LEGISLATIVE BILL 67

Introduced by Brasch, 16; Brewer, 43; Erdman, 47; Groene, 42; Halloran, 33; Kintner, 2; Lowe, 37.

Read first time January 05, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to trade practices; to adopt the Fair Repair Act.
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3 Be it enacted by the people of the State of Nebraska,
Section 1. This act shall be known and may be cited as the Fair Repair Act.

Sec. 2. For purposes of the Fair Repair Act:

(1) Authorized repair provider means an individual or an entity that has an arrangement for a definite or indefinite period in which an original equipment manufacturer grants to a separate individual or entity a license to use a trade name, service mark, or related characteristic for the purposes of offering repair services under the name of the original equipment manufacturer;

(2) Embedded software means any programmable instructions provided on firmware delivered with the equipment for the purposes of equipment operation, including all relevant patches and fixes made by the original equipment manufacturer for this purpose, including, but not limited to, a basic internal operating system, an internal operating system, a machine code, an assembly code, a root code, and a microcode;

(3) Equipment means digital electronic equipment or a part for such equipment originally manufactured for distribution and sale in the United States;

(4) Fair and reasonable terms means an equitable price in light of relevant factors, including, but not limited to:

(a) The net cost to the authorized repair provider for similar information obtained from an original equipment manufacturer, less any discounts, rebates, or other incentive programs;

(b) The cost to the original equipment manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading, or altering the product, but including amortized capital costs for the preparation and distribution of the information;

(c) The price charged by other original equipment manufacturers for similar information;

(d) The price charged by original equipment manufacturers for
similar information prior to the launch of original equipment manufacturer web sites;

(e) The ability of aftermarket technicians or shops to afford the information;

(f) The means by which the information is distributed;

(g) The extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use; and

(h) Inflation;

(5) Firmware means a software program or set of instructions programmed on a hardware device to allow the device to communicate with other computer hardware;

(6) Independent repair provider means a person or business operating in this state which is not affiliated with an original equipment manufacturer or an original equipment manufacturer's authorized repair provider, which is engaged in the diagnosis, service, maintenance, or repair of equipment, except that an original equipment manufacturer shall be considered an independent repair provider for purposes of those instances when such original equipment manufacturer engages in the diagnosis, service, maintenance, or repair of equipment that is not affiliated with the original equipment manufacturer;

(7) Motor vehicle means any vehicle that is designed for transporting persons or property on a street or highway and is certified by the motor vehicle manufacturer under all applicable federal safety and emissions standards and requirements for distribution and sale in the United States. Motor vehicle does not include:

(a) A motorcycle; or

(b) A recreational vehicle or manufactured home equipped for habitation;

(8) Motor vehicle dealer means any person or business who, in the ordinary course of business, is engaged in the business of selling or leasing new motor vehicles to a person or business pursuant to a
franchise agreement, who has obtained a license under the Motor Vehicle Industry Regulation Act, and who is engaged in the diagnosis, service, maintenance, or repair of motor vehicles or motor vehicle engines pursuant to such franchise agreement:

(9) Motor vehicle manufacturer means any person or business engaged in the business of manufacturing or assembling new motor vehicles;

(10) Original equipment manufacturer means any person or business who, in the ordinary course of its business, is engaged in the business of selling or leasing new equipment to any person or business and is engaged in the diagnosis, service, maintenance, or repair of equipment;

(11) Owner means a person or business who owns or leases a digital electronic product purchased or used in this state;

(12) Part means any replacement part, either new or used, made available by the original equipment manufacturer to the authorized repair provider for purposes of effecting repair; and

(13) Trade secret means anything tangible or intangible or electronically stored or kept which constitutes, represents, evidences, or records intellectual property, including secret or confidentially held designs, processes, procedures, formulas, inventions, or improvements, or secret or confidentially held scientific, technical, merchandising, production, financial, business, or management information, or any other trade secret as defined in 18 U.S.C. 1839, as such section existed on January 1, 2017.

