



2023 South Dakota Legislature

Senate Bill 194

Introduced by: **Senator Pischke**

1 **An Act to to establish certain provisions regarding fairness in repairs of equipment**
 2 **sold or used in this state.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That a NEW SECTION be added to title 37:**

5 Terms used in this chapter mean:

6 (1) "Authorized repair provider," a person who has an arrangement with the original
 7 equipment manufacturer under which the manufacturer grants to the person a
 8 license to use a trade name, service mark, or other proprietary identifier for the
 9 purposes of offering the services of diagnosis, maintenance, or repair of digital
 10 electronic equipment under the name of the manufacturer. An original equipment
 11 manufacturer who offers the services of diagnosis, maintenance, or repair of its
 12 own digital electronic equipment and who does not have an arrangement described
 13 in this subdivision with an unaffiliated individual or business is an authorized repair
 14 provider with respect to such equipment;

15 (2) "Digital electronic equipment," any product that depends for its functioning, in
 16 whole or in part, on digital electronics embedded in or attached to the product;

17 (3) "Documentation," any manual, diagram, reporting output, service code description,
 18 schematic diagram, security codes, passwords, or other guidance or information
 19 used in effecting the services of diagnosis, maintenance, or repair of digital
 20 electronic equipment;

21 (4) "Independent repair provider," a person operating in the state, that does not have
 22 an arrangement as an authorized repair provider with an original equipment
 23 manufacturer, and who is engaged in the services of diagnosis, maintenance, or
 24 repair of digital electronic equipment;

25 (5) "Motor vehicle," as defined under § 32-3-1;

26 (6) "Motor vehicle dealer," as defined under § 32-3-1;

- 1 (7) "Motor vehicle manufacturer," as defined under § 32-3-1;
2 (8) "Original equipment manufacturer," a business engaged in selling, leasing, or
3 otherwise supplying new digital electronic equipment manufactured by or on behalf
4 of itself, to any individual or business;
5 (9) "Owner," a person who owns or leases digital electronic equipment purchased or
6 used in this state;
7 (10) "Part," any replacement part, either new or used, made available by an original
8 equipment manufacturer for purposes of effecting the services of maintenance or
9 repair of digital electronic equipment manufactured by or on behalf of, sold, or
10 otherwise supplied by the manufacturer;
11 (11) "Tools," any software program, hardware implement, or other apparatus used for
12 diagnosis, maintenance, or repair of digital electronic equipment, including
13 software or other mechanisms that provision, program, or repair a new part,
14 calibrate functionality, or perform any other function required to bring the product
15 back to fully functional condition, including any updates; and
16 (12) "Trade secret," as defined under 18 U.S.C. § 1839, as amended and in effect on
17 January 1, 2024.

18 **Section 2. That a NEW SECTION be added to title 37:**

19 Terms of an agreement under this Act are considered to be fair and reasonable
20 when making available parts, tools, or documentation as follows:

- 21 (1) That documentation be made available by the original equipment manufacturer at
22 no charge, except for reasonable actual costs of preparing and sending a copy
23 when a physical printed form of the documentation is requested;
24 (2) That tools are made available by the original equipment manufacturer at no charge
25 without requiring authorization or internet access for use or operation of such tools,
26 imposing impediments to access or use of the tools to diagnose, maintain, or repair
27 and enable full functionality of digital electronic equipment, or in a manner that
28 impairs the efficient and cost-effective performance of any such diagnosis,
29 maintenance, or repair, except that, when such tool is requested in physical form,
30 a charge may be included for the reasonable, actual costs of preparing and sending
31 such tool;
32 (3) With respect to parts, that such parts are made available by the original equipment
33 manufacturer, either directly or through an authorized repair provider, to
34 independent repair providers and owners at no cost and terms that are equivalent

1 to the most favorable costs and terms under which an original equipment
2 manufacturer offers the parts to an authorized repair provider and which:

3 (a) Accounts for any discount, rebate, convenient and timely means of delivery,
4 means of enabling fully restored and updated functionality, rights of use, or
5 other incentive and preference the original manufacturer offer to an
6 authorized repair provider, or any additional cost, burden, or impediment
7 the original equipment manufacturer imposes on an owner or independent
8 repair provider;

9 (b) Is not conditioned on or imposing a substantial obligation or restriction that
10 is not reasonably necessary for enabling the owner or independent repair
11 provider to engage in the diagnosis, maintenance, or repair of digital
12 electronic equipment made by or on behalf of the original equipment
13 manufacturer; and

14 (c) Is not conditioned on an arrangement described in paragraph (a) of this
15 subdivision.

16 **Section 3. That a NEW SECTION be added to title 37:**

17 For digital electronic equipment and parts for the equipment that are sold or used
18 in this state, an original equipment manufacturer shall make available to any independent
19 repair provider and owner of digital electronic equipment manufactured by or on behalf
20 of, or sold by the manufacturer, on fair and reasonable terms, any documentation, parts,
21 and tools, required for the diagnosis, maintenance, or repair of the equipment and parts
22 for the equipment, inclusive of any updates to information. The documentation, parts, and
23 tools must be made available either directly by the manufacturer or via an authorized
24 repair provider.

25 For equipment that contains an electronic security lock or other security-related
26 function, the original equipment manufacturer shall make available to any owner and
27 independent repair provider, on fair and reasonable terms, any special documentation,
28 tools, and parts needed to access and reset the lock or function when disabled in the
29 course of diagnosis, maintenance, or repair of the digital electronic equipment. The
30 documentation, tools, and parts may be made available through appropriate secure
31 release systems.

32 **Section 4. That a NEW SECTION be added to title 37:**

1 Violation of any provision of this Act is an unlawful practice under chapter 37-1. All
2 remedies, penalties, and authority granted to the attorney general in chapter 37-1 are
3 available for the enforcement of this Act.

4 **Section 5. That a NEW SECTION be added to title 37:**

5 Nothing in this section shall be construed to require an original equipment
6 manufacturer to divulge any trade secret to any owner or independent service provider.

7 Nothing in this section shall be construed to alter the terms of any arrangement in
8 force between an authorized repair provider and an original equipment manufacturer,
9 including, but not limited to, the performance or provision of warranty or recall repair work
10 by an authorized repair provider on behalf of the manufacturer, except that any provision
11 in the terms that purports to waive, avoid, restrict, or limit the original equipment
12 manufacturer's obligations to comply with this section is void and unenforceable.

13 No original equipment manufacturer or authorized repair provider is liable for any
14 damage or injury caused to any digital electronic equipment by an independent repair
15 provider or owner that occurs during the course of repair, diagnosis, or maintenance.

16 **Section 6. That a NEW SECTION be added to title 37:**

17 Nothing in this Act shall apply to a motor vehicle manufacturer, or motor vehicle
18 dealer acting in such capacity, or to any product or service of a motor vehicle
19 manufacturer, or motor vehicle dealer acting in such capacity.

20 **Section 7. That a NEW SECTION be added to title 37:**

21 This Act applies with respect to equipment sold or in use on or after the effective
22 date of this Act.