

HOUSE BILL REPORT

HB 1342

As Reported by House Committee On:
Innovation, Technology & Economic Development

Title: An act relating to fair servicing and repair of digital electronic products.

Brief Description: Concerning the fair servicing and repair of digital electronic products.

Sponsors: Representatives Hudgins, Morris, Stanford, Kloba and Wylie.

Brief History:

Committee Activity:

Innovation, Technology & Economic Development: 2/5/19, 2/22/19 [DPS].

Brief Summary of Substitute Bill

- Requires digital electronic product manufacturers to make available certain information, parts, and tools related to independent repair.
- Prohibits digital electronic product manufacturers from requiring the purchase of proprietary information, excluding certain information, or preventing specified functions related to independent repair.
- Sets forth an alternative to the requirement to provide repair information and parts by allowing manufacturers to provide a training and certification program and by requiring manufacturers to have a certain minimum number of certified repair facilities.

HOUSE COMMITTEE ON INNOVATION, TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Hudgins, Chair; Kloba, Vice Chair; Smith, Ranking Minority Member; Morris, Slatter, Tarleton and Wylie.

Minority Report: Do not pass. Signed by 2 members: Representatives Boehnke, Assistant Ranking Minority Member; Van Werven.

Staff: Yelena Baker (786-7301).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Digital Electronic Products.

Consumer products increasingly include software that performs functions previously performed by mechanical components and enables additional product functions. The replacement of mechanical components with software affects the information and materials needed for repair of these products.

Laws Related to Unauthorized Use of Certain Information and Materials.

State law prohibits the manufacture of an article or product in competition with other articles or products while using stolen or misappropriated information technology.

A trade secret is information that derives independent economic value from not being known or readily accessible and that an owner takes reasonable steps to keep secret. Trade secrets are protected from misappropriation under state and federal laws.

Federal copyright law applies to original tangible works that express ideas, such as certain software. Copyright law does not apply to ideas, methods, or processes. An owner of a copyright for an original work has the exclusive rights to copy, distribute, and adapt that work.

The Digital Millennium Copyright Act makes it illegal to circumvent the access controls and technical protection measures that prevent copying or modification of most software-controlled products. Several exemptions exist, including the recently added exemptions that apply to owners or owner-designated third parties for circumvention necessary to allow the diagnosis, maintenance, or repair of lawfully acquired smart devices, home appliances, or home systems.

Consumer Protection Laws.

At the federal level, consumer rights are protected by several statutes, including the Magnuson-Moss Warranty Act of 1975, which largely prohibits companies from voiding a consumer's warranty or denying warranty coverage solely because the consumer allows an independent third party (not authorized by the company) to perform service on the product. A manufacturer's claim that creates a false impression that a warranty would be void due to the use of unauthorized parts or service may constitute a deceptive practice prohibited by the Federal Trade Commission Act of 1914.

The state Consumer Protection Act (CPA) prohibits unfair or deceptive acts or practices in trade or commerce. A private person or the Attorney General may bring a civil action to enforce the provisions of the CPA. A person or entity found to have violated the CPA may be subject to treble damages and attorney's fees.

Metropolitan and Micropolitan Statistical Areas.

The federal Office of Management and Budget delineates metropolitan and micropolitan statistical areas according to published standards that are applied to the United States Census Bureau data. The 2010 standards define a "metropolitan statistical area" as an area associated with at least one urbanized area that has a population of at least 50,000 people. A "micropolitan statistical area" is defined as an area associated with at least one urban cluster that has a population of at least 10,000, but less than 50,000 people.

Summary of Substitute Bill:

"Digital electronic product" is defined as an electronic device containing a microprocessor and originally manufactured for distribution and sale in the United States for general consumer purchase. Examples include smartphones, electronic reading devices, laptop computers, and tablets.

Obligations to Provide Repair Information and Tools.

For digital electronic products that are at least five years past their manufacture date, original digital electronic product manufacturers are required to make available:

- the same diagnostic and repair information to independent repair providers or the product owners as is made available to authorized repair providers;
- equipment or service parts for purchase by product owners, owners' agents, or independent repair providers; and
- diagnostic repair tools for purchase by product owners and independent repair providers with the same capabilities as are made available to the manufacturer's staff or authorized repair providers.

Equipment, service parts, and diagnostic repair tools made available for purchase must be offered on fair and reasonable terms. Original digital electronic product manufacturers are not required to sell equipment or service parts that are no longer available to the manufacturers.

Original digital electronic product manufacturers are prohibited from:

- requiring the purchase of repair-related documentation in a proprietary format in certain circumstances;
- designing or manufacturing products to prevent reasonable diagnostic or repair functions by independent repair providers; or
- excluding diagnostic, service, and repair information necessary to reset a security-related electronic function from information provided to product owners and independent repair providers.

