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**HOUSE BILL 1212**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

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

Read first time 01/15/21. Referred to Committee on Consumer Protection & Business.

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

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

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

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

20 The legislature further finds that low-income and Black  
21 Washingtonians face disproportionate barriers to accessing internet

1 in their homes. Recent census household pulse survey data shows that  
2 a computer is rarely or never available for children's educational  
3 use in 59 percent of households experiencing poverty and 80 percent  
4 of Black households in Washington state. Also, electronic product  
5 manufacturer shops or licensed repair shops can often be in urban  
6 areas, requiring rural consumers to travel long distances for repair.

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

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

15 Therefore, the legislature intends to broaden access to the  
16 information and tools necessary to repair digital electronic  
17 products, thereby increasing access to appropriate and affordable  
18 digital electronic products, supporting small businesses and jobs,  
19 and making it easier for all residents of Washington state to connect  
20 digitally.

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

24 (1) "Authorized repair provider" means a person or business: (a)  
25 That has an arrangement for a definite or indefinite period with an  
26 original manufacturer in which the original manufacturer grants to a  
27 person or business a license to use a trade name, service mark, or  
28 related characteristic for the purposes of offering repair services  
29 under the name of the original manufacturer; or (b) retained by the  
30 original manufacturer to provide refurbishing services for the  
31 original manufacturer's product or products.

32 (2) "Digital electronic product" means an electronic device  
33 containing a microprocessor and originally manufactured for  
34 distribution and sale in the United States for general consumer  
35 purchase. Digital electronic product includes but is not limited to  
36 smartphones, electronic reading devices, appliances, laptop  
37 computers, and tablets.

38 (3) "Embedded software" means any programmable instructions  
39 provided on firmware delivered with the digital electronic product

1 for the purposes of product operation, including all relevant patches  
2 and fixes made by the original manufacturer for this purpose  
3 including, but not limited to, synonyms "basic internal operating  
4 system," "internal operating system," "machine code," "assembly  
5 code," "root code," and "microcode."

6 (4) "Fair and reasonable terms" means an equitable price in light  
7 of relevant factors including, but not limited to:

8 (a) The net cost to the authorized repair provider for similar  
9 information obtained from an original manufacturer, less any  
10 discounts, rebates, or other incentive programs;

11 (b) The cost to the original manufacturer for preparing and  
12 distributing the information, excluding any research and development  
13 costs incurred in designing and implementing, upgrading, or altering  
14 the product, but including amortized capital costs for the  
15 preparation and distribution of the information;

16 (c) The price charged by other original manufacturers for similar  
17 information;

18 (d) The price charged by original manufacturers for similar  
19 information prior to the launch of original manufacturer websites;

20 (e) The ability of aftermarket technicians or shops to afford the  
21 information;

22 (f) The means by which the information is distributed;

23 (g) The extent to which the information is used, which includes  
24 the number of users, and frequency, duration, and volume of use; and

25 (h) Inflation.

26 (5) "Firmware" means a software program or set of instructions  
27 programmed on a hardware device to allow the device to communicate  
28 with other computer hardware.

29 (6) "Independent repair provider" means a person or business  
30 operating in this state that is not affiliated with an original  
31 manufacturer or an original manufacturer's authorized repair  
32 provider, which is engaged in the diagnosis, service, maintenance, or  
33 repair of digital electronic products. However, for the purposes of  
34 this section, an original manufacturer is considered an independent  
35 repair provider for purposes of those instances when such an original  
36 manufacturer engages in the diagnosis, service, maintenance, or  
37 repair of equipment that is not affiliated with the original  
38 manufacturer.

39 (7) "Medical device" means an instrument, apparatus, implement,  
40 machine, contrivance, implant, or other similar or related article,

1 including a component part, or accessory, as defined in the federal  
2 food, drug, and cosmetic act (21 U.S.C. Sec. 321 (h)), as amended,  
3 that is intended for use in the diagnosis of disease or other  
4 conditions, or in the cure, mitigation, treatment, or prevention of  
5 disease, in man or other animals.

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

11 (b) Motor vehicle does not include:

12 (i) A motorcycle; or

13 (ii) A recreational vehicle or manufactured home equipped for  
14 habitation.

15 (9) "Motor vehicle dealer" means any person or business who, in  
16 the ordinary course of business, is engaged in the business of  
17 selling or leasing new motor vehicles to a person or business  
18 pursuant to a franchise agreement, who has obtained a license under  
19 the motor vehicle industry regulation act, and who is engaged in the  
20 diagnosis, service, maintenance, or repair of motor vehicles or motor  
21 vehicle engines pursuant to such a franchise agreement.

22 (10) "Motor vehicle manufacturer" means any person or business  
23 engaged in the business of manufacturing or assembling new motor  
24 vehicles.

25 (11) "Nonroad engine" means an internal combustion engine,  
26 including the fuel system, that is not: (a) Used in a motor vehicle  
27 or a vehicle used solely for competition; or (b) subject to the  
28 standards of performance for new stationary sources or the emission  
29 standards for new motor vehicles or new motor vehicle engines  
30 promulgated under the clean air act, 42 U.S.C. Secs. 7411, 7521.

