

1 S.46

2 Introduced by Senators Gulick, Campion, Clarkson, Cummings, Hashim,
3 Lyons, McCormack, Perchlik, Ram Hinsdale, Vyhovsky,
4 Watson, White and Wrenner

5 Referred to Committee on

6 Date:

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

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

12 An act relating to the Vermont Fair Repair Act

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

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

15 CHAPTER 153. VERMONT FAIR REPAIR ACT

16 § 6101. TITLE

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

18 § 6102. DEFINITIONS

19 As used in this chapter:

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

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

6 (ii) a person retained by the OEM to provide refurbishing or repair
7 services for the OEM's products.

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

13 (2) "Embedded software" means any programmable instructions
14 provided on firmware delivered with the equipment for the purposes of
15 equipment operation, including all relevant patches and fixes made by the
16 OEM for this purpose and including synonyms for "basic internal operating
17 system," "internal operating system," "machine code," "assembly code," "root
18 code," and "microcode."

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

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

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

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

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

18 (I) account for any discount, rebate, convenient and timely
19 means of delivery, means of enabling fully restored and updated functionality,
20 rights of use, or other incentive or preference the OEM offers to an authorized

1 repair provider, or any additional cost, burden, or impediment the OEM
2 imposes on an owner of independent repair provider;

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

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

9 (B) Parts, tools, and documentation shall be made available to an
10 authorized repair provider and shall further be made available by an authorized
11 repair provider to any independent repair provider or owner, provided that such
12 authorized repair provider is contractually and practically permitted by the
13 OEM to sell such parts, tools, and documentation to any independent repair
14 provider or owner and provided further that such OEM shall not:

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

19 (ii) condition or impose a substantial obligation or restriction that
20 is not reasonably necessary for enabling the owner or independent repair

1 provider to engage in the diagnosis, maintenance, or repair of digital electronic
2 equipment made by or on behalf of the OEM.

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

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

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

17 (8) “Motor vehicle” means any vehicle that is designed for transporting
18 persons or property on a street or highway and is certified by the motor vehicle
19 manufacturer under all applicable federal safety and emissions standards and
20 requirements for distribution and sale in the United States. The term does not

1 include a motorcycle or a recreational vehicle or manufactured home equipped
2 for habitation.

3 (9) “Motor vehicle dealer” means a person who, in the ordinary course
4 of business, is engaged in the business of selling or leasing new motor vehicles
5 to a person pursuant to a franchise agreement and who is engaged in the
6 diagnosis, service, maintenance, or repair of motor vehicles or motor vehicle
7 engines pursuant to such franchise agreement.

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

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

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

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

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

1 (15) “Trade secret” means anything tangible or intangible or
2 electronically stored or kept that constitutes, represents, evidences, or records
3 intellectual property, including secret or confidentially held designs, processes,
4 procedures, formulas, inventions, or improvements; secret or confidentially
5 held scientific, technical, merchandising, production, financial, business, or
6 management information; or any other trade secret as set forth in 18 U.S.C.
7 § 1839, as it existed on January 1, 2016.

8 § 6103. REQUIREMENTS

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

11 (A) make available to independent repair providers and owners of
12 equipment manufactured by the OEM the same diagnostic and repair
13 information that it makes available to its authorized repair providers and
14 subcontract repair or refurbishment facilities, including technical updates,
15 schematic diagrams, and corrections to embedded software and safety and
16 security patches, on a timely basis and for no charge, or in the same manner as
17 the OEM makes such diagnostic and repair documentation available to its
18 authorized repair providers and subcontract repair or refurbishment
19 facilities; and

20 (B) make available for purchase by the owner, the owner’s
21 authorized agent, or an independent repair provider equipment or service parts,

1 inclusive of any updates to the embedded software of the equipment or service
2 parts, upon fair and reasonable terms.

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

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

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

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

2 (A) make available for purchase by owners and independent repair
3 providers all diagnostic repair tools incorporating the same diagnostic, repair,
4 and remote communications capabilities that the OEM makes available to its
5 own repair or engineering staff or any authorized repair provider without
6 requiring authorization or Internet access for use or operation of the tool, or
7 imposing impediments to access or use of the tools to diagnose, maintain, or
8 repair and enable full functionality of digital electronic equipment; and

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

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

16 § 6104. EXCLUSIONS

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

19 (b) This chapter does not require a manufacturer of a medical device to
20 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 2024, 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, 2024.