

1 S.180

2 Introduced by Senator Pearson

3 Referred to Committee on Economic Development, Housing and General  
4 Affairs

5 Date: January 3, 2018

6 Subject: Commerce and trade; consumer protection; right to repair

7 Statement of purpose of bill as introduced: This bill proposes to make  
8 information, schematics, diagnostics, and repair manuals from manufacturers  
9 more accessible to an individual who has purchased an appliance, device, or  
10 motor vehicle.

11 An act relating to the Vermont Fair Repair Act

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 ~~Sec. 1, 9 V.S.A., chapter 152 is added to read:~~

14 CHAPTER 152. VERMONT FAIR REPAIR ACT

15 § 6101. TITLE

16 This chapter shall be known as the Vermont Fair Repair Act.

17 § 6102. DEFINITIONS

18 As used in this chapter:

19 ~~(1) "Authorized repair provider" means:~~

1 (A) a person who has an arrangement for a definite or indefinite  
2 period in which an original equipment manufacturer (OEM) grants to a  
3 separate person a license to use a trade name, service mark, or related  
4 characteristic for the purposes of offering repair services under the name of the  
5 OEM; or

6 (B) a person retained by the OEM to provide refurbishing services  
7 for the OEM's products.

8 (2) "Embedded software" means any programmable instructions  
9 provided on firmware delivered with the equipment for the purposes of  
10 equipment operation, including all relevant patches and fixes made by the  
11 OEM for this purpose, and including synonyms for "basic internal operating  
12 system," "internal operating system," "machine code," "assembly code," "root  
13 code," and "microcode."

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

17 (4) "Fair and reasonable terms" means an equitable price in light of  
18 relevant factors, including:

19 (A) the net cost to an authorized repair provider for similar  
20 information obtained from an OEM, less any discounts, rebates, or other  
21 incentive programs,

1 ~~(B) the cost to an OEM for preparing and distributing the~~  
2 information, excluding any research and development costs incurred in  
3 designing and implementing, upgrading, or altering the product, but including  
4 amortized capital costs for the preparation and distribution of the information;

5 (C) the price charged by other OEMs for similar information;

6 (D) the price charged by OEMs for similar information prior to the  
7 launch of OEM websites;

8 (E) the ability of aftermarket technicians or shops to afford the  
9 information;

10 (F) the means by which the information is distributed;

11 (G) the extent to which the information is used, which includes the  
12 number of users and the frequency, duration, and volume of use; and

13 (H) inflation.

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

17 (6) "Independent repair provider" means a person operating in this State  
18 who is not affiliated with an OEM or an OEM's authorized repair provider,  
19 and who is engaged in the diagnosis, service, maintenance, or repair of  
20 equipment, except that an OEM shall be considered an independent repair

21 ~~provider for purposes of these instances when the OEM engages in the~~

1 ~~diagnosis, service, maintenance, or repair of equipment that is not affiliated~~  
2 with the OEM.

3 (7) “Medical device” means an instrument, apparatus, implement,  
4 machine, contrivance, implant, or other similar or related article, including a  
5 component part or accessory, as defined in the federal Food, Drug and  
6 Cosmetic Act, 21 U.S.C. § 321, as amended, that is intended for use in the  
7 diagnosis of disease or other conditions or in the cure, mitigation, treatment, or  
8 prevention of disease in humans or other animals.

9 (8) “Motor vehicle” means any vehicle that is designed for transporting  
10 persons or property on a street or highway and is certified by the motor vehicle  
11 manufacturer under all applicable federal safety and emissions standards and  
12 requirements for distribution and sale in the United States. The term does not  
13 include a motorcycle or a recreational vehicle or manufactured home equipped  
14 for habitation.

15 (9) “Motor vehicle dealer” means a person who, in the ordinary course  
16 of business, is engaged in the business of selling or leasing new motor vehicles  
17 to a person pursuant to a franchise agreement, and who is engaged in the  
18 diagnosis, service, maintenance, or repair of motor vehicles or motor vehicle  
19 engines pursuant to such franchise agreement.

