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H.79

Introduced by Representatives Donahue of Northfield, Sims of Craftsbury,
Andriano of Orwell, Anthony of Barre City, Biron of Vergennes, Boyden of Cambridge, Branagan of Georgia, Brumsted of Shelburne, Burrows of West Windsor, Demrow of Corinth, Dolan of Waitsfield, Farlice-Rubio of Barnet, Galfetti of Barre Town, Higley of Lowell, Labor of Morgan, LaBounty of Lyndon, Masland of Thetford, McGill of Bridport, Morris of Springfield, Mulvaney-Stanak of Burlington, Nicoll of Ludlow, Noyes of Wolcott, Ode of Burlington, Pajala of Londonderry, Priestley of Bradford, Sibilia of Dover, Surprenant of Barnard, Taylor of Milton, Templeman of Brownington, White of Bethel, Williams of Barre City, and Williams of Granby

Referred to Committee on

Date:

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

Statement of purpose of bill as introduced: This bill proposes to make available from original manufacturers to consumers and independent repair providers the information, schematics, diagnostics, and repair manuals necessary to repair certain equipment.

1 An act relating to the Vermont Fair Repair Act

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

3 Sec. 1. 9 V.S.A. chapter 153 is added to read:

4 CHAPTER 153. VERMONT FAIR REPAIR ACT

5 § 6101. TITLE

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

7 § 6102. DEFINITIONS

8 As used in this chapter:

9 (1)(A) “Authorized repair provider” means:

10 (i) a person who has an arrangement for a definite or indefinite
11 period in which an original equipment manufacturer (OEM) grants to a
12 separate person a license to use a trade name, service mark, or related
13 characteristic for the purposes of offering repair services under the name of the
14 OEM; or

15 (ii) a person retained by the OEM to provide refurbishing or repair
16 services for the OEM’s products.

17 (B) An OEM who offers the services of diagnosis, maintenance, or
18 repair of its own digital electronic equipment, and who does not have an
19 arrangement described in this subdivision (1) with an independent repair
20 provider, shall be considered an authorized repair provider with respect to such
21 equipment.

1 (2) “Embedded software” means any programmable instructions
2 provided on firmware delivered with the equipment for the purposes of
3 equipment operation, including all relevant patches and fixes made by the
4 OEM for this purpose and including synonyms for “basic internal operating
5 system,” “internal operating system,” “machine code,” “assembly code,” “root
6 code,” and “microcode.”

7 (3) “Equipment” means digital electronic equipment or a part for such
8 equipment originally manufactured for distribution and sale in the United
9 States.

10 (4)(A) “Fair and reasonable terms” means making available parts, tools,
11 or documentation as follows:

12 (i) with respect to documentation required for repair, that
13 documentation is provided by the OEM at no charge, except that, when the
14 documentation is requested in physical printed form, a charge may be included
15 for the reasonable actual costs of preparing and sending the copy;

16 (ii) with respect to tools, that tools are made available by the OEM
17 at no charge and without requiring authorization or Internet access for use or
18 operation of the tool, or imposing impediments to access or use of the tool to
19 diagnose, repair, and enable full functionality of digital electronic equipment,
20 except that when a tool is requested in physical form, a charge may be included
21 for the reasonable, actual costs of preparing and sending the tool; and

1 (iii) with respect to parts, that parts are made available by the
2 OEM, either directly or indirectly through an authorized repair provider to
3 independent repair providers and owners at reasonable costs and terms that are
4 equivalent to the most favorable costs and terms under which an OEM offers
5 the part to an authorized repair provider and that:

6 (I) account for any discount, rebate, convenient and timely
7 means of delivery, means of enabling fully restored and updated functionality,
8 rights of use, or other incentive or preference the OEM offers to an authorized
9 repair provider, or any additional cost, burden, or impediment the OEM
10 imposes on an owner of independent repair provider;

11 (II) is not conditioned on or imposing a substantial obligation
12 or restriction that is not reasonably necessary for enabling the owner or
13 independent repair provider to engage in the diagnosis, maintenance, or repair
14 of digital electronic equipment made by or on behalf of the OEM; and

15 (III) is not conditioned on an arrangement described in
16 subdivision (1)(A) of this section.

17 (B) Parts, tools, and documentation shall be made available to an
18 authorized repair provider and shall further be made available by an authorized
19 repair provider to any independent repair provider or owner, provided that such
20 authorized repair provider is contractually and practically permitted by the

1 OEM to sell such parts, tools, and documentation to any independent repair
2 provider or owner and provided further that such OEM shall not:

3 (i) retaliate against or hinder the ability of any authorized repair
4 provider to sell such parts, tools, or documentation through any means,
5 including advertising restrictions or product allocation limitations unrelated to
6 legitimate product shortages; or

7 (ii) condition or impose a substantial obligation or restriction that
8 is not reasonably necessary for enabling the owner or independent repair
9 provider to engage in the diagnosis, maintenance, or repair of digital electronic
10 equipment made by or on behalf of the OEM.

