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**SUBSTITUTE HOUSE BILL 1810**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** House Consumer Protection & Business (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)

READ FIRST TIME 01/21/22.

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

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

8 NEW SECTION. **Sec. 1.** The legislature finds that access to  
9 appropriate and affordable digital electronic products is necessary  
10 to overcome digital inequities in Washington state and that broader  
11 distribution of the information and tools necessary to repair digital  
12 electronic products will shorten repair times and lower costs for  
13 consumers.

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

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

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

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

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

23 NEW SECTION. **Sec. 2.** The definitions in this section apply  
24 throughout this chapter unless the context clearly requires  
25 otherwise.

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

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

36 (3) "Documentation" means any manual, diagram, reporting output,  
37 service code description, schematic, if applicable, or other guidance  
38 or information, or its equivalent, which is made available by an  
39 original manufacturer to an authorized repair provider and that is

1 intended for use in providing the services of diagnosis or repair of  
2 digital electronic equipment.

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

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

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

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

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

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

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

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

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

34 (h) Inflation.

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

38 (7) "Independent repair provider" means a person or business  
39 operating in this state that is not affiliated with an original  
40 manufacturer or an original manufacturer's authorized repair

1 provider, which is engaged in the diagnosis, service, maintenance, or  
2 repair of digital electronic products and which possesses a repair  
3 certification. However, for the purposes of this section, an original  
4 manufacturer may be considered an independent repair provider for  
5 purposes of those instances when such an original manufacturer  
6 engages in the diagnosis, service, maintenance, or repair of  
7 equipment that is not affiliated with the original manufacturer and  
8 obtains and maintains the required certification.

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

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

21 (b) Motor vehicle does not include:

22 (i) A motorcycle; or

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

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

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

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

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

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

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

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

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

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

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

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

38 (21) "Repair certification" means a valid and up to date  
39 certification issued by an appropriate third-party certification  
40 entity, which certifies that the repair provider possesses the

1 technical competence and financial assurance necessary for the  
2 performance of safe, secure, and reliable repair of digital  
3 electronic products to which the certification applies. Eligible  
4 certifications include CompTIA's A+ certification, CTIA's wireless  
5 industry service excellence certification, additional certifications  
6 deemed eligible by the original equipment manufacturer, and  
7 additional certifications established as eligible by the department  
8 of commerce.

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

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

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

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

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

35 (27) "Trade secret" means anything tangible or intangible or  
36 electronically stored or kept that constitutes, represents,  
37 evidences, or records intellectual property, including secret or  
38 confidentially held designs, processes, procedures, formulas,  
39 inventions, or improvements, or secret or confidentially held  
40 scientific, technical, merchandising, production, financial,

1 business, or management information, or any other trade secret as  
2 defined in 18 U.S.C. Sec. 1839, as that section existed on January 1,  
3 2017.

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

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

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

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

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

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

37 (b) Each original manufacturer must offer tools for sale to  
38 independent repair providers upon fair and reasonable terms. Each  
39 original manufacturer that provides tools has fully satisfied its

1 obligations under this section and thereafter is not responsible for  
2 the content and functionality of such tools.

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

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

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

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

31 NEW SECTION. **Sec. 5.** (1) Original manufacturers shall not be  
32 liable for repairs provided by independent repair providers,  
33 including damage to digital electronic products that occur during  
34 repairs conducted by independent repair providers, including any  
35 indirect, incidental, special, or consequential damages; any loss of  
36 data, privacy, or profits; or any inability to use, or reduced  
37 functionality of the digital electronic products resulting from  
38 repair.

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

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

6 (2) Nothing in this chapter applies to:

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

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

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

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

34 NEW SECTION. **Sec. 7.** (1) The legislature finds that the  
35 practices covered by this chapter are matters vitally affecting the  
36 public interest for the purpose of applying the consumer protection  
37 act, chapter 19.86 RCW. A violation of this chapter is not reasonable  
38 in relation to the development and preservation of business and is an

1 unfair or deceptive act in trade or commerce and an unfair method of  
2 competition for the purpose of applying the consumer protection act,  
3 chapter 19.86 RCW.

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

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

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

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