

1 S.262

2 Introduced by Senators Pearson, Clarkson, Hardy, Hooker and Sirotkin

3 Referred to Committee on

4 Date:

5 Subject: Commerce and trade; consumer protection

6 Statement of purpose of bill as introduced: This bill proposes to promote
7 choice and competition by requiring manufacturers of personal electronic
8 devices to make available to consumers and independent repair providers, on
9 fair and reasonable terms, the documentation, parts, and tools used to diagnose,
10 maintain, and repair those devices.

11 An act relating to creating a right to repair personal electronic devices

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

13 Sec. 1. SHORT TITLE

14 This act may be cited as the Personal Electronic Device Right-to-Repair
15 Act.

16 Sec. 2. 9 V.S.A. chapter 106 is added to read:

17 CHAPTER 106. PERSONAL ELECTRONIC DEVICES;

18 RIGHT TO REPAIR

19 § 4051. DEFINITIONS

20 As used in this chapter:

1 (1)(A) “Authorized repair provider” means an individual or business
2 who is unaffiliated with an original equipment manufacturer and who has an
3 arrangement with the original equipment manufacturer, for a definite or
4 indefinite period, under which the original equipment manufacturer grants to
5 the individual or business a license to use a trade name, service mark, or other
6 proprietary identifier for the purposes of offering the services of diagnosis,
7 maintenance, or repair of a personal electronic device under the name of the
8 original equipment manufacturer, or other arrangement with the original
9 equipment manufacturer to offer such services on behalf of the original
10 equipment manufacturer.

11 (B) An original equipment manufacturer who offers the services of
12 diagnosis, maintenance, or repair of its own personal electronic devices, and
13 who does not have an arrangement described in this subdivision (1) with an
14 unaffiliated individual or business, shall be considered an authorized repair
15 provider with respect to such devices.

16 (2) “Documentation” means any manual, diagram, reporting output,
17 service code description, schematic, security codes or passwords, or other
18 guidance or information used in effecting the services of diagnosis,
19 maintenance, or repair of personal electronic devices.

20 (3) “Embedded software” means any programmable instructions
21 provided on firmware delivered with a personal electronic device, or with a

1 part for such device, for purposes of operation, including all relevant patches
2 and fixes made by the manufacturer of such device or part for these purposes.

3 (4) “Fair and reasonable terms” means the following in the context
4 specified:

5 (A) For obtaining a part or tool or documentation, “fair and
6 reasonable terms” means at costs and terms that are equivalent to the most
7 favorable costs and terms under which an original equipment manufacturer
8 offers the part, tool, or documentation to an authorized repair provider:

9 (i) accounting for any discount, rebate, convenient and timely
10 means of delivery, means of enabling fully restored and updated functionality,
11 rights of use, or other incentive or preference the original equipment
12 manufacturer offers to an authorized repair provider, or any additional cost,
13 burden, or impediment the original equipment manufacturer imposes on an
14 independent repair provider;

15 (ii) not conditioned on or imposing a substantial obligation or
16 restriction that is not reasonably necessary for enabling the owner or
17 independent repair provider to engage in the diagnosis, maintenance, or repair
18 of a personal electronic device made by or on behalf of the original equipment
19 manufacturer; and

20 (iii) not conditioned on an arrangement described in subdivision
21 (1) of this section.

1 (B) For documentation, including any relevant updates, “fair and
2 reasonable terms” also means at no charge, except that when the
3 documentation is requested in physical printed form a charge may be included
4 for the reasonable actual costs of preparing and sending the copy.

5 (C) For software tools, “fair and reasonable terms” also means at no
6 charge and without requiring authorization or Internet access, or imposing
7 impediments to access or use, in the course of effecting the diagnosis,
8 maintenance, or repair and enabling full functionality of a personal electronic
9 device, in a manner that impairs the efficient and cost-effective performance of
10 any of those activities.

11 (5) “Firmware” means a software program or set of instructions
12 programmed on a personal electronic device or on a part for such device to
13 allow the device or part to communicate within itself or with other computer
14 hardware.

