

SECOND REGULAR SESSION

HOUSE BILL NO. 2204

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCCREERY.

5798H.011

D. ADAM CRUMBLISS, 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 407.650 and 407.651, to read as follows:

407.650. As used in sections 407.650 to 407.651, 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 meets 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, and 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 that is engaged in the diagnosis, service, maintenance, or repair of a product. A
29 manufacturer's authorized dealer shall be considered an independent repair provider if
30 the dealer engages in the diagnosis, service, maintenance, or repair of a product that is not
31 affiliated with the manufacturer;

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

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

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

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

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

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

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

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

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

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

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

9 (2) Make service parts available for purchase upon fair and reasonable terms by
10 the product owner or the authorized agent of the owner. Such service parts shall be made
11 available in the same manner and time as given to authorized repair providers. Such
12 service parts shall include updates to 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. Manufacturers that sell diagnostic, service, or repair information to an
18 independent repair provider or a third-party provider in a format that is standardized
19 with other manufacturers and on terms and conditions more favorable than the manner
20 and the terms and conditions pursuant to which an authorized repair provider obtains the
21 same diagnostic, service, or repair information are prohibited from requiring an
22 authorized repair provider to continue purchasing diagnostic, service, or repair
23 information in a proprietary format, unless the proprietary format includes diagnostic,
24 service, repair, or dealership operations information or functionality that is not available
25 in a standardized format.

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

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

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

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

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

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

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

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

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

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

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

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