

SUBSTITUTE HOUSE BILL 2279

State of Washington

65th Legislature

2018 Regular Session

By House Technology & Economic Development (originally sponsored by Representatives Morris, Cody, Hudgins, Santos, Smith, Lytton, Stanford, Young, Ormsby, Pollet, Doglio, and Gregerson)

1 AN ACT Relating to fair servicing and repair of digital
2 electronic products; adding a new chapter to Title 19 RCW; and
3 prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that digital
6 electronic product manufacturers are restricting fair servicing and
7 repair of their devices, to the detriment of consumers' access to
8 advanced electronics. The legislature intends to broaden access to
9 the information and tools necessary for repair of digital electronic
10 products, thereby reducing unnecessary early disposal of those
11 products, increasing consumer control over their own devices, and
12 supporting a competitive repair market and the increased availability
13 of remanufactured or repaired advanced electronics to create lower
14 cost entry points for consumers to own advanced electronics.

15 NEW SECTION. **Sec. 2.** The definitions in this section apply
16 throughout this chapter unless the context clearly requires
17 otherwise.

18 (1) "Authorized repair provider" means a person or business: (a)
19 That has an arrangement for a definite or indefinite period with an
20 original manufacturer in which the original manufacturer grants to a

1 person or business a license to use a trade name, service mark, or
2 related characteristic for the purposes of offering repair services
3 under the name of the original manufacturer; or (b) retained by the
4 original manufacturer to provide refurbishing services for the
5 original manufacturer's product or products.

6 (2) "Digital electronic product" means a handheld or portable
7 electronic device containing a microprocessor and flat panel computer
8 monitor originally manufactured for distribution and sale in the
9 United States for general consumer purchase. Digital electronic
10 product includes but is not limited to smartphones, electronic
11 reading devices, laptop computers, and tablets.

12 (3) "Embedded software" means any programmable instructions
13 provided on firmware delivered with the digital electronic product
14 for the purposes of product operation, including all relevant patches
15 and fixes made by the original manufacturer for this purpose
16 including, but not limited to, synonyms "basic internal operating
17 system," "internal operating system," "machine code," "assembly
18 code," "root code," and "microcode."

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

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

24 (b) The cost to the original manufacturer for preparing and
25 distributing the information, excluding any research and development
26 costs incurred in designing and implementing, upgrading, or altering
27 the product, but including amortized capital costs for the
28 preparation and distribution of the information;

29 (c) The price charged by other original manufacturers for similar
30 information;

31 (d) The price charged by original manufacturers for similar
32 information prior to the launch of original manufacturer web sites;

33 (e) The ability of aftermarket technicians or shops to afford the
34 information;

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

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

38 (h) Inflation.

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

4 (6) "Independent repair provider" means a person or business
5 operating in this state that is not affiliated with an original
6 manufacturer or an original manufacturer's authorized repair
7 provider, which is engaged in the diagnosis, service, maintenance, or
8 repair of digital electronic products. However, for the purposes of
9 this section, an original manufacturer is considered an independent
10 repair provider for purposes of those instances when such an original
11 manufacturer engages in the diagnosis, service, maintenance, or
12 repair of equipment that is not affiliated with the original
13 manufacturer.

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

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

26 (b) Motor vehicle does not include:

27 (i) A motorcycle; or

28 (ii) A recreational vehicle or manufactured home equipped for
29 habitation.

30 (9) "Motor vehicle dealer" means any person or business who, in
31 the ordinary course of business, is engaged in the business of
32 selling or leasing new motor vehicles to a person or business
33 pursuant to a franchise agreement, who has obtained a license under
34 the motor vehicle industry regulation act, and who is engaged in the
35 diagnosis, service, maintenance, or repair of motor vehicles or motor
36 vehicle engines pursuant to such a franchise agreement.

37 (10) "Motor vehicle manufacturer" means any person or business
38 engaged in the business of manufacturing or assembling new motor
39 vehicles.

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

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

10 (13) "Nonroad vehicle" means a vehicle that is powered by a
11 nonroad engine and that is not a motor vehicle or a vehicle used
12 solely for competition.

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

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

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

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

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

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

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

4 (21) "Stationary equipment" means equipment that is powered by a
5 stationary engine and that is not a motor vehicle, a vehicle used
6 solely for competition, a nonroad vehicle, or nonroad equipment.

7 (22) "Stationary engine or stationary equipment dealer" means any
8 person who is engaged in the sale or the distribution of new
9 stationary engines or new stationary equipment to the ultimate
10 purchaser.

