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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 287

01/17/2017 Authored by Hertaus, Vogel, McDonald, Thissen, Loonan and others
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to commerce; establishing fair repair requirements for manufacturers of
1.3 digital electronic products; proposing coding for new law in Minnesota Statutes,
1.4 chapter 325E.

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

1.6 Section 1. 325E.72 FAIR REPAIR REQUIREMENTS.

1.7 Subdivision 1. Definitions. (a) As used in this section, the terms in paragraphs (b) to (l)
1.8 have the meanings given them.

1.9 (b) "Authorized repair provider" means an oral or written arrangement for a definite or
1.10 indefinite period in which a manufacturer or distributor transfers to a separate business
1.11 organization or individual license to use a trade name, service mark, or relative characteristic
1.12 for the purposes of offering repair services under the name of the manufacturer.

1.13 (c) "Digital electronic product" means a part or machine containing a microprocessor
1.14 originally manufactured for distribution and sale in the United States.

1.15 (d) "Documentation" means manuals, diagrams, reporting output, or service code
1.16 descriptions provided to the authorized repair provider for the purposes of repair.

1.17 (e) "Embedded software" means programmable instructions provided on firmware
1.18 delivered with the digital electronic product for the purposes of product operation, including
1.19 all relevant patches and fixes made by the manufacturer for this purpose, including but not
1.20 limited to "basic internal operating system," "internal operating system," "machine code,"
1.21 "assembly code," "root code," and "microcode."

2.1 (f) "Fair and reasonable terms" means an equitable price in light of relevant factors,
2.2 including but not limited to the following:

2.3 (1) the net cost to the authorized repair provider for similar parts obtained from
2.4 manufacturers, less any discounts, rebates, or other incentive programs;

2.5 (2) the cost to the manufacturer for preparing and distributing the parts or product,
2.6 excluding any research and development costs incurred in designing and implementing,
2.7 upgrading, or altering the product, but including amortized capital costs for the preparation
2.8 and distribution of the parts; and

2.9 (3) the price charged by other manufacturers for similar parts or products.

2.10 (g) "Independent repair provider" means an individual or business operating in the state
2.11 that is not affiliated with a manufacturer or a manufacturer's authorized dealer of a digital
2.12 electronic product that is engaged in the diagnosis, service, maintenance, or repair of a
2.13 digital electronic product. A manufacturer's authorized dealer shall be considered an
2.14 independent repair provider when the dealer engages in the diagnosis, service, maintenance,
2.15 or repair of a digital electronic product that is not affiliated with the manufacturer.

2.16 (h) "Manufacturer" means an individual or business who, in the ordinary course of its
2.17 business, is engaged in the business of selling or leasing new digital electronic products to
2.18 consumers or other end users and is engaged in the diagnosis, service, maintenance, or repair
2.19 of that product.

2.20 (i) "Owner" means an individual or business who lawfully acquires a digital electronic
2.21 product purchased or used in the state.

2.22 (j) "Remote diagnostics" means a remote data transfer function between a digital
2.23 electronic product and a provider of repair services, including for purposes of remote
2.24 diagnostics, settings controls, or location identification.

2.25 (k) "Service parts" means replacement parts, either new or used, made available by the
2.26 manufacturer to the authorized repair provider for the purposes of repair.

2.27 (l) "Trade secret" means anything tangible or intangible or electronically stored or kept
2.28 that constitutes, represents, evidences, or records intellectual property, including secret or
2.29 confidentially held designs, processes, procedures, formulas, inventions or improvements,
2.30 or secrets of confidentially held scientific, technical, merchandising, production, financial,
2.31 business or management information, or anything within the definition of United States
2.32 Code, title 18, section 1839, paragraph (3).

3.1 Subd. 2. Fair repair requirements. (a) Manufacturers of digital electronic products
3.2 sold or used in the state must:

3.3 (1) make available to independent repair facilities or owners of products manufactured
3.4 by the manufacturer diagnostic and repair information, including repair technical updates,
3.5 diagnostic software, service access passwords, updates and corrections to firmware, and
3.6 related documentation, free of charge and in the same manner the manufacturer makes
3.7 available to its authorized repair providers; and

3.8 (2) make available for purchase by the product owner, or the authorized agent of the
3.9 owner, service parts, including updates to the firmware of the parts, for purchase upon fair
3.10 and reasonable terms. Nothing in this section requires the manufacturer to sell service parts
3.11 if the service parts are no longer available to the manufacturer or the authorized repair
3.12 channel of the manufacturer.

