

HOUSE BILL No. 2122

By Committee on Federal and State Affairs

1-23

1 AN ACT concerning commerce; relating to certain equipment; creating the
2 fair repair act.

3

4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. The provisions of sections 1 through 5, and amendments
6 thereto, shall be known and may be cited as the fair repair act.

7 Sec. 2. As used in the fair repair act:

8 (a) "Authorized repair provider" means an individual or entity
9 separate from a manufacturer with whom the manufacturer has entered
10 into an oral or written agreement for a definite or indefinite period in
11 which the manufacturer grants to such individual or entity a license to use
12 a trade name, service mark or related characteristic for the purposes of
13 offering repair services under the name of the manufacturer.

14 (b) "Digital electronic product" means equipment containing an
15 integrated circuit, or a part for such equipment, manufactured for
16 distribution and sale in the United States, and installed in a farm tractor,
17 farm trailer or implement of husbandry as those terms are defined in
18 K.S.A. 8-126, and amendments thereto.

19 (c) "Embedded software" means any programmable instructions
20 provided on firmware delivered with a digital electronic product for the
21 purposes of product operation, including all relevant patches and fixes
22 made by the manufacturer for this purpose, including, but not limited to,
23 basic internal operating systems, internal operating systems, machine code,
24 assembly code, root code and microcode.

25 (d) "Fair and reasonable terms" means an equitable price in light of
26 relevant factors, including, but not limited to:

27 (1) The net cost to the authorized repair provider for similar
28 information obtained from a manufacturer, less any discounts, rebates or
29 other incentive programs;

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

35 (3) the price charged by manufacturers for similar information;

36 (4) the price charged by a manufacturer for similar information prior

1 to the launch of a manufacturer website;

2 (5) the ability of aftermarket technicians or shops to afford the
3 information;

4 (6) the means by which the information is distributed;

5 (7) the extent to which the information is used, including the number
6 of users, and the frequency, duration and volume of use; and

7 (8) inflation.

8 (e) "Firmware" means a software program or set of instructions
9 programmed on a hardware device to allow the device to communicate
10 with other computer hardware.

11 (f) "Independent repair provider" means a person or business
12 operating in this state that is not affiliated with a manufacturer or a
13 manufacturer's authorized repair provider, and that is engaged in the
14 diagnosis, service, maintenance or repair of digital electronic products,
15 except that a manufacturer shall be considered an independent repair
16 provider in those instances when such manufacturer engages in the
17 diagnosis, service, maintenance or repair of digital electronic products that
18 are not affiliated with such manufacturer.

19 (g) "Manufacturer" means any person or entity that, in the ordinary
20 course of business, is engaged in the business of selling or leasing digital
21 electronic products and is engaged in the diagnosis, service, maintenance
22 or repair of such products.

23 (h) "Motor vehicle" means any vehicle that is designed for
24 transporting persons or property on a street or highway and is certified by
25 the motor vehicle manufacturer under all applicable federal safety and
26 emissions standards and requirements for distribution and sale in the
27 United States. The term "motor vehicle" does not include any farm tractor,
28 farm trailer or implement of husbandry as those terms are defined in
29 K.S.A. 8-126, and amendments thereto.

30 (i) "Motor vehicle dealer" means any person or entity that, in the
31 ordinary course of business, is engaged in the business of selling or leasing
32 motor vehicles.

33 (j) "Owner" means a person or entity that owns or leases a digital
34 electronic product purchased or used in this state.

35 (k) "Part" means any replacement part, new or used, made available
36 by the manufacturer to the authorized repair provider for purposes of
37 effecting repair.

38 (l) "Trade secret" means anything tangible or intangible or
39 electronically stored or kept which constitutes, represents, evidences, or
40 records intellectual property, including secret or confidentially held
41 designs, processes, procedures, formulas, inventions or improvements, or
42 secret or confidentially held scientific, technical, merchandising,
43 production, financial, business or management information, or any other

1 trade secret as defined in 18 U.S.C. § 1839, in effect on January 1, 2016.

2 Sec. 3. (a) For digital electronic products sold and used in this state,
3 the manufacturer of such products shall:

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

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

14 (b) Any manufacturer that sells any diagnostic and repair information
15 to any independent repair provider or to any owner in a format that is
16 standardized with other manufacturers, and on terms and conditions more
17 favorable than the manner and the terms and conditions pursuant to which
18 the authorized repair provider obtains the same diagnostic and repair
19 information, shall be prohibited from requiring any authorized repair
20 provider to continue purchasing diagnostic and repair information in a
21 proprietary format, unless such proprietary format includes diagnostic and
22 repair information or functionality that is not available in such
23 standardized format.

24 (c) Each manufacturer of digital electronic products sold or used in
25 this state shall make available for purchase by owners and independent
26 repair providers all diagnostic repair tools incorporating the same
27 diagnostic, repair and remote communications capabilities that such
28 manufacturer makes available to the repair or engineering personnel
29 employed by such manufacturer or to any authorized repair provider. Each
30 manufacturer shall offer such tools for sale to any owner or independent
31 repair provider upon fair and reasonable terms. Each manufacturer that
32 provides diagnostic repair information to aftermarket diagnostic tool
33 manufacturers, diagnostics providers or service information publications
34 and systems shall have fully satisfied its obligations under this section and
35 thereafter shall not be responsible for the content and functionality of such
36 aftermarket diagnostic tools, diagnostics or service information systems.

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

1 systems of the manufacturer.

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

5 Sec. 4. Nothing in sections 1 through 5, and amendments thereto:

6 (a) Shall be construed to require a manufacturer to divulge a trade
7 secret;

8 (b) shall be read, interpreted or construed to abrogate, interfere with,
9 contradict or alter the terms of any agreement executed and in force
10 between an authorized repair provider and a manufacturer, including, but
11 not limited to, the performance or provision of warranty or recall repair
12 work by an authorized repair provider on behalf of a manufacturer
13 pursuant to such agreement, except that any provision in such an
14 agreement that purports to waive, avoid, restrict or limit a manufacturer's
15 compliance with this section shall be void and unenforceable;

16 (c) shall be construed to require a manufacturer or an authorized
17 repair provider to provide an owner or independent repair provider access
18 to nondiagnostic and repair information provided by a manufacturer to an
19 authorized repair provider pursuant to the terms of an agreement; or

20 (d) shall apply to motor vehicles, any product or service of a motor
21 vehicle manufacturer or motor vehicle dealers.

22 Sec. 5. A violation of section 3, and amendments thereto, shall be an
23 unclassified misdemeanor punishable by a fine of \$5,000.

24 Sec. 6. This act shall take effect and be in force from and after its
25 publication in the statute book.