

SENATE BILL NO. 1564

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR MCCREERY.

4318S.011

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
2 two new sections, to be known as sections 407.652 and 407.653,
3 to read as follows:

407.652. As used in this section and section 407.653,
2 the following terms mean:

3 (1) "Authorized repair provider", an individual or
4 business that has an oral or written arrangement for a
5 definite or indefinite period in which a manufacturer or
6 distributor transfers to a separate business organization or
7 individual license to use a trade name, service mark, or
8 relative characteristic for the purposes of offering repair
9 services under the name of the manufacturer;

10 (2) "Documentation", manuals, diagrams, reporting
11 output, schematic diagrams, or service code descriptions
12 provided to the authorized repair provider for the purposes
13 of repair or refurbishment;

14 (3) "Embedded software", programmable instructions
15 provided on firmware delivered with certain products for the
16 purposes of product operation, including all relevant
17 safety, security, and defect patches and fixes made by the

18 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 repair dealer
40 of a product and that is engaged in the diagnosis, service,
41 maintenance, or repair of a product. A manufacturer's
42 authorized repair dealer shall be considered an independent
43 repair provider if the repair dealer engages in the
44 diagnosis, service, maintenance, or repair of a product that
45 is not affiliated 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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