

STATE OF NEW YORK

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IN ASSEMBLY

April 19, 2021

Introduced by M. of A. FAHY, LUPARDO, MAGNARELLI, GLICK, GOTTFRIED, BRONSON, L. ROSENTHAL, STECK, McDONALD, DICKENS, REYES, SIMON, GUNTHER, SEAWRIGHT, PHEFFER AMATO, NIOU, COLTON, GRIFFIN, FALL, GALEF, ZINERMAN, BURKE, HUNTER, WOERNER, J. RIVERA, MAMDANI -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, DE LA ROSA, ENGLEBRIGHT -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to the sale of digital electronic equipment 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 "digital 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 of digital electronic equipment; diagnostic and repair
6 information. 1. Definitions. For the purposes of this section, the
7 following terms shall have the following meanings:

8 (a) "Authorized repair provider" means an individual or business who
9 is unaffiliated with an original equipment manufacturer and who has an
10 arrangement with the original equipment manufacturer, for a definite or
11 indefinite period, under which the original equipment manufacturer
12 grants to the individual or business a license to use a trade name,
13 service mark, or other proprietary identifier for the purposes of offer-
14 ing the services of diagnosis, maintenance, or repair of digital elec-
15 tronic equipment under the name of the original equipment manufacturer,
16 or other arrangement with the original equipment manufacturer to offer
17 such services on behalf of the original equipment manufacturer. An
18 original equipment manufacturer who offers the services of diagnosis,
19 maintenance, or repair of its own digital electronic equipment, and who
20 does not have an arrangement described in this subdivision with an unaf-

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

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1 filial individual or business, shall be considered an authorized
2 repair provider with respect to such equipment.

3 (b) "Digital electronic equipment" or "equipment" means any product
4 that depends for its functioning, in whole or in part, on digital elec-
5 tronics embedded in or attached to the product.

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

11 (d) "Embedded software" means any programmable instructions provided
12 on firmware delivered with digital electronic equipment, or with a part
13 for such equipment, for purposes of equipment operation, including all
14 relevant patches and fixes made by the manufacturer of such equipment or
15 part for these purposes.

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

28 (f) "Firmware" means a software program or set of instructions
29 programmed on digital electronic equipment, or on a part for such equip-
30 ment, to allow the equipment or part to communicate with other computer
31 hardware.

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

47 (h) "Manufacturer of motor vehicle equipment" means a business engaged
48 in the business of manufacturing or supplying components that are used
49 in the manufacture, maintenance, or repair of a motor vehicle.

50 (i) "Medical device" means an instrument, apparatus, implement,
51 machine, contrivance, implant, or other similar or related article,
52 including a component part, or accessory, as defined in the federal
53 Food, Drug and Cosmetic Act, 21 USC, Section 321 (h) as amended from
54 time to time, which is intended for use in the diagnosis of disease or
55 other conditions, or in the cure, mitigation, treatment, or prevention
56 of disease, in man or other animals.

1 (j) "Motor vehicle" means a vehicle that is designed for transporting
2 persons or property on a street or highway and is certified by the
3 manufacturer under all applicable federal safety and emissions standards
4 and requirements for distribution and sale in the United States. Motor
5 vehicle does not include: (1) a motorcycle; or (2) a recreational vehi-
6 cle or an auto home equipped for habitation.

7 (k) "Motor vehicle dealer" means an individual or business who, in the
8 ordinary course of business, is engaged in the business of selling or
9 leasing new motor vehicles to an individual or business pursuant to a
10 franchise agreement, has obtained a license under the vehicle and traf-
11 fic law, and is engaged in the services of diagnosis, maintenance, or
12 repair of motor vehicles or motor vehicle engines pursuant to such fran-
13 chise agreement.

14 (l) "Motor vehicle manufacturer" means a business engaged in the manu-
15 facturing or assembling of new motor vehicles.

16 (m) "Original equipment manufacturer" means a business engaged in the
17 business of selling or leasing new digital electronic equipment manufac-
18 tured by or on behalf of itself, to any individual or business.

19 (n) "Owner" means an individual or business who owns or leases digital
20 electronic equipment purchased or used in this state.

21 (o) "Part" means any replacement part, either new or used, made avail-
22 able by an original equipment manufacturer for purposes of effecting the
23 services of maintenance or repair of digital electronic equipment manu-
24 factured or sold by the original equipment manufacturer.