Sec. 3. (1) For equipment sold and used in this state, the original equipment manufacturer of such equipment shall:

(a) Make available to any independent repair provider or owner of equipment manufactured by such original equipment manufacturer, diagnostic and repair documentation, including repair technical updates and updates and corrections to embedded software, for no charge or in the same manner as the original equipment manufacturer makes such diagnostic and repair documentation, including repair technical updates and updates
and corrections to embedded software, available to its authorized repair
provider; and

(b) Make available for purchase by the owner, his or her authorized
agent, or any independent repair provider, equipment, inclusive of any
updates to the embedded software of the equipment, upon fair and
reasonable terms. Nothing in this section shall require the original
equipment manufacturer to sell parts if the parts are no longer available
to the original equipment manufacturer or the authorized repair provider
of the original equipment manufacturer.

(2) Any original equipment manufacturer that sells any diagnostic,
service, or repair documentation to any independent repair provider or to
any owner in a format that is standardized with other original equipment
manufacturers, and on terms and conditions more favorable than the manner
and the terms and conditions pursuant to which the authorized repair
provider obtains the same diagnostic, service, or repair documentation,
shall be prohibited from requiring any authorized repair provider to
continue purchasing diagnostic, service, or repair documentation in a
proprietary format, unless such proprietary format includes diagnostic,
service, or repair documentation or functionality that is not available
in such standardized format.

(3) Each original equipment manufacturer of equipment sold or used
in this state shall make available for purchase by owners and independent
repair providers all diagnostic repair tools incorporating the same
diagnostic, repair, and remote communications capabilities that such
original equipment manufacturer makes available to its own repair or
engineering staff or any authorized repair provider. Each original
equipment manufacturer shall offer such tools for sale to any owner and
independent repair provider upon fair and reasonable terms. Each original
equipment manufacturer that provides diagnostic repair documentation to
aftermarket diagnostic tool manufacturers, diagnostics providers, or
service information publications and systems shall have fully satisfied
its obligations under this section and thereafter not be responsible for
the content and functionality of such aftermarket diagnostic tools,
diagnostics, or service information systems.

(4) Original equipment manufacturer equipment sold or used in this
state for the purpose of providing security-related functions may not
exclude diagnostic, service, and repair documentation necessary to reset
a security-related electronic function from information provided to an
owner or independent repair provider. If excluded under the Fair Repair
Act, the documentation necessary to reset an immobilizer system or
security-related electronic module shall be obtained by an owner or
independent repair provider through the appropriate secure data release
systems.

Sec. 4. Nothing in the Fair Repair Act shall be construed to
require an original equipment manufacturer to divulge a trade secret.

Sec. 5. No provision in the Fair Repair Act shall be read,
interpreted, or construed to abrogate, interfere with, contradict, or
alter the terms of any agreement executed and in force between an
authorized repair provider and an original equipment manufacturer,
including, but not limited to, the performance or provision of warranty
or recall repair work by an authorized repair provider on behalf of an
original equipment manufacturer pursuant to such authorized repair
agreement, except that any provision in such an authorized repair
agreement that purports to waive, avoid, restrict, or limit an original
equipment manufacturer's compliance with this section shall be void and
unenforceable.

Sec. 6. Nothing in the Fair Repair Act shall be construed to
require original equipment manufacturers or authorized repair providers
to provide an owner or independent repair provider access to
nondiagnostic and repair documentation provided by an original equipment
manufacturer to an authorized repair provider pursuant to the terms of an
authorizing agreement.
Sec. 7.  Nothing in the Fair Repair Act shall apply to motor vehicle manufacturers, any product or service of a motor vehicle manufacturer, or motor vehicle dealers.

Sec. 8.  Any original equipment manufacturer found in violation of the Fair Repair Act shall be liable to a civil penalty of not more than five hundred dollars for each violation. Such penalty may be recovered in a civil action by the Attorney General. Such penalty shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.