

SECOND REGULAR SESSION

HOUSE BILL NO. 2402

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HOVIS.

3598H.011

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 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:

- (1) "Authorized repair provider", an individual who or a business that has an oral or written arrangement for a definite or indefinite period in which a manufacturer or distributor transfers to a separate business organization or individual licensee the right to use a trade name, service mark, or other proprietary identifier for the purposes of offering diagnosis, maintenance, or repair services under the name of the manufacturer. A manufacturer that offers diagnosis, maintenance, or repair services for its product and that does not have an arrangement with an individual or business described in this subdivision shall be considered an authorized repair provider;**
- (2) "Construction machinery", any mobile heavy equipment or heavy machinery designed for construction or earthwork tasks;**
- (3) "Documentation", manuals, diagrams, reporting output, schematic diagrams, service code descriptions, or other information provided to the authorized repair provider for the purposes of diagnosis, maintenance, repair, or refurbishment;**
- (4) "Embedded software", programmable instructions provided on firmware delivered with certain products or parts for the purposes of product operation, including all relevant safety, security, and defect patches and fixes made by the**

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 manufacturer for this purpose. "Embedded software" shall include all software that
19 meets this definition regardless of name including, but not limited to, assembly code,
20 basic internal operating system, internal operating system, machine code, microcode,
21 and root code;

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

24 (a) The net cost to an authorized repair provider for similar parts,
25 documentation, or tools obtained from manufacturers, less any discounts, rebates, or
26 other incentive programs;

27 (b) The cost to the manufacturer for preparing and distributing the parts or
28 product, excluding any research and development costs incurred in designing and
29 implementing, upgrading, or altering the product, but including amortized capital costs
30 for the preparation and distribution of the parts; and

31 (c) The price charged by other manufacturers for similar parts or products.
32

33 For documentation including, but not limited to, software updates, "fair and reasonable
34 terms" shall mean at no charge, except if documentation is requested in printed form,
35 the manufacturer may charge for reasonable costs of preparing and sending the
36 documentation. For software tools, "fair and reasonable terms" shall mean at no
37 charge and without requiring authorization, without requiring internet access, and
38 without impeding access or use of the product;

39 (6) "Farm machinery", any mobile equipment or machinery including, but not
40 limited to, tractors, trailers, combines, tillage implements, balers, unmanned aircraft
41 systems, off-road vehicles, and other equipment, including attachments and repair parts
42 thereof, used in the planting, cultivating, irrigating, harvesting, or ranching of
43 agricultural products, excluding self-propelled machines designed primarily for the
44 transportation of persons or property on a street or highway;

45 (7) "Forestry machinery", any mobile equipment or machinery including, but
46 not limited to, skidders, delimbers, log loaders, and other equipment, including
47 attachments and repair parts thereof, used in a forest for logging and other forestry
48 purposes;

49 (8) "Independent repair provider", an individual or business operating in the
50 state that is not affiliated with a manufacturer or a manufacturer's authorized dealer of
51 a product but is engaged in the diagnosis, service, maintenance, or repair of products. A
52 manufacturer's authorized dealer shall be considered an independent repair provider if
53 the dealer engages in the diagnosis, service, maintenance, or repair of a product that is
54 not affiliated with the manufacturer;

55 (9) "Manufacturer", an individual who or a business that, in the ordinary course
56 of business, is engaged in selling or leasing new products to consumers or other end
57 users and is engaged in the diagnosis, service, maintenance, or repair of that product;

58 (10) "Owner", an individual who or a business that lawfully acquires a product
59 purchased or used in the state;

60 (11) "Product", any farm machinery, construction machinery, or forestry
61 machinery, regardless of the date purchased, whose functioning depends, in whole or in
62 part, on embedded or attached digital electronics;

63 (12) "Remote diagnostics", a remote data transfer function between certain
64 products and a provider of repair services, including for purposes of remote diagnostics,
65 settings controls, or location identification;

66 (13) "Service parts", replacement parts, either new or used, made available by
67 the manufacturer to the authorized repair provider for the purposes of repair;

68 (14) "Tools", any software program, hardware implement, or other apparatus
69 used for diagnosis, maintenance, or repair of a product including, but not limited to,
70 software or other mechanisms that provision, program, or pair a new part, calibrate
71 functionality, or perform a function required to bring the product back to fully
72 functional condition;

73 (15) "Trade secret", anything tangible, intangible, or electronically stored or
74 kept that constitutes, represents, evidences, or records intellectual property including,
75 but not limited to:

76 (a) Secret or confidentially held designs, processes, procedures, formulas,
77 inventions, or improvements;

78 (b) Secret or confidentially held scientific, technical, merchandising, production,
79 financial, business, or management information; or

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

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

3 (1) Access the same diagnostic and repair information of products manufactured
4 by the manufacturer as the manufacturer makes available to authorized repair
5 providers. Such information shall be provided in the same manner and time as
6 provided to authorized repair providers. Such information shall include, but not be
7 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, documentation, and tools available upon fair and
10 reasonable terms. Such service parts shall be made available in the same manner and

11 time as given to authorized repair providers. Such service parts shall include updates to
12 firmware of parts.

