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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 1337

02/06/2023 Authored by Fischer, Tabke, Jordan, Freiberg, Elkins and others
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; digital fair repair; requiring penalties; proposing coding for
1.3 new 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 diagnostic, maintenance, or repair
1.14 services for digital electronic equipment under the name of the original equipment
1.15 manufacturer; or (2) an arrangement with the original equipment manufacturer to offer
1.16 diagnostic, maintenance, or repair services for digital electronic equipment on behalf of the
1.17 original equipment manufacturer. An original equipment manufacturer that offers diagnostic,
1.18 maintenance, or repair services for the original equipment manufacturer's digital electronic
1.19 equipment is considered an authorized repair provider with respect to the digital electronic
1.20 equipment if the original equipment manufacturer does not have an arrangement described
1.21 in this paragraph with an unaffiliated individual or business.

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

2.4 (d) "Documentation" means a manual, diagram, reporting output, service code description,  
2.5 schematic diagram, or similar information provided to an authorized repair provider to  
2.6 facilitate diagnostic, maintenance, or repair services for digital electronic equipment.

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

2.11 (f) "Fair and reasonable terms" means, with respect to:

2.12 (1) parts offered by an original equipment manufacturer:

2.13 (i) costs that are fair to both parties, considering the agreed-upon conditions, promised  
2.14 quality, and timeliness of delivery; and

2.15 (ii) terms that do not impose on an owner or an independent repair provider:

2.16 (A) a substantial obligation to use or restrict the use of the part to diagnose, maintain,  
2.17 or repair agricultural equipment sold, leased, or otherwise supplied by the original equipment  
2.18 manufacturer, including a condition that the owner or independent repair provider become  
2.19 an authorized repair provider of the original equipment manufacturer; or

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

2.25 (2) tools, software, and documentation offered by an original equipment manufacturer:

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

2.30 (ii) terms that are equivalent to the most favorable terms under which an original  
2.31 equipment manufacturer offers the tool, software, or documentation to an authorized repair

3.1 provider, including the methods and timeliness of delivery of the tool, software, or  
3.2 documentation, do not impose on an owner or an independent repair provider:

3.3 (A) a substantial obligation to use or restrict the use of the tool, software, or  
3.4 documentation to diagnose, maintain, or repair agricultural equipment sold, leased, or  
3.5 otherwise supplied by the original equipment manufacturer, including a condition that the  
3.6 owner or independent repair provider become an authorized repair provider of the original  
3.7 equipment manufacturer; or

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

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

3.15 (g) "Firmware" means a software program or set of instructions programmed on digital  
3.16 electronic equipment, or on a part of the equipment, in order to allow the equipment or part  
3.17 to communicate with other computer hardware.

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

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

3.33 (j) "Motor vehicle" means a vehicle that is: (1) designed to transport persons or property  
3.34 on a street or highway; and (2) certified by the manufacturer under (i) all applicable federal

4.1 safety and emissions standards, and (ii) all requirements for distribution and sale in the  
4.2 United States. Motor vehicle does not include a motorcycle, a recreational vehicle, or an  
4.3 auto home equipped for habitation.

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

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

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

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

4.16 (o) "Part" means any replacement part, either new or used, made available by an original  
4.17 equipment manufacturer to facilitate the maintenance or repair of digital electronic equipment  
4.18 manufactured or sold by the original equipment manufacturer.

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

4.20 Subd. 3. **Requirements.** (a) For digital electronic equipment and parts for the equipment  
4.21 sold or used in Minnesota, an original equipment manufacturer must make available to any  
4.22 independent repair provider or to the owner of digital electronic equipment manufactured  
4.23 by or on behalf of, or sold by, the original equipment manufacturer, on fair and reasonable  
4.24 terms, documentation, parts, and tools, inclusive of any updates to information or embedded  
4.25 software, for diagnostic, maintenance, or repair purposes. Nothing in this section requires  
4.26 an original equipment manufacturer to make available a part if the part is no longer available  
4.27 to the original equipment manufacturer.

4.28 (b) For equipment that contains an electronic security lock or other security-related  
4.29 function, the original equipment manufacturer must make available to the owner and to  
4.30 independent repair providers, on fair and reasonable terms, any special documentation,  
4.31 tools, and parts needed to reset the lock or function when disabled in the course of performing  
4.32 diagnostic, maintenance, or repair services on the equipment. Documentation, tools, and  
4.33 parts may be made available through appropriate secure release systems.

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

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

5.7 (b) Nothing in this section alters the terms of any arrangement described in subdivision  
5.8 2, paragraph (b), including but not limited to the performance or provision of warranty or  
5.9 recall repair work by an authorized repair provider on behalf of an original equipment  
5.10 manufacturer pursuant to the arrangement, in force between an authorized repair provider  
5.11 and an original equipment manufacturer. A provision in the terms of an arrangement  
5.12 described in subdivision 2, paragraph (b), that purports to waive, avoid, restrict, or limit the  
5.13 original equipment manufacturer's obligations to comply with this section is void and  
5.14 unenforceable.

5.15 (c) Nothing in this section requires an original equipment manufacturer or an authorized  
5.16 repair provider to provide to an owner or independent repair provider access to information,  
5.17 other than documentation, that is provided by the original equipment manufacturer to an  
5.18 authorized repair provider pursuant to the terms of an arrangement described in subdivision  
5.19 2, paragraph (b).

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

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

5.29 Subd. 7. **Applicability.** This section applies to equipment sold or in use on or after  
5.30 January 1, 2024.

5.31 **EFFECTIVE DATE.** This section is effective January 1, 2024.