

FIRST REGULAR SESSION

HOUSE BILL NO. 975

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HOVIS.

1636H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 407, RSMo, by adding thereto two new sections relating to product repair requirements, with a penalty provision.

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 407.652 and 407.653, to read as follows:

407.652. As used in sections 407.652 and 407.653, 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 licensee the right to use a trade name, service mark, or other proprietary identifier for the purposes of offering diagnosis, maintenance, or repair services under the name of the manufacturer. A manufacturer that offers diagnosis, maintenance, or repair services for its product and that does not have an arrangement with an individual or business described in this subdivision shall be considered an authorized repair provider;

(2) "Construction machinery, any mobile heavy equipment or heavy machinery designed for construction or earthwork tasks;

(3) "Documentation", manuals, diagrams, reporting output, schematic diagrams, service code descriptions, or other information provided to the authorized repair provider for the purposes of diagnosis, maintenance, repair, or refurbishment;

(4) "Embedded software", programmable instructions provided on firmware delivered with certain products or parts for the purposes of product operation, including all relevant safety, security, and defect patches and fixes made by the manufacturer for this

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.

18 purpose. "Embedded software" shall include all software that meets this definition
19 regardless of name including, but not limited to, assembly code, basic internal operating
20 system, internal operating system, machine code, microcode, and root code;

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

23 (a) The net cost to an authorized repair provider for similar parts, documentation,
24 or tools obtained from manufacturers, less any discounts, rebates, or other incentive
25 programs;

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

30 (c) The price charged by other manufacturers for similar parts or products.
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32 For documentation including, but not limited to, software updates, "fair and reasonable
33 terms" shall mean at no charge, except, if documentation is requested in printed form, the
34 manufacturer may charge for reasonable costs of preparing and sending the
35 documentation. For software tools, "fair and reasonable terms" shall mean at no charge
36 and without requiring authorization, without requiring internet access, and without
37 impeding access or use of the product;

38 (6) "Farm machinery", any mobile equipment or machinery including, but not
39 limited to, tractors, trailers, combines, tillage implements, balers, unmanned aircraft
40 system, off-road vehicles, and other equipment, including attachments and repair parts
41 thereof, used in the planting, cultivating, irrigating, harvesting, or ranching of agricultural
42 products, excluding self-propelled machines designed primarily for the transportation of
43 persons or property on a street or highway;

44 (7) "Independent repair provider", an individual or business operating in the state
45 that is not affiliated with a manufacturer or a manufacturer's authorized dealer of a
46 product but is engaged in the diagnosis, service, maintenance, or repair of products. A
47 manufacturer's authorized dealer shall be considered an independent repair provider if
48 the dealer engages in the diagnosis, service, maintenance, or repair of a product that is not
49 affiliated with the manufacturer;

50 (8) "Manufacturer", an individual or business who, in the ordinary course of
51 business, is engaged in selling or leasing new products to consumers or other end users and
52 is engaged in the diagnosis, service, maintenance, or repair of that product;

53 (9) "Owner", an individual or business who lawfully acquires a product purchased
54 or used in the state;

55 (10) "Product", any farm machinery or construction machinery, regardless of the
56 date purchased, whose functioning depends, in whole or in part, on embedded or attached
57 digital electronics;

58 (11) "Remote diagnostics", a remote data transfer function between certain
59 products and a provider of repair services, including for purposes of remote diagnostics,
60 settings controls, or location identification;

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

63 (13) "Tools", any software program, hardware implement, or other apparatus used
64 for diagnosis, maintenance, or repair of a product including, but not limited to, software
65 or other mechanisms that provision, program, or pair a new part, calibrate functionality,
66 or perform a function required to bring the product back to fully functional condition;

67 (14) "Trade secret", anything tangible, intangible, or electronically stored or kept
68 that constitutes, represents, evidences, or records intellectual property including, but not
69 limited to:

70 (a) Secret or confidentially held designs, processes, procedures, formulas,
71 inventions, or improvements;

72 (b) Secret or confidentially held scientific, technical, merchandising, production,
73 financial, business, or management information; or

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

 407.653. 1. Owners of products purchased or used in this state and independent
2 repair providers shall have the right to:

3 (1) Access the same diagnostic and repair information of products manufactured
4 by the manufacturer as the manufacturer makes available to authorized repair providers.
5 Such information shall be provided in the same manner and time as provided to authorized
6 repair providers. Such information shall include, but not be limited to, repair technical
7 updates, diagnostic software, service access passwords, updates and corrections to
8 firmware, and related documentation; and

9 (2) Purchase service parts, documentation, and tools available upon fair and
10 reasonable terms. Such service parts shall be made available in the same manner and time
11 as given to authorized repair providers. Such service parts shall include updates to
12 firmware of parts.

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14 Nothing in this section shall require the manufacturer to sell service parts if the service
15 parts are no longer available to the manufacturer or the authorized repair channel of the
16 manufacturer.

