

SECOND REGULAR SESSION

HOUSE BILL NO. 1618

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SEITZ.

3883H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 407, RSMo, by adding thereto two new sections relating to the sale of digital electronic equipment.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto two new sections, to be known as sections 407.3000 and 407.3002, to read as follows:

407.3000. 1. The provisions of sections 407.3000 to 407.3002 shall be known and may be cited as the "Digital Fair Repair Act".

2. As used in sections 407.3000 to 407.3002, the following terms mean:

(1) "Authorized repair provider", an individual or business that is unaffiliated with an original equipment manufacturer and that 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 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 that offers the services of diagnosis, maintenance, or repair of its own digital electronic equipment but that 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 equipment;

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (2) "Digital electronic equipment" or "equipment", any product that depends
18 for its functioning, in whole or in part, on digital electronics embedded in or attached to
19 the product;

20 (3) "Documentation", any manual, diagram, reporting output, service code
21 description, schematic diagram, or similar kinds of information provided to an
22 authorized repair provider for purposes of its effecting the services of diagnosis,
23 maintenance, or repair of digital electronic equipment;

24 (4) "Embedded software", any programmable instructions provided on
25 firmware delivered with digital electronic equipment, or with a part for such
26 equipment, for purposes of equipment operation, including all relevant patches and
27 fixes made by the manufacturer of such equipment or part for these purposes;

28 (5) "Fair and reasonable terms" for obtaining a part, tool, or documentation; at
29 costs and terms including convenience of delivery and of enabling functionality, and
30 including rights of use, equivalent to the most favorable costs and terms offered by the
31 original equipment manufacturer to an authorized repair provider, using the net costs
32 that would be incurred by the authorized repair provider in obtaining an equivalent
33 part or tool or documentation from the original equipment manufacturer, accounting
34 for any discounts, rebates, or other incentive programs in arriving at the actual net
35 costs. For documentation, including any relevant updates, "fair and reasonable terms"
36 additionally means at no charge; except that, when the documentation is requested in
37 physical printed form, a charge may be included for the reasonable actual costs of
38 preparing and sending the copy;

39 (6) "Firmware", a software program or set of instructions programmed on
40 digital electronic equipment, or on a part for such equipment, to allow the equipment or
41 part to communicate with other computer hardware;

42 (7) "Independent repair provider", an individual or business operating in this
43 state that does not have an arrangement described in subdivision 1 of this subsection
44 with an original equipment manufacturer, and that is not affiliated with any individual
45 or business who has such an arrangement, and that is engaged in the services of
46 diagnosis, maintenance, or repair of digital electronic equipment; except that, an
47 original equipment manufacturer or, with respect to that original equipment
48 manufacturer, an individual or business that has such an arrangement with that
49 original equipment manufacturer or that is affiliated with an individual or business that
50 has such an arrangement with that original equipment manufacturer, shall be
51 considered an independent repair provider for purposes of those instances in which it
52 engages in the services of diagnosis, maintenance, or repair of digital electronic

53 equipment that is not manufactured by or sold under the name of that original
54 equipment manufacturer;

55 (8) "Manufacturer of motor vehicle equipment", a business engaged in the
56 business of manufacturing or supplying components that are used in the manufacture,
57 maintenance, or repair of a motor vehicle;

58 (9) "Motor vehicle", a vehicle that is designed for transporting persons or
59 property on a street or highway and is certified by the manufacturer under all
60 applicable federal safety and emissions standards and requirements for distribution and
61 sale in the United States. The term "motor vehicle" does not include a motorcycle or a
62 recreational vehicle;

63 (10) "Motor vehicle dealer", an individual or business that, in the ordinary
64 course of business, is engaged in the business of selling or leasing new motor vehicles to
65 an individual or business pursuant to a franchise agreement, has obtained a license
66 under section 301.550, and is engaged in the services of diagnosis, maintenance, or
67 repair of motor vehicles or motor vehicle engines pursuant to that franchise agreement;

