

# STATE OF NEW YORK

1320

2023-2024 Regular Sessions

## IN SENATE

January 11, 2023

Introduced by Sen. BRESLIN -- 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 digital electronic equipment and providing diagnostic and repair information; and to amend a chapter of the laws of 2022 amending the general business law relating to the sale of digital electronic equipment and providing diagnostic and repair information, as proposed in legislative bills numbers S. 4104-A and A. 7006-B, in relation to the effectiveness thereof

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

1 Section 1. Section 399-nn of the general business law, as added by a  
2 chapter of the laws of 2022 amending the general business law relating  
3 to the sale of digital electronic equipment and providing diagnostic and  
4 repair information, as proposed in legislative bills numbers S. 4104-A  
5 and A. 7006-B, is amended to read as follows:

6 § 399-nn. Sale of digital electronic equipment; diagnostic and repair  
7 information. 1. Definitions. For the purposes of this section, the  
8 following terms shall have the following meanings:

9 (a) "Authorized repair provider" means an individual or business who  
10 has an arrangement with the original equipment manufacturer under which  
11 the original equipment manufacturer grants to the individual or business  
12 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 digital electronic equipment under the name of the original equipment manufacturer, or other arrangement with the original equipment manufacturer to offer such services on behalf of the original equipment manufacturer. [~~An original equipment manufacturer who offers the services of diagnosis, maintenance, or repair of its own digital electronic equipment, and who does not have an arrangement described in this subdivision with an unaffiliated individual or business, shall be~~

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

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1 ~~considered an authorized repair provider with respect to such equip-~~  
2 ~~ment.]~~

3 (b) "Digital electronic equipment" or "equipment" means any hardware  
4 product ~~[with a value over ten dollars, adjusted annually by the rate of~~  
5 ~~change in the consumer price index as reported by the bureau of labor~~  
6 ~~statistics of the United States department of labor,]~~ manufactured for  
7 the first time, and first sold or used in New York on or after July  
8 first, two thousand twenty-three, that depends for its functioning, in  
9 whole or in part, on digital electronics embedded in or attached to the  
10 product for which the original equipment manufacturer makes available  
11 tools, parts, and documentation either through authorized repair provid-  
12 ers, its own employees, or any authorized third-party providers.  
13 "Digital electronic equipment" or "equipment" does not include any prod-  
14 uct sold under a specific business-to-government or business-to-business  
15 contract, which is not otherwise offered for sale directly by a retail  
16 seller.

17 (c) "Documentation" means any manual, diagram, reporting output,  
18 service code description, schematic diagram, ~~[security codes, pass-~~  
19 ~~words,]~~ or similar kinds of information ~~[used in]~~ required for effecting  
20 the services of diagnosis, maintenance, or repair of digital electronic  
21 equipment.

22 (d) "Fair and reasonable terms" means making available parts, tools,  
23 or documentation as follows:

24 (i) With respect to documentation required for repair, that such  
25 documentation is made available by the original equipment manufacturer  
26 at no charge, except that, when the documentation is requested in phys-  
27 ical printed form, a charge may be included for the reasonable actual  
28 costs of preparing and sending the copy.

29 (ii) With respect to tools, that such tools are made available by the  
30 original equipment manufacturer at no charge and without requiring  
31 authorization ~~[or internet access]~~ for use or operation of such tool, or  
32 imposing impediments to access or use of the tool to diagnose, maintain,  
33 or repair ~~[and enable full functionality of]~~ digital electronic equip-  
34 ment using parts provided by the original equipment manufacturer in  
35 accordance with this section, ~~[or]~~ and in a reasonably timely manner  
36 ~~[that impairs the efficient and cost-effective performance of any such~~  
37 ~~diagnosis, maintenance, or repair],~~ except that, when such tool is  
38 requested in physical form, a charge may be included for the reasonable,  
39 actual costs of procuring, preparing and sending such tool.

