

# HOUSE BILL REPORT

## HB 1810

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**As Reported by House Committee On:**  
Consumer Protection & Business  
Appropriations

**Title:** 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.

**Brief Description:** 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.

**Sponsors:** Representatives Gregerson, Chase, Ryu, Berry, Taylor, Fitzgibbon, Cody, Macri, Peterson, Ramel, Paul, Simmons, Bergquist, Valdez, Pollet, Stonier, Ormsby, Harris-Talley, Kloba and Frame.

**Brief History:**

**Committee Activity:**

Consumer Protection & Business: 1/13/22, 1/19/22 [DPS];  
Appropriations: 1/27/22, 2/1/22 [DP2S(w/o sub CPB)].

**Brief Summary of Second Substitute Bill**

- Requires original manufacturers of digital electronic products sold on or after January 1, 2023, to make certain documentation, parts, and tools available to owners and independent repair providers on fair and reasonable terms.
- Provides exceptions for certain categories of manufacturers and products.
- Provides that violations may be enforced solely by the Office of the Attorney General through the Consumer Protection Act.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

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## HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Kirby, Chair; Walen, Vice Chair; Dufault, Assistant Ranking Minority Member; Ryu and Santos.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Vick, Ranking Minority Member; Corry.

**Staff:** Corey Patton (786-7388).

### **Background:**

Digital electronic products are electronic devices containing a microprocessor manufactured for distribution and sale in the United States for general consumer purchase. Digital electronic products include desktop computers, laptop computers, tablet computers, cell phones, and smartphones.

Manufacturers of digital electronic products generally control and can restrict access to information, components, and tools necessary to diagnose, service, and repair their products.

Consumers can attempt to repair their own digital electronic products, or use the services of an authorized repair provider or independent repair provider. Authorized repair providers are merchants that have an arrangement with a manufacturer to service their products. Independent repair providers provide similar services but are not affiliated with a manufacturer. Independent repair providers may receive certifications from third-party organizations that indicate the providers' knowledge and competence with skills related to the repair of digital electronic products.

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### **Summary of Substitute Bill:**

#### Regulations on Original Manufacturers of Digital Electronic Products.

Original manufacturers of digital electronic products sold on or after January 1, 2023, must comply with the following regulatory requirements:

- Beginning January 1, 2023, original manufacturers must make available to independent repair providers any documentation, parts, and tools that the original manufacturer makes available to its authorized repair providers, upon fair and reasonable terms.
- Beginning January 1, 2024, original manufacturers must make available for purchase by owners any documentation, parts, and tools, except where the diagnosis, maintenance, or repair of such products presents a reasonably foreseeable risk of property damage or personal injury, upon fair and reasonable terms.

- Original manufacturers must make diagnostic repair tools available to independent repair providers that incorporate the same diagnostic, repair, and remote diagnostic capabilities the original manufacturer makes available to its own repair or engineering staff or authorized repair providers.
- Original manufacturers that sell documentation, parts, or tools to independent repair providers in a standardized format, and on terms and conditions more favorable than to the original manufacturers' authorized repair providers, are prohibited from requiring authorized repair providers to purchase diagnostic, service, or repair documentation in a proprietary format, unless the proprietary format includes documentation or functionality that is not available in the standardized format.
- Original manufacturer equipment or parts sold or used 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.

Original manufacturers are not required to sell service parts that are no longer available to authorized repair providers. Original manufacturers that provide tools are not responsible for the content and functionality of such tools.

#### Limitations.

Original manufacturers are not required to divulge trade secrets. Agreements between original manufacturers and authorized repair providers are not abrogated or altered, but any provision purporting to waive or limit an original manufacturer's compliance with statutory requirements is unenforceable. Original manufacturers and authorized repair providers are not required to provide owners or independent repair providers with nondiagnostic and repair information subject to the terms of an authorizing agreement. Original manufacturers shall not be liable for repairs provided 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. Original manufacturers do not warrant any repairs provided by independent repair providers.

#### Exceptions.

The regulatory obligations imposed on original manufacturers do not apply to:

- motor vehicle manufacturers, any product or service of a motor vehicle manufacturer, or motor vehicle dealers;
- 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;
- 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; or
- manufacturers or distributors of a medical device or a digital electronic product or software manufactured for use in a medical setting.

Enforcement.

Violations are deemed to affect the public interest and constitute an unfair or deceptive act in trade or commerce for purposes of a Consumer Protection Act claim and shall be enforced solely by the Office of the Attorney General.

**Substitute Bill Compared to Original Bill:**

The substitute bill provides that an independent repair provider must maintain a valid repair certification, rather than a certification from a digital electronic product repair credential program. The substitute bill also eliminates the provision allowing an original manufacturer to provide a training program and certification process for licensed businesses as an alternative option to regulatory compliance.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill would give people options for fixing their broken devices. The premise that people cannot effectively choose how to best repair their devices is faulty. When original manufacturers control who is authorized to fix their devices, they can charge anything they want or push consumers to buy new devices. Even if a person never intends to take a device to a local repair shop instead of the manufacturer's authorized shop, forcing manufacturers to compete with independent repair providers promotes honesty. The technology industry is at a turning point where newer devices are more frequently designed with features that undermine independent repair work. Small businesses may not be able to compete with authorized repair providers in this changing landscape.