68 (11) "Motor vehicle manufacturer", a business engaged in the business of
69 manufacturing or assembling new motor vehicles;

70 (12) "Original equipment manufacturer", a business engaged in the business of
71 selling or leasing new digital electronic equipment manufactured by or on behalf of
72 itself, to any individual or business;

73 (13) "Owner", an individual or business who owns or leases digital electronic
74 equipment purchased or used in this state;

75 (14) "Part", any replacement part, either new or used, made available by an
76 original equipment manufacturer for purposes of effecting the services of maintenance
77 or repair of digital electronic equipment manufactured or sold by the original
78 equipment manufacturer;

79 (15) "Trade secret", the same meaning as such term is defined in section 417.453.
407.3002. 1. (1) For digital electronic equipment and parts for such equipment
2 that are sold or used in this state, the original equipment manufacturer shall, on fair and
3 reasonable terms, make available to:

4 (a) Any independent repair provider; or

5 (b) The owner of digital electronic equipment manufactured by or on behalf of,
6 or sold by, the original equipment manufacturer,

7

8 any documentation, parts, and tools, inclusive of any updates to information or
9 embedded software, for purposes of diagnosis, maintenance, or repair. Nothing in this

10 section requires an original equipment manufacturer to make available a part if the part
11 is no longer available to the original equipment manager.

12 (2) For equipment that contains an electronic security lock or other security-
13 related function, the original equipment manufacturer shall, on fair and reasonable
14 terms, make available to:

15 (a) Any independent repair provider; or

16 (b) The owner of digital electronic equipment manufactured by or on behalf of,
17 or sold by, the original equipment manufacturer,

18

19 any special documentation, parts, and tools needed to reset the lock or security-related
20 function when disabled in the course of diagnosis, maintenance, or repair of the
21 equipment. Such documentation, parts, and tools may be made available through
22 appropriate secure release systems.

23 2. Violation of any of the provisions of sections 407.3000 to 407.3002 is an
24 unlawful practice under the Merchandising Practices Act, sections 407.010 to 407.130.
25 All remedies, penalties, and authority granted to the attorney general under sections
26 407.010 to 407.130 shall be available for the enforcement of sections 407.3000 to
27 407.3002.

28 3. (1) Nothing in sections 407.3000 to 407.3002 shall be construed to require an
29 original equipment manufacturer to divulge a trade secret to an owner or an
30 independent repair provider except as necessary to provide documentation, parts, and
31 tools on fair and reasonable terms.

32 (2) Nothing in sections 407.3000 to 407.3002 shall be construed to alter the terms
33 of any arrangement described in subdivision 1 of subsection 2 of section 407.3000 that is
34 in force between an authorized repair provider and an original equipment
35 manufacturer including, but not limited to, the performance or provision of warranty
36 or recall repair work by an authorized repair provider on behalf of an original
37 equipment manufacturer pursuant to such arrangement; except that, any provision in
38 such terms that purports to waive, avoid, restrict, or limit the original equipment
39 manufacturer's obligations to comply with sections 407.3000 to 407.3002 shall be void
40 and unenforceable.

41 (3) Nothing in sections 407.3000 to 407.3002 shall be construed to require an
42 original equipment manufacturer or an authorized repair provider to provide to an
43 owner or independent repair provider access to information, other than documentation,
44 that is provided by the original equipment manufacturer to an authorized repair
45 provider pursuant to the terms of an arrangement described in subdivision 1 of
46 subsection 2 of section 407.3000.

47 **4. Nothing in sections 407.3000 to 407.3002 applies to a motor vehicle**
48 **manufacturer, manufacturer of motor vehicle equipment, or motor vehicle dealer acting**
49 **in that capacity, or to any product or service of a motor vehicle manufacturer,**
50 **manufacturer of motor vehicle equipment, or motor vehicle dealer acting in that**
51 **capacity.**

52 **5. The provisions of sections 407.3000 to 407.3002 shall apply to any digital**
53 **electronic equipment sold or in use on or after August 28, 2024.**

✓