

1 S.180

2 Introduced by Senator Pearson

3 Referred to Committee on

4 Date:

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

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

10 An act relating to the Vermont Fair Repair Act

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

12 Sec. 1. 9 V.S.A. chapter 152 is added to read:

13 CHAPTER 152. VERMONT FAIR REPAIR ACT

14 § 6101. TITLE

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

16 § 6102. DEFINITIONS

17 As used in this chapter:

18 (1) “Authorized repair provider” means:

19 (A) a person who has an arrangement for a definite or indefinite
20 period in which an original equipment manufacturer (OEM) grants to a

1 separate person a license to use a trade name, service mark, or related
2 characteristic for the purposes of offering repair services under the name of the
3 OEM; or

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

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

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

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

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

20 (B) the cost to an OEM for preparing and distributing the
21 information, excluding any research and development costs incurred in

1 designing and implementing, upgrading, or altering the product, but including
2 amortized capital costs for the preparation and distribution of the information;

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

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

6 (E) the ability of aftermarket technicians or shops to afford the
7 information;

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

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

11 (H) inflation.

12 (5) “Firmware” means a software program or set of instructions
13 programmed on a hardware device to allow the device to communicate with
14 other computer hardware.

15 (6) “Independent repair provider” means a person operating in this State
16 who is not affiliated with an OEM or an OEM’s authorized repair provider,
17 and who is engaged in the diagnosis, service, maintenance, or repair of
18 equipment, except that an OEM shall be considered an independent repair
19 provider for purposes of those instances when the OEM engages in the
20 diagnosis, service, maintenance, or repair of equipment that is not affiliated
21 with the OEM.

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

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

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

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

20 (11) “Original equipment manufacturer” or “OEM” means a person
21 who, in the ordinary course of business, is engaged in the business of selling or

1 leasing new equipment, and who is engaged in the diagnosis, service,
2 maintenance, or repair of equipment.

3 (12) "Owner" means a person who owns or leases a digital electronic
4 product purchased or used in this State.

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

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

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

18 § 6103. REQUIREMENTS

19 (a)(1) For equipment and parts sold and used in this State, the OEM of the
20 equipment or parts shall:

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

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

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

17 (b) An OEM that sells diagnostic, service, or repair documentation to an
18 independent repair provider or to an owner in a format that is standardized with
19 other OEMs, and on terms and conditions more favorable than the manner and
20 the terms and conditions pursuant to which an authorized repair provider
21 obtains the same diagnostic, service, or repair documentation, shall not require

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

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

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

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

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

17 § 6104. EXCLUSIONS

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

20 (b) This chapter does not require a manufacturer of a medical device to
21 implement a provision of this chapter that is not permitted under the federal

1 Food, Drug, and Cosmetic Act or any other federal law that supersedes this
2 section.

3 § 6105. ENFORCEMENT

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

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

9 Sec. 2. IMPLEMENTATION

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

13 Sec. 3. EFFECTIVE DATE

14 This act shall take effect on January 1, 2019.