

HB3466



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3466

by Rep. Thomas M. Bennett

SYNOPSIS AS INTRODUCED:

New Act

Creates the Motor Vehicle Repair Fairness Act. Provides that motor vehicle manufacturers must make available to independent repair providers of parts manufactured by such motor vehicle manufacturer, diagnostic and repair documentation, including repair technical updates and updates and corrections to embedded software, in the same manner as the motor vehicle manufacturer makes such diagnostic and repair documentation, including repair technical updates and updates and corrections to embedded software, available to its authorized repair provider. Defines terms. Authorizes the imposition of a \$500 civil penalty. Provides that the Attorney General may bring an action to recover the penalty.

LRB100 10676 JLS 20900 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Motor
5 Vehicle Repair Fairness Act.

6 Section 5. Definitions. In this Act:

7 "Authorized repair provider" means an individual or an
8 entity that has an arrangement for a definite or indefinite
9 period in which a motor vehicle manufacturer grants to a
10 separate individual or entity a license to use a trade name,
11 service mark, or related characteristic for the purposes of
12 offering repair services under the name of the motor vehicle
13 manufacturer.

14 "Embedded software" means any programmable instructions
15 provided on firmware delivered with the equipment for the
16 purposes of equipment operation, including all relevant
17 patches and fixes made by the original motor vehicle
18 manufacturer for this purpose, including, but not limited to, a
19 basic internal operating system, an internal operating system,
20 a machine code, an assembly code, a root code, and a microcode.

21 "Fair and reasonable terms" means an equitable price in
22 light of relevant factors including, but not limited to:

23 (1) the net cost to the authorized repair provider for

1 similar information obtained from an original equipment
2 manufacturer, less any discounts, rebates, or other
3 incentive programs;

4 (2) the cost to the original equipment manufacturer for
5 preparing and distributing the information, excluding any
6 research and development costs incurred in designing and
7 implementing, upgrading, or altering the product, but
8 including amortized capital costs for the preparation and
9 distribution of the information;

10 (3) the price charged by other original equipment
11 manufacturers for similar information;

12 (4) the price charged by original equipment
13 manufacturers for similar information prior to the launch
14 of original equipment manufacturer web sites;

15 (5) the ability of aftermarket technicians or shops to
16 afford the information;

17 (6) the means by which the information is distributed;

18 (7) the extent to which the information is used, which
19 includes the number of users, and frequency, duration, and
20 volume of use; and

21 (8) inflation.

22 "Firmware" means a software program or set of instructions
23 programmed on a hardware device to allow the device to
24 communicate with other computer hardware.

25 "Independent repair provider" means a person or business
26 operating in this State which is not affiliated with a motor

1 vehicle manufacturer or a motor vehicle manufacturer's
2 authorized repair provider, which is engaged in the diagnosis,
3 service, maintenance, or repair of motor vehicle equipment.

4 "Motor vehicle" means any vehicle that is designed for
5 transporting persons or property on a street or highway and is
6 certified by the motor vehicle manufacturer under all
7 applicable federal safety and emissions standards and
8 requirements for distribution and sale in the United States.
9 Motor vehicle does not include:

10 (1) a motorcycle; or

11 (2) a recreational vehicle or manufactured home
12 equipped for Habitation.

13 "Motor vehicle manufacturer" means any person or business
14 engaged in the business of manufacturing or assembling new
15 motor vehicles.

16 "Part" means any replacement part, either new or used, made
17 available by the motor vehicle manufacturer to an authorized
18 repair provider for purposes of effecting repair and includes
19 embedded software, firmware, digital electronic, equipment, or
20 a part for such equipment.

21 "Trade secret" means anything tangible or intangible or
22 electronically stored or kept which constitutes, represents,
23 evidences, or records intellectual property, including secret
24 or confidentially held designs, processes, procedures,
25 formulas, inventions, or improvements, or secret or
26 confidentially held scientific, technical, merchandising,

1 production, financial, business, or management information, or
2 any other trade secret as defined in 18 U.S.C. 1839, as such
3 Section existed on January 1, 2017.

