

STATE OF NEW YORK

7006--A

2021-2022 Regular Sessions

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, JACKSON, FORREST, ANGELINO, THIELE, B. MILLER, CLARK, HEVESI, BLANKENBUSH, JEAN-PIERRE, KIM, WALLACE, CARROLL, LUNSFORD, BURDICK, GALLAGHER, JACOBSON, BURGOS -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, DAVILA, ENGLEBRIGHT -- read once and referred to the Committee on Consumer Affairs and Protection -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 has an arrangement with the original equipment manufacturer under which
10 the original equipment manufacturer grants to the individual or business
11 a license to use a trade name, service mark, or other proprietary iden-
12 tifier for the purposes of offering the services of diagnosis, mainte-
13 nance, or repair of digital electronic equipment under the name of the
14 original equipment manufacturer, or other arrangement with the original

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

LBD06580-04-2

1 equipment manufacturer to offer such services on behalf of the original
2 equipment manufacturer. An original equipment manufacturer who offers
3 the services of diagnosis, maintenance, or repair of its own digital
4 electronic equipment, and who does not have an arrangement described in
5 this subdivision with an unaffiliated individual or business, shall be
6 considered an authorized repair provider with respect to such equipment.

7 (b) "Digital electronic equipment" or "equipment" means any product
8 with a value over ten dollars, adjusted annually by the rate of change
9 in the consumer price index as reported by the bureau of labor statis-
10 tics of the United States department of labor, that depends for its
11 functioning, in whole or in part, on digital electronics embedded in or
12 attached to the product.

13 (c) "Documentation" means any manual, diagram, reporting output,
14 service code description, schematic diagram, security codes, passwords,
15 or similar kinds of information used in effecting the services of diag-
16 nosis, maintenance, or repair of digital electronic equipment.

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

30 (e) "Independent repair provider" means an individual or business
31 operating in this state, who does not have an arrangement described in
32 paragraph (a) of this subdivision with an original equipment manufactur-
33 er, and who is engaged in the services of diagnosis, maintenance, or
34 repair of digital electronic equipment.

35 (f) "Manufacturer of motor vehicle equipment" means a business engaged
36 in the business of manufacturing or supplying components that are used
37 in the manufacture, maintenance, or repair of a motor vehicle.

38 (g) "Medical device" means an instrument, apparatus, implement,
39 machine, contrivance, implant, or other similar or related article,
40 including a component part, or accessory, as defined in the federal
41 Food, Drug and Cosmetic Act, 21 USC, Section 321 (h) as amended from
42 time to time, which is intended for use in the diagnosis of disease or
43 other conditions, or in the cure, mitigation, treatment, or prevention
44 of disease, in man or other animals.

45 (h) "Motor vehicle" means a vehicle that is designed for transporting
46 persons or property on a street or highway and is certified by the
47 manufacturer under all applicable federal safety and emissions standards
48 and requirements for distribution and sale in the United States.

49 (i) "Motor vehicle dealer" means an individual or business who, in the
50 ordinary course of business, is engaged in the business of selling or
51 leasing motor vehicles to an individual or business pursuant to a fran-
52 chise agreement, has obtained a license under the vehicle and traffic
53 law, and is engaged in the services of diagnosis, maintenance, or repair
54 of motor vehicles or motor vehicle engines pursuant to such franchise
55 agreement.

1 (j) "Motor vehicle manufacturer" means a business engaged in the manu-
2 facturing or assembling of motor vehicles.

3 (k) "Original equipment manufacturer" means any individual or business
4 who, in the normal course of business, is engaged in the business of
5 selling or leasing digital electronic equipment manufactured by or on
6 behalf of itself, to any individual or business.

7 (l) "Owner" means an individual or business who owns or leases digital
8 electronic equipment purchased or used in this state.

9 (m) "Part" means any replacement part, either new or used, made avail-
10 able by an original equipment manufacturer for purposes of effecting the
11 services of maintenance or repair of digital electronic equipment manu-
12 factured or sold by the original equipment manufacturer.

13 (n) "Tool" means any software program, hardware implement, or other
14 apparatus used for diagnosis, maintenance, or repair of digital elec-
15 tronic equipment, including software or other mechanisms that provide,
16 program, or pair a part, calibrate functionality, or perform any other
17 function required to bring the equipment or part back to fully func-
18 tional condition, including any updates.

19 2. Requirements. (a) For digital electronic equipment, and parts for
20 such equipment, sold or used in this state, an original equipment
21 manufacturer shall make available, for purposes of diagnosis, mainte-
22 nance, or repair, to any independent repair provider, or to the owner of
23 digital electronic equipment manufactured by or on behalf of, or sold
24 by, the original equipment manufacturer, on fair and reasonable terms,
25 documentation, parts, and tools, inclusive of any updates to informa-
26 tion.

27 (b) For equipment that contains an electronic security lock or other
28 security-related function, the original equipment manufacturer shall
29 make available to the owner and to independent repair providers, on fair
30 and reasonable terms, any special documentation, tools, and parts needed
31 to access and reset the lock or function when disabled in the course of
32 diagnosis, maintenance, or repair of the equipment. Such documentation,
33 tools, and parts may be made available through appropriate secure
34 release systems.

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

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

48 (c) Nothing in this section shall be construed to require an original
49 equipment manufacturer or an authorized repair provider to provide to an
50 owner or independent repair provider access to information, other than
51 documentation, that is provided by the original equipment manufacturer
52 to an authorized repair provider pursuant to the terms of an arrangement
53 described in paragraph (a) of subdivision one of this section.

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

55 (a) a motor vehicle manufacturer, manufacturer of motor vehicle equip-
56 ment, or motor vehicle dealer acting in such capacity, or to any product

1 or service of a motor vehicle manufacturer, manufacturer of motor vehi-
2 cle equipment, or motor vehicle dealer acting in such capacity.

3 (b) a medical device, as defined in this section, or a digital elec-
4 tronic product found in a medical setting including diagnostic, monitor-
5 ing, or control equipment or any product or service that they offer.

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

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

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

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

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

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

46 § 3. This act shall take effect on the one hundred twentieth day after
47 it shall have become a law.