31 (12) "Nonroad engine, nonroad equipment, or nonroad vehicle  
32 dealer" means any person who is engaged in the sale or the  
33 distribution of new nonroad engines, new nonroad equipment, or new  
34 nonroad vehicles to the ultimate purchaser.

35 (13) "Nonroad engine, nonroad equipment, or nonroad vehicle  
36 manufacturer" means any person engaged in the manufacturing or  
37 assembling of new nonroad engines, new nonroad equipment, or new  
38 nonroad vehicles, or importing such engines, equipment, or vehicles  
39 for resale, or who acts for and is under the control of any such  
40 person in connection with the distribution of new nonroad engines,

1 new nonroad equipment, or new nonroad vehicles, but does not include  
2 any dealer with respect to new nonroad engines, new nonroad  
3 equipment, or new nonroad vehicles received by the dealer in  
4 commerce.

5 (14) "Nonroad equipment" means equipment that is powered by a  
6 nonroad engine and that is not a motor vehicle, a vehicle used solely  
7 for competition, or a nonroad vehicle.

8 (15) "Nonroad vehicle" means a vehicle that is powered by a  
9 nonroad engine and that is not a motor vehicle or a vehicle used  
10 solely for competition.

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

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

18 (18) "Part" or "service part" means any replacement part, either  
19 new or used, made available by the original manufacturer to the  
20 authorized repair provider for purposes of effecting repair.

21 (19) "Remote diagnostic" means any remote data transfer function  
22 between a digital electronic product and the provider of repair  
23 services, including for the purposes of remote diagnostics, settings  
24 controls, or location identification.

25 (20) "Stationary engine" means an internal combustion engine that  
26 is not used in a motor vehicle, a vehicle used solely for  
27 competition, a nonroad vehicle, or nonroad equipment.

28 (21) "Stationary engine or stationary equipment dealer" means any  
29 person who is engaged in the sale or the distribution of new  
30 stationary engines or new stationary equipment to the ultimate  
31 purchaser.

32 (22) "Stationary engine or stationary equipment manufacturer"  
33 means any person engaged in the manufacturing or assembling of new  
34 stationary engines or new stationary equipment, or importing such  
35 engines or equipment for resale, or who acts for and is under the  
36 control of any such person in connection with the distribution of new  
37 stationary engines or new stationary equipment, but does not include  
38 any dealer with respect to new stationary engines or new stationary  
39 equipment received by the dealer in commerce.

1 (23) "Stationary equipment" means equipment that is powered by a  
2 stationary engine and that is not a motor vehicle, a vehicle used  
3 solely for competition, a nonroad vehicle, or nonroad equipment.

4 (24) "Trade secret" means anything tangible or intangible or  
5 electronically stored or kept that constitutes, represents,  
6 evidences, or records intellectual property, including secret or  
7 confidentially held designs, processes, procedures, formulas,  
8 inventions, or improvements, or secret or confidentially held  
9 scientific, technical, merchandising, production, financial,  
10 business, or management information, or any other trade secret as  
11 defined in 18 U.S.C. Sec. 1839, as that section existed on January 1,  
12 2017.

13 NEW SECTION. **Sec. 3.** (1) For digital electronic products that  
14 are at least five years past their manufacture date, original  
15 manufacturers of digital electronic products sold on or after January  
16 1, 2012, in Washington state must make available:

17 (a) To independent repair providers or owners of digital  
18 electronic products manufactured by the original manufacturer the  
19 same diagnostic and repair information, including repair technical  
20 updates, schematic diagrams, updates, corrections to embedded  
21 software, and safety and security patches timely, and for no charge  
22 or for the same charge and in the same format the original  
23 manufacturer makes available to its authorized repair provider and  
24 subcontract repair of refurbishment facilities; and

25 (b) For purchase by the owner, the owner's authorized agent, or  
26 independent repair provider, equipment or service parts, inclusive of  
27 any updates to the embedded software of the equipment or parts, upon  
28 fair and reasonable terms.

29 (2) Nothing in this section requires the original manufacturer to  
30 sell equipment or service parts if the parts are no longer available  
31 to the original manufacturer or the authorized repair provider of the  
32 original manufacturer.

33 (3) Any original manufacturer that sells any diagnostic, service,  
34 or repair documentation to any independent repair provider or to any  
35 owner in a format that is standardized with other original  
36 manufacturers, and on terms and conditions more favorable than the  
37 manner and the terms and conditions pursuant to which the authorized  
38 repair provider obtains the same diagnostic, service, or repair  
39 documentation, is prohibited from requiring any authorized repair

1 provider to continue purchasing diagnostic, service, or repair  
2 documentation in a proprietary format, unless the proprietary format  
3 includes diagnostic, service, or repair documentation or  
4 functionality that is not available in such a standardized format.

5 (4) (a) Each original manufacturer of digital electronic products  
6 sold or used in the state must make available for purchase by owners  
7 and independent repair providers all diagnostic repair tools  
8 incorporating the same diagnostic, repair, and remote diagnostic  
9 capabilities that the original manufacturer makes available to its  
10 own repair or engineering staff or any authorized repair provider.

