

FIRST REGULAR SESSION

HOUSE BILL NO. 1178

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCCREERY.

2172H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 407, RSMo, by adding thereto two new sections relating to consumer product repair requirements.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto two new sections, to be known as sections 407.650 and 407.651, to read as follows:

407.650. As used in sections 407.650 to 407.651, the following terms mean:

(1) "Authorized repair provider", an individual or business that has an oral or written arrangement for a definite or indefinite period in which a manufacturer or distributor transfers to a separate business organization or individual license to use a trade name, service mark, or relative characteristic for the purposes of offering repair services under the name of the manufacturer;

(2) "Consumer product", any article, or component part thereof, produced or distributed:

(a) For sale to a consumer for use in or around a permanent or temporary household or residence or a school, in recreation, or otherwise; or

(b) For the personal use, consumption, or enjoyment by a consumer in or around a permanent or temporary household or residence or a school, in recreation, or otherwise.

Consumer product shall not include any article that is not customarily produced or distributed for sale to, use or consumption by, or enjoyment of, a consumer. Consumer products shall include, but not be limited to, aircraft and aircraft products, agricultural

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 products, electronic products, household products, motor vehicle products,
18 telecommunication products, or watercraft and watercraft products;

19 (3) "Documentation", manuals, diagrams, reporting output, or service code
20 descriptions provided to the authorized repair provider for the purposes of repair;

21 (4) "Embedded software", programmable instructions provided on firmware
22 delivered with certain consumer products for the purposes of product operation, including
23 all relevant patches and fixes made by the manufacturer for this purpose including, but not
24 limited to, a basic internal operating system, internal operating system, machine code,
25 assembly code, root code, and microcode;

26 (5) "Fair and reasonable terms", an equitable price in light of relevant factors
27 including, but not limited to:

28 (a) The net cost to the authorized repair provider for similar parts obtained from
29 manufacturers, less any discounts, rebates, or other incentive programs;

30 (b) The cost to the manufacturer for preparing and distributing the parts or
31 product, excluding any research and development costs incurred in designing and
32 implementing, upgrading, or altering the product, but including amortized capital costs
33 for the preparation and distribution of the parts; and

34 (c) The price charged by other manufacturers for similar parts or products;

35 (6) "Independent repair provider", an individual or business operating in the state
36 that is not affiliated with a manufacturer or a manufacturer's authorized dealer of a
37 consumer product that is engaged in the diagnosis, service, maintenance, or repair of a
38 consumer product. A manufacturer's authorized dealer shall be considered an
39 independent repair provider if the dealer engages in the diagnosis, service, maintenance,
40 or repair of a consumer product that is not affiliated with the manufacturer;

41 (7) "Manufacturer", an individual or business who, in the ordinary course of its
42 business, is engaged in the business of selling or leasing new consumer products to
43 consumers or other end users and is engaged in the diagnosis, service, maintenance, or
44 repair of that product;

45 (8) "Owner", an individual or business who lawfully acquires a consumer product
46 purchased or used in the state;

47 (9) "Remote diagnostics", a remote data transfer function between certain
48 consumer products and a provider of repair services, including for purposes of remote
49 diagnostics, settings controls, or location identification;

50 (10) "Service parts", replacement parts, either new or used, made available by the
51 manufacturer to the authorized repair provider for the purposes of repair;

52 (11) "Trade secret", anything tangible or intangible or electronically stored or kept
53 that constitutes, represents, evidences, or records intellectual property including, but not
54 limited to:

55 (a) Secret or confidentially held designs, processes, procedures, formulas,
56 inventions, or improvements;

57 (b) Secrets or confidentially held scientific, technical, merchandising, production,
58 financial, business, or management information; or

59 (c) Any "trade secret" as that term is defined under paragraph (3) of 18 U.S.C.
60 Section 1839.

407.651. 1. Manufacturers of consumer products sold or used in the state shall:

2 (1) Make available to independent repair facilities or owners of products
3 manufactured by the manufacturer diagnostic and repair information, including repair
4 technical updates, diagnostic software, service access passwords, updates and corrections
5 to firmware, and related documentation, free of charge and in the same manner the
6 manufacturer makes such information available to its authorized repair providers; and

7 (2) Make available for purchase by the product owner or the authorized agent of
8 the owner, service parts, including updates to the firmware of the parts, for purchase upon
9 fair and reasonable terms.

