

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL DRH30279-MM-23 (02/08)

Short Title: Right to Repair Act.

(Public)

Sponsors: Representative B. Richardson.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING FAIR REPAIR REQUIREMENTS FOR MANUFACTURERS OF
3 DIGITAL ELECTRONIC PRODUCTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 75 of the North Carolina Statutes is amended by adding a
6 new Article to read:

7 "Article 9.

8 "Fair Repair Requirements Act.

9 **§ 75-150. Definitions.**

10 The following definitions apply in this Article:

- 11 (1) Authorized repair provider. – An oral or written arrangement for a definite
12 or indefinite period in which a manufacturer or distributor transfers to a
13 separate business organization or individual license to use a trade name,
14 service mark, or relative characteristic for the purposes of offering repair
15 services under the name of the manufacturer.
- 16 (2) Digital electronic product. – A part or machine containing a microprocessor
17 originally manufactured for distribution and sale in the United States.
- 18 (3) Documentation. – Manuals, diagrams, reporting output, or service code
19 descriptions provided to the authorized repair provider for the purposes of
20 repair.
- 21 (4) Embedded software. – Programmable instructions provided on firmware
22 delivered with the digital electronic product for the purposes of product
23 operation, including all relevant patches and fixes made by the manufacturer
24 for this purpose, including, but not limited to, "basic internal operating
25 system," "internal operating system," "machine code," "assembly code,"
26 "root code," and "microcode."
- 27 (5) Fair and reasonable terms. – An equitable price in light of relevant factors,
28 including all of the following:
- 29 a. The net cost to the authorized repair provider for similar parts
30 obtained from manufacturers, less any discounts, rebates, or other
31 incentive programs.
- 32 b. The cost to the manufacturer for preparing and distributing the parts
33 or product, excluding any research and development costs incurred in
34 designing and implementing, upgrading, or altering the product, but
35 including amortized capital costs for the preparation and distribution
36 of the parts.



1 c. The price charged by other manufacturers for similar parts or
2 products.

3 (6) Independent repair provider. – An individual or business operating in the
4 State that is not affiliated with a manufacturer or a manufacturer's authorized
5 dealer of a digital electronic product that is engaged in the diagnosis, service,
6 maintenance, or repair of a digital electronic product. A manufacturer's
7 authorized dealer shall be considered an independent repair provider when
8 the dealer engages in the diagnosis, service, maintenance, or repair of a
9 digital electronic product that is not affiliated with the manufacturer.

10 (7) Manufacturer. – An individual or business who, in the ordinary course of its
11 business, is engaged in the business of selling or leasing new digital
12 electronic products to consumers or other end users and is engaged in the
13 diagnosis, service, maintenance, or repair of that product.

14 (8) Owner. – An individual or business who lawfully acquires a digital
15 electronic product purchased or used in the State.

16 (9) Remote diagnostics. – A remote data transfer function between a digital
17 electronic product and a provider of repair services, including for purposes
18 of diagnostics, settings controls, or location identification.

19 (10) Service parts. – Replacement parts, either new or used, made available by
20 the manufacturer to the authorized repair provider for the purposes of repair.

21 (11) Trade secret. – Anything tangible or intangible or electronically stored or
22 kept that constitutes, represents, evidences, or records intellectual property,
23 including secret or confidentially held designs, processes, procedures,
24 formulas, inventions or improvements or secrets of confidentially held
25 scientific, technical, merchandising, production, financial, business or
26 management information, or anything within the definition of 18 U.S.C. §
27 1839(3).

28 **§ 75-151. Fair repair requirements.**

29 (a) Manufacturers of digital electronic products sold or used in this State are required to
30 do all of the following:

31 (1) Make available to independent repair facilities or owners of products
32 manufactured by the manufacturer diagnostic and repair information,
33 including repair technical updates, diagnostic software, service access
34 passwords, updates and corrections to firmware, and related documentation,
35 free of charge and in the same manner the manufacturer makes available to
36 its authorized repair providers.