40 (iii) With respect to parts, that such parts are made available by the  
41 original equipment manufacturer, either directly or indirectly through  
42 an authorized repair provider or authorized third-party provider, to  
43 independent repair providers and owners at reasonable costs and terms  
44 ~~[that are equivalent to the most favorable costs and terms under which~~  
45 ~~an original equipment manufacturer offers the part to an authorized~~  
46 ~~repair provider]~~ and which:

47 A. ~~[accounts for any discount, rebate, convenient and timely means of~~  
48 ~~delivery, means of enabling fully restored and updated functionality,~~  
49 ~~rights of use, or other incentive or preference the original equipment~~  
50 ~~manufacturer offers to an authorized repair provider, or any additional~~  
51 ~~cost, burden, or impediment the original equipment manufacturer imposes~~  
52 ~~on an owner or independent repair provider,~~

53 B. ~~is]~~ are not conditioned on or imposing a substantial obligation or  
54 restriction that is not reasonably necessary for enabling the owner or  
55 independent repair provider to engage in the diagnosis, maintenance, or

1 repair of digital electronic equipment made by or on behalf of the  
2 original equipment manufacturer; and

3 [~~C. is~~] B. are not conditioned on an arrangement described in para-  
4 graph (a) of this subdivision.

5 (iv) Such parts, tools, and documentation shall be made available to  
6 an authorized repair provider, and shall further be made available by an  
7 authorized repair provider to any independent repair provider or owner,  
8 provided that such authorized repair provider is contractually and prac-  
9 tically permitted by the original equipment manufacturer to sell such  
10 parts, tools, and documentation to any independent repair provider or  
11 owner, and provided further that such original equipment manufacturer  
12 shall not:

13 A. retaliate against or hinder the ability of any authorized repair  
14 provider to sell such parts, tools, or documentation through any means,  
15 including advertising restrictions or product allocation limitations  
16 unrelated to legitimate product shortages; or

17 B. condition or impose a substantial obligation or restriction that is  
18 not reasonably necessary for enabling the owner or independent repair  
19 provider to engage in the diagnosis, maintenance, or repair of digital  
20 electronic equipment made by or on behalf of the original equipment  
21 manufacturer.

22 (e) "Independent repair provider" means an individual or business  
23 operating in this state, that does not have an arrangement described in  
24 paragraph (a) of this subdivision with an original equipment manufactur-  
25 er, and who is engaged in the services of diagnosis, maintenance, or  
26 repair of digital electronic equipment.

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

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

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

41 (i) "Motor vehicle dealer" means an individual or business who, in the  
42 ordinary course of business, is engaged in the business of selling or  
43 leasing motor vehicles to an individual or business pursuant to a fran-  
44 chise agreement, has obtained a license under the vehicle and traffic  
45 law, and is engaged in the services of diagnosis, maintenance, or repair  
46 of motor vehicles or motor vehicle engines pursuant to such franchise  
47 agreement.

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

50 (k) "Original equipment manufacturer" means any individual or business  
51 that, in the normal course of business, is engaged in the business of  
52 selling or leasing digital electronic equipment manufactured by or on  
53 behalf of itself, to any individual or business.

54 (l) "Owner" means an individual or business that owns or leases  
55 digital electronic equipment purchased or used in this state.

1 (m) "Part" or "parts" means any replacement part or assembly of parts,  
2 either new or used, made available by an original equipment manufacturer  
3 for purposes of effecting the services of maintenance or repair of  
4 digital electronic equipment manufactured or sold by the original equip-  
5 ment manufacturer. Part does not include printed board assemblies that  
6 may allow device cloning in violation of 18 U.S.C. Section 1029 or other  
7 applicable law.

8 (n) "Tool" means any software program, hardware implement, or other  
9 apparatus used for diagnosis, maintenance, or repair of digital elec-  
10 tronic equipment, including software or other mechanisms that provide,  
11 program, [~~or~~] pair a part, calibrate functionality, or perform any other  
12 function required to [~~bring~~] repair or update the original equipment or  
13 part back to fully functional condition[~~, including any updates~~].

14 (o) "Repair" means any act needed to restore digital electronic equip-  
15 ment or equipment to fully working order.

16 (p) "Maintenance" means any act necessary to keep currently working  
17 digital electronic equipment or equipment in fully working order.

18 (q) "Diagnosis" means the process of identifying the issue or issues  
19 that cause digital electronic equipment or equipment to not be in fully  
20 working order.

21 (r) "Modifications" or "modify" means any alteration to digital elec-  
22 tronic equipment that is not maintenance and not a repair.

