

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

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:

- 1 A BILL FOR AN ACT relating to trade practices; to adopt the Fair Repair
- 2 Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. This act shall be known and may be cited as the Fair
2 Repair Act.

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

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

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

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

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

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

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

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

31 (d) The price charged by original equipment manufacturers for

1 similar information prior to the launch of original equipment
2 manufacturer web sites;

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

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

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

8 (h) Inflation;

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

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

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

26 (a) A motorcycle; or

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

29 (8) Motor vehicle dealer means any person or business who, in the
30 ordinary course of business, is engaged in the business of selling or
31 leasing new motor vehicles to a person or business pursuant to a

1 franchise agreement, who has obtained a license under the Motor Vehicle
2 Industry Regulation Act, and who is engaged in the diagnosis, service,
3 maintenance, or repair of motor vehicles or motor vehicle engines
4 pursuant to such franchise agreement;

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

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

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

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

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

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

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

1 and corrections to embedded software, available to its authorized repair
2 provider; and

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

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

21 (3) Each original equipment manufacturer of equipment sold or used
22 in this state shall make available for purchase by owners and independent
23 repair providers all diagnostic repair tools incorporating the same
24 diagnostic, repair, and remote communications capabilities that such
25 original equipment manufacturer makes available to its own repair or
26 engineering staff or any authorized repair provider. Each original
27 equipment manufacturer shall offer such tools for sale to any owner and
28 independent repair provider upon fair and reasonable terms. Each original
29 equipment manufacturer that provides diagnostic repair documentation to
30 aftermarket diagnostic tool manufacturers, diagnostics providers, or
31 service information publications and systems shall have fully satisfied

1 its obligations under this section and thereafter not be responsible for
2 the content and functionality of such aftermarket diagnostic tools,
3 diagnostics, or service information systems.

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

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

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

26 Sec. 6. Nothing in the Fair Repair Act shall be construed to
27 require original equipment manufacturers or authorized repair providers
28 to provide an owner or independent repair provider access to
29 nondiagnostic and repair documentation provided by an original equipment
30 manufacturer to an authorized repair provider pursuant to the terms of an
31 authorizing agreement.

1 Sec. 7. Nothing in the Fair Repair Act shall apply to motor vehicle
2 manufacturers, any product or service of a motor vehicle manufacturer, or
3 motor vehicle dealers.

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