

Requested by Senator SOLLMAN

**PROPOSED AMENDMENTS TO
SENATE BILL 542**

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

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

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

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

8 **“(i) The original equipment manufacturer grants a license to or
9 otherwise permits the person to use the original equipment
10 manufacturer’s trade name, service mark or other proprietary iden-
11 tification for the purpose of offering the services of diagnosing, main-
12 taining or repairing consumer electronic equipment; or**

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

17 **“(B) An original equipment manufacturer, but only in instances
18 where the original equipment manufacturer does not have an ar-
19 rangement described in subparagraph (A) of this paragraph and offers
20 the services of diagnosing, maintaining or repairing consumer elec-
21 tronic equipment that the original equipment manufacturer makes or**

1 sells.

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

3 “(A) Functions, in whole or in part, on the basis of digital elec-
4 tronics that are embedded within or attached to the product;

5 “(B) Is tangible personal property;

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

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

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

11 “(c) ‘Documentation’ means any manual, diagram, reporting out-
12 put, service code description, schematic diagram, security code, pass-
13 word or other guidance or information that enables a person to
14 diagnose, maintain or repair consumer electronic equipment.

15 “(d) ‘Fair and reasonable terms’ means terms under which an ori-
16 ginal equipment manufacturer:

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

21 “(B) Makes tools for diagnosing, maintaining and repairing con-
22 sumer electronic equipment available at no charge and without im-
23 peding access to, or the efficient and cost-effective use of, the tools,
24 including by requiring authorization or access to the Internet to use
25 or operate the tools, except that the original equipment manufacturer
26 may charge for the reasonable and actual costs of preparing and
27 shipping a physical tool that a person requests; and

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

30 “(i) An independent repair provider and an owner at costs and on

1 terms that are equivalent to the most favorable costs and terms at
2 which the original equipment manufacturer offers the parts to an au-
3 thorized service provider and that:

4 “(I) Account for any discount, rebate, convenient means of delivery,
5 means of enabling fully restored and updated functionality, rights of
6 use or other incentive or preference the original equipment manufac-
7 turer offers to an authorized service provider, or that impose any ad-
8 ditional cost, burden or impediment the original equipment
9 manufacturer also imposes on an authorized service provider;

10 “(II) Do not impose a substantial condition, obligation or restriction
11 that is not reasonably necessary to enable an independent repair pro-
12 vider or owner to diagnose, maintain or repair consumer electronic
13 equipment that the original equipment manufacturer makes or sells;
14 and

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

18 “(ii) All authorized service providers that the original equipment
19 manufacturer permits, by contract or otherwise, to sell parts to inde-
20 pendent repair providers and owners, without:

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

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

29 “(e) ‘Independent repair provider’ means a person that engages in
30 the business of diagnosing, maintaining or repairing consumer elec-

1 **tronic equipment in this state but is not an authorized service pro-**
2 **vider.**

3 **“(f) ‘Original equipment manufacturer’ means a person that en-**
4 **gages in the business of selling, leasing or otherwise supplying to an-**
5 **other person new consumer electronic equipment that the person**
6 **makes or has made on the person’s behalf.**

7 **“(g) ‘Owner’ means a person that owns or leases from a lessor**
8 **consumer electronic equipment that the person or the lessor pur-**
9 **chased or used in this state.**

10 **“(h) ‘Part’ means a new or used replacement component for con-**
11 **sumer electronic equipment that an original equipment manufacturer**
12 **makes available for the purpose of maintaining or repairing consumer**
13 **electronic equipment that the original equipment manufacturer makes**
14 **or sells.**

15 **“(i) ‘Tool’ means software, a hardware implement or an apparatus**
16 **by means of which a person can diagnose, maintain or repair con-**
17 **sumer electronic equipment including any software, or a mechanism**
18 **that provisions, programs or pairs a new part, calibrates functionality**
19 **or performs another function that is necessary to update or restore a**
20 **product to a fully functional condition.**

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

22 **“(k)(A) ‘Video game console’ means a computing device, and com-**
23 **ponents and peripherals for the computing device, that is intended**
24 **primarily for playing interactive video games.**

25 **“(B) ‘Video game console’ does not include a general purpose per-**
26 **sonal computer that has the capability to run video games alongside**
27 **other computing functions.**

28 **“(2)(a) An original equipment manufacturer shall make available**
29 **to an owner or an independent repair provider on fair and reasonable**
30 **terms any documentation, tool, part or other device or implement that**

1 the original equipment manufacturer makes available to an authorized
2 service provider for the purpose of diagnosing, maintaining, repairing
3 or updating consumer electronic equipment that the original equip-
4 ment manufacturer makes or sells and that is sold or used in this
5 state.

