

House Bill 3631

Sponsored by Representative NERON, Senator SOLLMAN, Representatives PHAM K, ANDERSEN, GOMBERG, LIVELY, MCLAIN, Senators CAMPOS, DEMBROW, GELSER BLOUIN, GOLDEN, GORSEK, PATTERSON, WOODS; Representatives BOWMAN, CHAICHI, GAMBA, HARTMAN, HOLVEY, NELSON, NGUYEN H, PHAM H, WALTERS, Senators FREDERICK, JAMA, MANNING JR, PROZANSKI

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires original equipment manufacturer to make available to owner of consumer electronic equipment or independent repair provider on fair and reasonable terms any documentation, tool, part or other device or implement that original equipment manufacturer makes available to authorized service provider for purpose of diagnosing, maintaining or repairing consumer electronic equipment. Provides that person who suffers ascertainable loss of money or property has right to bring action to seek order requiring compliance with provisions of Act.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to a right to repair consumer electronic equipment; and prescribing an effective date.

3 Whereas the Legislative Assembly finds and declares that reusing, repairing and extending the
4 product life of electronics is a critical component of Oregon's 2050 Vision and Framework for
5 Action, that repairing and reusing electronics rather than throwing out electronics reduces waste,
6 greenhouse gas emissions and raw material use and that barriers to repairing electronics make ac-
7 cess to technology difficult by increasing costs; now, therefore,

8 **Be It Enacted by the People of the State of Oregon:**

9 **SECTION 1. (1) As used in this section and section 2 of this 2023 Act:**

10 **(a) "Authorized service provider" means:**

11 **(A) A person that has an arrangement with an original equipment manufacturer under**
12 **which:**

13 **(i) The original equipment manufacturer grants a license to or otherwise permits the**
14 **person to use the original equipment manufacturer's trade name, service mark or other**
15 **proprietary identification for the purpose of offering the services of diagnosing, maintaining**
16 **or repairing consumer electronic equipment; or**

17 **(ii) The person offers the services of diagnosing, maintaining or repairing consumer**
18 **electronic equipment on behalf of the original equipment manufacturer or under the original**
19 **equipment manufacturer's warranty; or**

20 **(B) An original equipment manufacturer, but only in instances where the original equip-**
21 **ment manufacturer does not have an arrangement described in subparagraph (A) of this**
22 **paragraph and offers the services of diagnosing, maintaining or repairing consumer elec-**
23 **tronic equipment that the original equipment manufacturer makes or sells.**

24 **(b) "Consumer electronic equipment" means a product that:**

25 **(A) Functions, in whole or in part, on the basis of digital electronics that are embedded**
26 **within or attached to the product;**

27 **(B) Is tangible personal property;**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (C) Is generally used for personal, family or household purposes;

2 (D) Is sold, used or supplied in this state one year or more after the product was first
3 manufactured and sold or used in this state; and

4 (E) Might be, but is not necessarily, capable of attachment to or installation in real
5 property.

6 (c) "Documentation" means any manual, diagram, reporting output, service code de-
7 scription, schematic diagram, security code, password or other guidance or information that
8 enables a person to diagnose, maintain or repair consumer electronic equipment.

9 (d) "Fair and reasonable terms" means terms under which an original equipment man-
10 ufacturer:

11 (A) Makes documentation available at no charge, except that the original equipment
12 manufacturer may charge for the reasonable and actual costs of printing, preparing and
13 sending or preparing and sending documentation that a person requests in print;

14 (B) Makes tools for diagnosing, maintaining and repairing consumer electronic equipment
15 available at no charge and without impeding access to, or the efficient and cost-effective use
16 of, the tools, including by requiring authorization or access to the Internet to use or operate
17 the tools, except that the original equipment manufacturer may charge for the reasonable
18 and actual costs of preparing and shipping a physical tool that a person requests; and

19 (C) Makes parts available directly or through an authorized service provider to:

20 (i) An independent repair provider and an owner at costs and on terms that are equiv-
21 alent to the most favorable costs and terms at which the original equipment manufacturer
22 offers the parts to an authorized service provider and that:

