
**Consumer Protection & Business
Committee**

HB 1212

Brief Description: Promoting the fair servicing and repair of digital electronic products to increase access to appropriate and affordable digital products, support small businesses and jobs, and enhance digital connectivity in Washington state.

Sponsors: Representatives Gregerson, Taylor, Peterson, Kloba, Johnson, J., Davis, Ortiz-Self, Ormsby, Simmons, Chase, Shewmake, Bergquist, Sells, Callan, Riccelli, Macri, Ramel, Paul, Frame and Harris-Talley.

Brief Summary of Bill

- Requires original manufacturers of digital electronic products to: (1) make available to owners and independent repair providers certain information, equipment, parts, and tools on fair and reasonable terms, and meet other right-to-repair requirements; or (2) provide a training program and allow any licensed Washington business to obtain certification as a "manufacturer certified repair facility".
- Contains exceptions for trade secrets, motor vehicles, nonroad and stationary engines, and medical devices.
- Right-to-repair requirements are enforceable through the Consumer Protection Act and a civil penalty.

Hearing Date: 1/20/21

Staff: John Burzynski (786-7133).

Background:

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.

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 but are not limited to smartphones, electronic reading devices, appliances, laptop computers, and tablets.

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 to 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.

Summary of Bill:

Right-to-Repair Requirements.

Making Available Information, Equipment, Parts, and Tools.

Original manufacturers of digital electronic products sold on or after January 1, 2012, must make available to independent repair providers and owners the following information and equipment for digital electronic products that are at least five years past their manufacture date:

- the same diagnostic and repair information made available to authorized repair providers and facilities, for no charge or the same charge; and
- equipment or service parts, inclusive of updates, for purchase on fair and reasonable terms.

The original manufacturer is not required to sell equipment or service parts that are no longer available.

Original manufacturers of digital electronic products must make available for purchase by independent repair providers and owners all diagnostic repair tools incorporating 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 must offer diagnostic repair tools for sale to independent repair providers and owners on fair and reasonable terms.

Select Defined Terms.

"Original manufacturer" means a person or business who, in the ordinary course of its business, is engaged in the business of selling or leasing new digital electronic products to consumers or other end users, and is engaged in the diagnosis, service, maintenance, or repair of that product.

"Digital electronic product" means an electronic device containing a microprocessor originally manufactured for distribution and sale in the United States for general consumer purchase. Digital electronic products include but are not limited to smartphones, electronic reading

devices, appliances, laptop computers, and tablets.

"Fair and reasonable terms" means an equitable price in light of relevant factors including net costs, the price charged by other original manufacturers, affordability, means of distribution, extent of use, and inflation.

Information to Reset a Security-Related Electronic Function.

Information provided to owners and independent repair facilities regarding original manufacturer equipment or parts sold or used to provide security-related functions may not exclude diagnostic, service, and repair information necessary to reset a security-related electronic function.

If such information is excluded, it may be obtained by owners and independent repair facilities through a secure data release system.

No Responsibility for Content and Functionality.

An original manufacturer that provides diagnostic repair documentation to aftermarket diagnostic tools, diagnostics, or third-party service information publications and systems is deemed to have met the right-to-repair requirements and is not responsible for the content and functionality of those tools, diagnostics, publications, and systems.

Standardized and Proprietary Formats.

When an original manufacturer sells diagnostic, service, or repair documentation to independent repair providers or owners in a standardized format on terms more favorable than the original manufacturer sells the same documentation to authorized repair providers, the original manufacturer is prohibited from requiring authorized repair providers to continue purchasing documentation in a proprietary format, unless the proprietary format includes documentation or functionality not available in a standardized format.

Prohibition on Preventing Diagnostic or Repair Functions.

Original manufacturers of digital electronic products sold on or after January 1, 2023, are prohibited from designing or manufacturing digital electronic products to prevent reasonable diagnostic or repair functions by an independent repair provider.

Alternative Certification of Repair Facilities.

Instead of complying with the above right-to-repair provisions, original manufacturers of digital electronic products sold on or after January 1, 2023, may provide a training program and allow any licensed Washington business to obtain certification as a "manufacturer certified repair facility" in an open and fair certification process.

Right-to-Repair Limitations.

Original manufacturers are not required to divulge a trade secret.

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 right-to-repair requirements is unenforceable.

Original manufacturers and authorized repair providers are not required to provide owners or independent repair providers with access to nondiagnostic and repair information by an original manufacturer to an authorized repair provider pursuant to the terms of an authorizing agreement.

Motor Vehicle, Nonroad and Stationary Engine, and Medical Device Exceptions.

Right-to-repair requirements do not apply to motor vehicle manufacturers, any product or service of a motor vehicle manufacturer, or motor vehicle dealers.

Right-to-repair requirements do not apply to 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.

Right-to-repair requirements do not apply to 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.

Right-to-repair requirements do not apply to manufacturers or distributors of a medical device or a digital electronic product or software manufactured for use in a medical setting.

Enforcement.

Violations of the right-to-repair 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. Additionally, violations are subject to a \$500 civil penalty for each violation, payable to the State Treasury.

Appropriation: None.

Fiscal Note: Not requested.

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