20 (10) “Motor vehicle manufacturer” means a person engaged in the  
21 ~~business of manufacturing or assembling new motor vehicles.~~

1 ~~(11) “Original equipment manufacturer” or “OEM” means a person~~  
2 ~~who, in the ordinary course of business, is engaged in the business of selling or~~  
3 ~~leasing new equipment, and who is engaged in the diagnosis, service,~~  
4 ~~maintenance, or repair of equipment.~~

5 (12) “Owner” means a person who owns or leases a digital electronic  
6 product purchased or used in this State.

7 (13) “Part” or “service part” means a replacement part, either new or  
8 used, made available by an OEM to an authorized repair provider for purposes  
9 of effecting repair.

10 (14) “Remote diagnostics” means a remote data transfer function  
11 between equipment and the provider of repair services, including for the  
12 purpose of remote diagnostics, settings controls, or location identification.

13 (15) “Trade secret” means anything tangible or intangible or  
14 electronically stored or kept that constitutes, represents, evidences, or records  
15 intellectual property, including secret or confidentially held designs, processes,  
16 procedures, formulas, inventions, or improvements; secret or confidentially  
17 held scientific, technical, merchandising, production, financial, business, or  
18 management information; or any other trade secret as set forth in 18 U.S.C.  
19 § 1839, as it existed on January 1, 2016.

20 § 6103. REQUIREMENTS

21 ~~(a)(1) For equipment and parts sold and used in this State, the OEM of the~~

1 equipment or parts shall:

2 (A) make available to independent repair providers and owners of  
3 equipment manufactured by the OEM the same diagnostic and repair  
4 information that it makes available to its authorized repair providers and  
5 subcontract repair or refurbishment facilities, including technical updates,  
6 schematic diagrams, and corrections to embedded software and safety and  
7 security patches, on a timely basis and for no charge, or in the same manner as  
8 the OEM makes such diagnostic and repair documentation available to its  
9 authorized repair providers and subcontract repair or refurbishment  
10 facilities; and

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

15 (2) This chapter does not require the OEM to sell equipment or service  
16 parts if the parts are no longer available to the OEM or the authorized repair  
17 provider of the OEM.

18 (b) An OEM that sells diagnostic, service, or repair documentation to an  
19 independent repair provider or to an owner in a format that is standardized  
20 with other OEMs, and on terms and conditions more favorable than the

21 manner and the terms and conditions pursuant to which an authorized repair

1 ~~provider obtains the same diagnostic, service, or repair documentation, shall~~  
2 not require an authorized repair provider to continue purchasing diagnostic,  
3 service, or repair documentation in a proprietary format, unless the proprietary  
4 format includes diagnostic, service, or repair documentation or functionality  
5 that is not available in the standardized format.

6 (c)(1) An OEM of equipment sold or used in this State shall:

7 (A) make available for purchase by owners and independent repair  
8 providers all diagnostic repair tools incorporating the same diagnostic, repair,  
9 and remote communications capabilities that the OEM makes available to its  
10 own repair or engineering staff or any authorized repair provider; and

11 (B) offer such tools for sale to owners and independent repair  
12 providers upon fair and reasonable terms.

13 (2) An OEM satisfies its obligations under this chapter if it provides  
14 diagnostic repair documentation to aftermarket diagnostic tool manufacturers,  
15 diagnostics providers, or service information publications and systems, and is  
16 not responsible for the content and function of aftermarket diagnostic tools,  
17 diagnostics, or service information systems.

18 § 6104. EXCLUSIONS

19 (a) This chapter does not apply to a motor vehicle manufacturer, a product  
20 or service of a motor vehicle manufacturer, or a motor vehicle dealer.

21 ~~(b) This chapter does not require a manufacturer of a medical device to~~

1 ~~implement a provision of this chapter that is not permitted under the federal~~  
2 Food, Drug, and Cosmetic Act or any other federal law that supersedes this  
3 section.

4 § 6105. ENFORCEMENT

5 (a) A person who violates this chapter commits an unfair and deceptive act  
6 in trade and commerce in violation of section 2453 of this title.

7 (b) The Attorney General has the same authority to make rules, conduct  
8 civil investigations, and enter into assurances of discontinuance as is provided  
9 under chapter 63, subchapter 1 of this title.

10 Sec. 2. IMPLEMENTATION

11 Beginning in calendar year 2019, this act applies to equipment and parts  
12 sold or used in this State for not less than five years following the last date the  
13 equipment or part was manufactured.

