STATE OF NEW YORK

149

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. THOMAS -- 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 establishing the "Right to repair act" to require original equipment manufacturers to make certain equipment available to independent repair providers under fair and reasonable terms

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

Section 1. This act shall be known and may be cited as the "Right to repair act".

§ 2. The general business law is amended by adding a new section 198-d to read as follows:

§ 198-d. Right of consumers to diagnose, service, maintain and repair motor vehicles. (a) Definitions. As used in this section:

(1) "Authorized repair provider" means: (i) a person or business that has an arrangement for a definite or indefinite period with an original equipment manufacturer in which the original equipment manufacturer grants to a person or business license to use a trade name, service mark, or related characteristic for the purposes of offering repair services under the name of the original equipment manufacturer; or (ii) a person or business retained by the original equipment manufacturer to provide refurbishing services for the original equipment manufacturer's product or products.

(2) "Embedded software" means any programmable instructions provided on firmware delivered with the equipment for the purposes of equipment operation, including all relevant patches and fixes made by the original equipment manufacturer for this purpose, including, but not limited to synonyms for "Basic internal operating system", "Internal operating system", "Machine code", "Assembly code", "Root code", and "Microcode".

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

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(3) "Equipment" means digital electronic equipment or a part for such equipment originally manufactured for distribution and sale in the United States.

(4) "Fair and reasonable terms" means an equitable price in light of relevant factors, including, but not limited to:

(i) the net cost to the authorized repair provider for similar information obtained from an original equipment manufacturer, less any discounts, rebates, or other incentive programs;

(ii) the cost to the original equipment manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading, or altering the product, but including amortized capital costs for the preparation and distribution of the information;

(iii) the price charged by other original equipment manufacturers for similar information;

(iv) the price charged by original equipment manufacturers for similar information prior to the launch of original equipment manufacturer websites;

(v) the ability of aftermarket technicians or shops to afford the information;

(vi) the means by which the information is distributed;

(vii) the extent to which the information is used, including the number of users, and the frequency, duration, and volume of use; and

(viii) inflation.

(5) "Firmware" means a software program or set of instructions programmed on a hardware device to allow the device to communicate with other computer hardware.

(6) "Independent repair provider" means a person or business operating in this state who is not affiliated with an original equipment manufacturer or an original equipment manufacturer's authorized repair provider and who is engaged in the diagnosis, service, maintenance, or repair of equipment; provided, however, that for the purposes of this section, an original equipment manufacturer shall be considered an independent repair provider for purposes of those instances when such original equipment manufacturer engages in the diagnosis, service, maintenance, or repair of equipment that is not affiliated with the original equipment manufacturer.

(7) "Motor vehicle" means any vehicle that is designed for transporting persons or property on a street or highway and is certified by the motor vehicle manufacturer under all applicable federal safety and emissions standards and requirements for distribution and sale in the United States. Motor vehicle does not include:

(i) a motorcycle; or

(ii) a recreational vehicle or manufactured home equipped for habitation.

(8) "Motor vehicle dealer" means any person or business who, in the ordinary course of business, is engaged in the business of selling or leasing new motor vehicles to a person or business pursuant to a franchise agreement, who has obtained a license as a motor vehicle dealer, and who is engaged in the diagnosis, service, maintenance, or repair of motor vehicles or motor vehicle engines pursuant to such franchise agreement.

(9) "Motor vehicle manufacturer" means any person or business engaged in the business of manufacturing or assembling new motor vehicles.

(10) "Original equipment manufacturer" means any person or business who, in the ordinary course of his or her business, is engaged in the

business of selling or leasing new equipment to any person or business and is engaged in the diagnosis, service, maintenance, or repair of equipment.

(11) "Owner" means a person or business who owns or leases a digital electronic product purchased or used in this state.

(12) "Part" or "service part" means any replacement part, either new or used, made available by the original equipment manufacturer to the authorized repair provider for purposes of effecting repair.

(13) "Remote diagnostics" means any remote data transfer function between equipment and the provider of repair services including for the purposes of remote diagnostics, settings controls, or location identification;

(14) "Service parts" or "parts" means any replacement parts, either new or used, made available by the original equipment manufacturer to the authorized repair provider for the purposes of effecting repair.

(b) Requirements. (1) For equipment and parts sold and used in this state, the original equipment manufacturer of such equipment and parts shall:

(i) make available to independent repair providers or owners of equipment manufactured by such original equipment manufacturer the same diagnostic and repair information, including repair technical updates, schematic diagrams, updates, corrections to embedded software and safety and security patches timely, and for no charge or for the same charge and in the same format such original equipment manufacturer makes available to its authorized repair provider and subcontract repair of refurbishment facilities; and

(ii) make available for purchase by the owner, his or her authorized agent, or independent repair provider, equipment or service parts, inclusive of any updates to the embedded software of the equipment or parts, upon fair and reasonable terms.

Nothing in this section shall require the original equipment manufacturer to sell equipment or service parts if the parts are no longer available to the original equipment manufacturer or the authorized repair provider of the original equipment manufacturer.

(2) Any original equipment manufacturer that sells any diagnostic, service, or repair documentation to any independent repair provider or to any owner in a format that is standardized with other original equipment manufacturers, and on terms and conditions more favorable than the manner and the terms and conditions pursuant to which the authorized repair provider obtains the same diagnostic, service, or repair documentation, shall be prohibited from requiring any authorized repair provider to continue purchasing diagnostic, service, or repair documentation in a proprietary format, unless such proprietary format includes diagnostic, service, or repair documentation or functionality that is not available in such standardized format.

(3) (i) Each original equipment manufacturer of equipment sold or used in the state shall make available for purchase by owners and independent repair providers all diagnostic repair tools incorporating the same diagnostic, repair, and remote communications capabilities that such original equipment manufacturer makes available to its own repair or engineering staff or any authorized repair provider.

(ii) Each original equipment manufacturer shall offer such tools for sale to owners and independent repair providers upon fair and reasonable terms. Each original equipment manufacturer that provides diagnostic repair documentation to aftermarket diagnostic tool, diagnostic, or third party service information publications and systems shall have

fully satisfied its obligations under this section and thereafter not be responsible for the content and functionality of such aftermarket diagnostic tools, diagnostics, or service information systems.

(4) Original equipment manufacturer equipment or parts sold or used in the state for the purpose of providing security-related functions may not exclude diagnostic, service, and repair information necessary to reset a security related electronic function from information provided to owners and independent repair facilities. If excluded under this paragraph, the information necessary to reset an immobilizer system or security related electronic module shall be obtained by owners and independent repair facilities through the appropriate secure data release systems.

(c) Limitations. (1) Notwithstanding any law, rule or regulation to the contrary, no provision of this section shall be read, interpreted, or construed to abrogate, interfere with, contradict, or alter the terms of any agreement executed and 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 authorized repair agreement, except that any provision in such an authorized repair agreement that purports to waive, avoid, restrict, or limit an original equipment manufacturer's compliance with this section shall be void and unenforceable.

(2) Nothing in this section shall be construed to require original equipment manufacturers or authorized repair providers to provide an owner or independent repair provider access to non-diagnostic and repair information by an original equipment manufacturer to an authorized repair provider pursuant to the terms of an authorizing agreement.

(d) Enforcement. A violation of this section shall be enforceable by the attorney general and punishable by a fine of a maximum of five hundred dollars per incident.

§ 3. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.