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11 Nothing in this section requires the manufacturer to sell service parts if the service parts
12 are no longer available to the manufacturer or the authorized repair channel of the
13 manufacturer.

14 2. Manufacturers that sell diagnostic, service, or repair information to an
15 independent repair provider or a third-party provider in a format that is standardized
16 with other manufacturers, and on terms and conditions more favorable than the manner
17 and the terms and conditions pursuant to which an authorized repair provider obtains the
18 same diagnostic, service, or repair information, are prohibited from requiring an
19 authorized repair provider to continue purchasing diagnostic, service, or repair
20 information in a proprietary format, unless the proprietary format includes diagnostic,
21 service, repair, or dealership operations information or functionality that is not available
22 in a standardized format.

23 3. Manufacturers of consumer products sold or used in the state shall make
24 available for purchase by owners and independent repair facilities all diagnostic repair
25 tools, incorporating the same diagnostic repair and remote diagnostic capabilities that the
26 manufacturer makes available to its own repair or engineering staff or any authorized
27 repair providers, upon fair and reasonable terms.

28 **4. Manufacturers that provide repair information to aftermarket tool, diagnostics,**
29 **or third-party service information publications and systems have fully satisfied their**
30 **obligations under this section and thereafter are not responsible for the content and**
31 **functionality of aftermarket diagnostic tools or service information systems.**

32 **5. Manufacturers of consumer products sold or used in the state for the purposes**
33 **of providing security-related functions may not exclude diagnostic, service, and repair**
34 **information necessary to reset a security-related electronic function from information**
35 **provided to owners and independent repair facilities. If necessary for security purposes,**
36 **manufacturers may provide information necessary to reset and unlock system or**
37 **security-related electronic modules to owners and independent repair facilities through an**
38 **appropriate secure data release system.**

39 **6. Nothing in this section requires the manufacturer to divulge a trade secret.**

40 **7. Notwithstanding any law or rule to the contrary, this section shall not be read,**
41 **interpreted, or construed to abrogate, interfere with, contradict, or alter the terms of an**
42 **agreement executed between an authorized repair provider and a manufacturer including,**
43 **but not limited to, performing warranty or recall repair work by an authorized repair**
44 **provider on behalf of a manufacturer pursuant to the authorized repair agreement.**
45 **Except in the case of a dispute arising between a manufacturer and its authorized repair**
46 **provider related to either party's compliance with an existing repair agreement, an**
47 **authorized repair provider has all the rights and remedies provided in this section.**

48 **8. This section does not require manufacturers or authorized repair providers to**
49 **provide an owner or independent repair provider access to nondiagnostic and nonrepair**
50 **information provided by a manufacturer to an authorized repair provider pursuant to the**
51 **terms of an authorizing agreement.**

52 **9. (1) An independent repair provider or owner who believes that a manufacturer**
53 **has failed to provide information, including documentation, updates to firmware, safety**
54 **and security corrections, diagnostics, documentation, or a tool required by this section shall**
55 **notify the manufacturer in writing and give the manufacturer thirty days from the time**
56 **the manufacturer receives the complaint to cure the failure. If the manufacturer cures the**
57 **complaint within thirty days, damages are limited to actual damages in any subsequent**
58 **litigation.**

59 **(2) If the manufacturer fails to respond to the notice provided in subdivision (1) of**
60 **this subsection or if an independent repair facility or owner is not satisfied with the**
61 **manufacturer's cure, the independent repair facility or owner may file a complaint in**
62 **district court. The complaint shall include:**

63 **(a) Written information confirming that the complainant attempted to acquire and**
64 **use, through the then-available standard support function provided by the manufacturer,**
65 **all relevant diagnostics, tools, service parts, documentation, and updates to embedded**
66 **software, including communication with customer assistance via the manufacturer's**
67 **then-standard process, if made available by the manufacturer; and**

68 **(b) Evidence of manufacturer notification as required in subdivision (1) of this**
69 **subsection.**

70 **10. The attorney general shall enforce this section.**

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