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

19 (24) "Trade secret" means anything tangible or intangible or
20 electronically stored or kept that constitutes, represents,
21 evidences, or records intellectual property, including secret or
22 confidentially held designs, processes, procedures, formulas,
23 inventions, or improvements, or secret or confidentially held
24 scientific, technical, merchandising, production, financial,
25 business, or management information, or any other trade secret as
26 defined in 18 U.S.C. Sec. 1839, as that section existed on January 1,
27 2017.

28 NEW SECTION. **Sec. 3.** (1) Original manufacturers of digital
29 electronic products sold on or after January 1, 2012, in Washington
30 state must make available:

31 (a) To independent repair providers or owners of digital
32 electronic products manufactured by the original manufacturer the
33 same diagnostic and repair information, including repair technical
34 updates, schematic diagrams, updates, corrections to embedded
35 software, and safety and security patches timely, and for no charge
36 or for the same charge and in the same format the original
37 manufacturer makes available to its authorized repair provider and
38 subcontract repair of refurbishment facilities; and

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

5 (2) Nothing in this section requires the original manufacturer to
6 sell equipment or service parts if the parts are no longer available
7 to the original manufacturer or the authorized repair provider of the
8 original manufacturer.

9 (3) Any original manufacturer that sells any diagnostic, service,
10 or repair documentation to any independent repair provider or to any
11 owner in a format that is standardized with other original
12 manufacturers, and on terms and conditions more favorable than the
13 manner and the terms and conditions pursuant to which the authorized
14 repair provider obtains the same diagnostic, service, or repair
15 documentation, is prohibited from requiring any authorized repair
16 provider to continue purchasing diagnostic, service, or repair
17 documentation in a proprietary format, unless the proprietary format
18 includes diagnostic, service, or repair documentation or
19 functionality that is not available in such a standardized format.

20 (4)(a) Each original manufacturer of digital electronic products
21 sold or used in the state must make available for purchase by owners
22 and independent repair providers all diagnostic repair tools
23 incorporating the same diagnostic, repair, and remote diagnostic
24 capabilities that the original manufacturer makes available to its
25 own repair or engineering staff or any authorized repair provider.

26 (b) Each original manufacturer must offer such tools for sale to
27 owners and independent repair providers upon fair and reasonable
28 terms. Each original manufacturer that provides diagnostic repair
29 documentation to aftermarket diagnostic tools, diagnostics, or third
30 party service information publications and systems has fully
31 satisfied its obligations under this section and thereafter is not
32 responsible for the content and functionality of such aftermarket
33 diagnostic tools, diagnostics, or service information systems.

34 (5) Original manufacturer equipment or parts sold or used in this
35 state for the purpose of providing security-related functions may not
36 exclude diagnostic, service, and repair information necessary to
37 reset a security-related electronic function from information
38 provided to owners and independent repair facilities. If excluded
39 under this subsection, the information necessary to reset an
40 immobilizer system or security-related electronic module may be

1 obtained by owners and independent repair facilities through the
2 appropriate secure data release systems.

3 (6) Original manufacturers of digital electronic products sold on
4 or after January 1, 2019, in Washington state are prohibited from
5 designing or manufacturing digital electronic products in such a way
6 as to prevent reasonable diagnostic or repair functions by an
7 independent repair provider. Preventing reasonable diagnostic or
8 repair functions includes permanently affixing a battery in a manner
9 that makes it difficult or impossible to remove.

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

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

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

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

32 (2) Nothing in this section applies to:

33 (a) Nonroad engine, nonroad equipment, or nonroad vehicle
34 manufacturers, any product or service of a nonroad engine, nonroad
35 equipment, or nonroad vehicle manufacturer, or nonroad engine,
36 nonroad equipment, or nonroad vehicle dealers; or

1 (b) Stationary engine or stationary equipment manufacturers, any
2 product or service of a stationary engine or stationary equipment
3 manufacturer, or stationary engine or stationary equipment dealers.

4 (3) Nothing in this section applies to manufacturers or
5 distributors of a medical device as defined in the federal food,
6 drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or a digital
7 electronic product or embedded software manufactured for use in a
8 medical setting including diagnostic, monitoring, or control
9 equipment or any product or service that they offer. A digital
10 electronic product otherwise subject to the provisions of this
11 chapter is not considered a medical device or considered manufactured
12 for use in a medical setting by virtue of its ability to be used in
13 conjunction with a medical device or with a digital electronic
14 product or software manufactured for use in a medical setting.

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

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

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

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

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