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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4418

02/28/2024 Authored by Fischer, Pursell and Frederick
The bill was read for the first time and referred to the Committee on Commerce Finance and Policy

1.1 A bill for an act
1.2 relating to commerce; removing equipment from the list of exclusions for purposes
1.3 of digital fair repair; amending Minnesota Statutes 2023 Supplement, section
1.4 325E.72, subdivisions 2, 6, 8.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2023 Supplement, section 325E.72, subdivision 2, is amended
1.7 to read:

1.8 Subd. 2. Definitions. (a) For the purposes of this section, the following terms have the
1.9 meanings given.

1.10 (b) "Authorized repair provider" means an individual or business who is unaffiliated
1.11 with an original equipment manufacturer and who has: (1) an arrangement with the original
1.12 equipment manufacturer, for a definite or indefinite period, under which the original
1.13 equipment manufacturer grants to the individual or business a license to use a trade name,
1.14 service mark, or other proprietary identifier to offer diagnostic, maintenance, or repair
1.15 services for digital electronic equipment under the name of the original equipment
1.16 manufacturer; or (2) an arrangement with the original equipment manufacturer to offer
1.17 diagnostic, maintenance, or repair services for digital electronic equipment on behalf of the
1.18 original equipment manufacturer. An original equipment manufacturer that offers diagnostic,
1.19 maintenance, or repair services for the original equipment manufacturer's digital electronic
1.20 equipment is considered an authorized repair provider with respect to the digital electronic
1.21 equipment if the original equipment manufacturer does not have an arrangement described
1.22 in this paragraph with an unaffiliated individual or business.

1.23 (c) "Contractor" has the meaning given in section 326B.31, subdivision 14.

2.1 (d) "Cybersecurity" means the practice of protecting networks, devices, and data from
2.2 unauthorized access or criminal use and the practice of ensuring the confidentiality, integrity,
2.3 and availability of information.

2.4 (e) "Digital electronic equipment" or "equipment" means any hardware product that
2.5 depends, in whole or in part, on digital electronics embedded in or attached to the product
2.6 in order for the product to function, for which the original equipment manufacturer makes
2.7 available tools, parts, or documentation to authorized repair providers.

2.8 (f) "Documentation" means a manual, diagram, reporting output, service code description,
2.9 schematic diagram, or similar information made available by an original equipment
2.10 manufacturer to an authorized repair provider to facilitate diagnostic, maintenance, or repair
2.11 services for digital electronic equipment.

2.12 (g) "Embedded software" means any programmable instructions provided on firmware
2.13 delivered with digital electronic equipment, or with a part for the equipment, in order to
2.14 operate the equipment. Embedded software includes all relevant patches and fixes made by
2.15 the manufacturer of the equipment or part in order to operate the equipment.

2.16 (h) "Fair and reasonable terms" means, with respect to:

2.17 (1) parts for digital electronic equipment offered by an original equipment manufacturer:

2.18 (i) costs that are fair to both parties; and

2.19 (ii) terms under which an original equipment manufacturer offers the part to an authorized
2.20 repair provider and which:

2.21 (A) is not conditioned on or imposing a substantial obligation to use or restrict the use
2.22 of the part to diagnose, maintain, or repair digital electronic equipment sold, leased, or
2.23 otherwise supplied by the original equipment manufacturer, including a condition that the
2.24 owner or independent repair provider become an authorized repair provider of the original
2.25 equipment manufacturer; or

2.26 (B) a requirement that a part be registered, paired with, or approved by the original
2.27 equipment manufacturer or an authorized repair provider before the part is operational or
2.28 prohibit an original equipment manufacturer from imposing any additional cost or burden
2.29 that is not reasonably necessary or is designed to be an impediment on the owner or
2.30 independent repair provider;

2.31 (2) tools, software, and documentation for digital electronic equipment offered by an
2.32 original equipment manufacturer:

3.1 (i) costs that are equivalent to the lowest actual cost for which the original equipment
3.2 manufacturer offers the tool, software, or documentation to an authorized repair provider,
3.3 including any discount, rebate, or other financial incentive offered to an authorized repair
3.4 provider; and

