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:

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

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

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

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

(b) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable handheld calculator, or other similar device.

(c) "Authorized repair provider" means an individual or business who is unaffiliated with an original equipment manufacturer and who has an arrangement with the original equipment manufacturer, for a definite or indefinite period, under which the original equipment manufacturer grants to the individual or business a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering the services of diagnosis, maintenance, or repair of mobile devices or computers under the name of the original equipment manufacturer, or 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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services on behalf of the original equipment manufacturer. An original equipment manufacturer who offers the services of diagnosis, maintenance, or repair of its own mobile device or computer, and who does not have an arrangement described in this subdivision with an unaffiliated individual or business, shall be considered an authorized repair provider with respect to such mobile devices or computers.

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

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

(f) "Fair and reasonable terms" for obtaining a part or tool or documentation means at costs and terms, including convenience of delivery, and including rights of use, equivalent to what is offered by the original equipment manufacturer to an authorized repair provider, using the net costs that would be incurred by an authorized repair provider in obtaining an equivalent part or tool or documentation from the original equipment manufacturer, accounting for any discounts, rebates, or other incentive programs in arriving at the actual net costs. For documentation, including any relevant updates, "fair and reasonable terms" means at no charge, except that, when the documentation is requested in physical printed form, a charge may be included for the reasonable actual costs of preparing and sending the copy.

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

(h) "Independent repair provider" means an individual or business operating in this state, who does not have an arrangement described in paragraph (c) of this subdivision with an original equipment manufacturer, and who is not affiliated with any individual or business who has such an arrangement, and who is engaged in the services of diagnosis, maintenance, or repair of mobile device or computer, except that an original equipment manufacturer or, with respect to that original equipment manufacturer, an individual or business who has such an arrangement with that original equipment manufacturer, or who is affiliated with an individual or business who has such an arrangement with that original equipment manufacturer, shall be considered an independent repair provider for purposes of those instances in which it engages in the services of diagnosis, maintenance, or repair of the mobile device or computer that is not manufactured by or sold under the name of that original equipment manufacturer.

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

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

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

services of maintenance or repair of mobile devices or computers manufactured or sold by the original equipment manufacturer.

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

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

3. Enforcement by attorney general. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than five hundred dollars for each violation resulting from a single act or incident. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoena in accordance with the civil practice law and rules.

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

(b) No provision in this section shall be construed to alter the terms of any arrangement described in paragraph (c) of subdivision one of this section in force between an authorized repair provider and an original equipment manufacturer, including, but not limited to, the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to such arrangement, except that any provision in such terms that purports to waive, avoid, restrict, or limit the original equipment manufacturer's obligations to comply with this section shall be void and unenforceable.

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

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

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

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