

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1495

Chapter 98, Laws of 2011

62nd Legislature
2011 Regular Session

SALE OF PRODUCTS--STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY

EFFECTIVE DATE: 07/22/11

Passed by the House April 5, 2011
Yeas 85 Nays 11

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 4, 2011
Yeas 39 Nays 8

BRAD OWEN

President of the Senate

Approved April 18, 2011, 2:13 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1495** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

April 19, 2011

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1495

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By House Judiciary (originally sponsored by Representatives Eddy, Rodne, Kirby, Armstrong, Hunter, Hinkle, Chandler, Pettigrew, Carlyle, Springer, Maxwell, Anderson, Clibborn, Kelley, and Kenney)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to the unfair competition that occurs when stolen
2 or misappropriated information technology is used to manufacture
3 products sold or offered for sale in this state; adding a new chapter
4 to Title 19 RCW; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires otherwise.

8 (1) "Article or product" means any tangible article or product, but
9 excludes: (a) Any services sold, offered for sale, or made available
10 in this state, including free services and online services; (b) any
11 product subject to regulation by the United States food and drug
12 administration and that is primarily used for medical or medicinal
13 purposes; (c) food and beverages; and (d) restaurant services.

14 (2) "Copyrightable end product" means a work within the subject
15 matter of copyright as specified in section 102 of Title 17, United
16 States Code, and which for the purposes of this chapter includes mask
17 works protection as specified in section 902 of Title 17, United States
18 Code.

1 (3) "Essential component" means a component of an article or
2 product provided or to be provided to a third party pursuant to a
3 contract, including a purchase order, without which the article or
4 product will not perform as intended and for which there is no
5 substitute component available that offers a comparable range and
6 quality of functionalities and is available in comparable quantities
7 and at a comparable price.

8 (4) "Manufacture" means to directly manufacture, produce, or
9 assemble an article or product subject to section 2 of this act, in
10 whole or substantial part, but does not include contracting with or
11 otherwise engaging another person, or that person engaging another
12 person, to develop, manufacture, produce, or assemble an article or
13 product subject to section 2 of this act.

14 (5) "Material competitive injury" means at least a three percent
15 retail price difference between the article or product made in
16 violation of section 2 of this act designed to harm competition and a
17 directly competing article or product that was manufactured without the
18 use of stolen or misappropriated information technology, with such a
19 price difference occurring over a four-month period of time.

20 (6) "Retail price" means the retail price of stolen or
21 misappropriated information technology charged at the time of, and in
22 the jurisdiction where, the alleged theft or misappropriation occurred,
23 multiplied by the number of stolen or misappropriated items used in the
24 business operations of the person alleged to have violated section 2 of
25 this act.

26 (7)(a) "Stolen or misappropriated information technology" means
27 hardware or software that the person referred to in section 2 of this
28 act acquired, appropriated, or used without the authorization of the
29 owner of the information technology or the owner's authorized licensee
30 in violation of applicable law, but does not include situations in
31 which the hardware or software alleged to have been stolen or
32 misappropriated was not available for retail purchase on a stand-alone
33 basis at or before the time it was acquired, appropriated, or used by
34 such a person.

35 (b) Information technology is considered to be used in a person's
36 business operations if the person uses the technology in the
37 manufacture, distribution, marketing, or sales of the articles or
38 products subject to section 2 of this act.

1 NEW SECTION. **Sec. 2.** Any person who manufactures an article or
2 product while using stolen or misappropriated information technology in
3 its business operations after notice and opportunity to cure as
4 provided in section 5 of this act and, with respect to remedies sought
5 under section 6(6) or 7 of this act, causes a material competitive
6 injury as a result of such use of stolen or misappropriated information
7 technology, is deemed to engage in an unfair act where such an article
8 or product is sold or offered for sale in this state, either separately
9 or as a component of another article or product, and in competition
10 with an article or product sold or offered for sale in this state that
11 was manufactured without violating this section. A person who engages
12 in such an unfair act, and any articles or products manufactured by the
13 person in violation of this section, is subject to the liabilities and
14 remedial provisions of this chapter in an action by the attorney
15 general or any person described in section 6(5) of this act, except as
16 provided in sections 3 through 9 of this act.

