

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 5318

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Introduction and first reading
Referred to Commerce and Consumer Protection

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to commerce; requiring an original equipment manufacturer to facilitate
1.3 the repair of farm equipment; amending Minnesota Statutes 2023 Supplement,
1.4 section 325E.72, subdivisions 2, 3, 5, 6, 7, by adding a subdivision.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2023 Supplement, section 325E.72, subdivision 2, is amended
1.7 to read:

1.8 Subd. 2. **Definitions.** (a) For the purposes of this section, the following terms have the
1.9 meanings given.

1.10 (b) "Authorized repair provider" means an individual or business who is unaffiliated
1.11 with an original equipment manufacturer and who has: (1) an arrangement with the original
1.12 equipment manufacturer, for a definite or indefinite period, under which the original
1.13 equipment manufacturer grants to the individual or business a license to use a trade name,
1.14 service mark, or other proprietary identifier to offer diagnostic, maintenance, or repair
1.15 services for digital electronic equipment or farm equipment under the name of the original
1.16 equipment manufacturer; or (2) an arrangement with the original equipment manufacturer
1.17 to offer diagnostic, maintenance, or repair services for digital electronic equipment or farm
1.18 equipment on behalf of the original equipment manufacturer. An original equipment
1.19 manufacturer that offers diagnostic, maintenance, or repair services for the original equipment
1.20 manufacturer's digital electronic equipment or farm equipment is considered an authorized
1.21 repair provider with respect to the digital electronic equipment and farm equipment if the
1.22 original equipment manufacturer does not have an arrangement described in this paragraph
1.23 with an unaffiliated individual or business.

2.1 (c) "Contractor" has the meaning given in section 326B.31, subdivision 14.

2.2 (d) "Cybersecurity" means the practice of protecting networks, devices, and data from
2.3 unauthorized access or criminal use and the practice of ensuring the confidentiality, integrity,
2.4 and availability of information.

2.5 (e) "Digital electronic equipment" ~~or "equipment"~~ means any hardware product that
2.6 depends, in whole or in part, on digital electronics embedded in or attached to the product
2.7 in order for the product to function, for which the original equipment manufacturer makes
2.8 available tools, parts, or documentation to authorized repair providers.

2.9 (f) "Documentation" means a manual, diagram, reporting output, service code description,
2.10 schematic diagram, or similar information made available by an original equipment
2.11 manufacturer to an authorized repair provider to facilitate diagnostic, maintenance, or repair
2.12 services for digital electronic equipment or farm equipment.

2.13 (g) "Embedded software" means any programmable instructions provided on firmware
2.14 delivered with digital electronic equipment or farm equipment, or with a part for the
2.15 equipment, in order to operate the equipment. Embedded software includes all relevant
2.16 patches and fixes made by the manufacturer of the equipment or part in order to operate the
2.17 equipment.

2.18 (h) "Equipment" means digital electronic equipment and farm equipment, unless the
2.19 context clearly indicates otherwise.

2.20 (i) "Fair and reasonable terms" means, with respect to:

2.21 (1) parts for digital electronic equipment or farm equipment offered by an original
2.22 equipment manufacturer:

2.23 (i) costs that are fair to both parties; and

2.24 (ii) terms under which an original equipment manufacturer offers the part to an authorized
2.25 repair provider and which:

2.26 (A) is not conditioned on or imposing a substantial obligation to use or restrict the use
2.27 of the part to diagnose, maintain, or repair digital electronic equipment or farm equipment
2.28 sold, leased, or otherwise supplied by the original equipment manufacturer, including a
2.29 condition that the owner or independent repair provider become an authorized repair provider
2.30 of the original equipment manufacturer; or

2.31 (B) a requirement that a part be registered, paired with, or approved by the original
2.32 equipment manufacturer or an authorized repair provider before the part is operational or

3.1 prohibit an original equipment manufacturer from imposing any additional cost or burden
3.2 that is not reasonably necessary or is designed to be an impediment on the owner or
3.3 independent repair provider;

3.4 (2) tools, software, and documentation for digital electronic equipment offered by an
3.5 original equipment manufacturer;

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

3.10 (ii) (3) tools, software, and documentation for digital electronic equipment or farm
3.11 equipment offered by an original equipment manufacturer, terms that are equivalent to the
3.12 most favorable terms under which an original equipment manufacturer offers the tool,
3.13 software, or documentation to an authorized repair provider, including the methods and
3.14 timeliness of delivery of the tool, software, or documentation, do not impose on an owner
3.15 or an independent repair provider:

3.16 (A) (i) a substantial obligation to use or restrict the use of the tool, software, or
3.17 documentation to diagnose, maintain, or repair digital electronic equipment or farm
3.18 equipment sold, leased, or otherwise supplied by the original equipment manufacturer,
3.19 including a condition that the owner or independent repair provider become an authorized
3.20 repair provider of the original equipment manufacturer; or

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

3.24 (3) (4) documentation offered by an original equipment manufacturer: that the
3.25 documentation is made available by the original equipment manufacturer at no charge,
3.26 except that when the documentation is requested in physical printed form, a charge may be
3.27 included for the reasonable actual costs of preparing and sending the copy.

