

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 873

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| DATE | D-PG | OFFICIAL STATUS |
|------------|------|--|
| 02/16/2015 | 309 | Introduction and first reading Referred to Commerce |

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 following terms shall
 1.8 have the meanings given them in paragraphs (b) to (l).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.34 (1) make available to independent repair facilities or owners of products
2.35 manufactured by the manufacturer diagnostic and repair information, including repair
2.36 technical updates, diagnostic software, service access passwords, updates and corrections

3.1 to firmware, and related documentation, free of charge and in the same manner the
3.2 manufacturer makes available to its authorized repair providers; and

3.3 (2) make available for purchase by the product owner, or the authorized agent of
3.4 the owner, such service parts, inclusive of any updates to the firmware of the parts,
3.5 for purchase upon fair and reasonable terms. Nothing in this section shall require the
3.6 manufacturer to sell service parts if the service parts are no longer available to the
3.7 manufacturer or the authorized repair channel of the manufacturer.

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

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

3.22 (d) Manufacturers that provide repair information to aftermarket tool, diagnostics,
3.23 or third-party service information publications and systems shall have fully satisfied its
3.24 obligations under this section and thereafter shall not be responsible for the content and
3.25 functionality of aftermarket diagnostic tools or service information systems.

3.26 (e) Manufacturers of digital electronic products sold or used in the state for the
3.27 purposes of providing security-related functions may not exclude diagnostic, service,
3.28 and repair information necessary to reset a security-related electronic function from
3.29 information provided to owners and independent repair facilities. If necessary for security
3.30 purposes, manufacturers may provide information necessary to reset and unlock system
3.31 or security-related electronic module to owners and independent repair facilities through
3.32 an appropriate secure data release system.

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

3.35 Subd. 4. **No abrogation of contract.** Notwithstanding any law or rule to the
3.36 contrary, this section must not be read, interpreted, or construed to abrogate, interfere

4.1 with, contradict, or alter the terms of an agreement executed between an authorized
4.2 repair provider and a manufacturer, including, but not limited to, the performance of
4.3 provision of warranty or recall repair work by an authorized repair provider on behalf of
4.4 a manufacturer pursuant to the authorized repair agreement. Except in the instance of a
4.5 dispute arising between a manufacturer and its authorized repair provider related to either
4.6 party's compliance with an existing repair agreement, an authorized repair provider has all
4.7 the rights and remedies provided in this section.

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

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

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

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

4.28 (2) evidence of manufacturer notification as required by paragraph (a).

4.29 Subd. 7. **Enforcement.** The attorney general shall enforce this section under section
4.30 8.31.