3.5 (ii) terms that are equivalent to the most favorable terms under which an original
3.6 equipment manufacturer offers the tool, software, or documentation to an authorized repair
3.7 provider, including the methods and timeliness of delivery of the tool, software, or
3.8 documentation, do not impose on an owner or an independent repair provider:

3.9 (A) a substantial obligation to use or restrict the use of the tool, software, or
3.10 documentation to diagnose, maintain, or repair digital electronic equipment sold, leased, or
3.11 otherwise supplied by the original equipment manufacturer, including a condition that the
3.12 owner or independent repair provider become an authorized repair provider of the original
3.13 equipment manufacturer; or

3.14 (B) a requirement that a tool be registered, paired with, or approved by the original
3.15 equipment manufacturer or an authorized repair provider before the part or tool is operational;
3.16 and

3.17 (3) documentation offered by an original equipment manufacturer: that the documentation
3.18 is made available by the original equipment manufacturer at no charge, except that when
3.19 the documentation is requested in physical printed form, a charge may be included for the
3.20 reasonable actual costs of preparing and sending the copy.

3.21 (i) "Independent repair provider" means an individual or business operating in Minnesota
3.22 that: (1) does not have an arrangement described in paragraph (b) with an original equipment
3.23 manufacturer; (2) is not affiliated with any individual or business that has an arrangement
3.24 described in paragraph (b); and (3) is engaged in providing diagnostic, maintenance, or
3.25 repair services for digital electronic equipment. An original equipment manufacturer or,
3.26 with respect to the original equipment manufacturer, an individual or business that has an
3.27 arrangement with the original equipment manufacturer or is affiliated with an individual or
3.28 business that has an arrangement with that original equipment manufacturer, is considered
3.29 an independent repair provider for purposes of the instances the original equipment
3.30 manufacturer engages in diagnostic, maintenance, or repair services for digital electronic
3.31 equipment that is not manufactured by or sold under the name of the original equipment
3.32 manufacturer.

4.1 (j) "Manufacturer of motor vehicle equipment" means a business engaged in the business
4.2 of manufacturing or supplying components used to manufacture, maintain, or repair a motor
4.3 vehicle.

4.4 (k) "Motor vehicle" means a vehicle that is: (1) designed to transport persons or property
4.5 on a street or highway; and (2) certified by the manufacturer under (i) all applicable federal
4.6 safety and emissions standards, and (ii) all requirements for distribution and sale in the
4.7 United States. Motor vehicle does not include a recreational vehicle or an auto home equipped
4.8 for habitation.

4.9 (l) "Motor vehicle dealer" means an individual or business that, in the ordinary course
4.10 of business: (1) is engaged in the business of selling or leasing new motor vehicles to an
4.11 individual or business pursuant to a franchise agreement; (2) has obtained a license under
4.12 section 168.27; and (3) is engaged in providing diagnostic, maintenance, or repair services
4.13 for motor vehicles or motor vehicle engines pursuant to a franchise agreement.

4.14 (m) "Motor vehicle manufacturer" means a business engaged in the business of
4.15 manufacturing or assembling new motor vehicles.

4.16 (n) "Original equipment manufacturer" means any individual or business that, in the
4.17 normal course of business, is engaged in the business of selling or leasing to any individual
4.18 or business new digital electronic equipment manufactured by or on behalf of the original
4.19 equipment manufacturer.

4.20 (o) "Owner" means an individual or business that owns or leases digital electronic
4.21 equipment purchased or used in Minnesota.

4.22 (p) "Part" means any replacement part or assembly of parts, either new or used, made
4.23 available by an original equipment manufacturer to authorized repair providers to facilitate
4.24 the maintenance or repair of digital electronic equipment manufactured or sold by the original
4.25 equipment manufacturer.

4.26 (q) "Parts pairing" means a manufacturer's use of software to identify component parts
4.27 through a unique identifier.

4.28 (r) "Personally identifiable information" means any representation of information that
4.29 permits the identity of an individual to whom the information applies to be reasonably
4.30 inferred by either direct or indirect means.

