

SENATE BILL 888

By Haile

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18; Title 55 and Title 62, relative to repairs.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding Sections 2 through 5 as a new part.

SECTION 2.

This part shall be known and may be cited as the "Fair Repair Act."

SECTION 3.

As used in this part:

(1) "Authorized repair provider" means an individual or entity separate from a manufacturer with whom the manufacturer has entered into an oral or written agreement for a definite or indefinite period in which the manufacturer grants to such 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 manufacturer;

(2) "Digital electronic product" means equipment containing an integrated circuit, or a part for such equipment, manufactured for distribution and sale in the United States, and installed in a farm tractor, as defined in § 55-1-104;

(3) "Embedded software" means any programmable instructions provided on firmware delivered with a digital electronic product for the purposes of product operation, including all relevant patches and fixes made by the manufacturer for this purpose, including, but not limited to, basic internal operating systems,

internal operating systems, machine code, assembly code, root code, and microcode;

(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 a manufacturer, less any discounts, rebates, or other incentive programs;

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

(C) The price charged by a manufacturer for similar information;

(D) The price charged by a manufacturer for similar information prior to the launch of a manufacturer website;

(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, including the number of users, and the 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 that is not affiliated with a manufacturer or a manufacturer's authorized repair provider, and that is engaged in the diagnosis, service, maintenance, or repair of digital electronic products, except that a manufacturer

shall be considered an independent repair provider in those instances when such manufacturer engages in the diagnosis, service, maintenance, or repair of digital electronic products that are not affiliated with such manufacturer;

(7) "Manufacturer" means any person or entity that, in the ordinary course of business, is engaged in the business of selling or leasing digital electronic products and is engaged in the diagnosis, service, maintenance, or repair of such products;

(8) "Motor vehicle":

(A) 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; and

(B) Does not include a farm tractor, as defined in § 55-1-104;

(9) "Motor vehicle dealer" means any person or entity that, in the ordinary course of business, is engaged in the business of selling or leasing motor vehicles;

(10) "Owner" means a person or entity that owns or leases a digital electronic product purchased or used in this state;

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

(12) "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.

#### SECTION 4.

(a) For digital electronic products sold and used in this state, the manufacturer of such products shall:

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

(2) Make diagnostic and repair tools and software, including any embedded software updates and corrections, available for purchase by the owner, the owner's agent, or any independent repair provider upon fair and reasonable terms.

(b) Any manufacturer that sells any diagnostic and repair information to any independent repair provider or to any owner in a format that is standardized with other 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 and repair information, shall be prohibited from requiring any authorized repair provider to continue purchasing diagnostic and repair information in a proprietary format, unless such proprietary format includes diagnostic and repair information or functionality that is not available in such standardized format.

(c) Each manufacturer of digital electronic products 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 manufacturer makes available to the repair or engineering personnel employed by such manufacturer or to any authorized repair provider. Each manufacturer shall offer such tools for sale to any owner or independent repair provider upon fair and reasonable terms. Each manufacturer that provides diagnostic repair information to aftermarket diagnostic tool manufacturers, diagnostics providers, or service information publications and systems shall have fully satisfied its obligations under this section and thereafter shall not be responsible for the content and functionality of such aftermarket diagnostic tools, diagnostics, or service information systems.

(d) Digital electronic products sold or used in this state for the purpose of providing security-related functions may not exclude diagnostic and repair information necessary to reset a security-related electronic function from the information provided to an owner or independent repair provider. Information necessary to reset an immobilizer system or other security-related electronic module shall be obtained by an owner or independent repair provider through the appropriate secure data release systems of the manufacturer.

(e) Nothing in this section requires the manufacturer to sell parts if the parts are no longer available to the manufacturer or an authorized repair provider of the manufacturer.

(f) A violation of this section shall be an unfair or deceptive act or practice affecting the conduct of trade or commerce pursuant to the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter.

## SECTION 5.

Nothing in this part:

(1) Requires a manufacturer to divulge a trade secret;

(2) Abrogates, interferes with, contradicts, or alters the terms of any agreement executed and in force between an authorized repair provider and a manufacturer, including, but not limited to, the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of a manufacturer pursuant to such agreement, except that any provision in such an agreement that purports to waive, avoid, restrict, or limit a manufacturer's compliance with this section is void and unenforceable;

(3) Requires a manufacturer or an authorized repair provider to provide an owner or independent repair provider access to nondiagnostic and repair information provided by a manufacturer to an authorized repair provider pursuant to the terms of an agreement; or

(4) Applies to motor vehicles, any product or service of a motor vehicle manufacturer, or motor vehicle dealers.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to conduct occurring on or after the effective date of this act.