17 NEW SECTION. **Sec. 3.** No action may be brought under this chapter,
18 and no liability results, where:

19 (1) The end article or end product sold or offered for sale in this
20 state and alleged to violate section 2 of this act is:

21 (a) A copyrightable end product;

22 (b) Merchandise manufactured by or on behalf of, or pursuant to a
23 license from, a copyright owner and which displays or embodies a name,
24 character, artwork, or other indicia of or from a work that falls
25 within (a) of this subsection, or merchandise manufactured by or on
26 behalf of, or pursuant to a license from, a copyright or trademark
27 owner and that displays or embodies a name, character, artwork, or
28 other indicia of or from a theme park, theme park attraction, or other
29 facility associated with a theme park; or

30 (c) Packaging, carrier media, or promotional or advertising
31 materials for any end article, end product, or merchandise that falls
32 within (a) or (b) of this subsection;

33 (2) The allegation that the information technology is stolen or
34 misappropriated is based on a claim that the information technology or
35 its use infringes a patent or misappropriates a trade secret under
36 applicable law or that could be brought under any provision of Title 35
37 of the United States Code;

1 (3) The allegation that the information technology is stolen or
2 misappropriated is based on a claim that the defendant's use of the
3 information technology violates the terms of a license that allows
4 users to modify and redistribute any source code associated with the
5 technology free of charge; or

6 (4) The allegation is based on a claim that the person violated
7 section 2 of this act by aiding, abetting, facilitating, or assisting
8 someone else to acquire, appropriate, use, sell, or offer to sell, or
9 by providing someone else with access to, information technology
10 without authorization of the owner of the information technology or the
11 owner's authorized licensee in violation of applicable law.

12 NEW SECTION. **Sec. 4.** No injunction may issue against a person
13 other than the person adjudicated to have violated section 2 of this
14 act, and no attachment order may issue against articles or products
15 other than articles or products in which the person alleged to violate
16 section 2 of this act holds title. A person other than the person
17 alleged to violate section 2 of this act includes any person other than
18 the actual manufacturer who contracts with or otherwise engages another
19 person to develop, manufacture, produce, market, distribute, advertise,
20 or assemble an article or product alleged to violate section 2 of this
21 act.

22 NEW SECTION. **Sec. 5.** (1) No action may be brought under section
23 2 of this act unless the person subject to section 2 of this act
24 received written notice of the alleged use of the stolen or
25 misappropriated information technology from the owner or exclusive
26 licensee of the information technology or the owner's agent and the
27 person: (a) Failed to establish that its use of the information
28 technology in question did not violate section 2 of this act; or (b)
29 failed, within ninety days after receiving such a notice, to cease use
30 of the owner's stolen or misappropriated information technology.
31 However, if the person commences and thereafter proceeds diligently to
32 replace the information technology with information technology whose
33 use would not violate section 2 of this act, such a period must be
34 extended for an additional period of ninety days, not to exceed one
35 hundred eighty days total. The information technology owner or the
36 owner's agent may extend any period described in this section.

1 (2) To satisfy the requirements of this section, written notice
2 must, under penalty of perjury: (a) Identify the stolen or
3 misappropriated information technology; (b) identify the lawful owner
4 or exclusive licensee of the information technology; (c) identify the
5 applicable law the person is alleged to be violating and state that the
6 notifier has a reasonable belief that the person has acquired,
7 appropriated, or used the information technology in question without
8 authorization of the owner of the information technology or the owner's
9 authorized licensee in violation of such applicable law; (d) to the
10 extent known by the notifier, state the manner in which the information
11 technology is being used by the defendant; (e) state the articles or
12 products to which the information technology relates; and (f) specify
13 the basis and the particular evidence upon which the notifier bases
14 such an allegation.

15 (3) The written notification must state, under penalty of perjury,
16 that, after a reasonable and good-faith investigation, the information
17 in the notice is accurate based on the notifier's reasonable knowledge,
18 information, and belief.

19 NEW SECTION. **Sec. 6.** (1) No earlier than ninety days after the
20 provision of notice in accordance with section 5 of this act, the
21 attorney general, or any person described in subsection (5) of this
22 section, may bring an action against any person that is subject to
23 section 2 of this act:

24 (a) To enjoin violation of section 2 of this act, including by
25 enjoining the person from selling or offering to sell in this state
26 articles or products that are subject to section 2 of this act, except
27 as provided in subsection (6) of this section. However, such an
28 injunction does not encompass articles or products to be provided to a
29 third party that establishes that such a third party has satisfied one
30 or more of the affirmative defenses set forth in section 8(1) of this
31 act with respect to the manufacturer alleged to have violated section
32 2 of this act;

33 (b) Only after a determination by the court that the person has
34 violated section 2 of this act, to recover the greater of:

