

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 412

(Senator Hester)(By Request - Joint Cybersecurity,
Information Technology, and Biotechnology Committee)

Finance

Consumer Protection - Right to Repair

This bill requires an original equipment manufacturer to, on fair and reasonable terms, make available to an independent repair provider (or owner) of digital electronic equipment (1) any documentation, parts, tools, or updates to information or embedded software or (2) as it applies to equipment that contains a security-related function, any documentation, tools, parts, or updates needed to reset the lock or function when disabled. The bill applies only prospectively and may not be applied or interpreted to have any effect on (or application to) any equipment sold or in use before the bill's effective date. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General, Consumer Protection Division, can handle the bill's requirements with existing resources.

Local Effect: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An "independent repair provider" means a person that (1) offers the services of diagnosis, maintenance, or repair of digital electronic equipment and (2) is not an authorized repair provider.

An “authorized repair provider” means a person who has an arrangement with the original equipment manufacturer under which the manufacturer authorizes the person to, among other things, offer diagnosis, maintenance, or repair services under the name, or on behalf, of the original equipment manufacturer; it also includes an original equipment manufacturer who offers such services for its own equipment.

“Documentation” means a manual, diagram, reporting output, service code description, schematic diagram, or other information provided to an authorized repair provider for the diagnosis, maintenance, or repair of digital electronic equipment.

Applicability

The bill applies only to documentation, parts, tools, or updates required for the diagnosis, maintenance, or repair of digital electronic equipment. The bill does not apply to:

- a motor vehicle manufacturer;
- a manufacturer of motor vehicle equipment;
- a motor vehicle dealer acting as a manufacturer of motor vehicle equipment;
- a product or service of a motor vehicle manufacturer;
- a product or service of a manufacturer of motor vehicle equipment; or
- a product or service of a motor vehicle dealer acting as a manufacturer of motor vehicle equipment.

The bill may not be construed to (1) require an original equipment manufacturer to divulge a trade secret (except as necessary to comply with the bill) or (2) interfere with or alter an arrangement between an authorized repair provider and an original equipment manufacturer.

Current Law: An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind, which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter,

issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Small Business Effect: Any independent repair providers or small business owners of such equipment may meaningfully benefit under the bill, which requires original equipment manufacturers to make available information needed to repair equipment. This may allow such independent repair providers to engage in additional business related to equipment repairs or small businesses to undertake the repairs themselves. Conversely, authorized repair providers, to the extent they are small businesses, may face greater competition.

Additional Information

Prior Introductions: HB 1124 of 2020, a nearly identical bill, received a hearing in the House Economic Matters Committee, but no further action was taken. Its cross file, SB 723, received a hearing in the Senate Finance Committee, but no further action was taken.

Designated Cross File: HB 84 (Delegate Feldmark, *et al.*) - Economic Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Maryland Department of Transportation; Department of Legislative Services

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Analysis by: Eric F. Pierce

Direct Inquiries to:
(410) 946-5510
(301) 970-5510