

ASSEMBLY BILL NO. 221—ASSEMBLYMEN TORRES, WATTS,
PETERS; CONSIDINE AND DURAN

MARCH 9, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Enacts provisions relating to the diagnosis, maintenance and repair of certain digital electronic equipment. (BDR 52-735)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to trade practices; requiring certain manufacturers of certain digital electronic equipment to make certain documentation, parts and tools available to owners of such equipment and to certain providers of services related to the diagnosis, maintenance and repair of such equipment; prescribing the costs and terms under which such documentation, parts and tools are required to be made available; providing that a violation of provisions relating to the availability of such documentation, parts and tools is a deceptive trade practice; providing certain exemptions; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law regulates trade practices and other commercial activities. (Title 52 of NRS) This bill generally requires manufacturers of digital electronic equipment with a value at wholesale of \$5,000 or less which is sold or used in this State to make certain documentation, parts and tools related to the diagnosis, maintenance or repair of such equipment available to owners of such equipment and to providers of diagnosis, maintenance or repair services who are not under an arrangement with the manufacturer to provide such services.

Section 4 of this bill defines “digital electronic equipment” to mean any product with a value at wholesale of \$5,000 or less that depends for its functioning, in whole or in part, on digital electronics embedded in or attached to the product.

Section 18 of this bill requires an original equipment manufacturer to make



12 available to an owner of certain digital electronic equipment or an independent
13 repair provider: (1) any documentation, part or tool necessary for the diagnosis,
14 maintenance or repair of the equipment; and (2) if the equipment contains certain
15 security functions, any documentation, part or tool necessary to disable and reset
16 the function. **Section 18** also sets forth the costs and terms under which an original
17 equipment manufacturer is required to make such documentation, parts and tools
18 available. **Section 18** generally requires such items to be made available to an
19 owner or independent repair provider at costs and under terms which are equivalent
20 to the costs and terms under which the manufacturer makes such items available to
21 an authorized repair provider, which is generally defined in **section 3** of this bill to
22 mean a person who provides diagnosis, maintenance or repair services for digital
23 electronic equipment pursuant to an arrangement with the original equipment
24 manufacturer. **Section 18** further requires an original equipment manufacturer to,
25 with certain exceptions, make documentation and tools which are software
26 available at no cost to an owner or independent repair provider.

27 **Section 19** of this bill imposes certain requirements with respect to
28 documentation, parts and tools to enable the repair of digital electronic equipment
29 that has a wholesale value of \$100 or more and for which an original equipment
30 manufacturer has made an express warranty. Under **section 19**, an original
31 equipment manufacturer is required, during the duration of the warranty for the
32 digital electronic equipment, to make such documentation, parts and tools available
33 to an owner or independent repair provider at a cost and under terms which are
34 equitable in light of: (1) the actual cost to the manufacturer to prepare and distribute
35 the documentation, part or tool, exclusive of any research and development costs;
36 (2) the ability of an owner or independent repair provider to afford the
37 documentation, part or tool; and (3) the means by which the documentation, part or
38 tool is distributed.

39 Existing law defines various activities involving businesses and occupations
40 that constitute deceptive trade practices. (NRS 598.0915-598.0925) If a person
41 engages in a deceptive trade practice, the person may be subject to restraint by
42 injunction and the imposition of civil and criminal penalties. (NRS 598.0979,
43 598.0985, 598.0999) **Section 20** of this bill provides that a violation of the
44 provisions of this bill constitutes a deceptive trade practice.

45 **Section 21** of this bill provides that the provisions of this bill do not apply to a
46 motor vehicle manufacturer, manufacturer of motor vehicle equipment, motor
47 vehicle dealer or any product or service of such a person. **Section 21** further
48 provides that the provisions of this bill do not, with certain exceptions: (1) require
49 an original equipment manufacturer to divulge a trade secret; or (2) alter the terms
50 of any arrangement between an original equipment manufacturer and an authorized
51 repair provider.

