H-1526.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SECOND SUBSTITUTE HOUSE BILL 1392**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 68th Legislature 2023 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Gregerson, Kretz, Ryu, Dent, Berry, Fitzgibbon, Reed, Ramel, Pollet, and Macri)

AN ACT Relating to promoting the fair servicing and repair of digital electronic equipment in a safe, secure, reliable, and sustainable manner to increase access to appropriate and affordable digital electronic equipment, 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.**  (1) The legislature finds that:

(a) Consumer access to affordable and reliable digital electronic equipment is essential to overcome digital inequities in Washington state and that broader distribution of the information and tools necessary to repair digital electronic equipment will shorten repair times, lengthen the useful lives of electronic equipment, and lower costs for consumers.

(b) The COVID-19 pandemic further highlighted the increased and ongoing need for access to digital electronic equipment as consumers increasingly rely on these products to conduct personal and professional business daily.

(c) The need for more accessible and affordable repair options is felt more acutely among specific sectors of the population, notably Washington residents in rural areas and people who earn low incomes. Original manufacturer shops or authorized repair providers are often located in urban areas requiring consumers to travel long distances for repair or being without equipment for periods of time.

(d) Small, independent businesses play a vital role in Washington's economy. Providing access to information, parts, and tools is essential in contributing to a competitive repair market, allowing small repair shop employees to repair equipment more safely.

(e) Certain electronic equipment are comprised of precious metals that are finite and unnecessary early disposal can be avoided with greater accessibility to proper and affordable repair.

(2) Therefore, the legislature intends to broaden access to the information and tools necessary to repair digital electronic equipment in a safe, secure, reliable, and sustainable manner, thereby increasing access to appropriate and affordable digital electronic equipment, 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 an individual or business that is unaffiliated with an original manufacturer and that has an arrangement with the original manufacturer to use the original manufacturer's trade name, service mark, or other proprietary identifier for the purpose of offering the services of diagnosis, maintenance, or repair of digital electronic equipment under the name of the original manufacturer, or that has an arrangement with the original manufacturer under which the individual or business offers the services of diagnosis, maintenance, or repair of digital electronic equipment on behalf of the original manufacturer.

(2) "Diagnosis" means the process of identifying the issue or issues that cause digital electronic equipment to not be in fully working order.

(3) "Digital electronic equipment" or "equipment" 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.

(4) "Documentation" means any manual, diagram, reporting output, service code description, schematic diagram, or similar kinds of information, or their equivalent, which is made available by an original manufacturer and intended exclusively for use in effecting the services of diagnosis, maintenance, or repair of digital electronic equipment.

(5) "Fair and reasonable terms" means making parts, tools, and documentation used in effecting the services of diagnosis, maintenance, or repair of digital electronic equipment available as follows:

(a) Parts for such equipment must be made available by the original manufacturer, either directly or through an authorized repair provider or authorized third-party provider, to independent repair providers and owners at reasonable costs and terms, and which:

(i) Are not conditioned on or imposing a substantial obligation or restriction that is not reasonably necessary for enabling the owner or independent repair provider to engage in the diagnosis, maintenance, or repair of digital electronic equipment made by or on behalf of the original manufacturer; and

(ii) Are not conditioned on an arrangement described in subsection (1) of this section.

(b) Tools for such equipment must be made available by the original manufacturer or authorized third-party provider:

(i) Without requiring authorization for use or operation of the tools;

(ii) Without imposing impediments to access or use of the tools to diagnose, maintain, or repair and enable full functionality of digital electronic equipment;

(iii) In a manner that does not impair the efficient and cost-effective performance of any such diagnosis, maintenance, or repair; and

(iv) At no charge, except for the reasonable, actual costs of preparing and sending tools that are requested in physical form.

(c) Documentation for such equipment must be made available by the original manufacturer or authorized third-party provider at no charge, except for the reasonable, actual costs of preparing and sending documentation that is requested in printed form.

(d) Parts, tools, and documentation for such equipment that are made available to an authorized repair provider shall further be made available by an authorized repair provider to any independent repair provider or owner, provided that such authorized repair provider is contractually and practically permitted by the original manufacturer to sell such parts, tools, and documentation to any independent repair provider or owner, and provided further that such original manufacturer shall not:

(i) Retaliate against or hinder the ability of any authorized repair provider to sell such parts, tools, or documentation through any means, including advertising restrictions or product allocation limitations unrelated to legitimate product shortages; or

(ii) Condition or impose a substantial obligation or restriction that is not reasonably necessary for enabling the owner or independent repair provider to engage in the diagnosis, maintenance, or repair of digital electronic equipment made by or on behalf of the original manufacturer.

(6) "Independent repair provider" means an individual or business that obtains and maintains a repair certification and engages in the services of diagnosis, maintenance, or repair of digital electronic equipment in this state without an arrangement with the original manufacturer of such equipment as described in subsection (1) of this section or an affiliation with an authorized repair provider for such equipment. "Independent repair provider" also means an original manufacturer or an original manufacturer's authorized repair provider that obtains and maintains a repair certification and engages in the services of diagnosis, maintenance, or repair of digital electronic equipment that is not manufactured by or on behalf of, sold by, or supplied by such original manufacturer.

(7) "Maintenance" means any act necessary to keep currently working digital electronic equipment in fully working order.

(8) "Modifications" or "modify" means any alteration to digital electronic equipment that is not maintenance or repair.

(9) "Original manufacturer" means an individual or business that, in the normal course of business, is engaged in the business of selling or leasing digital electronic equipment manufactured by or on behalf of itself.

