A-Engrossed

Senate Bill 1596

Ordered by the Senate February 16
Including Senate Amendments dated February 16

Sponsored by Senators SOLLMAN, DEMBROW, Representative NERON, Senators GOLDEN, WOODS, Representatives BYNUM, NOSSE; Senators CAMPOS, FREDERICK, GELSER BLOUIN, GORSEK, JAMA, LIEBER, MANNING JR, PATTERSON, PROZANSKI, TAYLOR, THATCHER, WAGNER, Representatives ANDERSEN, BOWMAN, CHAICHI, DEXTER, FAHEY, GOMBERG, HARTMAN, HELM, HOLVEY, HUDSON, LIVELY, MARSH, MCLAINE, NATHANSON, NELSON, NGUYEN D, NGUYEN H, PHAM K, REYNOLDS, RUIZ, SMITH G, TRAN, WALTERS (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. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Requires someone that makes electronic items for consumers to give on fair terms to those who look at, maintain or fix the items what they need to maintain or fix the items. Fair terms means, in part, giving independent people what they need on the same terms as people the maker authorizes to make fixes. Lets the state fine people who violate the Act. (Flesch Readability Score: 61.8).

Takes effect 91 days after session ends. (Flesch Readability Score: 61.1).

Requires an original equipment manufacturer to make available to an owner of consumer electronic equipment 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 or repairing consumer electronic equipment. Permits the Attorney General in response to a consumer complaint to make an investigative demand of a manufacturer that appears to have violated the Act. Specifies the contents of the investigative demand and the method of service. Subjects a manufacturer that violates the Act to a civil penalty of not more than $1,000 for each day of the violation.

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to a right to repair consumer electronic equipment; creating new provisions; and amending ORS 180.095.

Whereas 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; now, therefore,

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

SECTION 1. (1) As used in this section and section 2 of this 2024 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 the person for the use of, 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, repairing or updating consumer electronic equipment; or

(ii) The person offers the services of diagnosing, maintaining, repairing or updating con-
sumer 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 equip-
ment manufacturer does not have an arrangement described in subparagraph (A) of this
paragraph and offers the services of diagnosing, maintaining, repairing or updating consumer
electronic equipment that the original equipment manufacturer makes or sells.

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

(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 one year or more after the product was first 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 de-
scription, schematic diagram, security code, password or other guidance or information that
enables a person to diagnose, maintain, repair or update consumer electronic equipment.

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

(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, repairing or updating consumer electronic
equipment available at no charge and without impeding access to the tools or the efficient
and cost-effective use of 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 or 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 on an independent repair provider or an owner that
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 an owner to diagnose, maintain, repair
or update consumer electronic equipment that the original equipment manufacturer makes
or sells; and
(III) Do not require an independent repair provider or an owner to enter into an ar-

rangement 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 an owner to diagnose, maintain, repair

or update consumer electronic equipment that the original equipment manufacturer makes

or sells.

(e) “Independent repair provider” means a person that:

(A) Engages in the business of diagnosing, maintaining, repairing or updating consumer

electronic equipment in this state but is not an authorized service provider; and

(B) Possesses a valid and unexpired certification that demonstrates that the person has

the technical capabilities and competence necessary to safely, securely and reliably repair

consumer electronic equipment in accordance with widely accepted standards, such as a

Wireless Industry Service Excellence Certification, an A+ certification from the Computing

Technology Industry Association, a National Appliance Service Technician Certification or

another certification that an original equipment manufacturer accepts as evidence that the

person can perform safe, secure and reliable repairs to consumer electronic equipment that

the original equipment manufacturer makes or sells.

(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 equip-

ment that an original equipment manufacturer makes available for the purpose of main-

taining, repairing or updating consumer electronic equipment that the original equipment

manufacturer makes or sells.

(i) “Parts pairing” means a manufacturer’s practice of using software to identify com-

ponent parts through a unique identifier.

(j) “Tool” means software, a hardware implement or an apparatus by means of which a

person can diagnose, maintain, repair or update 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.

