
**Consumer Protection & Business
Committee**

HB 1392

Brief Description: Promoting the fair servicing and repair of digital electronic equipment.

Sponsors: Representatives Gregerson, Kretz, Ryu, Dent, Berry, Fitzgibbon, Reed, Ramel, Pollet and Macri.

Brief Summary of Bill

- Requires manufacturers of digital electronic equipment to make available to independent repair providers (IRPs) certain parts, tools, and documentation on fair and reasonable terms for the diagnosis, maintenance, and repair of digital electronic equipment.
- Contains certain exceptions for when parts, tools, and documentation do not have to be made available to IRPs.
- Makes a violation of the Fair Repair Act a violation of the Consumer Protection Act and enforceable only by the Attorney General.

Hearing Date: 2/1/23

Staff: Megan Mulvihill (786-7304).

Background:

Modern digital electronic equipment often has technology, such as microprocessors, that has become harder for consumers to fix and maintain because of specialized tools, difficult-to-obtain parts, and access to proprietary diagnostic software. Manufacturers generally have control over repairs by restricting access to information, components, and tools necessary to diagnose, service, and repair their products, such as with application of patent rights, enforcement of

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trademarks, software locks, firmware updates, and end user license agreements. 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.

The Magnuson-Moss Warranty Act (Act) is enforced by the Federal Trade Commission (Commission) and was passed in 1975 to clarify how written warranties may be used when marketing products to consumers. The Act has an anti-tying provision which prohibits manufacturers from using access to warranty coverage as a way of obstructing consumers' ability to have their products maintained or repaired using third-party replacement parts and independent repair shops. Manufacturers may seek a waiver from the Commission from the prohibition if: (1) the warrantor satisfies with the Commission that the manufacturer's parts or services are necessary for the product to function; and (2) the waiver is in the public interest.

Summary of Bill:

Fair Repair Act.

Definitions.

"Digital electronic equipment" includes desktop computers, laptop computers, tablet computers, cell phones, or smart phones containing a microprocessor and originally manufactured for distribution and sale in the United States for general consumer purchase.

"Original Manufacturer" (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.

"Authorized Repair Provider" (ARP) is an individual or business that:

- is unaffiliated with a manufacturer and has an arrangement with the manufacturer to use the 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 manufacturer's name;
- has an arrangement with the manufacturer under which the individual or business offers the services of diagnosis, maintenance, or repair of digital electronic equipment on behalf of the manufacturer; or
- is a manufacturer that offers the services of diagnosis, maintenance, or repair of digital electronic equipment manufactured by or on behalf of, sold by, or supplied by the manufacturer, provided that the manufacturer does not have an arrangement with an unaffiliated individual or business.

"Independent Repair Provider" (IRP) 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 Washington without an arrangement with the manufacturer or an affiliation with an ARP. An IRP also means a manufacturer or the manufacturer's ARP 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 manufacturer.

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

- Parts for equipment must be made available by the manufacturer to the IRP at costs and terms that are equivalent to the most favorable costs and terms under which the manufacturer offers the parts to an ARP, and which: (1) account for any discount, rebate, convenient, and timely means of delivery; means of enabling fully restored and updated functionality, rights of use, or other incentive or preference the manufacturer offers to an ARP; or any additional cost, burden or impediment the manufacturer imposes on an IRP; (2) are not conditioned on or imposing a substantial obligation or restriction that is not reasonably necessary for enabling the IRP to engage in the diagnosis, maintenance, or repair of digital electronic equipment made by or on behalf of the manufacturer; and (3) are not conditioned on an ARP arrangement.
- Tools for equipment must be made available by the manufacturer: (1) without requiring authorization or internet access for use or operation of the tools; (2) without imposing impediments to access or use of the tool to diagnose, maintain, or repair and enable full functionality of digital electronic equipment; (3) in a manner that does not impair the efficient and cost-effective performance of any such diagnosis, maintenance, or repair; and (4) at no charge, except for the reasonable, actual costs of preparing and sending tools that are requested in physical form.
- Documentation for such equipment must be made available by the manufacturer at no charge, except for the reasonable, actual costs of preparing and sending documentation that is requested in printed form.
- Parts, tools, and documentation for equipment must be made available to an ARP, and must further be made available by an ARP to any IRP, provided that such ARP is contractually and practically permitted by the manufacturer to sell such parts, tools, and documentation to any IRP, and the manufacturer must not: (1) retaliate against or hinder the ability of any ARP to sell such parts, tools, or documentation through any means, including advertising restrictions or product allocation limitations unrelated to legitimate product shortages; or (2) condition or impose a substantial obligation or restriction that is not reasonably necessary for enabling the IRP to engage in the diagnosis, maintenance, or repair of digital electronic equipment made by or on behalf of the manufacturer.

The following terms are also defined: diagnosis, documentation, maintenance, modifications, owner, part, repair, repair certification, tool, and trade secret.

Requirement.

Beginning January 1, 2024, a manufacturer of digital electronic equipment and parts must make available to IRPs, on fair and reasonable terms, any parts, tools, and documentation required for the diagnosis, maintenance, or repair of such equipment and its parts. The parts, tools, and documentation may be made available either directly from the manufacturer or from an ARP.

Any parts, tools, and documentation the manufacturer makes available for its own ARP must be made available for purchase by an IRP.

Security-Related Functions.

For equipment with a security lock or security-related function, the manufacturer must make available any special parts, tools, and documentation needed to access and reset the lock or function when disabled during diagnosis, maintenance, or repair. Manufacturer equipment or parts sold or used 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 the information that is provided to IRPs. If excluded from this requirement, the information necessary to reset an immobilizer system or security-related electronic module may be obtained by IRPs through the appropriate secure data release systems.

Standardized and Proprietary Formats.

When a manufacturer sells any parts, tools, or documentation to any IRP in a standardized format and on more favorable terms than which the ARP obtained the same diagnostic, maintenance, or repair documentation, the manufacturer is prohibited from requiring ARPs to continue purchasing documentation in a proprietary format, unless the proprietary format includes documentation or functionality that is not available in a standardized format.

Not Liable for Repairs or Functionality.

Manufacturers and ARPs are not liable for services performed by IRPs, and manufacturers do not warrant services provided by IRPs. In addition, while manufacturers must offer tools upon fair and reasonable terms, the manufacturer is not responsible for the content and functionality of such tools.

Enforcement.

Violations of the Fair Repair Act are deemed to affect public interest and constitute an unfair or deceptive act in trade or commerce for purposes of the Consumer Protection Act. Violations are only enforceable by the Attorney General.

Fair Repair Act Exceptions.

- A manufacturer is not required to sell service parts if the service parts are no longer available to the ARP of the manufacturer.
- A manufacturer is not required to divulge trade secrets, except as necessary to provide parts, tools, and documentation on fair and reasonable terms.
- The Fair Repair Act is not intended to alter an agreement between a manufacturer and an ARP.
- A manufacturer or an ARP are not required to provide an IRP access to information, other than documentation, that is provided by the manufacturer to the ARP pursuant to their agreement.
- A manufacturer does not need to make parts, tools, and documentation available for the purpose of making modifications to digital electronic equipment.
- The Fair Repair Act requirements do not apply to public safety communications equipment

which is intended for emergency response or prevention purposes by an emergency service organization.

Appropriation: None.

Fiscal Note: Available.

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