3.13 (b) Manufacturers that sell diagnostic, service, or repair information to an independent
3.14 repair provider or a third-party provider in a format that is standardized with other
3.15 manufacturers, and on terms and conditions more favorable than the manner and the terms
3.16 and conditions pursuant to which an authorized repair provider obtains the same diagnostic,
3.17 service, or repair information, are prohibited from requiring an authorized repair provider
3.18 to continue purchasing diagnostic, service, or repair information in a proprietary format,
3.19 unless the proprietary format includes diagnostic, service, repair, or dealership operations
3.20 information or functionality that is not available in a standardized format.

3.21 (c) Manufacturers of digital electronic products sold or used in the state shall make
3.22 available for purchase by owners and independent repair facilities all diagnostic repair tools,
3.23 incorporating the same diagnostic repair and remote diagnostic capabilities that the
3.24 manufacturer makes available to its own repair or engineering staff or any authorized repair
3.25 providers, upon fair and reasonable terms.

3.26 (d) Manufacturers that provide repair information to aftermarket tool, diagnostics, or
3.27 third-party service information publications and systems have fully satisfied their obligations
3.28 under this section and thereafter are not responsible for the content and functionality of
3.29 aftermarket diagnostic tools or service information systems.

3.30 (e) Manufacturers of digital electronic products sold or used in the state for the purposes
3.31 of providing security-related functions may not exclude diagnostic, service, and repair
3.32 information necessary to reset a security-related electronic function from information
3.33 provided to owners and independent repair facilities. If necessary for security purposes,
3.34 manufacturers may provide information necessary to reset and unlock system or

4.1 security-related electronic modules to owners and independent repair facilities through an
4.2 appropriate secure data release system.

4.3 Subd. 3. **No requirement to divulge trade secret.** This section does not require the
4.4 manufacturer to divulge a trade secret.

4.5 Subd. 4. **No abrogation of contract.** Notwithstanding any law or rule to the contrary,
4.6 this section must not be read, interpreted, or construed to abrogate, interfere with, contradict,
4.7 or alter the terms of an agreement executed between an authorized repair provider and a
4.8 manufacturer, including but not limited to performing warranty or recall repair work by an
4.9 authorized repair provider on behalf of a manufacturer pursuant to the authorized repair
4.10 agreement. Except in the case of a dispute arising between a manufacturer and its authorized
4.11 repair provider related to either party's compliance with an existing repair agreement, an
4.12 authorized repair provider has all the rights and remedies provided in this section.

4.13 Subd. 5. **No access to certain information.** This section does not require manufacturers
4.14 or authorized repair providers to provide an owner or independent repair provider access
4.15 to nondiagnostic and nonrepair information provided by a manufacturer to an authorized
4.16 repair provider pursuant to the terms of an authorizing agreement.

4.17 Subd. 6. **Right to cure.** (a) An independent repair provider or owner who believes that
4.18 a manufacturer has failed to provide information, including documentation, updates to
4.19 firmware, safety and security corrections, diagnostics, documentation, or a tool required by
4.20 this section must notify the manufacturer in writing and give the manufacturer 30 days from
4.21 the time the manufacturer receives the complaint to cure the failure. If the manufacturer
4.22 cures the complaint within 30 days, damages are limited to actual damages in any subsequent
4.23 litigation.

4.24 (b) If the manufacturer fails to respond to the notice provided in paragraph (a), or if an
4.25 independent repair facility or owner is not satisfied with the manufacturer's cure, the
4.26 independent repair facility or owner may file a complaint in district court. The complaint
4.27 must include the following:

4.28 (1) written information confirming that the complainant has attempted to acquire and
4.29 use, through the then-available standard support function provided by the manufacturer, all
4.30 relevant diagnostics, tools, service parts, documentation, and updates to embedded software,
4.31 including communication with customer assistance via the manufacturer's then-standard
4.32 process, if made available by the manufacturer; and

4.33 (2) evidence of manufacturer notification as required in paragraph (a).

5.1 Subd. 7. **Enforcement.** The attorney general shall enforce this section under section
5.2 8.31.