FOR AN ACT ENTITLED, An Act to establish certain provisions regarding fairness in repairs of equipment sold or used in this state.

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

Section 1. That the code be amended by adding a NEW SECTION to read:

Terms used in this chapter mean:

1. "Authorized repair provider," a person who has an arrangement for a definite or indefinite period in which an original equipment manufacturer grants to a separate person a license to use a trade name, service mark, or related characteristic for the purposes of offering repair services under the name of the original equipment manufacturer;

2. "Embedded software," any programmable instructions provided on firmware delivered with the equipment for the purposes of equipment operation, including all relevant patches and fixes made by the original equipment manufacturer for this purpose, including a basic internal operating system, an internal operating system, a machine code, an assembly code, a root code, and a microcode;
"Equipment," digital electronic equipment or a part for such equipment originally manufactured for distribution and sale in the United States;

"Fair and reasonable terms," an equitable price in light of relevant factors, including:

(a) The net cost to the authorized repair provider for similar information obtained from an original equipment manufacturer, less any discounts, rebates, or other incentive programs;

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

(c) The price charged by other original equipment manufacturers for similar information;

(d) The price charged by original equipment manufacturers for similar information prior to the launch of original equipment manufacturer web sites;

(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, which includes the number of users, and frequency, duration, and volume of use; and

(h) Inflation.

"Firmware," a software program or set of instructions programmed on a hardware device to allow the device to communicate with other computer hardware;

"Independent repair provider," a person operating in this state which is not affiliated with an original equipment manufacturer or an original equipment manufacturer's authorized repair provider, which is engaged in the diagnosis, service, maintenance,
or repair of equipment, except that an original equipment manufacturer is an independent repair provider for purposes of those instances when such original equipment manufacturer engages in the diagnosis, service, maintenance, or repair of equipment that is not affiliated with the original equipment manufacturer;

(7) "Motor vehicle," 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. The term does not include:

(a) A motorcycle; or

(b) A recreational vehicle or manufactured home equipped for habitation.

(8) "Motor vehicle dealer," any person who, in the ordinary course of business, is engaged in the business of selling or leasing new motor vehicles to a person pursuant to a franchise agreement, who has obtained a license pursuant to § 32-6B-12, 32-6C-5, or 32-7B-3, and who is engaged in the diagnosis, service, maintenance, or repair of motor vehicles or motor vehicle engines pursuant to such franchise agreement;

(9) "Motor vehicle manufacturer," any person engaged in the business of manufacturing or assembling new motor vehicles;

(10) "Original equipment manufacturer," any person who, in the ordinary course of its business, is engaged in the business of selling or leasing new equipment to any person and is engaged in the diagnosis, service, maintenance, or repair of equipment;

(11) "Owner," a person who owns or leases a digital electronic product purchased or used in this state;

(12) "Part," any replacement part, either new or used, made available by the original
equipment manufacturer to the authorized repair provider for purposes of effecting repair;

(13) "Trade secret," 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, 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, as of January 1, 2016.

Section 2. That the code be amended by adding a NEW SECTION to read:

For equipment sold and used in this state, the original equipment manufacturer of the equipment shall:

(1) Make available to any independent repair provider or owner of equipment manufactured by such original equipment manufacturer, the same diagnostic and repair documentation, including schematic diagrams, repair technical updates and updates and corrections to embedded software, for no charge or in the same manner and in the same time frame as the original equipment manufacturer makes the diagnostic and repair documentation, including repair technical updates and updates and corrections to embedded software, available to its authorized repair providers and subcontract repair or refurbishment facilities; and

(2) Make available for purchase by the owner, the owner's authorized agent, or any independent repair provider, equipment or service parts, inclusive of any updates to the embedded software of the equipment, upon fair and reasonable terms.

Nothing in this section requires the original equipment manufacturer to sell equipment or service parts if the parts are no longer available to the original equipment manufacturer or the
authorized repair provider of the original equipment manufacturer.

Section 3. That the code be amended by adding a NEW SECTION to read:

Any original equipment manufacturer that sells any diagnostic, service, or repair documentation to any independent repair provider or to any owner in a format that is standardized with other original equipment 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, service, or repair documentation, shall be prohibited from requiring any authorized repair provider to continue purchasing diagnostic, service, or repair documentation in a proprietary format, unless the proprietary format includes diagnostic, service, or repair documentation or functionality that is not available in a standardized format.

Section 4. That the code be amended by adding a NEW SECTION to read:

Each original equipment manufacturer of equipment 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 the original equipment manufacturer makes available to the manufacturer's own repair or engineering staff or any authorized repair provider. Each original equipment manufacturer shall offer the aforementioned tools for sale to any owner and independent repair provider upon fair and reasonable terms. Each original equipment manufacturer that provides diagnostic repair documentation to aftermarket diagnostic tool manufacturers, diagnostics providers, or service information publications and systems has fully satisfied the manufacturer's obligations under this section. Thereafter, the manufacturer is not responsible for the content and functionality of such aftermarket diagnostic tools, diagnostics, or service information systems.

Section 5. That the code be amended by adding a NEW SECTION to read:

Original equipment manufacturer equipment sold or used in this state for the purpose of
providing security-related functions may not exclude diagnostic, service, and repair
documentation necessary to reset a security-related electronic function from information
provided to an owner or independent repair provider. If excluded under this Act, the
documentation necessary to reset an immobilizer system or security-related electronic module
shall be obtained by an owner or independent repair provider through the appropriate secure data
release systems.

Section 6. That the code be amended by adding a NEW SECTION to read:

Nothing in this Act requires an original equipment manufacturer to divulge a trade secret.

Section 7. That the code be amended by adding a NEW SECTION to read:

Nothing in this Act requires original equipment manufacturers or authorized repair providers
to provide an owner or independent repair provider access to non-diagnostic and repair
documentation provided by an original equipment manufacturer to an authorized repair provider
pursuant to the terms of an authorizing agreement.

Section 8. That the code be amended by adding a NEW SECTION to read:

No provision in this Act may be read, interpreted, or construed to abrogate, interfere with,
contradict, or alter the terms of any agreement executed and in force between an authorized
repair provider and an original equipment manufacturer, including the performance or provision
of warranty or recall repair work by an authorized repair provider on behalf of an original
equipment manufacturer pursuant to the authorized repair agreement. However, any provision
in an authorized repair agreement that purports to waive, avoid, restrict, or limit an original
equipment manufacturer's compliance with this section is void and unenforceable.

Section 9. That the code be amended by adding a NEW SECTION to read:

Nothing in this Act applies to motor vehicle manufacturers, any product or service of a
motor vehicle manufacturer, or motor vehicle dealers.
Section 10. That the code be amended by adding a NEW SECTION to read:

The attorney general may bring a civil action against any original equipment manufacturer found in violation of this Act. The court may assess a civil penalty of no greater than five hundred dollars for each violation. The civil penalty shall be deposited in the state general fund.

Section 11. That the code be amended by adding a NEW SECTION to read:

The requirements of this Act apply to equipment already sold or in use on or before July 1, 2016.