Original digital electronic product manufacturers are not required to reveal trade secrets or to provide product owners and independent repair providers with nondiagnostic and repair information made available to authorized repair providers.

Training and Certification Program.

As an alternative to complying with the obligations to provide repair information and tools, original manufacturers of electronic products sold on or after January 1, 2021, are permitted to provide a training and certification program that would allow any licensed Washington business to get certified as a "manufacturer-certified repair facility" in an open and fair certification process.

Each manufacturer must have at least one manufacturer-certified repair facility for every metropolitan and micropolitan statistical area in Washington, as identified by the most recent United States Census Bureau statistics.

Exemptions.

The provisions above do not apply to the following:

- manufacturers, dealers, products, and services of:
 - motor vehicles;
 - nonroad engines, equipment, or vehicles; or
 - stationary engines, equipment, or vehicles; and
- manufacturers or distributors of medical devices, or of digital electronic products or embedded software manufactured for use in a medical setting.

Enforcement.

Violations of these provisions are enforceable under the Consumer Protection Act and subject to a civil penalty of \$500.

Substitute Bill Compared to Original Bill:

The substitute bill:

- modifies the definition of "digital electronic product" to include nonscreen and nonhandheld electronic products;
- provides the definition of "medical setting" in the provisions that exempt certain medical devices;
- extends the date after which original manufacturers of digital electronic products sold in Washington are prohibited from designing or manufacturing products in such a way as to prevent reasonable diagnostic or repair function by an independent repair provider;
- specifies that the requirement to provide certain repair information and parts applies to digital electronic products that are at least five years past their manufacture date; and
- sets forth an alternative to the requirement to provide repair information and parts by allowing manufacturers to provide a training and certification program and by requiring manufacturers to have a certain minimum number of certified repair facilities.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is based on Massachusetts' automotive Right to Repair law, which pushed manufacturers to apply the Massachusetts law nationwide. No safety issues have resulted from allowing independent repair of automobiles. Providing repair information is not the same as providing a blueprint for a device.

Companies intentionally make their products harder to repair, including designing the products to not be repairable. This costs consumers more money and generates more waste. Consumers frequently have to wait a long time for authorized repairs, and many consumers do not live within easy driving distance of an authorized repair provider. People who want to repair their own digital products find that it is impossible to get parts or replacement batteries, because original manufacturers do not supply parts to independent repair providers; the only option is to turn to shady suppliers.

Original manufacturers do not allow access to repair information. When expensive digital products break, sometimes a consumer's only option is to replace the product and pay more than the consumer would have paid for repairing the broken product. Manufacturers frequently require authorized repair centers to sell a certain amount of their products. An authorized repair provider may still not have access to the schematics necessary for repair and has to sell a consumer a new replacement at a much higher price.

There are social and economic benefits of reusing and repairing digital products. People with limited income are not able to buy new digital products. Without the ability to buy reliable parts to repair phones and laptops, the secondhand computer industry suffers and so do people who need access to low-cost refurbished electronics. Being able to refurbish a digital product can mean providing someone with access to the Internet, which is particularly important in rural areas. It does not make sense to not be able to repair and refurbish very expensive digital products that many people cannot afford to buy new. Refurbishing organizations ensure that all devices are handled safely and securely.

The scrap market is not as good as it used to be; many digital products end up being thrown away. About 80 percent of lifecycle energy is in the manufacturing of an electronic product and only 20 percent in its usage. Allowing people to keep their electronics longer would help with climate change and reduce waste, including toxic waste from heavy metals and toxic chemicals that are found in many electronic products.

(Opposed) This will open up devices to potential breaches that the industry does not control. Anyone can open a repair shop. The certified repair providers have the training and the contractual arrangement with the manufacturer to protect the proprietary data. This bill interferes with private contractual relationships. People who go to independent repair providers probably understand that they will not be provided with access to original manufacturer parts.

These devices are highly integrated and intended to be dismantled by trained professionals. Improper handling may lead to consumer safety issues. Providing product blueprints would make counterfeit products easier and faster to produce. Video game publishers rely on secure game consoles to prevent illegal copying of video games. Sharing sensitive diagnostic information and tools would compromise the security of video game platforms.

Persons Testifying: (In support) Representative Hudgins, prime sponsor; Kyle Wiens, iFixit; Nicole Spink, Olympia iPhone Repair; Charles Brennick, 3R Technology; Elise Orlick, Washington Public Interest Research Group; Daniel Bartholomew, Free Geek; Heather Trim, Zero Waste Washington; and Brian Engelhard, Phone Love.

(Opposed) Bob Battles, Association of Washington Business; Mike Hoover, TechNet; Tom McBride, Computing Technology Industry Association; Kathryn Gunter, Entertainment Software Association; and Charlie Brown, Consumer Technology Association.

Persons Signed In To Testify But Not Testifying: None.