4.31 (s) "Tool" means any software program, hardware implement, or other apparatus
4.32 used for diagnosis, maintenance, or repair of digital electronic equipment, including software
4.33 or other mechanisms that provide, program, pair a part, calibrate functionality, or perform

5.1 any other function required to repair the original equipment or part back to fully functional
5.2 condition, including updates.

5.3 ~~(s)~~ (t) "Trade secret" has the meaning given in section 325C.01, subdivision 5.

5.4 ~~(t)~~ (u) "Video game console" means a computing device, such as a console machine, a
5.5 handheld console device, or another device or system, and its components and peripherals,
5.6 that is primarily used by consumers for playing video games but which is neither a general
5.7 nor an all-purpose computer. A general or all-purpose computer includes but is not limited
5.8 to a desktop computer, laptop, tablet, or cell phone.

5.9 Sec. 2. Minnesota Statutes 2023 Supplement, section 325E.72, subdivision 6, is amended
5.10 to read:

5.11 Subd. 6. **Exclusions.** (a) Nothing in this section applies to: (1) a motor vehicle
5.12 manufacturer, manufacturer of motor vehicle equipment, or motor vehicle dealer acting in
5.13 that capacity; or (2) any product or service of a motor vehicle manufacturer, manufacturer
5.14 of motor vehicle equipment, or motor vehicle dealer acting in that capacity.

5.15 (b) Nothing in this section applies to manufacturers or distributors of a medical device
5.16 as defined in the Federal Food, Drug, and Cosmetic Act, United States Code, title 21, section
5.17 301 et seq., or a digital electronic product or software manufactured for use in a medical
5.18 setting including diagnostic, monitoring, or control equipment or any product or service
5.19 that the manufacturer or distributor of a medical device offers.

5.20 (c) Nothing in this section applies to manufacturers, distributors, importers, or dealers
5.21 of any off-road or nonroad equipment, including without limitation farm and utility tractors;
5.22 farm implements; farm machinery; forestry equipment; industrial equipment; utility
5.23 equipment; construction equipment; compact construction equipment; road-building
5.24 equipment; ~~electronic vehicle charging infrastructure equipment;~~ mining equipment; ~~turf,~~
5.25 ~~yard, and garden equipment;~~ ~~outdoor power equipment;~~ ~~portable generators;~~ marine;
5.26 ~~all-terrain sports, and recreational vehicles, including without limitation racing vehicles;~~
5.27 ~~stand-alone or integrated stationary or mobile internal combustion engines; generator sets~~
5.28 ~~and fuel cell power; power tools;~~ and any tools, technology, attachments, accessories,
5.29 components, and repair parts for any of the foregoing.

5.30 (d) Nothing in this section shall be construed to require any original equipment
5.31 manufacturer or authorized repair provider to make available any parts, tools, or
5.32 documentation required for the diagnosis, maintenance, or repair of a video game console
5.33 and its components and peripherals.

6.1 (e) Nothing in this section applies to an energy storage system, as defined in section
6.2 216B.2422, subdivision 1, paragraph (f).

6.3 (f) Nothing in this section requires an original equipment manufacturer to make available
6.4 parts, documentation, or tools related to cybersecurity, except as necessary for the repair or
6.5 maintenance of equipment. Notwithstanding anything in this section to the contrary, an
6.6 original equipment manufacturer is not required to make available parts, documentation,
6.7 or tools related to cybersecurity which: (1) could reasonably give a recipient or third-party
6.8 access to trade secret or personally identifiable information owned or possessed by an
6.9 original equipment manufacturer for itself or on behalf of another person; (2) is protected
6.10 from disclosure under other laws of this state; or (3) could reasonably be used to compromise
6.11 cybersecurity or cybersecurity equipment.

6.12 (g) Nothing in this section applies to information technology equipment that is intended
6.13 for use in critical infrastructure, as defined in United States Code, title 42, section 5195c(e).

6.14 Sec. 3. Minnesota Statutes 2023 Supplement, section 325E.72, subdivision 8, is amended
6.15 to read:

6.16 Subd. 8. **Applicability.** This section applies to equipment: (1) manufactured for the first
6.17 time; and (2) first sold or used in Minnesota on or after July 1, 2021.