6 “(b) An original equipment manufacturer shall make available to
7 an owner or independent repair provider on fair and reasonable terms
8 any documentation, tool or part necessary to disable and reset any
9 electronic security lock or other security function in consumer elec-
10 tronic equipment that is or must be disabled or that must be reset
11 while diagnosing, maintaining or repairing the consumer electronic
12 equipment. The original equipment manufacturer may make the doc-
13 umentation, tool or part available by means of an appropriate secure
14 release system.

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

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

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

26 “(4) This section does not:

27 “(a) Require an original equipment manufacturer to disclose a trade
28 secret to an independent service provider or owner except as necessary
29 to provide, on fair and reasonable terms, any documentation, tool,
30 part or other device or implement that the independent repair provider

1 or owner needs to diagnose, maintain or repair consumer electronic
2 equipment.

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

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

23 “(d) Apply to:

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

29 “(B) A product or equipment that:

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

1 “(ii) Is a medical device, as defined in the federal Food, Drug, and
2 Cosmetic Act, 21 U.S.C. 301 et seq., or a digital electronic product,
3 software, control equipment or related products or services manufac-
4 tured for or provided for use in diagnosis or monitoring in an acute
5 care hospital, a long term care facility such as a nursing home or
6 skilled nursing facility, a physician’s office, an urgent care center, an
7 outpatient clinic, a home setting where health care is provided by or
8 at the direction of a licensed health care provider, an emergency
9 medical service facility or at a site where health care is routinely de-
10 livered on premises that are not otherwise a health care facility, such
11 as a medical clinic within a school;

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

14 “(iv) Is a system, mechanism or series of mechanisms that gener-
15 ates, stores or combines generation and storage of electrical energy
16 from solar radiation;

17 “(v) Is a video game console; or

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

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

30 “(i) An internal combustion engine, including the engine’s fuel

1 system or other power sources such as an electric battery or fuel cell,
2 that is not used in a motor vehicle or a vehicle used solely for com-
3 petition or that is not subject to standards of performance for sta-
4 tionary sources or emission standards for new motor vehicles or new
5 motor vehicle engines under the federal Clean Air Act, 42 U.S.C. 7411
6 and 7521 et seq.;

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

12 “(iii) An internal combustion engine or another power source, in-
13 cluding an electric battery or fuel cell, that is not used in a motor
14 vehicle, a vehicle used solely for competition or a vehicle described in
15 sub-subparagraph (ii) of this subparagraph, or equipment that is pow-
16 ered by the internal combustion engine or power source, together with
17 tools, technology, attachments, accessories, components or repair
18 parts for the internal combustion engine or the equipment; or

19 “(iv) An engine or other power source, including an electric battery
20 or fuel cell, that is used for propulsion or power generation in a mar-
21 itime environment or waterway, together with any tools, technology,
22 attachments, accessories, components or repair parts for the engine
23 or power source; or

24 “(D) A manufacturer, distributor or dealer of any off-road equip-
25 ment and tools, technology, attachments, accessories, components and
26 repair parts for off-road equipment including, but not limited to, farm
27 and utility tractors, farm implements and machinery, equipment for
28 forestry, industry, utilities, construction, mining or maintaining a
29 yard, garden or turf, outdoor power equipment and portable genera-
30 tors, vehicles used in marine environments, for sports, recreation and

1 racing, all-terrain vehicles, power tools and stand-alone or integrated
2 mobile or stationary internal combustion engines or power sources
3 such as generator sets and battery or fuel cell power.

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

5 **“(a) ‘Certification entity’ means a person that engages in evaluating**
6 **and certifying the technical capabilities and competence of independ-**
7 **ent repair providers in accordance with standards that the person**
8 **adopts or that an original equipment manufacturer specifies.**

9 **“(b) ‘Repair certification’ means evidence that an independent re-**
10 **pair provider has the technical and financial capability and compe-**
11 **tence necessary to safely, securely and reliably repair digital electronic**
12 **equipment in accordance with standards that a certification entity**
13 **specifies.**

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

16 **“(a) Post at the authorized service provider’s or independent repair**
17 **provider’s place of business, on the authorized service provider’s or**
18 **independent repair provider’s website, or provide directly to customers**
19 **a notice that:**

20 **“(A) Specifies the steps the authorized service provider or inde-**
21 **pendent repair provider takes to ensure the customer’s privacy and the**
22 **security of consumer electronic equipment the customer entrusts to**
23 **the authorized service provider or independent repair provider;**

24 **“(B) Recommends steps the consumer should take to ensure privacy**
25 **and security, including but not limited to:**

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

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