17 2. An authorized repair provider shall have the right to purchase diagnostic,
18 service, or repair information of a product in a format standardized with other
19 manufacturers instead of a proprietary format from a manufacturer if the manufacturer
20 sells diagnostic, service, or repair information to independent repair providers or
21 third-party providers in such a standardized format or if the manufacturer offers terms
22 and conditions more favorable to independent repair providers or third-party providers
23 than the manner and the terms and conditions that are available to an authorized repair
24 provider. However, this subsection shall not apply if the proprietary format includes
25 diagnostic, service, repair, or dealership operations information or functionality not
26 available in a standardized format.

27 3. Owners and independent repair facilities shall have the right to purchase from
28 manufacturers of products sold or used in this state all diagnostic repair tools,
29 incorporating the same diagnostic repair and remote diagnostic capabilities that the
30 manufacturer makes available to its own repair or engineering staff or any authorized
31 repair providers, on fair and reasonable terms.

32 4. For equipment that contains an electronic security lock or other security-related
33 function, the manufacturer shall make available to owners and independent repair
34 providers, on fair and reasonable terms, any special documentation, tools, and parts
35 needed to disable the lock or function and to reset it when disabled in the course of
36 diagnosis, maintenance, or repair of the equipment. The documentation, tools, and parts
37 may be made available through an appropriate secure system.

38 5. Manufacturers that provide repair information to aftermarket tools, diagnostics,
39 or third-party service information publications and systems have fully satisfied their
40 obligations under this section and thereafter are not responsible for the content and
41 functionality of aftermarket diagnostic tools or service information systems.

42 6. If a manufacturer has made an express warranty with respect to a product and
43 the wholesale price of the equipment is one hundred dollars or more, the manufacturer
44 shall provide the parts, tools, and documentation needed to repair the product during the
45 warranty period at an equitable price, with convenient delivery, and with an enabled
46 functionality, considering:

47 (1) The actual cost to the manufacturer to prepare and distribute the part, tool, or
48 documentation, exclusive of any research and development costs incurred;

49 (2) The ability of owners or independent repair providers to afford the part, tool,
50 or documentation; and

51 (3) The means by which the part, tool, or documentation is distributed.

52 7. Manufacturers of products sold or used in the state for the purposes of providing
53 security-related functions shall not exclude diagnostic, service, or repair information
54 necessary to reset a security-related electronic function from information provided to
55 owners and independent repair facilities. If necessary for security purposes,
56 manufacturers shall provide information necessary to reset and unlock system or
57 security-related electronic modules to owners and independent repair facilities through an
58 appropriate secure data release system.

59 8. Nothing in this section shall require the manufacturer to divulge a trade secret.

60 9. Notwithstanding any law or rule to the contrary, this section shall not be read,
61 interpreted, or construed to abrogate, interfere with, contradict, or alter the terms of an
62 agreement executed between an authorized repair provider and a manufacturer including,
63 but not limited to, performing warranty or recall repair work by an authorized repair
64 provider on behalf of a manufacturer pursuant to the authorized repair agreement.
65 Except in the case of a dispute arising between a manufacturer and its authorized repair
66 provider related to either party's compliance with an existing repair agreement, an
67 authorized repair provider shall have all the rights and remedies provided in this section.

68 10. This section shall not require manufacturers or authorized repair providers to
69 provide an owner or independent repair provider access to nondiagnostic and nonrepair
70 information provided by a manufacturer to an authorized repair provider under the
71 agreement between the manufacturer and the authorized repair provider.

72 11. (1) An independent repair provider or owner who believes that a manufacturer
73 has failed to provide information including, but not limited to, documentation, updates to
74 firmware, safety and security corrections, diagnostics, documentation, or a tool required
75 by this section shall notify the manufacturer in writing and give the manufacturer thirty
76 days from the date the manufacturer receives the complaint to cure the failure. If the
77 manufacturer cures the complaint within thirty days, damages are limited to actual
78 damages in any subsequent litigation.

79 (2) If the manufacturer fails to respond in a timely manner to the notice described
80 under subdivision (1) of this subsection or if an independent repair facility or owner is not
81 satisfied with the manufacturer's cure, the independent repair facility or owner may file
82 a complaint in district court. The complaint shall include:

83 (a) Written information confirming that the complainant attempted to acquire and
84 use, through the then-available standard support function provided by the manufacturer,

85 all relevant diagnostics, tools, service parts, documentation, and updates to embedded
86 software, including communication with customer assistance via the manufacturer's
87 then-standard process, if made available by the manufacturer; and

88 (b) Evidence of manufacturer notification as required in subdivision (1) of this
89 subsection.

90 12. No manufacturer shall be required to provide any information or service parts
91 under subsection 1 of this section if the product for which the information or service parts
92 are sought is under a valid warranty for repair or replacement of the product.

93 13. The attorney general shall enforce this section. Each violation of this section
94 shall be punishable by a ten-thousand-dollar fine, which shall be deposited in the general
95 revenue fund established under section 33.543.

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