15 (6) “Independent repair provider” means an individual or business
16 operating in this State who does not have an arrangement described in
17 subdivision (1) of this section with an original equipment manufacturer; who is
18 not affiliated with any individual or business who has such an arrangement;
19 and who is engaged in the services of diagnosis, maintenance, or repair of
20 personal electronic devices, except that an original equipment manufacturer or,
21 with respect to that original equipment manufacturer, an individual or business

1 who has such an arrangement with that original equipment manufacturer or
2 who is affiliated with an individual or business who has such an arrangement
3 with that original equipment manufacturer shall be considered an independent
4 repair provider for purposes of those instances in which it engages in the
5 services of diagnosis, maintenance, or repair of personal electronic devices that
6 are not manufactured by or sold under the name of that original equipment
7 manufacturer.

8 (7) “Original equipment manufacturer” means a business engaged in the
9 business of selling, leasing, or otherwise supplying new personal electronic
10 devices or parts of devices manufactured by or on behalf of itself to any
11 individual or business.

12 (8) “Owner” means an individual or business who owns or leases a
13 personal electronic device purchased or used in this State.

14 (9) “Part” means any replacement part, either new or used, made
15 available by an original equipment manufacturer for purposes of effecting the
16 services of maintenance or repair of a personal electronic device manufactured
17 by or on behalf of, sold or otherwise supplied by, the original equipment
18 manufacturer.

19 (10) “Personal electronic device” or “device” means a portable
20 electronic device that has the capability to store, record, or transmit text,
21 photographic, audio, or video data.

1 (11) “Tools” means any software program, hardware implement, or
2 other apparatus used for the diagnosis, maintenance, or repair of a personal
3 electronic device, including software or other mechanisms that provision,
4 program, or pair a new part; calibrate functionality; or perform any other
5 function required to bring the product back to a fully functional condition.

6 (12) “Trade secret” has the same meaning as in section 4601 of this title.
7 § 4052. REQUIREMENTS.

8 (a)(1) For a personal electronic device, and parts for such device, sold or
9 used in this State, an original equipment manufacturer shall make available, for
10 purposes of diagnosis, maintenance, or repair of such device, to any
11 independent repair provider, or to the owner of the personal electronic device
12 by or on behalf of, or sold or otherwise supplied by, the original equipment
13 manufacturer, on fair and reasonable terms, documentation, parts, and tools,
14 inclusive of any updates to information or embedded software.

15 (2) This subsection does not require an original equipment manufacturer
16 to make available a part if the part is no longer available to the original
17 equipment manufacturer.

18 (b) For a device that contains an electronic security lock or other security-
19 related function, the original equipment manufacturer shall make available to
20 the owner and to independent repair providers, on fair and reasonable terms,
21 any special documentation, tools, and parts needed to disable the lock or

1 function and to reset it when disabled in the course of diagnosis, maintenance,
2 or repair of the device. Such documentation, tools, and parts may be made
3 available by means of an appropriate secure system.

4 (c) When the original equipment manufacturer has made an express
5 warranty with respect to a personal electronic device and the wholesale price
6 of the device is \$100.00 or more, the manufacturer shall provide such parts,
7 tools, and documentation as to enable the repair of the device during the
8 warranty period at an equitable price and convenience of delivery and of
9 enabling functionality in light of:

10 (1) the actual cost to the original equipment manufacturer to prepare and
11 distribute the part, tool, or documentation, exclusive of any research and
12 development costs incurred;

13 (2) the ability of owners and independent repair providers to afford the
14 part, tool, or documentation; and

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

16 § 4053. ENFORCEMENT

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

19 (b) The Attorney General has the same authority to make rules, conduct
20 civil investigations, enter into assurances of discontinuance, and bring civil
21 actions as provided in chapter 63, subchapter 1 of this title.

1 § 4054. LIMITATION

2 (a) Nothing in this chapter shall be construed to require an original
3 equipment manufacturer to divulge a trade secret to an owner or an
4 independent service provider except as necessary to provide documentation,
5 parts, and tools on fair and reasonable terms.

6 (b) No provision in this chapter shall be construed to alter the terms of any
7 arrangement described in subdivision 4051(1) of this title in force between an
8 authorized repair provider and an original equipment manufacturer, including
9 the performance or provision of warranty or recall repair work by an
10 authorized repair provider on behalf of an original equipment manufacturer
11 pursuant to such arrangement, except that any provision in such terms that
12 purports to waive, avoid, restrict, or limit the original equipment
13 manufacturer's obligations to comply with this chapter shall be void and
14 unenforceable.

15 Sec. 3. APPLICABILITY

16 This act applies with respect to a personal electronic device sold or in use
17 on or after the effective date of this act.

18 Sec. 4. EFFECTIVE DATE

19 This act shall take effect on July 1, 2022.