35 (i) Actual direct damages, which may be imposed only against the
36 person who violated section 2 of this act; or

1 (ii) Statutory damages of no more than the retail price of the
2 stolen or misappropriated information technology, which may be imposed
3 only against the person who violated section 2 of this act; or

4 (c) In the event the person alleged to have violated section 2 of
5 this act has been subject to a final judgment or has entered into a
6 final settlement, or any products manufactured by such a person and
7 alleged to violate section 2 of this act have been the subject of an
8 injunction or attachment order, in any federal or state court in this
9 state or any other state, arising out of the same theft or
10 misappropriation of information technology, the court shall dismiss the
11 action with prejudice. If such a person is a defendant in an ongoing
12 action, or any products manufactured by such a person and alleged to
13 violate section 2 of this act are the subject of an ongoing injunction
14 or attachment order, in any federal or state court in this state or any
15 other state, arising out of the same theft or misappropriation of
16 information technology, the court shall stay the action against such a
17 person pending resolution of the other action. In the event the other
18 action results in a final judgment or final settlement, the court shall
19 dismiss the action with prejudice against the person. Dismissals under
20 this subsection are res judicata to actions filed against the person
21 alleged to have violated section 2 of this act arising out of the same
22 theft or misappropriation of information technology.

23 (2) After determination by the court that a person has violated
24 section 2 of this act and entry of a judgment against the person for
25 violating section 2 of this act, the attorney general, or a person
26 described in subsection (5) of this section, may add to the action a
27 claim for actual direct damages against a third party who sells or
28 offers to sell in this state products made by that person in violation
29 of section 2 of this act, subject to the provisions of section 8 of
30 this act. However, damages may be imposed against a third party only
31 if:

32 (a) The third party's agent for service of process was properly
33 served with a copy of a written notice sent to the person alleged to
34 have violated section 2 of this act that satisfies the requirements of
35 section 5 of this act at least ninety days prior to the entry of the
36 judgment;

37 (b) The person who violated section 2 of this act did not make an

1 appearance or does not have sufficient attachable assets to satisfy a
2 judgment against the person;

3 (c) Such a person either manufactured the final product or produced
4 a component equal to thirty percent or more of the value of the final
5 product;

6 (d) Such a person has a direct contractual relationship with the
7 third party respecting the manufacture of the final product or
8 component; and

9 (e) The third party has not been subject to a final judgment or
10 entered into a final settlement in any federal or state court in this
11 state or any other state arising out of the same theft or
12 misappropriation of information technology. However, in the event the
13 third party is a party to an ongoing suit for damages, or has entered
14 an appearance as an interested third party in proceedings in rem, in
15 any federal or state court in this state or any other state arising out
16 of the same theft or misappropriation of information technology, the
17 court shall stay the action against the third party pending resolution
18 of the other action. In the event the other action results in a final
19 judgment, the court shall dismiss the action with prejudice against the
20 third party and dismiss any in rem action as to any articles or
21 products manufactured for such a third party or that have been or are
22 to be supplied to such a third party. Dismissals under this subsection
23 are res judicata to actions filed against the person alleged to have
24 violated section 2 of this act arising out of the same theft or
25 misappropriation of information technology.

26 (3) An award of damages against such a third party pursuant to
27 subsection (2) of this section must be the lesser of the retail price
28 of the stolen or misappropriated information technology at issue or two
29 hundred fifty thousand dollars, less any amounts recovered from the
30 person adjudicated to have violated section 2 of this act, and
31 subsection (4)(a) of this section does not apply to such an award or
32 recovery against the third party.

33 (4) In an action under this chapter, a court may:

34 (a) Against the person adjudicated to have violated section 2 of
35 this act, increase the damages up to three times the damages authorized
36 by subsection (1)(b) of this section where the court finds that the
37 person's use of the stolen or misappropriated information technology
38 was willful;

1 (b) With respect to an award under subsection (1) of this section
2 only, award costs and reasonable attorneys' fees to: (i) A prevailing
3 plaintiff in actions brought by an injured person under section 2 of
4 this act; or (ii) a prevailing defendant in actions brought by an
5 allegedly injured person; and

6 (c) With respect to an action under subsection (2) of this section
7 brought by a private plaintiff only, award costs and reasonable
8 attorneys' fees to a third party for all litigation expenses
9 (including, without limitation, discovery expenses) incurred by that
10 party if it prevails on the requirement set forth in subsection (2)(c)
11 of this section or who qualifies for an affirmative defense under
12 section 8 of this act. However, in a case in which the third party
13 received a copy of the notification described in subsection (2)(a) of
14 this section at least ninety days before the filing of the action under
15 subsection (2) of this section, with respect to a third party's
16 reliance on the affirmative defenses set forth in section 8(1) (c) and
17 (d) of this act, the court may award costs and reasonable attorneys'
18 fees only if all of the conduct on which the affirmative defense is
19 based was undertaken by the third party, and the third party notified
20 the plaintiff of the conduct, prior to the end of the ninety- day
21 period.