23 2. Requirements. [~~(a) For digital electronic equipment and parts for~~  
24 ~~such equipment that are sold or used in this state, an~~] An original  
25 equipment manufacturer shall make available to any independent repair  
26 provider and owner of digital electronic equipment manufactured by or on  
27 behalf of or sold by such original equipment manufacturer, on fair and  
28 reasonable terms, any documentation, parts, and tools required for the  
29 diagnosis, maintenance, or repair of such digital electronic equipment  
30 and parts [~~for such equipment~~] that are manufactured for the first time,  
31 and first sold or used in New York on or after July first, two thousand  
32 twenty-three. Such documentation, parts, and tools shall be made avail-  
33 able either directly by [~~such~~] an original equipment manufacturer or via  
34 an authorized repair provider. An original equipment manufacturer who,  
35 in the regular course of business, offers to an owner the services of  
36 diagnosis, maintenance or repair of its own digital electronic equip-  
37 ment, and who does not have an arrangement described in paragraph (a) of  
38 subdivision one of this section with an unaffiliated individual or busi-  
39 ness, shall be considered an authorized repair provider with respect to  
40 such equipment.

41 [~~(b) For equipment that contains an electronic security lock or other~~  
42 ~~security-related function, the original equipment manufacturer shall~~  
43 ~~make available to any owner and independent repair provider, on fair and~~  
44 ~~reasonable terms, any special documentation, tools, and parts needed to~~  
45 ~~access and reset the lock or function when disabled in the course of~~  
46 ~~diagnosis, maintenance, or repair of such equipment. Such documenta-~~  
47 ~~tion, tools, and parts may be made available through appropriate secure~~  
48 ~~release systems.]~~

49 3. Limitations. (a) Nothing in this section shall be construed to  
50 require an original equipment manufacturer to divulge any trade secret  
51 or license any intellectual property to any owner or independent service  
52 provider.

53 (b) Nothing in this section shall be construed to alter the terms of  
54 any arrangement described in paragraph (a) of subdivision one of this  
55 section in force between an authorized repair provider and an original  
56 equipment manufacturer, including, but not limited to, the performance

1 or provision of warranty or recall repair work by an authorized repair  
2 provider on behalf of an original equipment manufacturer pursuant to  
3 such arrangement, except that any provision in such terms that purports  
4 to waive, avoid, restrict, or limit the original equipment manufactur-  
5 er's obligations to comply with this section shall be void and unen-  
6 forceable.

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

13 (d) Nothing in this section shall be construed to require an original  
14 equipment manufacturer or authorized repair provider to make available  
15 any parts, tools or documentation for the purposes of modifying or  
16 making modifications to any digital electronic equipment.

17 (e) Nothing in this section shall be construed to require an original  
18 equipment manufacturer or authorized repair provider to make available  
19 any parts, tools, or documentation required for the diagnosis, mainte-  
20 nance, or repair of public safety communications equipment, the intended  
21 use of which is for emergency response or prevention purposes by an  
22 emergency service organization such as a police, fire or emergency  
23 medical services agency.

24 (f) Nothing in this section shall be construed to require any original  
25 equipment manufacturer or authorized repair provider to make available  
26 any parts, tools, or documentation required for the diagnosis, mainte-  
27 nance, or repair of digital electronic equipment in a manner that is  
28 inconsistent with or in violation of any federal law, such as gaming and  
29 entertainment consoles, related software and components.

30 (g) Nothing in this section shall be construed to require any original  
31 equipment manufacturer or authorized repair provider to make available  
32 any parts, tools, or documentation required for the diagnosis, mainte-  
33 nance, or repair of any home appliance that has a digital electronic  
34 product embedded within it, including, but not limited to, refrigerators,  
35 ovens, microwaves, air conditioning ~~and~~, heating units, and  
36 security devices or alarm systems including any related software and  
37 components.

38 (h) Nothing in this section shall prevent an original equipment  
39 manufacturer from establishing reasonable training and certification  
40 programs for independent repair providers, however, no independent  
41 repair provider shall be required to complete any such training or  
42 certification program as a condition to be covered by the rights granted  
43 under this chapter.

44 (i) Nothing in this section shall prevent an original equipment  
45 manufacturer from offering parts, such as integrated batteries, to inde-  
46 pendent repair providers or owners pre-assembled with other parts rather  
47 than as individual components, where the individual components may pose  
48 a heightened safety risk if installed improperly.

49 (j) Nothing in this section shall require an original equipment  
50 manufacturer to make available special documentation, tools, and parts  
51 that would disable or override anti-theft security measures set by the  
52 owner of the equipment without the owner's authorization.