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

(L)(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 inde-

pendent 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 au-

thorized 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) For consumer electronic equipment that is manufactured for the first time, and first

sold or used in this state, after January 1, 2025, an original equipment manufacturer may

not use parts pairing to:

(A) Prevent or inhibit an independent repair provider or an owner from installing or en-

abling the function of an otherwise functional replacement part or a component of consumer

electronic equipment, including a replacement part or a component that the original equip-

ment manufacturer has not approved;

(B) Reduce the functionality or performance of consumer electronic equipment; or

(C) Cause consumer electronic equipment to display misleading alerts or warnings, which

the owner cannot immediately dismiss, about unidentified parts.

(3) This section does not:

(a) Require an original equipment manufacturer to disclose a trade secret or license in-

tellectual property, including copyrights or patents, to an independent repair provider or an

owner except as necessary to provide, on fair and reasonable terms, any documentation, tool,

part or other device or implement used to diagnose, maintain, repair or update 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 an owner

causes while diagnosing, maintaining, repairing or updating the consumer electronic equip-

ment using documentation, tools, parts or other devices or implements that the original

equipment manufacturer made available on fair and reasonable terms to an authorized ser-

vice provider, an independent repair provider or an owner before the date of the diagnosis,

maintenance, repair or update, except that an original equipment manufacturer remains li-

able 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) Require an original equipment manufacturer to make available special documentation,

tools, parts or other devices or implements that would disable or override, without an

owner's authorization, anti-theft or privacy security measures that the owner sets for con-

sumer electronic equipment.

(e) Require an original equipment manufacturer to provide to an independent repair

provider or an owner any part that the equipment manufacturer no longer makes or no

longer provides to authorized service providers.

(f) Prohibit parts pairing for the purpose of reducing the functionality of a battery if a

thermal event occurs.

(g) 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 service 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 a related product manufactured for or service 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, an outpatient clinic, a home setting where health care is provided by or at the direction of a licensed health care provider or an emergency medical service facility or for use in diagnosis or monitoring 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 that 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 a fuel cell, that is not used in a motor vehicle or in 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, equipment or engine;

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

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

(D) A manufacturer, distributor or dealer of any off-road equipment or of tools, tech-
nology, attachments, accessories, components or repair parts for off-road equipment includ-
ing, 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; or

(E) Electric toothbrushes.

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 or 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, in-
cluding 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, closing websites and deleting caches or records of ap-
lication 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;

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

(D) Informs the customer about any potential safety concerns about the parts being in-
stalled.

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

(3) Before repairing consumer electronic equipment, an independent repair provider shall
disclose to each customer:

(a) That the independent repair provider is not an authorized service provider; and

(b) Whether replacement parts the independent repair provider incorporates into repairs are used replacement parts or are replacement parts provided by suppliers other than the original equipment manufacturer of the consumer electronic equipment.

SECTION 3. (1) If the Attorney General determines in response to a complaint from a consumer that a person has or controls any information, documents, physical evidence or other material that is relevant to an investigation of a violation of section 1 of this 2024 Act, or that could lead to a discovery of relevant information in an investigation of a violation of section 1 of this 2024 Act, the Attorney General may execute and cause an investigative demand to be served upon the person. The investigative demand may require that the person:

(a) Appear and testify under oath at the time and place stated in the investigative demand;

(b) Answer written interrogatories; and

(c) Produce relevant information, documents, physical evidence or other material for examination at the time and place stated in the investigative demand.

(2) An investigative demand under this section must be served as provided in ORS 646.622 and may be enforced as provided in ORS 646.626. Within the earlier of the return date specified in the investigative demand or 20 days after the date on which the investigative demand was served, a person may petition a circuit court of this state to extend the return date or modify or set aside the investigative demand. The petition must state good cause, including any privileged material.

(3) Information the Attorney General obtains under this section that is a trade secret, as defined in ORS 192.345, is confidential and is not subject to public disclosure under ORS 192.311 to 192.478.

