

SENATE AMENDMENTS TO SENATE BILL 542

By COMMITTEE ON ENERGY AND ENVIRONMENT

April 19

1 On page 1 of the printed bill, delete lines 9 through 28 and delete pages 2 through 5 and insert:

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

3 **“(a) ‘Authorized service provider’ means:**

4 **“(A) A person that has an arrangement with an original equipment manufacturer under**
5 **which:**

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

10 **“(ii) The person offers the services of diagnosing, maintaining or repairing consumer**
11 **electronic equipment on behalf of the original equipment manufacturer or under the original**
12 **equipment manufacturer’s warranty; or**

13 **“(B) An original equipment manufacturer, but only in instances where the original**
14 **equipment manufacturer does not have an arrangement described in subparagraph (A) of this**
15 **paragraph and offers the services of diagnosing, maintaining or repairing consumer elec-**
16 **tronic equipment that the original equipment manufacturer makes or sells.**

17 **“(b) ‘Consumer electronic equipment’ means a product that:**

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

20 **“(B) Is tangible personal property;**

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

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

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

26 **“(c) ‘Documentation’ means any manual, diagram, reporting output, service code de-**
27 **scription, schematic diagram, security code, password or other guidance or information that**
28 **enables a person to diagnose, maintain or repair consumer electronic equipment.**

29 **“(d) ‘Fair and reasonable terms’ means terms under which an original equipment man-**
30 **ufacturer:**

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

34 **“(B) Makes tools for diagnosing, maintaining and repairing consumer electronic equip-**
35 **ment available at no charge and without impeding access to, or the efficient and cost-**

1 effective use of, the tools, including by requiring authorization or access to the Internet to
2 use or operate the tools, except that the original equipment manufacturer may charge for
3 the reasonable and actual costs of preparing and shipping a physical tool that a person re-
4 quests; and

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

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

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

14 “(II) Do not impose a substantial condition, obligation or restriction that is not reason-
15 ably necessary to enable an independent repair provider or owner to diagnose, maintain or
16 repair consumer electronic equipment that the original equipment manufacturer makes or
17 sells; and

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

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

23 “(I) Imposing allocation limitations or advertising restrictions upon the authorized ser-
24 vice provider as a means of retaliation or as a means of hindering the authorized service
25 provider in selling parts by any means; or

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

29 “(e) ‘Independent repair provider’ means a person that engages in the business of diag-
30 nosing, maintaining or repairing consumer electronic equipment in this state but is not an
31 authorized service provider.

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

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

37 “(h) ‘Part’ means a new or used replacement component for consumer electronic equip-
38 ment that an original equipment manufacturer makes available for the purpose of main-
39 taining or repairing consumer electronic equipment that the original equipment
40 manufacturer makes or sells.

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

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

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

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

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

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

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

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

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

28 “(4) This section does not:

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

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

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

1 strict liability for defects in the design or manufacture of the consumer electronic equip-
2 ment.

3 “(d) Apply to:

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

8 “(B) A product or equipment that:

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

10 “(ii) Is a medical device, as defined in the federal Food, Drug, and Cosmetic Act, 21 U.S.C.
11 301 et seq., or a digital electronic product, software, control equipment or related products
12 or services manufactured for or provided for use in diagnosis or monitoring in an acute care
13 hospital, a long term care facility such as a nursing home or skilled nursing facility, a
14 physician’s office, an urgent care center, an outpatient clinic, a home setting where health
15 care is provided by or at the direction of a licensed health care provider, an emergency
16 medical service facility or at a site where health care is routinely delivered on premises that
17 are not otherwise a health care facility, such as a medical clinic within a school;

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

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

21 “(v) Is a video game console; or

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

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

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

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

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

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

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

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

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

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

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

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

26 “(A) Specifies the steps the authorized service provider or independent repair provider
27 takes to ensure the customer’s privacy and the security of consumer electronic equipment
28 the customer entrusts to the authorized service provider or independent repair provider;

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

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

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

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

40 “(C) Informs the customer about the customer’s rights to privacy under the laws of this
41 state.

42 “(b) Display all of the authorized service provider’s or independent repair provider’s re-
43 pair certifications.

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

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