3.28 (j) "Farm equipment" has the meaning given in section 325E.061, subdivision 2, except
3.29 that farm equipment does not include the equipment described in section 325E.068,
3.30 subdivision 2.

3.31 (k) "Farm equipment manufacturer" means a person, partnership, corporation, association,
3.32 or other form of business enterprise engaged in the manufacturing, assembly, or wholesale
3.33 distribution of farm equipment. Farm equipment manufacturer includes a successor in

4.1 interest of the farm equipment manufacturer, including a purchaser of assets or stock, a
 4.2 surviving corporation resulting from a merger or liquidation, a receiver or assignee, or a
 4.3 trustee of the original farm equipment manufacturer.

4.4 ~~(j)~~ (l) "Independent repair provider" means an individual or business operating in
 4.5 Minnesota that: (1) does not have an arrangement described in paragraph (b) with an original
 4.6 equipment manufacturer; (2) is not affiliated with any individual or business that has an
 4.7 arrangement described in paragraph (b); and (3) is engaged in providing diagnostic,
 4.8 maintenance, or repair services for digital electronic equipment or farm equipment. An
 4.9 original equipment manufacturer or, with respect to the original equipment manufacturer,
 4.10 an individual or business that has an arrangement with the original equipment manufacturer
 4.11 or is affiliated with an individual or business that has an arrangement with that original
 4.12 equipment manufacturer, is considered an independent repair provider for purposes of the
 4.13 instances the original equipment manufacturer engages in diagnostic, maintenance, or repair
 4.14 services for digital electronic equipment or farm equipment that is not manufactured by or
 4.15 sold under the name of the original equipment manufacturer.

4.16 ~~(j)~~ (m) "Manufacturer of motor vehicle equipment" means a business engaged in the
 4.17 business of manufacturing or supplying components used to manufacture, maintain, or repair
 4.18 a motor vehicle.

4.19 ~~(k)~~ (n) "Motor vehicle" means a vehicle that is: (1) designed to transport persons or
 4.20 property on a street or highway; and (2) certified by the manufacturer under (i) all applicable
 4.21 federal safety and emissions standards, and (ii) all requirements for distribution and sale in
 4.22 the United States. Motor vehicle does not include a recreational vehicle or an auto home
 4.23 equipped for habitation.

4.24 ~~(l)~~ (o) "Motor vehicle dealer" means an individual or business that, in the ordinary course
 4.25 of business: (1) is engaged in the business of selling or leasing new motor vehicles to an
 4.26 individual or business pursuant to a franchise agreement; (2) has obtained a license under
 4.27 section 168.27; and (3) is engaged in providing diagnostic, maintenance, or repair services
 4.28 for motor vehicles or motor vehicle engines pursuant to a franchise agreement.

4.29 ~~(m)~~ (p) "Motor vehicle manufacturer" means a business engaged in the business of
 4.30 manufacturing or assembling new motor vehicles.

4.31 ~~(n)~~ (q) "Original equipment manufacturer" means any individual or business that, in the
 4.32 normal course of business, is engaged in the business of selling or leasing to any individual
 4.33 or business new digital electronic equipment or farm equipment manufactured by or on
 4.34 behalf of the original equipment manufacturer.

5.1 ~~(r)~~ (r) "Owner" means an individual or business that owns or leases digital electronic
5.2 equipment or farm equipment purchased or used in Minnesota.

5.3 ~~(s)~~ (s) "Part" means any replacement part or assembly of parts, either new or used, made
5.4 available by an original equipment manufacturer to authorized repair providers to facilitate
5.5 the maintenance or repair of digital electronic equipment or farm equipment manufactured
5.6 or sold by the original equipment manufacturer.

5.7 (t) "Parts pairing" means a manufacturer's use of software to identify component parts
5.8 through a unique identifier.

5.9 ~~(u)~~ (u) "Personally identifiable information" means any representation of information
5.10 that permits the identity of an individual to whom the information applies to be reasonably
5.11 inferred by either direct or indirect means.

5.12 (v) "Proprietary firmware" means permanent software programmed into read-only
5.13 memory that the manufacturer has restricted from use, private modification, copying, or
5.14 publication.

5.15 ~~(w)~~ (w) "Tool" means any software program, hardware implement, or other apparatus
5.16 used for diagnosis, maintenance, or repair of digital electronic equipment or farm equipment,
5.17 including software or other mechanisms that provide, program, pair a part, calibrate
5.18 functionality, or perform any other function required to repair the original equipment or
5.19 part back to fully functional condition, including updates.