(4) If the Attorney General finds in response to a complaint from a consumer that a person has violated section 1 of this 2024 Act, the Attorney General may bring a civil action in a circuit court of this state to:

(a) Impose a civil penalty of not more than $1,000 for each day in which the violation continues; or

(b) Obtain an injunction to restrain the violation.

(5) The Attorney General shall deposit the proceeds of any civil penalties the Attorney General recovers under this section into the Department of Justice Protection and Education Revolving Account created under ORS 180.095.

SECTION 4. The Attorney General shall submit not later than December 31, 2025, a report to an interim committee of the Legislative Assembly concerned with consumer protection in which the Attorney General specifies the number and nature of complaints from owners and independent repair providers the Attorney General received within the previous two years concerning original equipment manufacturers that did not provide upon request documentation, tools, parts or other devices or implements necessary to diagnose, maintain, repair or update consumer electronic equipment that the original equipment manufacturer makes or sells.

SECTION 5. ORS 180.095 is amended to read:

180.095. (1) The Department of Justice Protection and Education Revolving Account is created in the General Fund. All moneys in the account are continuously appropriated to the Department
of Justice and may be used to pay for only the following activities:

(a) Restitution and refunds in proceedings described in paragraph (c) of this subsection;
(b) Consumer and business education relating to the laws governing antitrust and unlawful trade practices; and
(c) Personal services, travel, meals, lodging and all other costs and expenses incurred by the department in investigating, preparing, commencing and prosecuting the following actions and suits, and enforcing judgments, settlements, compromises and assurances of voluntary compliance arising out of the following actions and suits:

(A) Actions and suits under the state and federal antitrust laws;
(B) Actions and suits under ORS 336.184 and 646.605 to 646.656;
(C) Actions commenced under ORS 59.331;
(D) Actions and suits under ORS 180.750 to 180.785;
(E) Actions and suits under ORS 646A.025; [and]
(F) Actions commenced under ORS 646A.589[; and]

(G) Actions and suits under section 3 of this 2024 Act.

(2) Moneys in the Department of Justice Protection and Education Revolving Account are not subject to allotment. Upon request of the Attorney General, the State Treasurer shall create sub-accounts within the account for the purposes of managing moneys in the account and allocating those moneys to the activities described in subsection (1) of this section.

(3) Except as otherwise provided by law, all sums of money received by the Department of Justice under a judgment, settlement, compromise or assurance of voluntary compliance, including damages, restitution, refunds, attorney fees, costs, disbursements and other recoveries, but excluding civil penalties under ORS 646.642, in proceedings described in subsection (1)(c) of this section shall, upon receipt, be deposited with the State Treasurer to the credit of the Department of Justice Protection and Education Revolving Account. However, if the action or suit was based on an expenditure or loss from a public body or a dedicated fund, the amount of such expenditure or loss, after deduction of attorney fees and expenses awarded to the department by the court or agreed to by the parties, if any, shall be credited to the public body or dedicated fund and the remainder thereof credited to the Department of Justice Protection and Education Revolving Account.

(4) If the Department of Justice recovers restitution or refunds in a proceeding described in subsection (1)(c) of this section, and the department cannot determine the persons to whom the restitution or refunds should be paid or the amount of the restitution or refund payable to individual claimants is de minimis, the restitution or refunds may not be deposited in the Department of Justice Protection and Education Revolving Account and shall be deposited in the General Fund.

(5) Before April 1 of each odd-numbered year, the Department of Justice shall report to the Joint Committee on Ways and Means:

(a) The department’s projection of the balance in the Department of Justice Protection and Education Revolving Account at the end of the biennium in which the report is made and at the end of the following biennium;
(b) The amount of the balance held for restitution and refunds;
(c) An estimate of the department’s anticipated costs and expenses under subsection (1)(b) and (c) of this section for the biennium in which the report is made and for the following biennium; and
(d) Any judgment, settlement, compromise or other recovery, the proceeds of which are used for purposes other than:

(A) For deposit into the Department of Justice Protection and Education Revolving Account; or
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