

SENATE BILL REPORT

SB 5464

As of January 31, 2023

Title: An act relating to promoting the fair servicing and repair of digital electronic equipment in a safe, secure, reliable, and sustainable manner to increase access to appropriate and affordable digital electronic equipment, support small businesses and jobs, and enhance digital connectivity in Washington state.

Brief Description: Promoting the fair servicing and repair of digital electronic equipment.

Sponsors: Senators Stanford, Hasegawa, Nguyen, Keiser, Conway, Hunt, Kuderer, Liias, Lovelett, Randall, Rolfes, Salomon, Shewmake, Valdez and Wilson, C..

Brief History:

Committee Activity: Environment, Energy & Technology: 1/31/23.

Brief Summary of Bill

- Requires original manufacturers of digital electronic equipment and parts for such equipment to make available to any independent repair provider and owner any parts, tools, and documentation required for the maintenance and repair of such equipment and parts.
- Provides sole attorney general enforcement under the Consumer Protection Act.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Angela Kleis (786-7469)

Background: Federal. The Federal Trade Commission (FTC) is authorized, among other things, to prevent unfair methods of competition, and unfair or deceptive acts or practices in or affecting commerce. Enforced by the FTC, the Magnuson-Moss Warranty Act generally prohibits manufacturers from conditioning warranty coverage on the use of particular

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products or services.

Federal copyright laws protect original works of authorship including artistic works such as computer software. Certain federal laws prohibit bypassing technical measures that control access to copyrighted works. Several exemptions are specified.

The Digital Millennium Copyright Act prohibits circumvention of technical measures that control access to copyrighted works. Exemptions are specified such as for a lawfully acquired smartphone, home appliance, or home system when circumvention is necessary to allow the diagnosis, maintenance, or repair of such a device or system.

State. The Consumer Protection Act (CPA) prohibits unfair methods of competition or unfair or deceptive practices in the conduct of any trade or commerce. A person injured by a violation of the CPA may bring a civil action for injunctive relief, recovery of actual damages, and reasonable attorneys' fees. Under certain circumstances, the courts may increase awarded damages up to three times the actual damages sustained. The attorney general is authorized to investigate and prosecute claims under the CPA on behalf of the state or individuals in the state.

Under state law, a trade secret means information that derives economic value from being unknown to others who can obtain economic value from its disclosure, and is subject to reasonable efforts to maintain its secrecy. Trade secrets are protected from misappropriation under federal and state law.

Summary of Bill: Obligations. Effective January 1, 2024, an original manufacturer of digital electronic equipment, and parts for such equipment sold or used in the state must make available to any independent repair provider and owner, on fair and reasonable terms, any parts, tools, and documentation required for the diagnosis, maintenance, or repair of such equipment and parts for such equipment. For equipment that contains an electronic security-related function, the original manufacturer must make available any special parts, tools, and documentation needed to access and reset the lock or function when disabled in the course of repair.

Original manufacturers of digital electronic equipment sold or used in the state must make available for purchase by independent repair providers all parts, tools, and documentation that the original manufacturer makes available to its own authorized repair providers.

Original manufacturer equipment or parts sold or used in the state for the purpose of providing security-related functions may not exclude diagnostic, maintenance, and repair information necessary to reset a security-related electronic function from information provided to owners and independent repair providers.

Limitations. Nothing in the bill shall be construed to require original manufacturers or an authorized repair provider to:

- divulge a trade secret, except as necessary to provide parts, tools, and documentation on fair and reasonable terms;
- alter terms of any arrangement with an authorized repair provider;
- provide to an owner or independent repair provider access to information that is provided by an original manufacturer to an authorized repair provider pursuant to terms of an arrangement; or
- make available any parts, tools, or documentation for modifying any digital electronic equipment or repairing public safety communications equipment used by an emergency service organization.

Liability. Original manufacturers and authorized repair providers must not be liable for services performed by independent repair providers, including:

- any indirect, incidental, special, or consequential damages;
- any loss of data, privacy, or profits; or
- any inability to use, or reduced functionality of, the digital electronic equipment resulting from diagnosis, maintenance, repair, or modification.

Enforcement. Violations of this act are enforceable under the CPA solely by the attorney general.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is about fairness and consumer protection. When companies put unnecessary artificial barriers in their devices, it prevents consumers from being able to repair their own devices and leads to the loss of competition. This causes prices to go up for everyone. Implementation of this bill would create opportunities for equity as second-hand and refurbished devices can be a more affordable option, help our communities by supporting small businesses, and reduce the amount of e-waste by enabling the repair of devices that would otherwise be thrown away or end up in landfills.

A student's academic success relies on access to technology. Most students do not have the funds to purchase new devices when current ones could have been repaired. School districts need reliable, efficient, and affordable ways to repair their electronic devices. With this legislation, they would be able to make routine repairs in-house or locally and significantly reduce the time staff and students devices are out of order.

CON: Mandating original equipment manufacturers to disclose repair information, software tools, and parts cause safety, privacy, and security risks that compromise consumer protection. Customers are already provided with a wide range of choices of electronic repair without the mandates. Manufacturers have relationships with authorized providers, including small local businesses, which receive appropriate training from manufacturers to help ensure that repairs are done properly and with consumer safety in mind.

OTHER: While the definition of digital electronic equipment is intentionally designed to focus on computed or smartphones containing microprocessors, numerous other types of equipment, such as vehicles, charging infrastructure, and residential energy products, may contain computers with microprocessors and could potentially be included in the scope of this bill. Digital electronic equipment language needs clarification excluding electronic equipment in motor vehicles.

Persons Testifying: PRO: Senator Derek Stanford, Prime Sponsor; Travis Dutton, Washington State Association of Counties and Washington Association of County Solid Waste Managers; Andrew Villeneuve, Northwest Progressive Institute; Nathan Proctor, PIRG; Moji Igun, Zero Waste Washington; Mitch Kramer, FiXCO; Michael Brittain, Peninsula Computer Services; McKenna Morigan, Seattle Public Utilities; Bailey Cunningham, UW Student; Patrick Connor, National Federation of Independent Business; Cynthia McMullen, Central Valley School Board; Kyle Wiens, iFixIt.

CON: Nora Burnes, TechNet; Melissa Gombosky, Cellular Telecommunications Industry Association; Charlie Brown, Consumer Technology Association; Dustin Brighton, Repair Done Right.

OTHER: Devin Gombosky, Tesla Motors.

Persons Signed In To Testify But Not Testifying: No one.