

# SENATE BILL NO. 420

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR MCCREERY.

0353S.01I

KRISTINA MARTIN, Secretary

## AN ACT

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

*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 this section and section 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

19 include all software that satisfies this definition  
20 regardless if called a different name including, but not  
21 limited to, assembly code, basic internal operating system,  
22 internal operating system, machine code, microcode, or root  
23 code;

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

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

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

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

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

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

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

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

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

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

62 (11) "Trade secret", anything tangible or intangible  
63 or electronically stored or kept that constitutes,  
64 represents, evidences, or records intellectual property  
65 including, but not limited to:

66 (a) Secret or confidentially held designs, processes,  
67 procedures, formulas, inventions, or improvements;

68 (b) Secret or confidentially held scientific,  
69 technical, merchandising, production, financial, business,  
70 or management information; or

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

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

3 (1) Access the same diagnostic and repair information  
4 of products manufactured by the manufacturer as the  
5 manufacturer makes available to independent repair providers  
6 or authorized repair providers. Such information shall be  
7 provided in the same manner and time as provided to  
8 authorized repair providers. Such information shall  
9 include, but not be limited to, repair technical updates,

10 diagnostic software, service access passwords, updates and  
11 corrections to firmware, and related documentation; and

12 (2) Purchase service parts available upon fair and  
13 reasonable terms. Such service parts shall be made  
14 available in the same manner and time as given to authorized  
15 repair providers. Such service parts shall include updates  
16 to firmware of parts.

17 Nothing in this section shall require the manufacturer to  
18 sell service parts if the service parts are no longer  
19 available to the manufacturer or the authorized repair  
20 channel of the manufacturer.

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

35 3. Owners and independent repair providers shall have  
36 the right to purchase from manufacturers of products sold or  
37 used in this state all diagnostic repair tools,  
38 incorporating the same diagnostic repair and remote  
39 diagnostic capabilities that the manufacturer makes

40 available to its own repair or engineering staff or any  
41 authorized repair providers, upon fair and reasonable terms.

42 4. Manufacturers that provide repair information to  
43 aftermarket tools, diagnostics, or third-party service  
44 information publications and systems have fully satisfied  
45 their obligations under this section and thereafter are not  
46 responsible for the content and functionality of aftermarket  
47 diagnostic tools or service information systems.

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

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

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

72           8. This section shall not require manufacturers or  
73 authorized repair providers to provide an owner or  
74 independent repair provider access to nondiagnostic and  
75 nonrepair information provided by a manufacturer to an  
76 authorized repair provider pursuant to the terms of an  
77 authorizing agreement.

78           9. (1) An independent repair provider or owner who  
79 believes that a manufacturer has failed to provide  
80 information, including documentation, updates to firmware,  
81 safety and security corrections, diagnostics, documentation,  
82 or a tool required by this section, shall notify the  
83 manufacturer in writing and give the manufacturer thirty  
84 days from the time the manufacturer receives the complaint  
85 to cure the failure. If the manufacturer cures the failure  
86 within thirty days, damages are limited to actual damages in  
87 any subsequent litigation.

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

94           (a) Written information confirming that the  
95 complainant attempted to acquire and use, through the then  
96 available standard support function provided by the  
97 manufacturer, all relevant diagnostics, tools, service  
98 parts, documentation, and updates to embedded software,  
99 including communication with customer assistance via the  
100 manufacturer's then standard process, if made available by  
101 the manufacturer; and

102           (b) Evidence of manufacturer notification as required  
103 in subdivision (1) of this subsection.

104           10. No manufacturer shall be required to provide any  
105 information or service parts under subsection 1 of this  
106 section if the product for which the information or service  
107 parts are sought is under a valid warranty for repair or  
108 replacement of the product.

109           11. The attorney general shall enforce the provisions  
110 of this section. Each violation of this section shall be  
111 punishable by a fine of five hundred dollars, which shall be  
112 deposited into the school fund of the county in which the  
113 complaint arose.

114           12. This section shall not apply to manufacturers or  
115 distributors of a medical device as defined in the Federal  
116 Food, Drug, and Cosmetic Act, or a digital electronic  
117 product or software manufactured for use in a medical  
118 setting including diagnostic, monitoring, or control  
119 equipment or any product or service that the manufacturer or  
120 distributor of a medical device offers.

121           13. This section shall not apply to a manufacturer,  
122 dealer, distributor, integrator, installer, or monitoring  
123 service provider of a central station security device or  
124 alarm system, including, but not limited to, all central  
125 station alarm systems used to prevent, detect, protect  
126 against, or respond to fire, carbon monoxide risks, falls,  
127 medical alerts, or security incidents, or control access to  
128 residential, commercial, and governmental property,  
129 services, or information systems.

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