52 **Sections 3-17** of this bill define terms for the purposes of this bill.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 598 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 21, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 21, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3 to 17, inclusive, of this act have the meanings*
7 *ascribed to them in those sections.*



1 **Sec. 3. “Authorized repair provider” means:**

2 1. *A person who is unaffiliated with an original equipment*
3 *manufacturer and who:*

4 (a) *Has an arrangement with an original equipment*
5 *manufacturer for a definite or indefinite period in which the*
6 *original equipment manufacturer grants to the person a license to*
7 *use a trade name, service mark or other proprietary identifier for*
8 *the purpose of offering the services of diagnosis, maintenance or*
9 *repair of digital electronic equipment under the name of the*
10 *original equipment manufacturer; or*

11 (b) *Offers the services of diagnosis, maintenance or repair of*
12 *digital electronic equipment on behalf of the original equipment*
13 *manufacturer under an arrangement with an original equipment*
14 *manufacturer other than an arrangement described in paragraph*
15 *(a); or*

16 2. *An original equipment manufacturer who does not have an*
17 *arrangement described in subsection 1 when the original*
18 *equipment manufacturer offers services for the diagnosis,*
19 *maintenance or repair of its own digital electronic equipment.*

20 **Sec. 4. “Digital electronic equipment” means any product**
21 *with a value at wholesale of \$5,000 or less that depends for its*
22 *functioning, in whole or in part, on digital electronics embedded*
23 *in or attached to the product. The term includes, without*
24 *limitation, a camera, cellular phone, computer, gaming device or*
25 *tablet with a value at wholesale of \$5,000 or less.*

26 **Sec. 5. “Documentation” means any manual, diagram,**
27 *reporting output, service code description, schematic or other*
28 *guidance or information used in effecting the services of*
29 *diagnosis, maintenance or repair of digital electronic equipment.*

30 **Sec. 6. “Embedded software” means any programmable**
31 *instructions provided on firmware delivered with digital electronic*
32 *equipment or with a part for such equipment for the purpose of*
33 *the operation of the equipment or part, including, without*
34 *limitation, all relevant patches and fixes made by the original*
35 *equipment manufacturer for that purpose.*

36 **Sec. 7. “Firmware” means a software program or set of**
37 *instructions programmed on digital electronic equipment or on a*
38 *part for such equipment to allow the equipment or part to*
39 *communicate within itself or with other computer hardware.*

40 **Sec. 8. “Independent repair provider” means:**

41 1. *A person who is not an authorized repair provider or*
42 *affiliated with an authorized repair provider and who is engaged*
43 *in the services of diagnosis, maintenance or repair of digital*
44 *electronic equipment;*



1 2. An original equipment manufacturer when the original
2 equipment manufacturer engages in the services of diagnosis,
3 maintenance or repair of digital electronic equipment that was not
4 manufactured by or sold under the name of the original
5 equipment manufacturer; or

6 3. An authorized repair provider or a person affiliated with
7 the authorized repair provider when the provider or person
8 engages in the services of diagnosis, maintenance or repair of
9 digital electronic equipment that was not manufactured by or sold
10 under the name of the original equipment manufacturer with
11 whom the authorized repair provider has an arrangement to
12 provide such services.

13 **Sec. 9.** “Manufacturer of motor vehicle equipment” means a
14 person engaged in the business of manufacturing or supplying
15 components that are used in the manufacturing, maintenance or
16 repair of a motor vehicle.

17 **Sec. 10.** “Motor vehicle” means any vehicle that is designed
18 for transporting persons or property on a street or highway and
19 that is certified by the motor vehicle equipment manufacturer
20 under all applicable federal safety and emissions standards and
21 requirements for distribution and sale in the United States. The
22 term does not include:

- 23 1. A motorcycle, as defined in NRS 486.041;
- 24 2. A recreational vehicle, as defined in NRS 482.101; or
- 25 3. A mobile home, as defined in NRS 461.140.