37 (2) Make available for purchase by the product owner, or the authorized agent
38 of the owner, service parts, including updates to the firmware of the parts,
39 for purchase upon fair and reasonable terms. Nothing in this section requires
40 the manufacturer to sell service parts if the service parts are no longer
41 available to the manufacturer or the authorized repair channel of the
42 manufacturer.

43 (b) Manufacturers that sell diagnostic, service, or repair information to an independent
44 repair provider or a third-party provider in a format that is standardized with other
45 manufacturers, and on terms and conditions more favorable than the manner and the terms and
46 conditions pursuant to which an authorized repair provider obtains the same diagnostic, service,
47 or repair information, are prohibited from requiring an authorized repair provider to continue
48 purchasing diagnostic, service, or repair information in a proprietary format, unless the
49 proprietary format includes diagnostic, service, repair, or dealership operations information or
50 functionality that is not available in a standardized format.

1 (c) Manufacturers of digital electronic products sold or used in this State shall make
2 available for purchase by owners and independent repair facilities all diagnostic repair tools,
3 incorporating the same diagnostic repair and remote diagnostic capabilities that the
4 manufacturer makes available to its own repair or engineering staff or any authorized repair
5 providers, upon fair and reasonable terms.

6 (d) Manufacturers that provide repair information to aftermarket tool, diagnostics, or
7 third-party service information publications and systems have fully satisfied their obligations
8 under this section and thereafter are not responsible for the content and functionality of
9 aftermarket diagnostic tools or service information systems.

10 (e) Manufacturers of digital electronic products sold or used in the State for the
11 purposes of providing security-related functions may not exclude diagnostic, service, and repair
12 information necessary to reset a security-related electronic function from information provided
13 to owners and independent repair facilities. If necessary for security purposes, manufacturers
14 may provide information necessary to reset and unlock system or security-related electronic
15 modules to owners and independent repair facilities through an appropriate secure data release
16 system.

17 **"§ 75-152. No requirement to divulge trade secret.**

18 This Article does not require the manufacturer to divulge a trade secret.

19 **"§ 75-153. No abrogation of contract.**

20 This Article shall not be interpreted or construed to abrogate, interfere with, contradict, or
21 alter the terms of an agreement executed between an authorized repair provider and a
22 manufacturer, including, but not limited to, performing warranty or recall repair work by an
23 authorized repair provider on behalf of a manufacturer pursuant to the authorized repair
24 agreement. Except in the case of a dispute arising between a manufacturer and its authorized
25 repair provider related to either party's compliance with an existing repair agreement, an
26 authorized repair provider has all the rights and remedies provided in this section.

27 **"§ 75-154. No access to certain information.**

28 This Article does not require manufacturers or authorized repair providers to provide an
29 owner or independent repair provider access to nondiagnostic and nonrepair information
30 provided by a manufacturer to an authorized repair provider pursuant to the terms of an
31 authorizing agreement.

32 **"§ 75-155. Right to cure.**

33 (a) An independent repair provider or owner who believes that a manufacturer has
34 failed to provide information, including documentation, updates to firmware, safety and
35 security corrections, diagnostics, documentation, or a tool required by this section must notify
36 the manufacturer in writing and give the manufacturer 30 days from the time the manufacturer
37 receives the complaint to cure the failure. If the manufacturer cures the complaint within 30
38 days, damages are limited to actual damages in any subsequent litigation.

39 (b) If the manufacturer fails to respond to the notice provided in subsection (a) of this
40 section, or if an independent repair facility or owner is not satisfied with the manufacturer's
41 cure, the independent repair facility or owner may file a complaint in district court. The
42 complaint must include all of the following:

43 (1) Written information confirming that the complainant has attempted to
44 acquire and use, through the then-available standard support function
45 provided by the manufacturer, all relevant diagnostics, tools, service parts,
46 documentation, and updates to embedded software, including
47 communication with customer assistance via the manufacturer's
48 then-standard process, if made available by the manufacturer.

49 (2) Evidence of manufacturer notification as required in subsection (a) of this
50 section."

51 **SECTION 2.** This act becomes effective October 1, 2017.