23 (I) Account for any discount, rebate, convenient means of delivery, means of enabling
24 fully restored and updated functionality, rights of use or other incentive or preference the
25 original equipment manufacturer offers to an authorized service provider, or that impose any
26 additional cost, burden or impediment the original equipment manufacturer also imposes on
27 an authorized service provider;

28 (II) Do not impose a substantial condition, obligation or restriction that is not reasonably
29 necessary to enable an independent repair provider or owner to diagnose, maintain or repair
30 consumer electronic equipment that the original equipment manufacturer makes or sells;
31 and

32 (III) Do not require an independent repair provider or owner to become an authorized
33 service provider or enter into an arrangement described in paragraph (a)(A) of this sub-
34 section; and

35 (ii) All authorized service providers that the original equipment manufacturer permits,
36 by contract or otherwise, to sell parts to independent repair providers and owners, without:

37 (I) Imposing allocation limitations or advertising restrictions upon the authorized service
38 provider as a means of retaliation or as a means of hindering the authorized service provider
39 in selling parts by any means; or

40 (II) Imposing a substantial condition, obligation or restriction that is not reasonably
41 necessary to enable an independent repair provider or owner to diagnose, maintain or repair
42 consumer electronic equipment that the original equipment manufacturer makes or sells.

43 (e) 'Independent repair provider' means a person that:

44 (A) Engages in the business of diagnosing, maintaining or repairing consumer electronic
45 equipment in this state but is not an authorized service provider; and

1 (B) Possesses a valid and unexpired certification that demonstrates that the person has
 2 the technical capabilities and competence necessary to safely, securely and reliably repair
 3 consumer electronic equipment in accordance with widely accepted standards, such as a
 4 Wireless Industry Service Excellence Certification, an A+ certification from the Computing
 5 Technology Industry Association, a National Appliance Service Technician Certification or
 6 another certification that an original equipment manufacturer accepts as evidence that the
 7 person can perform safe, secure and reliable repairs to the manufacturer’s consumer elec-
 8 tronic equipment.

9 (f) “Original equipment manufacturer” means a person that engages in the business of
 10 selling, leasing or otherwise supplying to another person new consumer electronic equipment
 11 that the person makes or has made on the person’s behalf.

12 (g) “Owner” means a person that owns or leases from a lessor consumer electronic
 13 equipment that the person or the lessor purchased or used in this state.

14 (h) “Part” means a new or used replacement component for consumer electronic equip-
 15 ment that an original equipment manufacturer makes available for the purpose of main-
 16 taining or repairing consumer electronic equipment that the original equipment
 17 manufacturer makes or sells.

18 (i) “Tool” means software, a hardware implement or an apparatus by means of which a
 19 person can diagnose, maintain or repair consumer electronic equipment including any soft-
 20 ware, or a mechanism that provisions, programs or pairs a new part, calibrates functionality
 21 or performs another function that is necessary to update or restore a product to a fully
 22 functional condition.

23 (j) “Trade secret” has the meaning given that term in ORS 646.461.

24 (k)(A) “Video game console” means a computing device, and components and peripherals
 25 for the computing device, that is intended primarily for playing interactive video games.

26 (B) “Video game console” does not include a general purpose personal computer that has
 27 the capability to run video games alongside other computing functions.

28 (2)(a) An original equipment manufacturer shall make available to an owner or an inde-
 29 pendent repair provider on fair and reasonable terms any documentation, tool, part or other
 30 device or implement that the original equipment manufacturer makes available to an au-
 31 thorized service provider for the purpose of diagnosing, maintaining, repairing or updating
 32 consumer electronic equipment that the original equipment manufacturer makes or sells and
 33 that is sold or used in this state.

34 (b) An original equipment manufacturer shall make available to an owner or independent
 35 repair provider on fair and reasonable terms any documentation, tool or part necessary to
 36 disable and reset any electronic security lock or other security function in consumer elec-
 37 tronic equipment that is or must be disabled or that must be reset while diagnosing, main-
 38 taining or repairing the consumer electronic equipment. The original equipment
 39 manufacturer may make the documentation, tool or part available by means of an appropri-
 40 ate secure release system.