5.20 ~~(x)~~ (x) "Trade secret" has the meaning given in section 325C.01, subdivision 5.

5.21 ~~(y)~~ (y) "Video game console" means a computing device, such as a console machine, a
5.22 handheld console device, or another device or system, and its components and peripherals,
5.23 that is primarily used by consumers for playing video games but which is neither a general
5.24 nor an all-purpose computer. A general or all-purpose computer includes but is not limited
5.25 to a desktop computer, laptop, tablet, or cell phone.

5.26 Sec. 2. Minnesota Statutes 2023 Supplement, section 325E.72, subdivision 3, is amended
5.27 to read:

5.28 Subd. 3. **Requirements.** (a) For digital electronic equipment, farm equipment, and parts
5.29 for the equipment sold or used in Minnesota, an original equipment manufacturer must
5.30 make available to any independent repair provider or to the owner of digital electronic
5.31 equipment or farm equipment manufactured by or on behalf of, or sold by, the original
5.32 equipment manufacturer, on fair and reasonable terms, documentation, parts, and tools,
5.33 inclusive of any updates to information or embedded software, for diagnostic, maintenance,

6.1 or repair purposes. Documentation, parts, and tools must be made available either directly
6.2 by the original equipment manufacturer or an authorized repair provider or distributor.
6.3 Nothing in this section requires an original equipment manufacturer to make available a
6.4 part, tools, or documentation if it is no longer available to the original equipment
6.5 manufacturer.

6.6 (b) Such parts, tools, and documentation shall be made available within 60 days after
6.7 the first sale of the digital electronic equipment or farm equipment in Minnesota.

6.8 (c) A farm equipment manufacturer must make available tools, software, and
6.9 documentation for farm equipment to owners at no charge. If a physical tool is requested,
6.10 a farm equipment manufacturer may charge a fee to pay for reasonable, actual costs incurred
6.11 to prepare and send a physical tool.

6.12 Sec. 3. Minnesota Statutes 2023 Supplement, section 325E.72, is amended by adding a
6.13 subdivision to read:

6.14 Subd. 3a. **Prohibitions.** An original equipment manufacturer must not use parts pairing,
6.15 proprietary firmware, or any other mechanism to:

6.16 (1) prevent the installation or functioning of any otherwise functional part, including a
6.17 replacement part or component that is not approved by the manufacturer;

6.18 (2) inhibit or reduce the functioning of any part, so that replacement by an independent
6.19 repair provider or the device owner causes the device to operate with reduced functionality
6.20 or performance;

6.21 (3) create false, misleading, deceptive, or undismissible alerts or warnings about parts;

6.22 (4) charge additional fees or increased prices for future repairs; or

6.23 (5) limit who can purchase parts or perform repair services.

6.24 Sec. 4. Minnesota Statutes 2023 Supplement, section 325E.72, subdivision 5, is amended
6.25 to read:

6.26 Subd. 5. **Limitations.** (a) Nothing in this section requires an original equipment
6.27 manufacturer to divulge a trade secret or license any intellectual property to an owner or
6.28 an independent service provider, except as necessary to provide documentation, parts, and
6.29 tools on fair and reasonable terms.

6.30 (b) Nothing in this section alters the terms of any arrangement described in subdivision
6.31 2, paragraph (b), including but not limited to the performance or provision of warranty or

7.1 recall repair work by an authorized repair provider on behalf of an original equipment
7.2 manufacturer pursuant to the arrangement, in force between an authorized repair provider
7.3 and an original equipment manufacturer. A provision in the terms of an arrangement
7.4 described in subdivision 2, paragraph (b), that purports to waive, avoid, restrict, or limit the
7.5 original equipment manufacturer's obligations to comply with this section is void and
7.6 unenforceable.

7.7 (c) Nothing in this section requires that an original equipment manufacturer or authorized
7.8 repair provider is held liable for any damage or injury to any farm equipment caused by an
7.9 independent repair provider or owner that: (1) occurs during the course of repairing,
7.10 diagnosing, or maintaining the farm equipment; and (2) is not attributable to the original
7.11 equipment manufacturer or authorized repair provider, unless the failure is attributable to
7.12 design or manufacturing defects.

7.13 (d) Nothing in this section requires a manufacturer to provide any part or equipment
7.14 used solely to develop the manufacturer's products.

7.15 (e) Nothing in this section allows a modification that permanently deactivates a safety
7.16 notification system in the course of diagnosing, maintaining, or repairing farm equipment.

7.17 (f) Nothing in this section allows a modification that causes a piece of equipment to
7.18 become permanently out of compliance with any applicable safety or emissions laws.

