

STATE OF NEW YORK

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2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sens. BOYLE, GALLIVAN -- read twice and ordered printed,
and when printed to be committed to the Committee on Consumer
Protection

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 Assem-
bly, 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 initions. 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

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

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1 grants to the individual or business a license to use a trade name,
2 service mark, or other proprietary identifier for the purposes of offer-
3 ing the services of diagnosis, maintenance, or repair of mobile devices
4 or computers under the name of the original equipment manufacturer, or
5 other arrangement with the original equipment manufacturer to offer such
6 services on behalf of the original equipment manufacturer. An original
7 equipment manufacturer who offers the services of diagnosis, mainte-
8 nance, or repair of its own mobile device or computer, and who does not
9 have an arrangement described in this subdivision with an unaffiliated
10 individual or business, shall be considered an authorized repair provid-
11 er with respect to such mobile devices or computers.

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

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

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

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

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

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

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

6 (k) "Part" means any replacement part, either new or used, made avail-
7 able by an original equipment manufacturer for purposes of effecting the
8 services of maintenance or repair of mobile devices or computers manu-
9 factured or sold by the original equipment manufacturer.

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

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

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

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

51 (b) No provision in this section shall be construed to alter the terms
52 of any arrangement described in paragraph (c) of subdivision one of this
53 section in force between an authorized repair provider and an original
54 equipment manufacturer, including, but not limited to, the performance
55 or provision of warranty or recall repair work by an authorized repair
56 provider on behalf of an original equipment manufacturer pursuant to

1 such arrangement, except that any provision in such terms that purports
2 to waive, avoid, restrict, or limit the original equipment manufactur-
3 er's obligations to comply with this section shall be void and unen-
4 forceable.

5 (c) Nothing in this section shall be construed to require an original
6 equipment manufacturer or an authorized repair provider to provide to an
7 owner or independent repair provider access to information, other than
8 documentation, that is provided by the original equipment manufacturer
9 to an authorized repair provider pursuant to the terms of an arrangement
10 described in paragraph (c) of subdivision one of this section.

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

14 § 3. This act shall take effect January 1, 2020.