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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1138

- 02/14/2019 Authored by Fischer, Halverson, Howard, Mariani, Hertaus and others
The bill was read for the first time and referred to the Committee on Commerce
- 03/11/2019 Adoption of Report: Re-referred to the Judiciary Finance and Civil Law Division
- 03/13/2019 Adoption of Report: Placed on the General Register as Amended
Read for the Second Time
- 05/20/2019 Pursuant to Rule 4.20, returned to the Judiciary Finance and Civil Law Division

1.1 A bill for an act

1.2 relating to commerce; providing for digital fair repair; proposing coding for new

1.3 law in Minnesota Statutes, chapter 325E.

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

1.5 Section 1. **325E.72] DIGITAL FAIR REPAIR.**

1.6 Subdivision 1. Short title. This act may be cited as the "Digital Fair Repair Act."

1.7 Subd. 2. Definitions. (a) For the purposes of this section, the following terms have the

1.8 meanings given them.

1.9 (b) "Authorized repair provider" means an individual or business who is unaffiliated

1.10 with an original equipment manufacturer and who has (1) an arrangement with the original

1.11 equipment manufacturer, for a definite or indefinite period, under which the original

1.12 equipment manufacturer grants to the individual or business a license to use a trade name,

1.13 service mark, or other proprietary identifier to offer the services of diagnosis, maintenance,

1.14 or repair of digital electronic equipment under the name of the original equipment

1.15 manufacturer, or (2) other arrangement with the original equipment manufacturer to offer

1.16 diagnostic, maintenance, or repair services on behalf of the original equipment manufacturer.

1.17 An original equipment manufacturer who offers the services of diagnosis, maintenance, or

1.18 repair of its own digital electronic equipment, and who does not have an arrangement

1.19 described in this paragraph with an unaffiliated individual or business, is considered an

1.20 authorized repair provider with respect to the equipment.

2.1 (c) "Digital electronic equipment" or "equipment" means any product that depends for
2.2 its functioning, in whole or in part, on digital electronics embedded in or attached to the
2.3 product.

2.4 (d) "Documentation" means any manual, diagram, reporting output, service code
2.5 description, schematic diagram, or similar information provided to an authorized repair
2.6 provider to affect the services of diagnosis, maintenance, or repair of digital electronic
2.7 equipment.

2.8 (e) "Embedded software" means any programmable instructions provided on firmware
2.9 delivered with digital electronic equipment or with a part for the equipment to operate
2.10 equipment. Embedded software includes all relevant patches and fixes made by the
2.11 manufacturer of the equipment or part for these purposes.

2.12 (f) "Fair and reasonable terms" for obtaining a part, tool, or documentation means at
2.13 costs and terms, including convenience of delivery and rights of use, equivalent to what is
2.14 offered by the original equipment manufacturer to an authorized repair provider, using the
2.15 net costs that would be incurred by an authorized repair provider to obtain an equivalent
2.16 part, tool, or documentation from the original equipment manufacturer, accounting for any
2.17 discounts, rebates, or other incentive programs in arriving at the actual net costs. For
2.18 documentation, including any relevant updates, "fair and reasonable terms" means at no
2.19 charge, except that when the documentation is requested in physical printed form a fee for
2.20 the reasonable actual costs to prepare and send the copy may be charged.

2.21 (g) "Firmware" means a software program or set of instructions programmed on digital
2.22 electronic equipment or on a part for the equipment to allow the equipment or part to
2.23 communicate with other computer hardware.

2.24 (h) "Independent repair provider" means an individual or business operating in Minnesota
2.25 that (1) does not have an arrangement described in paragraph (b) with an original equipment
2.26 manufacturer, (2) is not affiliated with any individual or business that has an arrangement
2.27 described in paragraph (b), and (3) is engaged in the services of diagnosis, maintenance, or
2.28 repair of digital electronic equipment. An original equipment manufacturer or, with respect
2.29 to the original equipment manufacturer, an individual or business that has an arrangement
2.30 with the original equipment manufacturer or is affiliated with an individual or business that
2.31 has such an arrangement with that original equipment manufacturer is considered an
2.32 independent repair provider for purposes of the instances it engages in the services of
2.33 diagnosis, maintenance, or repair of digital electronic equipment that is not manufactured
2.34 by or sold under the name of the original equipment manufacturer.

3.1 (i) "Manufacturer of motor vehicle equipment" means a business engaged in the business
3.2 of manufacturing or supplying components used to manufacture, maintain, or repair a motor
3.3 vehicle.

3.4 (j) "Motor vehicle" means a vehicle that is designed to transport persons or property on
3.5 a street or highway and is certified by the manufacturer under all applicable federal safety
3.6 and emissions standards and requirements for distribution and sale in the United States.

