

# Senate Bill 542

Sponsored by Senators SOLLMAN, DEMBROW, GOLDEN, Representative DEXTER; Representatives GOMBERG, HELM, MCLAIN, NERON, REYNOLDS (Pre-session 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 **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 repair 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 recover damages for violation of 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 The Legislative Assembly finds and declares that reusing, repairing and extending the product  
4 life of electronics is a critical component of Oregon's 2050 Vision and Framework for Action, that  
5 repairing and reusing electronics rather than throwing out electronics reduces waste, greenhouse  
6 gas emissions and raw material use and that barriers to repairing electronics make access to tech-  
7 nology difficult by increasing costs.

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

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

10 **(a) "Authorized repair 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 to the public the services of diagnosing,**  
16 **maintaining 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**

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

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

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

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

27 **(C) Is sold, used or supplied in this state; and**

28 **(D) Might be, but is not necessarily, capable of attachment to or installation in real**

**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 **property.**

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

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

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

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

15 (C) **Makes parts available directly or through an authorized repair provider to:**

16 (i) **An independent repair provider and an owner at costs and on terms that are equiv-**  
17 **alent to the most favorable costs and terms at which the original equipment manufacturer**  
18 **offers the parts to an authorized repair provider and that:**

19 (I) **Provide the same discount, rebate, convenient means of delivery, means of enabling**  
20 **fully restored and updated functionality, rights of use or other incentive or preference the**  
21 **original equipment manufacturer offers to an authorized repair provider, or that impose any**  
22 **additional cost, burden or impediment the original equipment manufacturer also imposes on**  
23 **an authorized repair provider;**

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

28 (III) **Do not require an independent repair provider or owner to become an authorized**  
29 **repair provider or enter into an arrangement described in paragraph (a)(A) of this sub-**  
30 **section; and**

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

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

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

39 (e) **“Independent repair provider” means a person that engages in the business of diag-**  
40 **nosng, maintaining or repairing consumer electronic equipment in this state but is not an**  
41 **authorized repair provider.**

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

45 (g) **“Owner” means a person that owns or leases from a lessor consumer electronic**

1 equipment that the person or the lessor purchased or used in this state.

2 (h) "Part" means a new or used replacement component for consumer electronic equip-  
3 ment that an original equipment manufacturer makes available for the purpose of main-  
4 taining or repairing consumer electronic equipment that the original equipment  
5 manufacturer makes or sells.

6 (i) "Tool" means software, a hardware implement or an apparatus by means of which a  
7 person can diagnose, maintain or repair consumer electronic equipment such as software,  
8 or a mechanism that provisions, programs or pairs a new part, calibrates functionality or  
9 performs another function that is necessary to update or restore a product to a fully func-  
10 tional condition.

11 (j) "Trade secret" has the meaning given that term in ORS 646.461.

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

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

25 (3)(a) A person that suffers an ascertainable loss of money or property, real or personal,  
26 as a result of an original equipment manufacturer's failure to comply with this section may  
27 bring an action in a court of this state to recover the greater of the person's actual damages  
28 or statutory damages of \$1,000.

29 (b) A court in appropriate circumstances may award punitive damages to a prevailing  
30 plaintiff in an action under paragraph (a) of this subsection or may provide equitable relief  
31 the court deems appropriate.

32 (c) A court may award reasonable attorney fees and costs at trial and on appeal to a  
33 plaintiff that prevails in an action under paragraph (a) of this subsection. The court may  
34 award attorney fees and costs to a prevailing defendant only if the court finds that an ob-  
35 jectively reasonable basis for bringing the action or asserting the ground for the appeal did  
36 not exist.

37 (d)(A) A class action may be maintained under this subsection in accordance with ORCP  
38 32. In a class action under this subsection a plaintiff may recover statutory damages on be-  
39 half of class members only if the plaintiff establishes that the members have suffered an  
40 ascertainable loss of money or property as a result of the defendant's reckless or knowing  
41 violation of the provisions of this section.

42 (B) A court may not award attorney fees to a prevailing defendant if the action is a class  
43 action under subparagraph (A) of this paragraph.

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

1 (4) This section does not:

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

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

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

20 (d) Apply to:

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

25 (B) A product or equipment that:

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

27 (ii) Is a device that the United States Food and Drug Administration has approved for  
28 sale or use;

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

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

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

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

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

1       (ii) A vehicle or equipment that is not a motor vehicle or a vehicle used solely for com-  
2 petition and is powered by an engine described in subparagraph (A) of this paragraph, to-  
3 gether with any tools, technology, attachments, accessories, components or repair parts for  
4 the vehicle or engine;

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

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

15       **SECTION 2.** Section 1 of this 2023 Act applies to consumer electronic equipment that is  
16 sold or is in use on or after the effective date of this 2023 Act.

17       **SECTION 3.** This 2023 Act takes effect on the 91st day after the date on which the 2023  
18 regular session of the Eighty-second Legislative Assembly adjourns sine die.  
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