationary engine or stationary equipment manufacturer, or stationary engine or stationary equipment dealers.

(3)(a) Nothing in this chapter applies to manufacturers or distributors of a medical device as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or a digital electronic product or software manufactured for use in a medical setting including diagnostic, monitoring, or control equipment or any product or service that they offer. For the purposes of this chapter, "medical setting" includes, but is not limited to, acute care hospitals, long-term care facilities, such as nursing homes or skilled nursing facilities, physicians' offices, urgent care centers, outpatient clinics, home settings where health care is provided at home by or at the direction of licensed health care providers, emergency medical services, and specific sites within nonhealth care settings where health care is routinely delivered, such as a medical clinic embedded within a school.

(b) A digital electronic product otherwise subject to the provisions of this chapter is not considered a medical device or considered manufactured for use in a medical setting by virtue of its ability to be used in conjunction with a medical device or with a digital electronic product or software manufactured for use in a medical setting.

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

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

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

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

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2022, in the omnibus appropriations act, this act is null and void.

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