22 (5) A person is deemed to have been injured by the sale or offer
23 for sale of a directly competing article or product subject to section
24 2 of this act if the person establishes by a preponderance of the
25 evidence that:

26 (a) The person manufactures articles or products that are sold or
27 offered for sale in this state in direct competition with articles or
28 products that are subject to section 2 of this act;

29 (b) The person's articles or products were not manufactured using
30 stolen or misappropriated information technology of the owner of the
31 information technology;

32 (c) The person suffered economic harm, which may be shown by
33 evidence that the retail price of the stolen or misappropriated
34 information technology was twenty thousand dollars or more; and

35 (d) If the person is proceeding in rem or seeks injunctive relief,
36 that the person suffered material competitive injury as a result of the
37 violation of section 2 of this act.

1 (6)(a) If the court determines that a person found to have violated
2 section 2 of this act lacks sufficient attachable assets in this state
3 to satisfy a judgment rendered against it, the court may enjoin the
4 sale or offering for sale in this state of any articles or products
5 subject to section 2 of this act, except as provided in section 4 of
6 this act.

7 (b) To the extent that an article or product subject to section 2
8 of this act is an essential component of a third party's article or
9 product, the court shall deny injunctive relief as to such an essential
10 component, provided that the third party has undertaken good faith
11 efforts within the third party's rights under its applicable contract
12 with the manufacturer to direct the manufacturer of the essential
13 component to cease the theft or misappropriation of information
14 technology in violation of section 2 of this act, which may be
15 satisfied, without limitation, by the third party issuing a written
16 directive to the manufacturer demanding that it cease the theft or
17 misappropriation and demanding that the manufacturer provide the third
18 party with copies of invoices, purchase orders, licenses, or other
19 verification of lawful use of the information technology at issue.

20 (7) The court shall determine whether a cure period longer than the
21 period reflected in section 5 of this act would be reasonable given the
22 nature of the use of the information technology that is the subject of
23 the action and the time reasonably necessary either to bring such use
24 into compliance with applicable law or to replace the information
25 technology with information technology that would not violate section
26 2 of this act. If the court deems that a longer cure period would be
27 reasonable, then the action shall be stayed until the end of that
28 longer cure period. If by the end of that longer cure period, the
29 defendant has established that its use of the information technology in
30 question did not violate section 2 of this act, or the defendant ceased
31 use of the stolen or misappropriated information technology, then the
32 action must be dismissed.

33 NEW SECTION. **Sec. 7.** (1) In a case in which the court is unable
34 to obtain personal jurisdiction over a person subject to section 2 of
35 this act, the court may proceed in rem against any articles or products
36 subject to section 2 of this act sold or offered for sale in this state
37 in which the person alleged to have violated section 2 of this act

1 holds title. Except as provided in section 4 of this act and
2 subsection (2) through (4) of this section, all such articles or
3 products are subject to attachment at or after the time of filing a
4 complaint, regardless of the availability or amount of any monetary
5 judgment.

6 (2) At least ninety days prior to the enforcement of an attachment
7 order against articles or products pursuant to subsection (1) of this
8 section, the court shall notify any person in possession of the
9 articles or products of the pending attachment order. Prior to the
10 expiration of the ninety day period, any person for whom the articles
11 or products were manufactured, or to whom the articles or products have
12 been or are to be supplied, pursuant to an existing contract or
13 purchase order, may:

14 (a) Establish that the person has satisfied one or more of the
15 affirmative defenses set forth in section 8(1) of this act with respect
16 to the manufacturer alleged to have violated section 2 of this act, in
17 which case the attachment order must be dissolved only with respect to
18 those articles or products that were manufactured for such a person, or
19 have been or are to be supplied to such a person, pursuant to an
20 existing contract or purchase order; or

21 (b) Post a bond with the court equal to the retail price of the
22 allegedly stolen or misappropriated information technology or twenty-
23 five thousand dollars, whichever is less, in which case the court shall
24 stay enforcement of the attachment order against the articles or
25 products and shall proceed on the basis of its jurisdiction over the
26 bond. The person posting the bond shall recover the full amount of
27 such bond, plus interest, after the issuance of a final judgment.