3.7 Motor vehicle does not include:

3.8 (1) a motorcycle; or

3.9 (2) a recreational vehicle or an auto home equipped for habitation.

3.10 (k) "Motor vehicle dealer" means an individual or business that, in the ordinary course
3.11 of business, (1) is engaged in the business of selling or leasing new motor vehicles to an
3.12 individual or business pursuant to a franchise agreement, (2) has obtained a license under
3.13 section 168.27, and (3) is engaged in the services of diagnosis, maintenance, or repair of
3.14 motor vehicles or motor vehicle engines pursuant to the franchise agreement.

3.15 (l) "Motor vehicle manufacturer" means a business engaged in the business of
3.16 manufacturing or assembling new motor vehicles.

3.17 (m) "Original equipment manufacturer" means a business engaged in the business of
3.18 selling or leasing to any individual or business new digital electronic equipment manufactured
3.19 by or on behalf of the original equipment manufacturer.

3.20 (n) "Owner" means an individual or business that owns or leases digital electronic
3.21 equipment purchased or used in Minnesota.

3.22 (o) "Part" means any replacement part, either new or used, made available by an original
3.23 equipment manufacturer to affect the services of maintenance or repair of digital electronic
3.24 equipment manufactured or sold by the original equipment manufacturer.

3.25 (p) "Trade secret" has the meaning given in section 325C.01, subdivision 5.

3.26 Subd. 3. **Requirements.** (a) For digital electronic equipment and parts for the equipment
3.27 sold or used in Minnesota, an original equipment manufacturer must make available, on
3.28 fair and reasonable terms, documentation, parts, and tools, inclusive of any updates to
3.29 information or embedded software, to any independent repair provider or to the owner of
3.30 digital electronic equipment manufactured by or on behalf of, or sold by, the original
3.31 equipment manufacturer for purposes of diagnosis, maintenance, or repair. Nothing in this
3.32 section requires an original equipment manufacturer to make available a part if the part is
3.33 no longer available to the original equipment manufacturer.

4.1 (b) For equipment that contains an electronic security lock or other security-related
4.2 function, the original equipment manufacturer must make available to the owner and to
4.3 independent repair providers, on fair and reasonable terms, any special documentation,
4.4 tools, and parts needed to reset the lock or function when disabled in the course of diagnosis,
4.5 maintenance, or repair of the equipment. Documentation, tools, and parts may be made
4.6 available through appropriate secure release systems.

4.7 Subd. 4. **Enforcement by attorney general.** A violation of this section is an unlawful
4.8 practice under section 325D.44. All remedies, penalties, and authority granted to the attorney
4.9 general under chapter 8 is available to the attorney general to enforce this section.

4.10 Subd. 5. **Limitations.** (a) Nothing in this section requires an original equipment
4.11 manufacturer to divulge a trade secret to an owner or an independent service provider,
4.12 except as necessary to provide documentation, parts, and tools on fair and reasonable terms.

4.13 (b) No provision in this section alters the terms of any arrangement described in
4.14 subdivision 2, paragraph (b), in force between an authorized repair provider and an original
4.15 equipment manufacturer, including but not limited to the performance or provision of
4.16 warranty or recall repair work by an authorized repair provider on behalf of an original
4.17 equipment manufacturer pursuant to such arrangement. A provision in the terms of an
4.18 arrangement described in subdivision 2, paragraph (b), that purports to waive, avoid, restrict,
4.19 or limit the original equipment manufacturer's obligations to comply with this section is
4.20 void and unenforceable.

4.21 (c) Nothing in this section requires an original equipment manufacturer or an authorized
4.22 repair provider to provide to an owner or independent repair provider access to information,
4.23 other than documentation, that is provided by the original equipment manufacturer to an
4.24 authorized repair provider pursuant to the terms of an arrangement described in subdivision
4.25 2, paragraph (b).

4.26 Subd. 6. **Exclusions.** (a) Nothing in this act applies to (1) a motor vehicle manufacturer,
4.27 manufacturer of motor vehicle equipment, or motor vehicle dealer acting in that capacity,
4.28 or (2) any product or service of a motor vehicle manufacturer, manufacturer of motor vehicle
4.29 equipment, or motor vehicle dealer acting in that capacity.

4.30 (b) Nothing in this section applies to manufacturers or distributors of a medical device
4.31 as defined in the Federal Food, Drug, and Cosmetic Act, codified at United States Code,
4.32 title 21, section 301 et seq., or a digital electronic product or software manufactured for use
4.33 in a medical setting including diagnostic, monitoring, or control equipment or any product
4.34 or service that they offer.

- 5.1 Subd. 7. **Applicability.** This section applies with respect to equipment sold or in use on
- 5.2 or after January 1, 2020.
- 5.3 **EFFECTIVE DATE.** This section is effective January 1, 2020.