26 **Sec. 11.** “Motor vehicle dealer” means a person who, in the
27 ordinary course of business, is engaged in the business of selling
28 or leasing new motor vehicles pursuant to a franchise agreement,
29 has been issued a license to operate as a vehicle dealer pursuant to
30 NRS 482.322 and is engaged in the services of diagnosis,
31 maintenance or repair of motor vehicles or the engines of motor
32 vehicles pursuant to that franchise agreement.

33 **Sec. 12.** “Motor vehicle manufacturer” means a person who
34 is engaged in the business of manufacturing or assembling new
35 motor vehicles.

36 **Sec. 13.** “Original equipment manufacturer” means a person
37 who is engaged in the business of selling, leasing or otherwise
38 supplying new digital electronic equipment that was manufactured
39 by or on behalf of the person.

40 **Sec. 14.** “Owner” means a person who owns or leases digital
41 electronic equipment purchased or used in this State.

42 **Sec. 15.** “Part” means any replacement part, either new or
43 used, made available by an original equipment manufacturer for
44 purposes of effecting the services of maintenance or repair of
45 digital electronic equipment that was manufactured by or on



1 *behalf of, sold or otherwise supplied by the original equipment*
2 *manufacturer.*

3 **Sec. 16.** *“Tool” means any software program, hardware*
4 *implement or other apparatus used for diagnosis, maintenance or*
5 *repair of digital electronic equipment, including, without*
6 *limitation, software or any other mechanism to provision, program*
7 *or pair a part, calibrate functionality or perform any other*
8 *function required to bring digital electronic equipment back to*
9 *fully functional condition.*

10 **Sec. 17.** *“Trade secret” has the meaning ascribed to it in*
11 *NRS 600A.030.*

12 **Sec. 18. 1.** *An original equipment manufacturer shall, for*
13 *digital electronic equipment or a part for such equipment sold or*
14 *used in this State that was manufactured by or on behalf of, sold*
15 *or otherwise supplied by the original equipment manufacturer,*
16 *make available to any independent repair provider or to an owner*
17 *of such equipment or part:*

18 *(a) Any documentation, part or tool, including, without*
19 *limitation, updates to information or embedded software,*
20 *necessary for the diagnosis, maintenance or repair of the digital*
21 *electronic equipment or part; and*

22 *(b) For digital electronic equipment that contains an electronic*
23 *security lock or other function related to security, any special*
24 *documentation, part or tool necessary to disable the lock or*
25 *function and to reset the lock or function when disabled in the*
26 *course of diagnosis, maintenance or repair of the equipment.*

27 **2.** *Except as otherwise provided in this section, the*
28 *documentation, parts and tools specified in subsection 1 must be*
29 *made available at a cost and under terms, including, without*
30 *limitation, terms relating to any license, right or authorization*
31 *necessary to use the documentation, part or tool, that are*
32 *equivalent to the most favorable costs and terms under which an*
33 *original equipment manufacturer offers the documentation, part*
34 *or tool to an authorized repair provider, accounting for:*

35 *(a) Any discount, rebate, convenient means of delivery, means*
36 *of enabling fully restored and updated functionality, rights of use*
37 *or other incentive or preference the original equipment*
38 *manufacturer offers to an authorized repair provider; and*

39 *(b) Any additional cost, burden or impediment the original*
40 *equipment manufacturer imposes on an independent repair*
41 *provider.*

42 **3.** *Except as otherwise provided in this subsection, the*
43 *documentation specified in subsection 1 must be made available at*
44 *no cost to the owner or independent repair provider. If an owner*
45 *or independent repair provider requests such documentation in a*



1 *physical printed form, the original equipment manufacturer may*
2 *charge the owner or independent repair provider for the actual*
3 *reasonable costs of preparing and sending the documentation.*