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

14 (6) “Independent repair provider” means a person operating in this State
15 who is not affiliated with an OEM or an OEM’s authorized repair provider,
16 who does not have an arrangement with an OEM as described in subdivision
17 (1)(A) of this section, and who is engaged in the diagnosis, service,
18 maintenance, or repair of equipment.

19 (7) “Medical device” means an instrument, apparatus, implement,
20 machine, contrivance, implant, or other similar or related article, including a
21 component part or accessory, as defined in the federal Food, Drug, and

1 Cosmetic Act, 21 U.S.C. § 321, as amended, that is intended for use in the
2 diagnosis of disease or other conditions or in the cure, mitigation, treatment, or
3 prevention of disease in humans or other animals.

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

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

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

17 (11) “Original equipment manufacturer” or “OEM” means a person
18 who, in the ordinary course of business, is engaged in the business of selling or
19 leasing new equipment and who is engaged in the diagnosis, service,
20 maintenance, or repair of equipment.

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

3 (13) “Part” or “parts” means a replacement part, either new or used,
4 made available by an OEM to an authorized repair provider for purposes of
5 effecting repair.

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

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

16 § 6103. REQUIREMENTS

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

19 (A) make available to independent repair providers and owners of
20 equipment manufactured by the OEM the same diagnostic and repair
21 information that it makes available to its authorized repair providers and

1 subcontract repair or refurbishment facilities, including technical updates,
2 schematic diagrams, and corrections to embedded software and safety and
3 security patches, on a timely basis and for no charge, or in the same manner as
4 the OEM makes such diagnostic and repair documentation available to its
5 authorized repair providers and subcontract repair or refurbishment
6 facilities; and

7 (B) make available for purchase by the owner, the owner's
8 authorized agent, or an independent repair provider equipment or service parts,
9 inclusive of any updates to the embedded software of the equipment or service
10 parts, upon fair and reasonable terms.

11 (2) For equipment that contains an electronic security lock or other
12 security-related function, the OEM shall make available to the owner or
13 independent repair provider, on fair and reasonable terms, any special
14 documentation, tools, or parts needed to access and reset the lock or function
15 when disabled in the court of diagnosis, maintenance, or repair of such
16 equipment. Such documentation, tools, and parts may be made available
17 through an appropriate secure release system.

18 (3) This chapter does not require the OEM to sell equipment or service
19 parts if the parts are no longer available to the OEM or the authorized repair
20 provider of the OEM.

1 (b) An OEM that sells diagnostic, service, or repair documentation to an
2 independent repair provider or to an owner in a format that is standardized with
3 other OEMs, and on terms and conditions more favorable than the manner and
4 the terms and conditions pursuant to which an authorized repair provider
5 obtains the same diagnostic, service, or repair documentation, shall not require
6 an authorized repair provider to continue purchasing diagnostic, service, or
7 repair documentation in a proprietary format, unless the proprietary format
8 includes diagnostic, service, or repair documentation or functionality that is not
9 available in the standardized format.

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

11 (A) make available for purchase by owners and independent repair
12 providers all diagnostic repair tools incorporating the same diagnostic, repair,
13 and remote communications capabilities that the OEM makes available to its
14 own repair or engineering staff or any authorized repair provider without
15 requiring authorization or Internet access for use or operation of the tool, or
16 imposing impediments to access or use of the tools to diagnose, maintain, or
17 repair and enable full functionality of digital electronic equipment; and

18 (B) offer the tools for sale to owners and independent repair
19 providers upon fair and reasonable terms.

20 (2) An OEM satisfies its obligations under this chapter if it provides
21 diagnostic repair documentation to aftermarket diagnostic tool manufacturers,

1 diagnostics providers, or service information publications and systems and is
2 not responsible for the content and function of aftermarket diagnostic tools,
3 diagnostics, or service information systems.

4 § 6104. EXCLUSIONS

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

7 (b) This chapter does not require a manufacturer of a medical device to
8 implement a provision of this chapter that is not permitted under the federal
9 Food, Drug, and Cosmetic Act or any other federal law that supersedes this
10 section.

11 § 6105. ENFORCEMENT

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

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

1 Sec. 2. IMPLEMENTATION

2 Beginning in calendar year 2024, this act applies to equipment and parts
3 sold or used in this State for not less than five years following the last date the
4 equipment or part was manufactured.

5 Sec. 3. EFFECTIVE DATE

6 This act shall take effect on January 1, 2024.