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

54 (a) a motor vehicle manufacturer, manufacturer of motor vehicle equip-  
55 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; or

6 (c) a manufacturer, distributor, importer, or dealer of any off-road  
7 (non-road) equipment, including but not limited to, farm and utility  
8 tractors, farm implements, farm machinery, forestry equipment, indus-  
9 trial equipment, utility equipment, construction equipment, compact  
10 construction equipment, mining equipment, turf, yard and garden equip-  
11 ment, outdoor power equipment (including portable generators), marine,  
12 all-terrain sports and recreational vehicles (including racing vehi-  
13 cles), stand-alone or integrated stationary or mobile internal  
14 combustion engines, other power sources, (including without limitation,  
15 generator sets, electric/battery and fuel cell power), power tools, and  
16 any tools, technology, attachments, accessories, components and repair  
17 parts for any of the foregoing.

18 (d) commercial and industrial electrical equipment (including power  
19 distribution equipment, such as medium/low voltage switchgear and trans-  
20 formers, power control equipment, such as medium/low voltage motor  
21 control and drives, power quality equipment, such as uninterruptable  
22 power supplies, remote power panels, power distribution units and  
23 static/transfer switches) and any tools, technology, attachments, acces-  
24 sories, components and repair parts for any of the foregoing.

25 (e) an electronic bicycle manufacturer, distributor, importer, retail-  
26 er or dealer.

27 5. No original equipment manufacturer or authorized repair provider  
28 shall be liable for any damage or injury caused to any digital electron-  
29 ic equipment [~~by an independent repair provider or owner~~], person, or  
30 property which occurs [~~during the course~~] as a result of repair, diagno-  
31 sis, maintenance, or modification performed by an independent repair  
32 provider or owner, including but not limited to, any indirect, inci-  
33 dental, special or consequential damages; any loss of data, privacy or  
34 profits; or any inability to use, or reduced functionality of, the  
35 digital electronic equipment.

36 6. Before repairing digital electronic equipment, independent repair  
37 providers shall provide to any customer, and publish on their website  
38 and the place of business, a written notice that contains the following  
39 information:

40 (a) The independent repair provider is not an authorized repair  
41 provider for the equipment;

42 (b) The consumer should review the terms and conditions of any warran-  
43 ty for the equipment, as repairs not performed by an authorized repair  
44 provider may affect the warranty;

45 (c) Warranties for consumer products are governed by the federal  
46 Magnuson-Moss Warranty Act (15 U.S.C. ch. 50 § 2301), which gives  
47 consumers rights and protections that apply over conflicting provisions  
48 in the warranty;

49 (d) Under the Magnuson-Moss Warranty Act, a warranty cannot require  
50 that maintenance and repairs be performed only by an authorized repair  
51 provider; and

52 (e) Under the Magnuson-Moss Warranty Act, if damage to equipment is  
53 shown to be caused by equipment not offered or sold by the original  
54 equipment manufacturer or by faulty repair performed by a non-authorized  
55 repair provider, that damage may not be covered by the warranty, but the  
56 warranty may otherwise remain in effect.

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

12 (b) Except as provided herein, before any violation of this section is  
13 sought to be enjoined, the attorney general shall give such person,  
14 firm, corporation, or association against whom such proceeding is  
15 contemplated notice and an opportunity to show in writing, within five  
16 business days after the delivery of such notice, why proceedings should  
17 not be instituted against such person, firm, corporation, or associ-  
18 ation. Such notice by the attorney general shall be delivered by certi-  
19 fied mail and by first-class mail with proof of mailing. In any proceed-  
20 ing in which the attorney general seeks preliminary relief, such notice  
21 shall not be required upon a finding by the attorney general that such  
22 notice and opportunity is not in the public interest.

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

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

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

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

42 § 2. Section 3 of a chapter of the laws of 2022 amending the general  
43 business law relating to the sale of digital electronic equipment and  
44 providing diagnostic and repair information, as proposed in legislative  
45 bills numbers S. 4104-A and A. 7006-B is amended to read as follows:

46 § 3. This act shall take effect one year after it shall have become a  
47 law and shall apply to digital electronic equipment, manufactured for  
48 the first time, and first sold or used in New York on or after July 1,  
49 2023.

50 § 3. This act shall take effect immediately; provided, however that  
51 section one of this act shall take effect on the same date and in the  
52 same manner as a chapter of the laws of 2022 amending the general busi-  
53 ness law relating to the sale of digital electronic equipment and  
54 providing diagnostic and repair information, as proposed in legislative  
55 bills numbers S. 4104-A and A. 7006-B, takes effect.