14 Sec. 3. EFFECTIVE DATE

15 ~~This act shall take effect on January 1, 2019.~~

*Sec. 1. FINDINGS*

*The General Assembly finds:*

*(1) Manufacturers can make it difficult or impossible—whether inadvertently or intentionally—for consumers or independent repair technicians to fix their consumer electronic products, even for such minor repairs as replacing a battery or screen.*

*(2) Manufacturers may limit access to information or parts to correct defects to only those customers who are under warranty; may refuse access to information or parts for owners of older models; and may refuse to stock or sell parts at fair and reasonable prices. Consequently, consumers are often left with few options other than to buy new.*



(3) Modern repairs involve electronics: any product that can have embedded electronics will eventually have embedded electronics. Repairing those electronics requires information, parts, firmware access, and tooling specifications from the product designers.

(4) The knowledge and tools to repair and refurbish consumer electronic products should be distributed as widely and freely as the products themselves. In contrast to centralized manufacturing, reuse must be broadly distributed to achieve economies of scale.

(5) Many manufacturers have made commitments to sustainability, repair, and reuse, and the innovation economy of Vermont and the United States has had many positive economic and environmental impacts. Legislation that further promotes extending the lifespan of consumer electronic products can create jobs and benefit the environment.

(6) As demonstrated by Massachusetts's experience with a right to repair initiative concerning automobiles in 2014, which resulted in a compromise between manufacturers and independent repair providers to adopt a voluntary nationwide approach for providing diagnostic codes and repair data available in a common format by the 2018 model year, legislative action to secure a right to repair can achieve positive benefits for manufacturers, independent businesses, and consumers.

## Sec. 2. RIGHT TO REPAIR TASK FORCE; REPORT

(a) Creation. There is created the Right to Repair Task Force.

(b) Membership. The Task Force shall be composed of the following five members:

(1) one current member of the House of Representatives, appointed by the Speaker of the House;

(2) one current member of the Senate, appointed by the Committee on Committees;

(3) the Attorney General or designee;

(4) the Secretary of Commerce and Community Development or designee; and

(5) the Secretary of Digital Services or designee.

(c) Stakeholder engagement. The Task Force shall solicit testimony and participation in its work from representatives of relevant stakeholders, including authorized and independent repair providers, and consumer, environmental, agricultural, medical device, and other trade groups having an interest in consumer or business electronic product repairs.

(d) Powers and duties. The Task Force shall review and consider the following issues relating to potential legislation designed to secure the right to repair consumer electronic products, including personal electronic devices such as cell phones, tablets, and computers:

(1) the scope of products to include;

(2) economic costs and benefits, including economic development and workforce opportunities;

(3) effects on the cost and availability to consumers of new and used consumer electronic products in the marketplace, including diminished availability of refurbished products for secondary users;

(4) consequences or impacts for intellectual property and trade secrets;

(5) environmental and economic costs of a “throw-away” economy;

(6) legal issues, including potential for alignment or conflict with federal law, and litigation risks;

(7) issues relating to privacy and security features in electronic products; and

(8) any other issues the Task Force considers relevant and necessary to accomplish its work, including regulation of business consumer products or other products the Task Force finds appropriate.

(e) Assistance. The Task Force shall have the administrative, legal, and fiscal assistance of the Office of Legislative Council and the Joint Fiscal Office. Relevant agencies and departments within State government shall provide their technical and other expertise upon request of the Task Force.

(f) Report. On or before December 15, 2018, the Task Force shall submit a written report to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on Commerce and Economic Development with its findings and any recommendations for legislative action, including specific findings and recommendations concerning personal electronic devices such as cell phones, tablets, and computers.

(g) Meetings.

(1) The Office of Legislative Council shall call the first meeting of the Task Force to occur on or before August 1, 2018.

(2) The legislative members of the Task Force shall serve as co-chairs.

(3) A majority of the membership shall constitute a quorum.

(4) The Task Force shall cease to exist on December 15, 2018.

(h) Compensation and reimbursement. For attendance at meetings during adjournment of the General Assembly, a legislative member of the Task Force serving in his or her capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than five meetings. These payments shall be made from monies appropriated to the General Assembly.

*Sec. 3. EFFECTIVE DATE*

*This act shall take effect on July 1, 2018.*