According to the Environmental Protection Agency, electronic waste is the fastest growing source of municipal waste in the United States. Every day in Washington, over 8,700 phones are thrown away. This bill would have a positive impact on the environment by extending the life and sustainability of technology we would otherwise throw away, thereby reducing carbon emissions and other ecological harms.

Device repairability is important in remote learning environments where devices have become a core part of basic education. This is especially evident due to the ongoing pandemic. Closing the digital divide and promoting equity requires everyone to have access to affordable, fast Internet; digital literacy skills; and appropriate, working devices. Having

the ability to work freely with devices may also foster curiosity and encourage people to pursue a career in technology. Nothing in the bill conflicts with manufacturers' rights with regard to intellectual property.

(Opposed) Consumers already have a variety of professional repair options through authorized repair networks. These networks, which include local and small businesses, continue to expand in response to the increased need for repairs. Manufacturers should be able to require repair providers to receive appropriate training and possess the qualifications to ensure repairs are conducted properly and safely. For example, due to the high energy density and flammable characteristics of lithium ion batteries, many jurisdictions have adopted laws restricting the use, storage, and transport of batteries. Installing a battery may require special knowledge and training to understanding the safety features of the battery, and compromising those safety features may lead to battery failures or a thermal runaway event. Even with the correct tools, consumers and independent repair providers have limited knowledge of these sophisticated safety features. This bill would provide unvetted third parties with sensitive diagnostic information, software, tools, and parts, without imposing the consumer protections typically afforded through authorized repair networks, such as quality and safety assurances.

Many diagnostic programs are developed at significant cost to manufacturers and are confidential or licensed under contractual arrangements. The protection of intellectual property is a legitimate and important aspect of sustaining any industry. This bill would require manufacturers to grant access to those programs without the protections afforded by an authorized repair relationship.

**Persons Testifying:** (In support) Representative Mia Gregerson, prime sponsor; Andrew Villeneuve, Northwest Progressive Institute; Patrick Connor, National Federation of Independent Businesses; Laura Loe, Share The Cities Action Fund; Nicole Walter, Washington Public Interest Research Group; Tarah Wheeler, Red Queen Dynamics; Moji Igun, Zero Waste Washington; Sandy Hayes, North Shore School District; Mitch Kramer, FIXCO; Cheryl Roe, InterConnection; Kyle Wiens, iFixit; and Owen Rubel, bottledwind.com.

(Opposed) David Edmonson, TechNet; George Kerchner, the Portable Rechargeable Battery Association; Dustin Brighton, Repair Done Right Coalition; Lisa McCabe, CTIA; and Charlie Brown, Consumer Technology Association.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Consumer Protection & Business. Signed by 18 members: Representatives Ormsby, Chair; Bergquist,

Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier and Sullivan.

**Minority Report:** Do not pass. Signed by 12 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Chandler, Dye, Hoff, Jacobsen, Rude, Schmick and Steele.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Harris and Tharinger.

**Staff:** Jessica Van Horne (786-7288).

### **Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Consumer Protection & Business:**

The second substitute bill adds a null and void clause, making the bill null and void unless funded in the operating budget.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Second Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

### **Staff Summary of Public Testimony:**

(In support) Access to digital devices is a key component of addressing the digital divide for low-income residents. Allowing for independent repair is good for device longevity and will reduce cost impacts for low-income individuals. Currently there is a high amount of waste as many residents throw devices away rather than repair them. By repairing rather than replacing devices, consumers could save money and reduce waste. For school districts, digital devices are now a core part of education. However, many districts do not have the funds to replace broken devices. More affordable repair options will help reduce costs for schools.

Under the current system, using an authorized repair shop is prohibitively expensive. It also privileges large technology corporations and gives them too much power. The right to repair would benefit small businesses by giving them access to certifications and tools. There is no evidence that the right to repair is riskier than going through an authorized repair shop. The bill also protects manufacturers' intellectual property. This policy is broadly popular among residents and repair advocates.

(Opposed) This bill would create a mandate for device manufacturers to provide unvetted third parties who lack expertise with sensitive information. It will undercut the business of authorized repair providers, who ensure repair is done right and that repairers have proper training to handle devices. Certain products, such as rechargeable lithium batteries, have unique design and safety concerns that could create a real health and safety risk to consumers and repairers if not handled properly. Consumers already have options for repairing their devices. The market is responding to consumer need and more authorized repair providers are now offering services. The Legislature should allow the market to work before enacting a prescriptive policy.

(Other) The Office of the Attorney General (AGO) would be the only entity that would conduct enforcement activity around this policy, which would create a new and significant violation of the Consumer Protection Act. The AGO will need resources in order to provide enforcement, which includes conducting litigation. A public right of action would lower the fiscal impact for the AGO.

**Persons Testifying:** (In support) Representative Mia Gregerson, prime sponsor; Andrew Villeneuve, Northwest Progressive Institute; Sandy Hayes, Washington State School Directors' Association and Northshore School District; Owen Rubel, BeAPI; and Nathan Proctor, Washington Public Interest Research Group and United States Public Interest Research Group.

(Opposed) David Edmonson, TechNet; Dustin Brighton, Repair Done Right Coalition; Lisa McCabe, Cellular Telecommunications and Internet Association; and George Kerchner, Portable Rechargeable Battery Association.

(Other) Amy Teng, Washington State Attorney General's Office.

**Persons Signed In To Testify But Not Testifying:** None.