13

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

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

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

32 4. For equipment that contains an electronic security lock or other security-
33 related function, the manufacturer shall make available to owners and independent
34 repair providers, on fair and reasonable terms, any special documentation, tools, and
35 parts needed to disable the lock or function and to reset it when disabled in the course of
36 diagnosis, maintenance, or repair of the equipment. The documentation, tools, and
37 parts may be made available through an appropriate secure system.

38 5. Manufacturers that provide repair information to aftermarket tools,
39 diagnostics, or third-party service information publications and systems have fully
40 satisfied their obligations under this section and thereafter are not responsible for the
41 content and functionality of aftermarket diagnostic tools or service information systems.

42 6. If a manufacturer has made an express warranty with respect to a product
43 and the wholesale price of the equipment is one hundred dollars or more, the
44 manufacturer shall provide the parts, tools, and documentation needed to repair the
45 product during the warranty period at an equitable price, with convenient delivery, and
46 with an enabled functionality, considering:

47 (1) The actual cost to the manufacturer to prepare and distribute the part, tool,
48 or documentation, exclusive of any research and development costs incurred;

49 (2) The ability of owners or independent repair providers to afford the part, tool,
50 or documentation; and

51 (3) The means by which the part, tool, or documentation is distributed.

52 7. Manufacturers of products sold or used in the state for the purposes of
53 providing security-related functions shall not exclude diagnostic, service, or repair
54 information necessary to reset a security-related electronic function from information
55 provided to owners and independent repair providers. If necessary for security
56 purposes, manufacturers shall provide information necessary to reset and unlock system
57 or security-related electronic modules to owners and independent repair providers
58 through an appropriate secure data release system.

59 8. Nothing in this section shall require the manufacturer to divulge a trade secret
60 to an owner or to an independent repair provider, except as necessary to provide
61 documentation, parts, and tools on fair and reasonable terms.

62 9. Notwithstanding any law or rule to the contrary, this section shall not be read,
63 interpreted, or construed to abrogate, interfere with, contradict, or alter the terms of an
64 agreement executed between an authorized repair provider and a manufacturer
65 including, but not limited to, performing warranty or recall repair work by an
66 authorized repair provider on behalf of a manufacturer pursuant to the authorized
67 repair agreement. Except in the case of a dispute arising between a manufacturer and
68 its authorized repair provider related to either party's compliance with an existing
69 repair agreement, an authorized repair provider shall have all the rights and remedies
70 provided in this section.

71 10. This section shall not require manufacturers or authorized repair providers
72 to provide an owner or independent repair provider access to nondiagnostic and
73 nonrepair information provided by a manufacturer to an authorized repair provider
74 under the agreement between the manufacturer and the authorized repair provider.

75 11. (1) An independent repair provider or owner who believes that a
76 manufacturer has failed to provide information including, but not limited to,
77 documentation, updates to firmware, safety and security corrections, diagnostics,
78 documentation, or a tool required by this section shall notify the manufacturer in
79 writing and give the manufacturer thirty days from the date the manufacturer receives
80 the complaint to cure the failure. If the manufacturer cures the complaint within thirty
81 days, damages are limited to actual damages in any subsequent litigation.

82 (2) If the manufacturer fails to respond in a timely manner to the notice
83 described under subdivision (1) of this subsection or if an independent repair provider

84 or an owner is not satisfied with the manufacturer's cure, the independent repair
85 provider or the owner may file a complaint in district court. The complaint shall
86 include:

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

92 (b) Evidence of manufacturer notification as required in subdivision (1) of this
93 subsection.

94 12. No manufacturer shall be required to provide any information or service
95 parts under subsection 1 of this section if the product for which the information or
96 service parts are sought is under a valid warranty for repair or replacement of the
97 product.

98 13. The attorney general shall enforce this section. Each violation of this section
99 shall be punishable by a ten-thousand-dollar fine, which shall be deposited in the
100 general revenue fund established under section 33.543.

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