

2SHB 1810 - H AMD 1126

By Representative Gregerson

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that access to
4 appropriate and affordable digital electronic products is necessary
5 to overcome digital inequities in Washington state and that broader
6 distribution of the information and tools necessary to repair digital
7 electronic products will shorten repair times and lower costs for
8 consumers.

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

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

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

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

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

7 NEW SECTION. **Sec. 2.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires
9 otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

19 (h) Inflation.

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

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

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

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

6 (b) Motor vehicle does not include:

7 (i) A motorcycle; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (23) "Stationary engine or stationary equipment dealer" means any
39 person who is engaged in the sale or the distribution of new

1 stationary engines or new stationary equipment to the ultimate
2 purchaser.

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

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

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

22 (27) "Trade secret" means anything tangible or intangible or
23 electronically stored or kept that constitutes, represents,
24 evidences, or records intellectual property, including secret or
25 confidentially held designs, processes, procedures, formulas,
26 inventions, or improvements, or secret or confidentially held
27 scientific, technical, merchandising, production, financial,
28 business, or management information, or any other trade secret as
29 defined in 18 U.S.C. Sec. 1839, as that section existed on January 1,
30 2017.

31 NEW SECTION. **Sec. 3.** (1) Original manufacturers of digital
32 electronic products sold in Washington state must make available:

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

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

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

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

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

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

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

1 (6) Each independent repair provider must disclose to its
2 customers who seek repair of a digital electronic product when
3 nonoriginal manufacturer parts are used to repair the digital
4 electronic product.

5 (7) Nothing in this chapter authorizes an independent repair
6 provider to steal or disclose any information or data stored on a
7 digital electronic product when performing a repair.

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

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

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

27 NEW SECTION. **Sec. 5.** (1) Original manufacturers shall not be
28 liable for repairs provided by independent repair providers,
29 including damage to digital electronic products that occur during
30 repairs conducted by independent repair providers, including any
31 indirect, incidental, special, or consequential damages; any loss of
32 data, privacy, or profits; or any inability to use, or reduced
33 functionality of the digital electronic products resulting from
34 repair. Nothing in this chapter shall limit the liability of
35 independent repair providers for negligent or faulty repairs.

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

1 (3) An independent repair provider that receives a request from a
2 customer to repair a digital electronic product shall advise the
3 customer, in writing, that the product may be under the original
4 manufacturer's warranty and repair done by the independent repair
5 provider would not be covered by such warranty. The independent
6 repair provider must receive a signed acknowledgment from the
7 customer indicating that the customer has been given such advisements
8 before the independent repair provider may initiate repair of the
9 product.

10 (4) An independent repair provider that receives a request from a
11 customer to repair a digital electronic product shall ask the
12 customer whether the product is owned by a public school, as defined
13 in RCW 28A.150.010, and, if so, must receive written permission from
14 the public school before performing the repair.

15 NEW SECTION. **Sec. 6.** (1) Nothing in this chapter applies to
16 motor vehicle manufacturers, any product or service of a motor
17 vehicle manufacturer, or motor vehicle dealers.

18 (2) Nothing in this chapter applies to:

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

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

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

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

7 NEW SECTION. **Sec. 7.** (1) The legislature finds that the
8 practices covered by this chapter are matters vitally affecting the
9 public interest for the purpose of applying the consumer protection
10 act, chapter 19.86 RCW. A violation of this chapter is not reasonable
11 in relation to the development and preservation of business and is an
12 unfair or deceptive act in trade or commerce and an unfair method of
13 competition for the purpose of applying the consumer protection act,
14 chapter 19.86 RCW.

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

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

19 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act
20 constitute a new chapter in Title 19 RCW.

21 NEW SECTION. **Sec. 10.** (1) The office of the superintendent of
22 public instruction shall conduct a study on the use of digital
23 electronic products, as defined in section 2 of this act, in public
24 schools of the state. At a minimum, the study must include an
25 analysis of:

26 (a) The cost of digital electronic products used by public school
27 students;

28 (b) The cost of repairs made to such products; and

29 (c) School district security vulnerability to ransomware related
30 to such products.

31 (2) The office of the superintendent of public instruction shall
32 provide a report on the study described in subsection (1) of this
33 section to the appropriate committees of the legislature by December
34 1, 2022, in compliance with RCW 43.01.036.

35 (3) This section expires December 1, 2023.

1 NEW SECTION. **Sec. 11.** If specific funding for the purposes of
2 this act, referencing this act by bill or chapter number, is not
3 provided by June 30, 2022, in the omnibus appropriations act, this
4 act is null and void."

5 Correct the title.

EFFECT: (1) Requires an independent repair provider to disclose when nonoriginal manufacturer parts are used to repair customers' digital electronic products.

(2) Provides that nothing in the bill authorizes an independent repair provider to steal or disclose any information or data stored on a digital electronic product when performing a repair.

(3) Provides that nothing in the bill limits the liability of an independent repair provider for negligent or faulty repairs.

(4) Requires an independent repair provider that receives a request to repair a digital electronic product to advise the customer, in writing, that the product may be under the original manufacturer's warranty and repair done by the independent repair provider would not be covered by such warranty.

(5) Requires an independent repair provider to receive a signed acknowledgment of certain advisements before initiating repair of a customer's digital electronic product.

(6) Requires an independent repair provider that receives a request to repair a digital electronic product to ask whether the product is owned by a public school and, if so, receive written approval from the public school before initiating repair of the product.

(7) Requires the Office of the Superintendent of Public Instruction to conduct a study on the use of digital electronic products in public schools and provide a report on the study to the Legislature by December 1, 2022.

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