

SECOND REGULAR SESSION

HOUSE BILL NO. 2541

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCCREERY.

5351H.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:

- 2 **(1) "Authorized repair provider", an individual or business that has an oral or**
3 **written arrangement for a definite or indefinite period in which a manufacturer or**
4 **distributor transfers to a separate business organization or individual license to use a trade**
5 **name, service mark, or relative characteristic for the purposes of offering repair services**
6 **under the name of the manufacturer;**
- 7 **(2) "Documentation", manuals, diagrams, reporting output, schematic diagrams,**
8 **or service code descriptions provided to the authorized repair provider for the purposes**
9 **of repair or refurbishment;**
- 10 **(3) "Embedded software", programmable instructions provided on firmware**
11 **delivered with certain products for the purposes of product operation, including all**
12 **relevant safety, security, and defect patches and fixes made by the manufacturer for this**
13 **purpose. "Embedded software" shall include all software that satisfies this definition**
14 **regardless if called a different name including, but not limited to, assembly code, basic**
15 **internal operating system, internal operating system, machine code, microcode, or root**
16 **code;**

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

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

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

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

26 (5) "Independent repair provider", an individual or business operating in the state
27 that is not affiliated with a manufacturer or a manufacturer's authorized dealer of a
28 product and that is engaged in the diagnosis, service, maintenance, or repair of a product.
29 A manufacturer's authorized dealer shall be considered an "independent repair provider"
30 if the dealer engages in the diagnosis, service, maintenance, or repair of a product that is
31 not affiliated with the manufacturer;

32 (6) "Manufacturer", an individual or business that, in the ordinary course of its
33 business, is engaged in selling or leasing new products to consumers or other end users and
34 is engaged in the diagnosis, service, maintenance, or repair of those products;

35 (7) "Owner", an individual or business that lawfully acquires a product purchased
36 or used in the state;

37 (8) "Product", any product regardless of the date purchased. "Product" shall
38 exclude motor vehicles;

39 (9) "Remote diagnostics", a remote data-transfer function between certain
40 products and a provider of repair services, including for purposes of remote diagnostics,
41 settings controls, or location identification;

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

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

47 (a) Secret or confidentially held designs, processes, procedures, formulas,
48 inventions, or improvements;

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

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

1 **407.653. 1. Owners of products purchased or used in this state shall have the right**
2 **to:**

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

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

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

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

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

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

34 **5. Manufacturers of products sold or used in the state for the purposes of providing**
35 **security-related functions shall not exclude diagnostic, service, and repair information**
36 **necessary to reset a security-related electronic function from information provided to**

37 owners and independent repair facilities. If necessary for security purposes,
38 manufacturers may provide information necessary to reset and unlock system or
39 security-related electronic modules to owners and independent repair facilities through an
40 appropriate secure data release system.

41 **6. Nothing in this section shall require the manufacturer to divulge a trade secret.**

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

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

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

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

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

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

72 **10. No manufacturer shall be required to provide any information or service parts**
73 **under subsection 1 of this section if the product for which the information or service parts**
74 **are sought is under a valid warranty for repair or replacement of the product.**

75 **11. The attorney general shall enforce this section. Each violation of this section**
76 **shall be punishable by a five-hundred-dollar fine, which shall be deposited in the general**
77 **revenue fund established under section 33.543.**

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