

SECOND REGULAR SESSION

HOUSE BILL NO. 2871

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WEBER.

4358H.011

JOSEPH ENGLER, 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 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) "Documentation", manuals, diagrams, reporting output, schematic diagrams, or service code descriptions provided to the authorized repair provider for the purposes of repair or refurbishment;

(3) "Embedded software", programmable instructions provided on firmware delivered with certain products for the purposes of product operation, including all relevant safety, security, and defect patches and fixes made by the manufacturer for this purpose. "Embedded software" shall include all software that satisfies this definition regardless if called a different name including, but not limited to, assembly code, basic internal operating system, internal operating system, machine code, microcode, or root 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
20 from 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
27 state that is not affiliated with a manufacturer or a manufacturer's authorized dealer of
28 a product and that is engaged in the diagnosis, service, maintenance, or repair of a
29 product. A manufacturer's authorized dealer shall be considered an independent repair
30 provider if the dealer engages in the diagnosis, service, maintenance, or repair of a
31 product that is 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
34 and is engaged in the diagnosis, service, maintenance, or repair of those products;
- 35 (7) "Owner", an individual or business that lawfully acquires a product
36 purchased 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
43 the manufacturer to the authorized repair provider for the purposes of repair;
- 44 (11) "Trade secret", anything tangible or intangible or electronically stored or
45 kept that constitutes, represents, evidences, or records intellectual property including,
46 but not limited to:
- 47 (a) Secret or confidentially held designs, processes, procedures, formulas,
48 inventions, or improvements;
- 49 (b) Secret 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.

407.653. 1. Owners of products purchased or used in this state shall have the
2 right 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
5 providers or authorized repair providers. Such information shall be provided in the
6 same manner and time as provided to authorized repair providers. Such information
7 shall include, but not be limited to, repair technical updates, diagnostic software, service
8 access passwords, updates and corrections to firmware, and related documentation; and

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

17 2. An authorized repair provider shall have the right to purchase diagnostic,
18 service, or repair information in a format standardized with other manufacturers
19 instead of a proprietary format from a manufacturer if the manufacturer sells
20 diagnostic, service, or repair information to independent repair providers or third-party
21 providers in such a standardized format or if the manufacturer offers terms and
22 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 providers shall have the right to purchase
28 from 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, upon fair and reasonable terms.

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

36 5. Manufacturers of products sold or used in the state for the purposes of
37 providing security-related functions shall not exclude diagnostic, service, or repair

38 information necessary to reset a security-related electronic function from information
39 provided to owners and independent repair providers. If necessary for security
40 purposes, manufacturers may provide information necessary to reset and unlock system
41 or security-related electronic modules to owners and independent repair providers
42 through an appropriate secure data release system.

43 6. Nothing in this section shall require the manufacturer to divulge a trade
44 secret.

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

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

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

65 (2) If the manufacturer fails to respond to the notice provided in subdivision (1)
66 of this subsection or if an independent repair provider or owner is not satisfied with the
67 manufacturer's cure, the independent repair provider or owner may file a complaint in
68 circuit court. The complaint shall include:

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

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

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

80 **11. The attorney general shall enforce this section. Each violation of this section**
81 **shall be punishable by a five-hundred-dollar fine, which shall be deposited into the**
82 **school fund of the county in which the complaint arose.**

83 **12. This section shall not apply to manufacturers or distributors of a medical**
84 **device as defined in the Federal Food, Drug, and Cosmetic Act, or a digital electronic**
85 **product or software manufactured for use in a medical setting, including diagnostic,**
86 **monitoring, or control equipment or any product or service that the manufacturer or**
87 **distributor of a medical device offers.**

88 **13. This section shall not apply to a manufacturer, dealer, distributor, integrator,**
89 **installer, or monitoring service provider of a central station security device or alarm**
90 **system including, but not limited to, all central station alarm systems used to prevent,**
91 **detect, protect against, or respond to fire, carbon monoxide risks, falls, medical alerts,**
92 **or security incidents, or control access to residential, commercial, and governmental**
93 **property, services, or information systems.**

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