7.19 (g) Nothing in this section requires an original equipment manufacturer or an authorized
7.20 repair provider to provide to an owner or independent repair provider access to information,
7.21 other than documentation, that is provided by the original equipment manufacturer to an
7.22 authorized repair provider pursuant to the terms of an arrangement described in subdivision
7.23 2, paragraph (b).

7.24 ~~(d)~~ (h) Nothing in this section requires an original equipment manufacturer or authorized
7.25 repair provider to make available any parts, tools, or documentation for the purpose of
7.26 making modifications to any digital electronic equipment or farm equipment.

7.27 ~~(e)~~ (i) Nothing in this section shall be construed to require the original equipment
7.28 manufacturer to sell service parts if the service parts are no longer provided by the original
7.29 equipment manufacturer or made available to authorized repair providers of the original
7.30 equipment manufacturer.

7.31 ~~(f)~~ (j) Nothing in this section shall require an original manufacturer to make available
7.32 special documentation, tools, and parts that would disable or override antitheft security
7.33 measures set by the owner of the equipment without the owner's authorization.

8.1 ~~(g)~~ (k) Nothing in this section shall apply if the original equipment manufacturer provides
8.2 equivalent or better, readily available replacement equipment at no charge to the customer.

8.3 ~~(h)~~ (l) Nothing in this section requires the original manufacturer to provide access to
8.4 parts, tools, or documentation for work that is required to be done or supervised by an
8.5 individual or contractor licensed under chapter 326B or with any individual or contractor
8.6 who does not possess the relevant license required for that work.

8.7 Sec. 5. Minnesota Statutes 2023 Supplement, section 325E.72, subdivision 6, is amended
8.8 to read:

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

8.13 (b) Nothing in this section applies to manufacturers or distributors of a medical device
8.14 as defined in the Federal Food, Drug, and Cosmetic Act, United States Code, title 21, section
8.15 301 et seq., or a digital electronic product or software manufactured for use in a medical
8.16 setting including diagnostic, monitoring, or control equipment or any product or service
8.17 that the manufacturer or distributor of a medical device offers.

8.18 (c) Nothing in this section applies to manufacturers, distributors, importers, or dealers
8.19 of any off-road or nonroad equipment, including without limitation ~~farm and utility tractors;~~
8.20 ~~farm implements; farm machinery;~~ forestry equipment; industrial equipment; utility
8.21 equipment; construction equipment; compact construction equipment; road-building
8.22 equipment; electronic vehicle charging infrastructure equipment; mining equipment; turf,
8.23 yard, and garden equipment; outdoor power equipment; portable generators; marine,
8.24 all-terrain sports, and recreational vehicles, including without limitation racing vehicles;
8.25 stand-alone or integrated stationary or mobile internal combustion engines; generator sets
8.26 and fuel cell power; power tools; and any tools, technology, attachments, accessories,
8.27 components, and repair parts for any of the foregoing.

8.28 (d) Nothing in this section shall be construed to require any original equipment
8.29 manufacturer or authorized repair provider to make available any parts, tools, or
8.30 documentation required for the diagnosis, maintenance, or repair of a video game console
8.31 and its components and peripherals.

8.32 (e) Nothing in this section applies to an energy storage system, as defined in section
8.33 216B.2422, subdivision 1, paragraph (f).

9.1 (f) Nothing in this section requires an original equipment manufacturer to make available
9.2 parts, documentation, or tools related to cybersecurity, except as necessary for the repair or
9.3 maintenance of equipment. Notwithstanding anything in this section to the contrary, an
9.4 original equipment manufacturer is not required to make available parts, documentation,
9.5 or tools related to cybersecurity which: (1) could reasonably give a recipient or third-party
9.6 access to trade secret or personally identifiable information owned or possessed by an
9.7 original equipment manufacturer for itself or on behalf of another person; (2) is protected
9.8 from disclosure under other laws of this state; or (3) could reasonably be used to compromise
9.9 cybersecurity or cybersecurity equipment.

9.10 (g) Nothing in this section applies to information technology equipment that is intended
9.11 for use in critical infrastructure, as defined in United States Code, title 42, section 5195c(e).

9.12 Sec. 6. Minnesota Statutes 2023 Supplement, section 325E.72, subdivision 7, is amended
9.13 to read:

9.14 Subd. 7. **Liability, defenses, and warranties.** No original equipment manufacturer or
9.15 authorized repair provider shall be liable for any damage or injury caused to any digital
9.16 electronic equipment, farm equipment, person, or property that occurs as a result of repair,
9.17 diagnosis, maintenance, or modification performed by an independent repair provider or
9.18 owner, including but not limited to any indirect, incidental, special, or consequential damages;
9.19 any loss of data, privacy, or profits; or an inability to use, or reduced functionality of, the
9.20 digital electronic equipment or farm equipment.