28 (3) In the event the person posting the bond pursuant to subsection
29 (2)(b) of this section is entitled to claim an affirmative defense in
30 section 8 of this act, and that person establishes with the court that
31 the person is entitled to any affirmative defense, the court shall
32 award costs and reasonable attorneys' fees to the person posting the
33 bond and against the plaintiff in the event the plaintiff proceeds with
34 an action pursuant to section 6(2) of this act against the person
35 posting the bond.

36 (4) In the event that the court does not provide notification as
37 described in subsection (2) of this section, the court, upon motion of
38 any third party, shall stay the enforcement of the attachment order for

1 ninety days as to articles or products manufactured for the third
2 party, or that have been or are to be supplied to the third party,
3 pursuant to an existing contract or purchase order, during which ninety
4 day period the third party may avail itself of the options set forth in
5 subsection (2)(a) and (b) of this section.

6 NEW SECTION. **Sec. 8.** (1) A court may not award damages against
7 any third party pursuant to section 6(2) of this act where that party,
8 after having been afforded reasonable notice of at least ninety days by
9 proper service upon such a party's agent for service of process and
10 opportunity to plead any of the affirmative defenses set forth in this
11 subsection, establishes by a preponderance of the evidence any of the
12 following:

13 (a) Such a person is the end consumer or end user of an article or
14 product subject to section 2 of this act, or acquired the article or
15 product after its sale to an end consumer or end user;

16 (b) Such a person is a business with annual revenues not in excess
17 of fifty million dollars;

18 (c) The person acquired the articles or products:

19 (i) And had either: A code of conduct or other written document
20 governing the person's commercial relationships with the manufacturer
21 adjudicated to have violated section 2 of this act and which includes
22 commitments, such as general commitments to comply with applicable
23 laws, that prohibit use of the stolen or misappropriated information
24 technology by such manufacturer; or written assurances from the
25 manufacturer of the articles or products that the articles or products,
26 to the manufacturer's reasonable knowledge, were manufactured without
27 the use of stolen or misappropriated information technology in the
28 manufacturer's business operations. However, with respect to this
29 subsection (c)(i), within one hundred eighty days of receiving written
30 notice of the judgment against the manufacturer for a violation of
31 section 2 of this act and a copy of a written notice that satisfies the
32 requirements of section 5 of this act, the person must undertake
33 commercially reasonable efforts to do any of the following:

34 (A) Exchange written correspondence confirming that such a
35 manufacturer is not using the stolen or misappropriated information
36 technology in violation of section 2 of this act, which may be
37 satisfied, without limitation, by obtaining written assurances from the

1 manufacturer accompanied by copies of invoices, purchase orders,
2 licenses, or other verification of lawful use of the information
3 technology at issue;

4 (B) Direct the manufacturer to cease the theft or misappropriation,
5 which may be satisfied, without limitation, by the third party issuing
6 a written directive to the manufacturer demanding that it cease such
7 theft or misappropriation and demanding that the manufacturer provide
8 the third party with copies of invoices, purchase orders, licenses, or
9 other verification of lawful use of the information technology at
10 issue; and for purposes of clarification, the third party need take no
11 additional action to fully avail itself of this affirmative defense; or

12 (C) In a case in which the manufacturer has failed to cease such a
13 theft or misappropriation within the one hundred eighty-day period, and
14 the third party has not fulfilled either option (c)(i)(A) of this
15 subsection or option (c)(i)(B) of this subsection, cease the future
16 acquisition of the articles or products from the manufacturer during
17 the period that the manufacturer continues to engage in the theft or
18 misappropriation subject to section 2 of this act where doing so would
19 not constitute a breach of an agreement between the person and the
20 manufacturer for the manufacture of the articles or products in
21 question that was entered into on or before one hundred eighty days
22 after the effective date of this section; or

23 (ii) Pursuant to an agreement between the person and a manufacturer
24 for the manufacture of the articles or products in question that was
25 entered into before one hundred eighty days after the effective date of
26 this section. However, within one hundred eighty days of receiving
27 written notice of the judgment against the manufacturer for a violation
28 of section 2 of this act and a copy of a written notice that satisfies
29 the requirements of section 5 of this act, the person must undertake
30 commercially reasonable efforts to do any of the following:

31 (A) Obtain from the manufacturer written assurances that such a
32 manufacturer is not using the stolen or misappropriated information
33 technology in violation of section 2 of this act, which may be
34 satisfied, without limitation, by obtaining written assurances from the
35 manufacturer accompanied by copies of invoices, purchase orders,
36 licenses, or other verification of lawful use of the information
37 technology at issue;

1 (B) Direct the manufacturer to cease the theft or misappropriation,
2 which may be satisfied, without limitation, by the third party issuing
3 a written directive to the manufacturer demanding that it cease such
4 theft or misappropriation and demanding that the manufacturer provide
5 the third party with copies of invoices, purchase orders, licenses, or
6 other verification of lawful use of the information technology at
7 issue; and for purposes of clarification, the third party need take no
8 additional action to fully avail itself of this affirmative defense; or

9 (C) In a case in which the manufacturer has failed to cease the
10 theft or misappropriation within the one hundred eighty-day period, and
11 the third party has not fulfilled either option (c)(ii)(A) of this
12 subsection or option (c)(ii)(B) of this subsection, cease the future
13 acquisition of the articles or products from the manufacturer during
14 the period that the manufacturer continues to engage in the theft or
15 misappropriation subject to section 2 of this act where doing so would
16 not constitute a breach of such agreement;

17 (d) The person has made commercially reasonable efforts to
18 implement practices and procedures to require its direct manufacturers,
19 in manufacturing articles or products for such person, not to use
20 stolen or misappropriated information technology in violation of
21 section 2 of this act. A person may satisfy this subsection (1)(d) by:

22 (i) Adopting and undertaking commercially reasonable efforts to
23 implement a code of conduct or similar written requirements, which are
24 applicable to the person's direct manufacturers, that prohibit the use
25 of stolen or misappropriated information technology by such a
26 manufacturer, subject to a right of audit, and the person either: (A)
27 Has a practice of auditing its direct manufacturers on a periodic basis
28 in accordance with generally accepted industry standards; or (B)
29 requires in its agreements with its direct manufacturers that they
30 submit to audits by a third party, which may include a third-party
31 association of businesses representing the owner of the stolen or
32 misappropriated intellectual property, and further provides that a
33 failure to remedy any deficiencies found in such an audit that
34 constitute a violation of the applicable law of the jurisdiction where
35 the deficiency occurred constitutes a breach of the contract, subject
36 to cure within a reasonable period of time; or

37 (ii) Adopting and undertaking commercially reasonable efforts to
38 implement a code of conduct or similar written requirements, which are

1 applicable to the person's direct manufacturers, that prohibit use of
2 stolen or misappropriated information technology by such a
3 manufacturer, and the person undertakes practices and procedures to
4 address compliance with the prohibition against the use of the stolen
5 or misappropriated information technology in accordance with the
6 applicable code of conduct or written requirements; or

7 (e) The person does not have a contractual relationship with the
8 person alleged to have violated section 2 of this act respecting the
9 manufacture of the articles or products alleged to have been
10 manufactured in violation of section 2 of this act.

11 (2) A third party must have the opportunity to be heard regarding
12 whether an article or product is an essential component provided or to
13 be provided to a third party, and must have the right to file a motion
14 to dismiss any action brought against it under section 6(2) of this
15 act.

16 (3) The court may not enforce any award for damages against such a
17 third party until after the court has ruled on that party's claim of
18 eligibility for any of the affirmative defenses set out in this
19 section, and prior to such a ruling may allow discovery, in an action
20 under section 6(2) of this act, only on the particular defenses raised
21 by the third party.

22 (4) The court shall allow discovery against a third party on an
23 issue only after all discovery on that issue between the parties has
24 been completed and only if the evidence produced as a result of the
25 discovery does not resolve an issue of material dispute between the
26 parties.

27 (5) Any confidential or otherwise sensitive information submitted
28 by a party pursuant to this section is subject to a protective order.

29 NEW SECTION. **Sec. 9.** A court may not enforce an award of damages
30 against a third party pursuant to section 6(2) of this act for a period
31 of eighteen months from the effective date of this section.

32 NEW SECTION. **Sec. 10.** A violation of this chapter may not be
33 considered a violation of the state consumer protection act, and
34 chapter 19.86 RCW does not apply to this chapter. The remedies
35 provided under this chapter are the exclusive remedies for the parties.

1 NEW_SECTION. **Sec. 11.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW_SECTION. **Sec. 12.** Sections 1 through 10 of this act
6 constitute a new chapter in Title 19 RCW.

 Passed by the House April 5, 2011.

 Passed by the Senate April 4, 2011.

 Approved by the Governor April 18, 2011.

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