4 *4. Any tool specified in subsection 1 which is software must*
5 *be made available at no cost to the owner or independent repair*
6 *provider. The original equipment manufacturer shall not:*

7 *(a) Require the owner or independent repair provider to obtain*
8 *authorization or access the Internet in order to obtain or use the*
9 *tool; or*

10 *(b) Impose impediments to the access or use of the tool in the*
11 *course of effecting the diagnosis, maintenance or repair and*
12 *enabling the full functionality of digital electronic equipment in a*
13 *manner that impairs the efficient and cost-effective performance*
14 *of any of those activities.*

15 *5. An original equipment manufacturer shall not condition*
16 *the availability of any documentation, part or tool specified in*
17 *subsection 1 on an agreement with the original equipment*
18 *manufacturer that requires exclusivity or that has the effect of*
19 *placing a substantial cost, restriction, burden, penalty or*
20 *impediment on the owner or independent repair provider.*

21 *6. An original equipment manufacturer may make any*
22 *documentation, tool or part specified in paragraph (b) of*
23 *subsection 1 available through an appropriate secure system.*

24 *7. Nothing in the provisions of this section requires an*
25 *original equipment manufacturer to make available a part that is*
26 *no longer available to the original equipment manufacturer.*

27 *8. The provisions of this section do not apply to any*
28 *documentation, part or tool described in section 19 of this act.*

29 **Sec. 19.** *If an original equipment manufacturer has made an*
30 *express warranty with respect to digital electronic equipment and*
31 *the wholesale price for the equipment is \$100 or more, the original*
32 *equipment manufacturer shall, during the duration of the*
33 *warranty, make available to any owner of the equipment and any*
34 *independent repair provider such documentation, parts and tools*
35 *as are necessary to enable the repair of the equipment at a cost*
36 *and under terms, including terms relating to the convenient means*
37 *of delivery and the means of enabling fully restored and updated*
38 *functionality, which are equitable in consideration of:*

39 *1. The actual cost to the original equipment manufacturer to*
40 *prepare and distribute the documentation, part or tool, exclusive*
41 *of any research and development costs incurred;*

42 *2. The ability of an owner or independent repair provider to*
43 *afford the documentation, part or tool; and*

44 *3. The means by which the documentation, part or tool is*
45 *distributed.*



1 **Sec. 20.** *A violation of a provision of sections 2 to 21,*
2 *inclusive, of this act constitutes a deceptive trade practice for the*
3 *purposes of NRS 598.0903 to 598.0999, inclusive.*

4 **Sec. 21.** *Nothing in sections 2 to 21, inclusive, of this act:*

5 1. *Requires an original equipment manufacturer to divulge a*
6 *trade secret to an owner or independent repair provider except as*
7 *necessary to comply with the provisions of sections 2 to 21,*
8 *inclusive, of this act.*

9 2. *Alters the terms of any arrangement described in the*
10 *definition of “authorized repair provider” in section 3 of this act*
11 *in force between an authorized repair provider and an original*
12 *equipment manufacturer, including, without limitation, the*
13 *performance or provision of warranty or recall repair work by an*
14 *authorized repair provider on behalf of an original equipment*
15 *manufacturer pursuant to such an arrangement, except that any*
16 *provision in such terms that purports to waive, avoid, restrict or*
17 *limit the obligations of the original equipment manufacturer to*
18 *comply with the provisions of sections 2 to 21, inclusive, of this*
19 *act, is void and unenforceable.*

20 3. *Applies to a motor vehicle manufacturer, manufacturer of*
21 *motor vehicle equipment or motor vehicle dealer who is acting in*
22 *that capacity or to any product or service of a motor vehicle*
23 *manufacturer, manufacturer of motor vehicle equipment or motor*
24 *vehicle dealer who is acting in that capacity.*

25 **Sec. 22.** The amendatory provisions of this act apply to digital
26 electronic equipment, as defined in section 4 of this act, sold or in
27 use on or after October 1, 2021.

