

STATE OF NEW YORK

9058

IN SENATE

June 15, 2018

Introduced by Sen. BOYLE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law, in relation to the sale of mobile devices and computers and providing diagnostic and repair information

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "mobile device and computer fair repair act".

3 § 2. The general business law is amended by adding a new section 399-
4 nn to read as follows:

5 § 399-nn. Sale and repair of mobile devices and computers. 1. Defi-
6 nitions. For the purposes of this section, the following terms shall
7 have the following meanings:

8 (a) "Mobile device" means any hand-held mobile telephone, personal
9 digital assistant (PDA), hand-held device with mobile data access,
10 laptop computer, pager, broadband personal communication device, two-way
11 messaging device, or portable computing device.

12 (b) "Computer" means an electronic, magnetic, optical, electrochemi-
13 cal, or other high-speed data processing device performing logical,
14 arithmetic, or storage functions, and includes any data storage facility
15 or communications facility directly related to or operating in conjunc-
16 tion with such device, but such term does not include an automated type-
17 writer or typesetter, a portable handheld calculator, or other similar
18 device.

19 (c) "Authorized repair provider" means an individual or business who
20 is unaffiliated with an original equipment manufacturer and who has an
21 arrangement with the original equipment manufacturer, for a definite or
22 indefinite period, under which the original equipment manufacturer
23 grants to the individual or business a license to use a trade name,
24 service mark, or other proprietary identifier for the purposes of offer-
25 ing the services of diagnosis, maintenance, or repair of mobile devices
26 or computers under the name of the original equipment manufacturer, or
27 other arrangement with the original equipment manufacturer to offer such

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 services on behalf of the original equipment manufacturer. An original
2 equipment manufacturer who offers the services of diagnosis, mainte-
3 nance, or repair of its own mobile device or computer, and who does not
4 have an arrangement described in this subdivision with an unaffiliated
5 individual or business, shall be considered an authorized repair provid-
6 er with respect to such mobile devices or computers.

7 (d) "Documentation" means any manual, diagram, reporting output,
8 service code description, schematic diagram, or similar kinds of infor-
9 mation provided to an authorized repair provider for purposes of its
10 effecting the services of diagnosis, maintenance, or repair of the
11 mobile device or computer.

12 (e) "Embedded software" means any programmable instructions provided
13 on firmware delivered with the mobile device or computer, or with a part
14 for such mobile device or computer, for purposes of mobile device or
15 computer operation, including all relevant patches and fixes made by the
16 manufacturer of such mobile device or computer or part for these
17 purposes.

18 (f) "Fair and reasonable terms" for obtaining a part or tool or
19 documentation means at costs and terms, including convenience of deliv-
20 ery, and including rights of use, equivalent to what is offered by the
21 original equipment manufacturer to an authorized repair provider, using
22 the net costs that would be incurred by an authorized repair provider in
23 obtaining an equivalent part or tool or documentation from the original
24 equipment manufacturer, accounting for any discounts, rebates, or other
25 incentive programs in arriving at the actual net costs. For documenta-
26 tion, including any relevant updates, "fair and reasonable terms" means
27 at no charge, except that, when the documentation is requested in phys-
28 ical printed form, a charge may be included for the reasonable actual
29 costs of preparing and sending the copy.

30 (g) "Firmware" means a software program or set of instructions
31 programmed on the mobile device or computer, or on a part for such
32 mobile devices or computers, to allow the mobile device or computer or
33 part to communicate with other components of the mobile device or
34 computer.

35 (h) "Independent repair provider" means an individual or business
36 operating in this state, who does not have an arrangement described in
37 paragraph (c) of this subdivision with an original equipment manufactur-
38 er, and who is not affiliated with any individual or business who has
39 such an arrangement, and who is engaged in the services of diagnosis,
40 maintenance, or repair of mobile device or computer, except that an
41 original equipment manufacturer or, with respect to that original equip-
42 ment manufacturer, an individual or business who has such an arrangement
43 with that original equipment manufacturer, or who is affiliated with an
44 individual or business who has such an arrangement with that original
45 equipment manufacturer, shall be considered an independent repair
46 provider for purposes of those instances in which it engages in the
47 services of diagnosis, maintenance, or repair of the mobile device or
48 computer that is not manufactured by or sold under the name of that
49 original equipment manufacturer.

