

SECOND REGULAR SESSION

HOUSE BILL NO. 2369

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HOVIS.

4638H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 407, RSMo, by adding thereto two new sections relating to product repair requirements, with a penalty provision.

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
2 known as sections 407.652 and 407.653, to read as follows:

407.652. As used in sections 407.652 and 407.653, the following terms mean:

2 **(1) "Authorized repair provider", an individual or business that has an oral or**
3 **written arrangement for a definite or indefinite period in which a manufacturer or**
4 **distributor transfers to a separate business organization or individual licensee to use a**
5 **trade name, service mark, or relative characteristic for the purposes of offering repair**
6 **services under the name of the manufacturer;**

7 **(2) "Construction machinery", any mobile heavy equipment or heavy machinery**
8 **designed for construction or earthwork tasks;**

9 **(3) "Documentation", manuals, diagrams, reporting output, schematic diagrams,**
10 **or service code descriptions provided to the authorized repair provider for the purposes**
11 **of repair or refurbishment;**

12 **(4) "Embedded software", programmable instructions provided on firmware**
13 **delivered with certain products for the purposes of product operation, including all**
14 **relevant safety, security, and defect patches and fixes made by the manufacturer for this**
15 **purpose. "Embedded software" shall include all software that meets this definition**
16 **regardless of name including, but not limited to, assembly code, basic internal operating**
17 **system, internal operating system, machine code, microcode, and root code;**

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.

18 **(5) "Fair and reasonable terms", an equitable price in light of relevant factors**
19 **including, but not limited to:**

20 **(a) The net cost to the authorized repair provider for similar parts obtained from**
21 **manufacturers, less any discounts, rebates, or other incentive programs;**

22 **(b) The cost to the manufacturer for preparing and distributing the parts or**
23 **product, excluding any research and development costs incurred in designing and**
24 **implementing, upgrading, or altering the product, but including amortized capital costs**
25 **for the preparation and distribution of the parts; and**

26 **(c) The price charged by other manufacturers for similar parts or products;**

27 **(6) "Farm machinery", any mobile equipment or machinery including, but not**
28 **limited to, tractors, trailers, combines, tillage implements, balers, and other equipment,**
29 **including attachments and repair parts thereof, used in the planting, cultivating, irrigating,**
30 **or harvesting of agricultural products, excluding self-propelled machines designed**
31 **primarily for the transportation of persons or property on a street or highway;**

32 **(7) "Independent repair provider", an individual or business operating in the state**
33 **that is not affiliated with a manufacturer or a manufacturer's authorized dealer of a**
34 **product but is engaged in the diagnosis, service, maintenance, or repair of a product. A**
35 **manufacturer's authorized dealer shall be considered an independent repair provider if**
36 **the dealer engages in the diagnosis, service, maintenance, or repair of a product that is not**
37 **affiliated with the manufacturer;**

38 **(8) "Manufacturer", an individual or business who, in the ordinary course of**
39 **business, is engaged in selling or leasing new products to consumers or other end users and**
40 **is engaged in the diagnosis, service, maintenance, or repair of that product;**

41 **(9) "Owner", an individual or business who lawfully acquires a product purchased**
42 **or used in the state;**

43 **(10) "Product", any farm machinery or construction machinery, regardless of the**
44 **date purchased;**

45 **(11) "Remote diagnostics", a remote data transfer function between certain**
46 **products and a provider of repair services, including for purposes of remote diagnostics,**
47 **settings controls, or location identification;**

48 **(12) "Service parts", replacement parts, either new or used, made available by the**
49 **manufacturer to the authorized repair provider for the purposes of repair;**

50 **(13) "Trade secret", anything tangible, intangible, or electronically stored or kept**
51 **that constitutes, represents, evidences, or records intellectual property including, but not**
52 **limited to:**

53 (a) Secret or confidentially held designs, processes, procedures, formulas,
54 inventions, or improvements;

55 (b) Secrets or confidentially held scientific, technical, merchandising, production,
56 financial, business, or management information; or

57 (c) Any "trade secret" as that term is defined under paragraph (3) of 18 U.S.C.
58 Section 1839.

407.653. 1. Owners of products purchased or used in this state shall have the right
2 to:

3 (1) Access the same diagnostic and repair information of products manufactured
4 by the manufacturer as the manufacturer makes available to independent repair facilities
5 or authorized repair providers. Such information shall be provided in the same manner
6 and time as provided to authorized repair providers. Such information shall include, but
7 not be limited to, repair technical updates, diagnostic software, service access passwords,
8 updates and corrections to firmware, and related documentation; and

9 (2) Purchase service parts available upon fair and reasonable terms. Such service
10 parts shall be made available in the same manner and time as given to authorized repair
11 providers. Such service parts shall include updates to firmware of parts.