25 2. Requirements. (a) For digital electronic equipment, and parts for
26 such equipment, sold or used in this state, an original equipment
27 manufacturer shall make available, for purposes of diagnosis, mainte-
28 nance, or repair, to any independent repair provider, or to the owner of
29 digital electronic equipment manufactured by or on behalf of, or sold
30 by, the original equipment manufacturer, on fair and reasonable terms,
31 documentation, parts, and tools, inclusive of any updates to information
32 or embedded software. Nothing in this section requires an original
33 equipment manufacturer to make available a part if the part is no longer
34 available to the original equipment manufacturer.

35 (b) For equipment that contains an electronic security lock or other
36 security-related function, the original equipment manufacturer shall
37 make available to the owner and to independent repair providers, on fair
38 and reasonable terms, any special documentation, tools, and parts needed
39 to reset the lock or function when disabled in the course of diagnosis,
40 maintenance, or repair of the equipment. Such documentation, tools, and
41 parts may be made available through appropriate secure release systems.

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

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

55 (c) Nothing in this section shall be construed to require an original
56 equipment manufacturer or an authorized repair provider to provide to an

1 owner or independent repair provider access to information, other than
2 documentation, that is provided by the original equipment manufacturer
3 to an authorized repair provider pursuant to the terms of an arrangement
4 described in paragraph (a) of subdivision one of this section.

5 4. Exclusions. Nothing in this section shall apply to:

6 (a) a motor vehicle manufacturer, manufacturer of motor vehicle equip-
7 ment, or motor vehicle dealer acting in such capacity, or to any product
8 or service of a motor vehicle manufacturer, manufacturer of motor vehi-
9 cle equipment, or motor vehicle dealer acting in such capacity.

10 (b) a medical device, as defined in this section, or a digital elec-
11 tronic product or embedded software found in a medical setting including
12 diagnostic, monitoring, or control equipment or any product or service
13 that they offer.

14 5. Enforcement by attorney general. (a) Whenever the attorney general
15 shall believe from evidence satisfactory to him or her that any person,
16 firm, corporation or association or agent or employee thereof has
17 engaged in or is about to engage in any of the acts or practices in
18 violation of this section he or she may bring a proceeding in the name
19 and on behalf of the people of the state of New York to enjoin such
20 unlawful acts or practices and to obtain restitution of any moneys or
21 property obtained directly or indirectly by any such acts or practices
22 in violation of this section. In such proceeding preliminary relief may
23 be granted under article sixty-three of the civil practice law and
24 rules.

25 (b) Except as provided herein, before any violation of this section is
26 sought to be enjoined, the attorney general shall give the person
27 against whom such proceeding is contemplated notice and an opportunity
28 to show in writing, within five business days after the delivery of such
29 notice, why a proceeding should not be instituted against such person.
30 Such notice by the attorney general shall be delivered by certified mail
31 and by first-class mail with proof of mailing. In a proceeding in which
32 the attorney general seeks preliminary relief, such notice shall not be
33 required upon a finding by the attorney general that such notice is not
34 in the public interest.

35 (c) In connection with any proposed proceeding under this section, the
36 attorney general is authorized to take proof and make a determination of
37 the relevant facts, and to issue subpoenas in accordance with the civil
38 practice law and rules.

39 (d) This subdivision shall apply to all acts or practices declared to
40 be in violation of this section, whether or not subject to any other law
41 of this state, and shall not supersede, amend or repeal any other law of
42 this state under which the attorney general is authorized to take any
43 action or conduct any inquiry.

44 (e) Any person, firm, corporation or association or agent or employee
45 thereof who engages in any of the acts or practices in violation of this
46 section shall be liable to a civil penalty of not more than five hundred
47 dollars for each violation, which shall accrue to the state of New York
48 and may be recovered in a civil action brought by the attorney general.

49 (f) Except in the instance of a dispute arising between an original
50 equipment manufacturer and its authorized repair provider related to
51 either party's compliance with an existing authorized repair agreement,
52 an authorized repair provider shall have all the rights and remedies
53 provided in this section.

54 § 3. This act shall take effect on the one hundred twentieth day after
55 it shall have become a law and shall apply with respect to equipment
56 sold or in use on or after such date.