4 Section 10. Duty of motor vehicle manufacturer.

5 (a) For parts sold and used in this State, the motor
6 vehicle manufacturer of such part shall make available to any
7 independent repair provider of parts manufactured by such motor
8 vehicle manufacturer, diagnostic and repair documentation,
9 including repair technical updates and updates and corrections
10 to embedded software, for no charge or in the same manner as
11 the motor vehicle manufacturer makes such diagnostic and repair
12 documentation, including repair technical updates and updates
13 and corrections to embedded software, available to its
14 authorized repair provider.

15 (b) Nothing in this Section requires the motor vehicle
16 manufacturer to sell parts if the parts are no longer available
17 to the original equipment manufacturer or the authorized repair
18 provider of the motor vehicle manufacturer.

19 (c) Any motor vehicle manufacturer that sells any
20 diagnostic, service, or repair documentation to any
21 independent repair provider in a format that is standardized
22 with other original equipment manufacturers, and on terms and
23 conditions more favorable than the manner and the terms and
24 conditions pursuant to which the authorized repair provider
25 obtains the same diagnostic, service, or repair documentation,

1 shall be prohibited from requiring any authorized repair
2 provider to continue purchasing diagnostic, service, or repair
3 documentation in a proprietary format, unless such proprietary
4 format includes diagnostic, service, or repair documentation
5 or functionality that is not available in such standardized
6 format.

7 (d) A motor vehicle manufacturer of equipment sold or used
8 in this State shall make available for purchase by independent
9 repair providers all diagnostic repair tools incorporating the
10 same diagnostic, repair, and remote communications
11 capabilities that such motor vehicle manufacturer makes
12 available to its own repair or engineering staff or any
13 authorized repair provider. A motor vehicle manufacturer shall
14 offer such tools for sale to any independent repair provider
15 upon fair and reasonable terms. A motor vehicle manufacturer
16 that provides diagnostic repair documentation to aftermarket
17 diagnostic tool manufacturers, diagnostics providers, or
18 service information publications and systems shall have fully
19 satisfied its obligations under this Section and thereafter not
20 be responsible for the content and functionality of such
21 aftermarket diagnostic tools, diagnostics, or service
22 information systems.

23 (e) Original motor vehicle manufacturer parts sold or used
24 in this State for the purpose of providing security-related
25 functions may not exclude diagnostic, service, and repair
26 documentation necessary to reset a security-related electronic

1 function from information provided to an independent repair
2 provider. If excluded under this Act, the documentation
3 necessary to reset an immobilizer system or security-related
4 electronic module shall be obtained by an independent repair
5 provider through the appropriate secure data release systems.

6 Section 15. Trade secrets. Nothing in this Act shall be
7 construed to require a motor vehicle manufacturer to divulge a
8 trade secret.

9 Section 20. Warranty and recall service. No provision in
10 this Act shall be read, interpreted, or construed to abrogate,
11 interfere with, contradict, or alter the terms of any agreement
12 executed and in force between an authorized repair provider and
13 a motor vehicle manufacturer, including, but not limited to,
14 the performance or provision of warranty or recall repair work
15 by an authorized repair provider on behalf of a motor vehicle
16 manufacturer pursuant to such authorized repair agreement,
17 except that any provision in such an authorized repair
18 agreement that purports to waive, avoid, restrict, or limit a
19 motor vehicle manufacturer's compliance with this Section
20 shall be void and unenforceable.

21 Section 25. Access to certain non-diagnostic and repair
22 documentation. Nothing in this Act shall be construed to
23 require motor vehicle manufacturers or authorized repair

1 providers to provide independent repair provider access to
2 non-diagnostic and repair documentation provided by a motor
3 vehicle manufacturer to an authorized repair provider pursuant
4 to the terms of an authorizing agreement.

5 Section 30. Civil penalty. Any motor vehicle manufacturer
6 found in violation of this Act is liable for a civil penalty of
7 not more than \$500 for each violation. The penalty may be
8 recovered in a civil action by the Attorney General in the
9 manner authorized under the Consumer Fraud and Deceptive
10 Business Practices Act.