12

13 Nothing in this section shall require the manufacturer to sell service parts if the service
14 parts are no longer available to the manufacturer or the authorized repair channel of the
15 manufacturer.

16 2. An authorized repair provider shall have the right to purchase diagnostic,
17 service, or repair information of a product in a format standardized with other
18 manufacturers instead of a proprietary format from a manufacturer if the manufacturer
19 sells diagnostic, service, or repair information to independent repair providers or
20 third-party providers in such a standardized format or if the manufacturer offers terms
21 and conditions more favorable to independent repair providers or third-party providers
22 than the manner and the terms and conditions that are available to an authorized repair
23 provider. However, this subsection shall not apply if the proprietary format includes
24 diagnostic, service, repair, or dealership operations information or functionality not
25 available in a standardized format.

26 3. Owners and independent repair facilities shall have the right to purchase from
27 manufacturers of products sold or used in this state all diagnostic repair tools,
28 incorporating the same diagnostic repair and remote diagnostic capabilities that the
29 manufacturer makes available to its own repair or engineering staff or any authorized
30 repair providers, upon fair and reasonable terms.

31 **4. Manufacturers that provide repair information to aftermarket tools, diagnostics,**
32 **or third-party service information publications and systems have fully satisfied their**
33 **obligations under this section and thereafter are not responsible for the content and**
34 **functionality of aftermarket diagnostic tools or service information systems.**

35 **5. Manufacturers of products sold or used in the state for the purposes of providing**
36 **security-related functions shall not exclude diagnostic, service, and repair information**
37 **necessary to reset a security-related electronic function from information provided to**
38 **owners and independent repair facilities. If necessary for security purposes,**
39 **manufacturers may provide information necessary to reset and unlock system or**
40 **security-related electronic modules to owners and independent repair facilities through an**
41 **appropriate secure data release system.**

42 **6. Nothing in this section shall require the manufacturer to divulge a trade secret.**

43 **7. Notwithstanding any law or rule to the contrary, this section shall not be read,**
44 **interpreted, or construed to abrogate, interfere with, contradict, or alter the terms of an**
45 **agreement executed between an authorized repair provider and a manufacturer including,**
46 **but not limited to, performing warranty or recall repair work by an authorized repair**
47 **provider on behalf of a manufacturer pursuant to the authorized repair agreement.**
48 **Except in the case of a dispute arising between a manufacturer and its authorized repair**
49 **provider related to either party's compliance with an existing repair agreement, an**
50 **authorized repair provider shall have all the rights and remedies provided in this section.**

51 **8. This section shall not require manufacturers or authorized repair providers to**
52 **provide an owner or independent repair provider access to nondiagnostic and nonrepair**
53 **information provided by a manufacturer to an authorized repair provider pursuant to the**
54 **terms of an authorizing agreement.**

55 **9. (1) An independent repair provider or owner who believes that a manufacturer**
56 **has failed to provide information including, but not limited to, documentation, updates to**
57 **firmware, safety and security corrections, diagnostics, documentation, or a tool required**
58 **by this section shall notify the manufacturer in writing and give the manufacturer thirty**
59 **days from the date the manufacturer receives the complaint to cure the failure. If the**
60 **manufacturer cures the complaint within thirty days, damages are limited to actual**
61 **damages in any subsequent litigation.**

62 **(2) If the manufacturer fails to respond to the notice provided in subdivision (1) of**
63 **this subsection or if an independent repair facility or owner is not satisfied with the**
64 **manufacturer's cure, the independent repair facility or owner may file a complaint in**
65 **district court. The complaint shall include:**

66 **(a) Written information confirming that the complainant attempted to acquire and**
67 **use, through the then-available standard support function provided by the manufacturer,**
68 **all relevant diagnostics, tools, service parts, documentation, and updates to embedded**
69 **software, including communication with customer assistance via the manufacturer's**
70 **then-standard process, if made available by the manufacturer; and**

71 **(b) Evidence of manufacturer notification as required in subdivision (1) of this**
72 **subsection.**

73 **10. No manufacturer shall be required to provide any information or service parts**
74 **under subsection 1 of this section if the product for which the information or service parts**
75 **are sought is under a valid warranty for repair or replacement of the product.**

76 **11. The attorney general shall enforce this section. Each violation of this section**
77 **shall be punishable by a ten-thousand-dollar fine, which shall be deposited in the general**
78 **revenue fund established under section 33.543.**