50 (i) "Original equipment manufacturer" means a business engaged in the
51 business of selling or leasing new mobile devices or computers manufac-
52 tured by or on behalf of itself, to any individual or business.

53 (j) "Owner" means an individual or business who owns or leases mobile
54 devices or computers purchased or used in this state.

55 (k) "Part" means any replacement part, either new or used, made avail-
56 able by an original equipment manufacturer for purposes of effecting the

1 services of maintenance or repair of mobile devices or computers manu-
2 factured or sold by the original equipment manufacturer.

3 2. Requirements. (a) For mobile devices or computers, and parts for
4 such mobile devices or computers, sold or used in this state, an
5 original equipment manufacturer shall make available, for purposes of
6 diagnosis, maintenance, or repair, to any independent repair provider,
7 or to the owner of the mobile device or computer manufactured by or on
8 behalf of, or sold by, the original equipment manufacturer, on fair and
9 reasonable terms, documentation, parts, and tools, inclusive of any
10 updates to information or embedded software. Nothing in this section
11 requires an original equipment manufacturer to make available a part if
12 the part is no longer available to the original equipment manufacturer.

13 (b) For mobile devices or computers that contain an electronic securi-
14 ty lock or other security-related function, the original equipment
15 manufacturer shall make available to the owner and to independent repair
16 providers, on fair and reasonable terms, any special documentation,
17 tools, and parts needed to reset the lock or function when disabled in
18 the course of diagnosis, maintenance, or repair of the mobile device or
19 computer. Such documentation, tools, and parts may be made available
20 through appropriate secure release systems.

21 3. Enforcement by attorney general. Whenever there shall be a
22 violation of this section, an application may be made by the attorney
23 general in the name of the people of the state of New York to a court or
24 justice having jurisdiction by a special proceeding to issue an injunc-
25 tion, and upon notice to the defendant of not less than five days, to
26 enjoin and restrain the continuance of such violation; and if it shall
27 appear to the satisfaction of the court or justice that the defendant
28 has, in fact, violated this section, an injunction may be issued by such
29 court or justice, enjoining and restraining any further violation, with-
30 out requiring proof that any person has, in fact, been injured or
31 damaged thereby. In any such proceeding, the court may make allowances
32 to the attorney general as provided in paragraph six of subdivision (a)
33 of section eighty-three hundred three of the civil practice law and
34 rules, and direct restitution. Whenever the court shall determine that
35 a violation of this section has occurred, the court may impose a civil
36 penalty of not more than five hundred dollars for each violation result-
37 ing from a single act or incident. In connection with any such proposed
38 application, the attorney general is authorized to take proof and make a
39 determination of the relevant facts and to issue subpoena in accordance
40 with the civil practice law and rules.

41 4. Limitations. (a) Nothing in this section shall be construed to
42 require an original equipment manufacturer to divulge a trade secret to
43 an owner or an independent service provider.

44 (b) No provision in this section shall be construed to alter the terms
45 of any arrangement described in paragraph (c) of subdivision one of this
46 section in force between an authorized repair provider and an original
47 equipment manufacturer, including, but not limited to, the performance
48 or provision of warranty or recall repair work by an authorized repair
49 provider on behalf of an original equipment manufacturer pursuant to
50 such arrangement, except that any provision in such terms that purports
51 to waive, avoid, restrict, or limit the original equipment manufactur-
52 er's obligations to comply with this section shall be void and unen-
53 forceable.

54 (c) Nothing in this section shall be construed to require an original
55 equipment manufacturer or an authorized repair provider to provide to an
56 owner or independent repair provider access to information, other than

1 documentation, that is provided by the original equipment manufacturer
2 to an authorized repair provider pursuant to the terms of an arrangement
3 described in paragraph (c) of subdivision one of this section.

4 5. Applicability. This section applies with respect to mobile devices
5 or computers sold or in use on or after the effective date of this
6 section.

7 § 3. This act shall take effect January 1, 2019.