11 (b) Each original manufacturer must offer such tools for sale to  
12 owners and independent repair providers upon fair and reasonable  
13 terms. Each original manufacturer that provides diagnostic repair  
14 documentation to aftermarket diagnostic tools, diagnostics, or third  
15 party service information publications and systems has fully  
16 satisfied its obligations under this section and thereafter is not  
17 responsible for the content and functionality of such aftermarket  
18 diagnostic tools, diagnostics, or service information systems.

19 (5) Original manufacturer equipment or parts sold or used in this  
20 state for the purpose of providing security-related functions may not  
21 exclude diagnostic, service, and repair information necessary to  
22 reset a security-related electronic function from information  
23 provided to owners and independent repair facilities. If excluded  
24 under this subsection, the information necessary to reset an  
25 immobilizer system or security-related electronic module may be  
26 obtained by owners and independent repair facilities through the  
27 appropriate secure data release systems.

28 (6) Original manufacturers of digital electronic products sold on  
29 or after January 1, 2023, in Washington state are prohibited from  
30 designing or manufacturing digital electronic products in such a way  
31 as to prevent reasonable diagnostic or repair functions by an  
32 independent repair provider.

33 (7) As an alternative to the obligations set forth in subsections  
34 (1) through (6) of this section, original manufacturers of digital  
35 electronic products sold on or after January 1, 2023, may provide a  
36 training program and allow any licensed Washington business to get  
37 certified as a "manufacturer certified repair facility" in an open  
38 and fair certification process.

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

4        (2) Notwithstanding any law or rule to the contrary, no provision  
5 in this section may be read, interpreted, or construed to abrogate,  
6 interfere with, contradict, or alter the terms of any agreement  
7 executed and in force between an authorized repair provider and an  
8 original manufacturer including, but not limited to, the performance  
9 or provision of warranty or recall repair work by an authorized  
10 repair provider on behalf of an original manufacturer pursuant to  
11 such an authorized repair agreement, except that any provision in  
12 such an authorized repair agreement that purports to waive, avoid,  
13 restrict, or limit an original manufacturer's compliance with this  
14 section is void and unenforceable.

15        (3) Nothing in this section may be construed to require original  
16 manufacturers or authorized repair providers to provide an owner or  
17 independent repair provider access to nondiagnostic and repair  
18 information by an original manufacturer to an authorized repair  
19 provider pursuant to the terms of an authorizing agreement.

20        NEW SECTION.        **Sec. 5.**        (1) Nothing in this section applies to  
21 motor vehicle manufacturers, any product or service of a motor  
22 vehicle manufacturer, or motor vehicle dealers.

23        (2) Nothing in this section applies to:

24        (a) Nonroad engine, nonroad equipment, or nonroad vehicle  
25 manufacturers, any product or service of a nonroad engine, nonroad  
26 equipment, or nonroad vehicle manufacturer, or nonroad engine,  
27 nonroad equipment, or nonroad vehicle dealers; or

28        (b) Stationary engine or stationary equipment manufacturers, any  
29 product or service of a stationary engine or stationary equipment  
30 manufacturer, or stationary engine or stationary equipment dealers.

31        (3)(a) Nothing in this section applies to manufacturers or  
32 distributors of a medical device as defined in the federal food,  
33 drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or a digital  
34 electronic product or software manufactured for use in a medical  
35 setting including diagnostic, monitoring, or control equipment or any  
36 product or service that they offer. For the purposes of this section,  
37 "medical setting" includes, but is not limited to, acute care  
38 hospitals, long-term care facilities, such as nursing homes or  
39 skilled nursing facilities, physicians' offices, urgent care centers,



1 outpatient clinics, home settings where health care is provided at  
2 home by or at the direction of licensed health care providers,  
3 emergency medical services, and specific sites within nonhealth care  
4 settings where health care is routinely delivered, such as a medical  
5 clinic embedded within a school.

6 (b) A digital electronic product otherwise subject to the  
7 provisions of this chapter is not considered a medical device or  
8 considered manufactured for use in a medical setting by virtue of its  
9 ability to be used in conjunction with a medical device or with a  
10 digital electronic product or software manufactured for use in a  
11 medical setting.

12 NEW SECTION. **Sec. 6.** (1) The legislature finds that the  
13 practices covered by this chapter are matters vitally affecting the  
14 public interest for the purpose of applying the consumer protection  
15 act, chapter 19.86 RCW. A violation of this chapter is not reasonable  
16 in relation to the development and preservation of business and is an  
17 unfair or deceptive act in trade or commerce and an unfair method of  
18 competition for the purpose of applying the consumer protection act,  
19 chapter 19.86 RCW.

20 (2) In addition to any other remedies provided by law, including  
21 under the consumer protection act, chapter 19.86 RCW, any original  
22 manufacturer that violates any provision of this chapter is subject  
23 to a civil penalty in the amount of five hundred dollars for each act  
24 in violation of this chapter. All penalties imposed under this  
25 section must be paid to the state treasury and credited to the  
26 general fund.

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

29 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act  
30 constitute a new chapter in Title 19 RCW.

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