A-Engrossed

Senate Bill 542

Ordered by the Senate April 19
Including Senate Amendments dated April 19

Sponsored by Senators SOLLMAN, DEMBROW, GOLDEN, Representative DEXTER; Representatives GOMBERG, HELM, MCLAIN, NERON, REYNOLDS (Presession filed.)

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.

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

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

The Legislative Assembly finds and declares that reusing, repairing and extending the product life of electronics is a critical component of Oregon’s 2050 Vision and Framework for Action, that repairing and reusing electronics rather than throwing out electronics reduces waste, greenhouse gas emissions and raw material use and that barriers to repairing electronics make access to technology difficult by increasing costs.

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

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

(a) “Authorized service provider” means:

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

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

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

(B) An original equipment manufacturer, but only in instances where the original equipment manufacturer does not have an arrangement described in subparagraph (A) of this paragraph and offers the services of diagnosing, maintaining or repairing consumer electronic equipment that the original equipment manufacturer makes or sells.

(b) “Consumer electronic equipment” means a product that:

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.

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

(B) Is tangible personal property;

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

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

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

(c) “Documentation” means any manual, diagram, reporting output, service code description, schematic diagram, security code, password or other guidance or information that enables a person to diagnose, maintain or repair consumer electronic equipment.

(d) “Fair and reasonable terms” means terms under which an original equipment manufacturer:

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

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

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

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

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

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

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

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

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

(II) Imposing a substantial condition, obligation or restriction that is not reasonably necessary to enable an independent repair provider or owner to diagnose, maintain or repair consumer electronic equipment that the original equipment manufacturer makes or sells.
(e) “Independent repair provider” means a person that engages in the business of diagnosing, maintaining or repairing consumer electronic equipment in this state but is not an authorized service provider.

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

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

(h) “Part” means a new or used replacement component for consumer electronic equipment that an original equipment manufacturer makes available for the purpose of maintaining or repairing consumer electronic equipment that the original equipment manufacturer makes or sells.

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

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

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

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

(2)(a) An original equipment manufacturer shall make available to an owner or an independent repair provider on fair and reasonable terms any documentation, tool, part or other device or implement that the original equipment manufacturer makes available to an authorized service provider for the purpose of diagnosing, maintaining, repairing or updating consumer electronic equipment that the original equipment manufacturer makes or sells and that is sold or used in this state.

(b) An original equipment manufacturer shall make available to an owner or independent repair provider on fair and reasonable terms any documentation, tool or part necessary to disable and reset any electronic security lock or other security function in consumer electronic equipment that is or must be disabled or that must be reset while diagnosing, maintaining or repairing the consumer electronic equipment. The original equipment manufacturer may make the documentation, tool or part available by means of an appropriate secure release system.

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

(b) Upon proof of a defendant’s failure to comply with this section, a court shall order compliance and may punish a failure to obey the court’s order as contempt. The court may award reasonable attorney fees and costs at trial and on appeal to a plaintiff that prevails in the action under paragraph (a) of this subsection.

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

(4) This section does not:
(a) Require an original equipment manufacturer to disclose a trade secret to an independent service provider or owner except as necessary to provide, on fair and reasonable terms, any documentation, tool, part or other device or implement that the independent repair provider or owner needs to diagnose, maintain or repair consumer electronic equipment.

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

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

(d) Apply to:

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

(B) A product or equipment that:

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

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

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

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

(v) Is a video game console; or

(vi) Is a system that stores electrical energy for a period of time and transmits the energy after storage, that is interconnected with a transmission or distribution system and is approved by an electric utility or located on a customer's side of an electric utility meter in accordance with an applicable utility tariff or interconnection agreement;

(C) A vehicle, an engine, equipment or a power source, or a person that engages directly in, or acts for or is subject to the control of another person that engages directly in, manufacturing, assembling, distributing, selling, importing for resale, maintaining, servicing or
repairing a vehicle, an engine, equipment or a power source with any of the following characteristics:

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

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

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

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

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

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

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

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

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

(a) Post at the authorized service provider's or independent repair provider's place of business, on the authorized service provider's or independent repair provider's website, or provide directly to customers a notice that:

(A) Specifies the steps the authorized service provider or independent repair provider takes to ensure the customer's privacy and the security of consumer electronic equipment the customer entrusts to the authorized service provider or independent repair provider;
(B) Recommends steps the consumer should take to ensure privacy and security, including but not limited to:

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

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

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

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

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

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

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