41 (3)(a) A person that suffers an ascertainable loss of money or property, real or personal,
 42 as a result of an original equipment manufacturer’s failure to comply with this section may
 43 bring an action in a court of this state.

44 (b) Upon proof of a defendant’s failure to comply with this section, a court shall order
 45 compliance and may punish a failure to obey the court’s order as contempt. The court may

1 award reasonable attorney fees and costs at trial and on appeal to a plaintiff that prevails
 2 in the action under paragraph (a) of this subsection.

3 (c) A plaintiff must commence an action under this subsection within one year after
 4 discovering a violation of this section.

5 (4) This section does not:

6 (a) Require an original equipment manufacturer to disclose a trade secret to an inde-
 7 pendent service provider or owner except as necessary to provide, on fair and reasonable
 8 terms, any documentation, tool, part or other device or implement that the independent re-
 9 pair provider or owner needs to diagnose, maintain or repair consumer electronic equipment.

10 (b) Alter the terms of any agreement or arrangement between an original equipment
 11 manufacturer and an authorized service provider including, but not limited to, the authorized
 12 service provider's performance or provision of warranty service or recall repair work on the
 13 original equipment manufacturer's behalf under the agreement or arrangement, except that
 14 any provision in the agreement or arrangement that purports to waive, restrict or limit the
 15 original equipment manufacturer's compliance with this section is void and unenforceable.

16 (c) Impose liability upon an original equipment manufacturer for any bodily injury or
 17 damage to consumer electronic equipment that an independent repair provider or owner
 18 causes while diagnosing, maintaining or repairing the consumer electronic equipment using
 19 documentation, tools or parts the original equipment manufacturer made available on fair
 20 and reasonable terms to an authorized service provider, independent repair provider or
 21 owner before the date of the diagnosis, maintenance or repair, except that an original
 22 equipment manufacturer remains liable to the extent that the laws of this state provide for
 23 strict liability for defects in the design or manufacture of the consumer electronic equip-
 24 ment.

25 (d) Apply to:

26 (A) A person that is engaged in the business of manufacturing or assembling new motor
 27 vehicles or in the business of selling or leasing new motor vehicles and offering the service
 28 of diagnosing, maintaining or repairing motor vehicles or motor vehicle engines under the
 29 terms of a franchise agreement, or to the person's products or services;

30 (B) A product or equipment that:

31 (i) Has never been available for retail sale to a consumer;

32 (ii) Is a medical device, as defined in the federal Food, Drug, and Cosmetic Act, 21 U.S.C.
 33 301 et seq., or a digital electronic product, software, control equipment or related products
 34 or services manufactured for or provided for use in diagnosis or monitoring in an acute care
 35 hospital, a long term care facility such as a nursing home or skilled nursing facility, a
 36 physician's office, an urgent care center, an outpatient clinic, a home setting where health
 37 care is provided by or at the direction of a licensed health care provider, an emergency
 38 medical service facility or at a site where health care is routinely delivered on premises that
 39 are not otherwise a health care facility, such as a medical clinic within a school;

40 (iii) Provides heat, ventilation or air conditioning or recharges refrigerant gases;

41 (iv) Is a system, mechanism or series of mechanisms that generates, stores or combines
 42 generation and storage of electrical energy from solar radiation;

43 (v) Is a video game console; or

44 (vi) Is a system that stores electrical energy for a period of time and transmits the en-
 45 ergy after storage, that is interconnected with a transmission or distribution system and is

1 approved by an electric utility or located on a customer's side of an electric utility meter in
 2 accordance with an applicable utility tariff or interconnection agreement;

3 (C) A vehicle, an engine, equipment or a power source, or a person that engages directly
 4 in, or acts for or is subject to the control of another person that engages directly in, man-
 5 ufacturing, assembling, distributing, selling, importing for resale, maintaining, servicing or
 6 repairing a vehicle, an engine, equipment or a power source with any of the following char-
 7 acteristics:

8 (i) An internal combustion engine, including the engine's fuel system or other power
 9 sources such as an electric battery or fuel cell, that is not used in a motor vehicle or a ve-
 10 hicle used solely for competition or that is not subject to standards of performance for sta-
 11 tionary sources or emission standards for new motor vehicles or new motor vehicle engines
 12 under the federal Clean Air Act, 42 U.S.C. 7411 and 7521 et seq.;

13 (ii) A vehicle or equipment that is not a motor vehicle or a vehicle used solely for com-
 14 petition and is powered by an engine described in sub-subparagraph (i) of this subparagraph,
 15 together with any tools, technology, attachments, accessories, components or repair parts
 16 for the vehicle or engine;

17 (iii) An internal combustion engine or another power source, including an electric battery
 18 or fuel cell, that is not used in a motor vehicle, a vehicle used solely for competition or a
 19 vehicle described in sub-subparagraph (ii) of this subparagraph, or equipment that is powered
 20 by the internal combustion engine or power source, together with tools, technology, attach-
 21 ments, accessories, components or repair parts for the internal combustion engine or the
 22 equipment; or

23 (iv) An engine or other power source, including an electric battery or fuel cell, that is
 24 used for propulsion or power generation in a maritime environment or waterway, together
 25 with any tools, technology, attachments, accessories, components or repair parts for the
 26 engine or power source; or

27 (D) A manufacturer, distributor or dealer of any off-road equipment and tools, technol-
 28 ogy, attachments, accessories, components and repair parts for off-road equipment including,
 29 but not limited to, farm and utility tractors, farm implements and machinery, equipment for
 30 forestry, industry, utilities, construction, mining or maintaining a yard, garden or turf,
 31 outdoor power equipment and portable generators, vehicles used in marine environments, for
 32 sports, recreation and racing, all-terrain vehicles, power tools and stand-alone or integrated
 33 mobile or stationary internal combustion engines or power sources such as generator sets
 34 and battery or fuel cell power.

35 **SECTION 2.** (1) As used in this section:

36 (a) "Certification entity" means a person that engages in evaluating and certifying the
 37 technical capabilities and competence of independent repair providers in accordance with
 38 standards that the person adopts or that an original equipment manufacturer specifies.

39 (b) "Repair certification" means evidence that an independent repair provider has the
 40 technical and financial capability and competence necessary to safely, securely and reliably
 41 repair digital electronic equipment in accordance with standards that a certification entity
 42 specifies.

43 (2) Before repairing consumer electronic equipment, an authorized service provider and
 44 an independent repair provider shall:

45 (a) Post at the authorized service provider's or independent repair provider's place of

1 business or on the authorized service provider’s or independent repair provider’s website, or
2 provide directly to customers, a notice that:

3 (A) Specifies the steps the authorized service provider or independent repair provider
4 takes to ensure the customer’s privacy and the security of consumer electronic equipment
5 the customer entrusts to the authorized service provider or independent repair provider;

6 (B) Recommends steps the consumer should take to ensure privacy and security, in-
7 cluding but not limited to:

8 (i) Backing up data from the consumer electronic equipment onto another device and
9 permanently erasing the data from the consumer electronic equipment the customer will
10 bring in for repair;

11 (ii) Sharing only those passwords or access to functions that are necessary to effect the
12 repair; and

13 (iii) Logging out of applications and closing websites and deleting caches or records of
14 application or website use that have sensitive information or that otherwise pose a security
15 risk, such as financial applications or websites, electronic mail or messaging or social media
16 accounts; and

17 (C) Informs the customer about the customer’s rights to privacy under the laws of this
18 state.

19 (b) Display all of the authorized service provider’s or independent repair provider’s repair
20 certifications.

21 **SECTION 3.** Section 1 of this 2023 Act applies to consumer electronic equipment that is
22 sold or is in use on or after the effective date of this 2023 Act.

23 **SECTION 4.** This 2023 Act takes effect on the 91st day after the date on which the 2023
24 regular session of the Eighty-second Legislative Assembly adjourns sine die.
25