(10) "Owner" means an individual or business that owns or leases digital electronic equipment purchased or leased in this state.

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

(12) "Repair" means any act needed to restore digital electronic equipment or equipment to fully working order.

(13) "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 equipment 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 manufacturer, and additional certifications established as eligible by the department of commerce.

(14) "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, maintenance, or repair of digital electronic equipment, including software or other mechanisms that provide, program, or pair a part, calibrate functionality, or perform any other function required to bring the equipment or part back to fully functional condition, including any updates.

(15) "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) Effective January 1, 2024, an original manufacturer of digital electronic equipment and parts for such equipment that are manufactured for the first time and first sold or leased in this state on or after July 1, 2023, shall make available to any independent repair provider and owner, on fair and reasonable terms, any parts, tools, and documentation required for the diagnosis, maintenance, or repair of such equipment and parts for such equipment. Such parts, tools, and documentation shall be made available either directly by the original manufacturer or via an authorized repair provider or authorized third-party provider. For equipment that contains an electronic security lock or other security-related function, the original manufacturer shall make available to any independent repair provider or owner, on fair and reasonable terms, any special parts, tools, and documentation needed to access and reset the lock or function when disabled in the course of diagnosis, maintenance, or repair of such equipment. Such parts, tools, and documentation may be made available through appropriate secure release systems.

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

(3) Any original manufacturer that sells any parts, tools, and documentation 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, maintenance, or repair documentation, is prohibited from requiring any authorized repair provider to continue purchasing diagnostic or repair documentation in a proprietary format, unless the proprietary format includes diagnostic, maintenance, or repair documentation or functionality that is not available in such a standardized format.

(4) Original manufacturer equipment or parts sold or leased in this state for the purpose of providing security-related functions may not exclude diagnostic, maintenance, and repair information necessary to reset a security-related electronic function from information provided to owners and independent repair providers. 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 providers through the appropriate secure data release systems.

NEW SECTION. **Sec.**  Before repairing digital electronic equipment, authorized repair providers and independent repair providers shall provide to any customer, publish on their website, or post at the place of business, a written notice that contains the following information:

(1) The steps taken by the authorized repair provider or the independent repair provider to ensure the privacy and security of devices entrusted for repair;

(2) Recommended steps for the customer to take to safeguard device data, including:

(a) If appropriate, backing up data prior to repair and wiping backed-up data from the device;

(b) Sharing only the passwords or access to functions necessary for the relevant repairs; and

(c) Logging out of applications or websites that contain sensitive data or that otherwise pose a security risk, such as electronic mail, banking, and social media accounts; and

(3)(a) A statement about the customer's legal right to privacy, which is protected under Article I, section 7 of the state Constitution and under Washington law, which protects against:

(i) Washington cybercrimes under chapter 9A.90 RCW, including electronic data theft, electronic data tampering, spoofing, and computer trespass;

(ii) The disclosing of intimate images under RCW 9A.86.010;

(iii) The criminal impersonation of another under RCW 9A.60.040; and

(iv) Identity crimes under chapter 9.35 RCW.

(b) Violations of privacy may be referred to law enforcement for criminal prosecution, and violators may be liable for damages, including mental pain and suffering, that a violation of privacy may have caused to a customer's business, person, or reputation.

NEW SECTION. **Sec.**  (1) Nothing in this chapter shall be construed to require an original manufacturer to divulge a trade secret or license any intellectual property to an owner or to an independent repair provider, except as necessary to provide parts, tools, and documentation on fair and reasonable terms.

(2) Nothing in this chapter shall be construed to alter the terms of any arrangement described in section 2(1) of this act 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 arrangement, except that any provision in such terms that purports to waive, avoid, restrict, or limit the original manufacturer's obligations to comply with this section shall be void and unenforceable.

(3) Nothing in this chapter shall be construed to require an original manufacturer or an authorized repair provider to provide to an owner or independent repair provider access to information, other than documentation, that is provided by the original manufacturer to an authorized repair provider pursuant to the terms of an arrangement described in section 2(1) of this act.

(4) Nothing in this chapter shall be construed to require an original manufacturer or authorized repair provider to make available any parts, tools, or documentation for the purposes of modifying or making modifications to any digital electronic equipment.

(5) Nothing in this chapter shall be construed to require an original manufacturer or authorized repair provider to make available any parts, tools, or documentation required for the diagnosis, maintenance, or repair of public safety communications equipment, the intended use of which is for emergency response or prevention purposes by an emergency service organization such as a police, fire, or emergency medical services agency.

(6) Nothing in this chapter shall prevent an original manufacturer from offering parts, such as integrated batteries, to independent repair providers or owners preassembled with other parts rather than as individual components, provided that the preassembled parts that are provided to independent repair providers or owners are functionally equivalent to corresponding parts provided to authorized repair providers.

(7) Nothing in this chapter shall apply to manufacturers or distributors of a medical device as defined in the federal food, drug, and cosmetic act, Title 21 U.S.C. Sec. 301 et seq., a digital electronic product or embedded software manufactured for use in a medical setting, including diagnostic, monitoring, or control equipment, or any product or service that a manufacturer or distributor of medical devices offers.

NEW SECTION. **Sec.**  (1) Original manufacturers and authorized repair providers shall not be liable for services performed by independent repair providers, including damage to digital electronic equipment that occurs 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 equipment resulting from diagnosis, maintenance, repair, or modification.

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

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, 2023, in the omnibus appropriations act, this act is null and void.

**--- END ---**