

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 167,
2 Page 3, Section 107.170, Line 63, by inserting after all of said section and line the following:

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4 "407.652. As used in sections 407.652 and 407.653, the following terms mean:

5 (1) "Authorized repair provider", an individual or business that has an oral or written
6 arrangement for a definite or indefinite period in which a manufacturer or distributor transfers to a
7 separate business organization or individual license to use a trade name, service mark, or relative
8 characteristic for the purposes of offering repair services under the name of the manufacturer;

9 (2) "Documentation", manuals, diagrams, reporting output, schematic diagrams, or service
10 code descriptions provided to the authorized repair provider for the purposes of repair or
11 refurbishment;

12 (3) "Embedded software", programmable instructions provided on firmware delivered with
13 certain products for the purposes of product operation, including all relevant safety, security, and
14 defect patches and fixes made by the manufacturer for this purpose. "Embedded software" shall
15 include all software that meets this definition regardless if called a different name including, but not
16 limited to, assembly code, basic internal operating system, internal operating system, machine code,
17 microcode, or root code;

18 (4) "Fair and reasonable terms", an equitable price in light of relevant factors including, but
19 not limited to:

20 (a) The net cost to the authorized repair provider for similar parts obtained from
21 manufacturers, less any discounts, rebates, or other incentive programs;

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

26 (c) The price charged by other manufacturers for similar parts or products;

27 (5) "Independent repair provider", an individual or business operating in the state that is not
28 affiliated with a manufacturer or a manufacturer's authorized dealer of a product that is engaged in
29 the diagnosis, service, maintenance, or repair of a product. A manufacturer's authorized dealer shall
30 be considered an independent repair provider if the dealer engages in the diagnosis, service,
31 maintenance, or repair of a product that is not affiliated with the manufacturer;

32 (6) "Manufacturer", an individual or business that, in the ordinary course of its business, is
33 engaged in selling or leasing new products to consumers or other end users and is engaged in the
34 diagnosis, service, maintenance, or repair of that product;

35 (7) "Owner", an individual or business that lawfully acquires a product purchased or used in
36 the state;

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1 (8) "Product", any product regardless of the date purchased. "Product" shall exclude motor
2 vehicles;

3 (9) "Remote diagnostics", a remote data transfer function between certain products and a
4 provider of repair services, including for purposes of remote diagnostics, settings controls, or
5 location identification;

6 (10) "Service parts", replacement parts, either new or used, made available by the
7 manufacturer to the authorized repair provider for the purposes of repair;

8 (11) "Trade secret", anything tangible or intangible or electronically stored or kept that
9 constitutes, represents, evidences, or records intellectual property including, but not limited to:

10 (a) Secret or confidentially held designs, processes, procedures, formulas, inventions, or
11 improvements;

12 (b) Secrets or confidentially held scientific, technical, merchandising, production, financial,
13 business, or management information; or

14 (c) Any "trade secret" as that term is defined under paragraph (3) of 18 U.S.C. Section 1839.
15 407.653. 1. Owners of products purchased or used in this state shall have the right to:

16 (1) Access the same diagnostic and repair information of products manufactured by the
17 manufacturer as the manufacturer makes available to independent repair facilities or authorized
18 repair providers. Such information shall be provided in the same manner and time as provided to
19 authorized repair providers. Such information shall include, but not be limited to, repair technical
20 updates, diagnostic software, service access passwords, updates and corrections to firmware, and
21 related documentation; and

22 (2) Purchase service parts available upon fair and reasonable terms. Such service parts shall
23 be made available in the same manner and time as given to authorized repair providers. Such
24 service parts shall include updates to firmware of parts.

25
26 Nothing in this section shall require the manufacturer to sell service parts if the service parts are no
27 longer available to the manufacturer or the authorized repair channel of the manufacturer.

28 2. An authorized repair provider shall have the right to purchase diagnostic, service, or
29 repair information in a format standardized with other manufacturers instead of a proprietary format
30 from a manufacturer if the manufacturer sells diagnostic, service, or repair information to
31 independent repair providers or third-party providers in such a standardized format or if the
32 manufacturer offers terms and conditions more favorable to independent repair providers or third-
33 party providers than the manner and the terms and conditions that are available to an authorized
34 repair provider. However, this subsection shall not apply if the proprietary format includes
35 diagnostic, service, repair, or dealership operations information or functionality not available in a
36 standardized format.

37 3. Owners and independent repair facilities shall have the right to purchase from
38 manufacturers of products sold or used in this state all diagnostic repair tools, incorporating the
39 same diagnostic repair and remote diagnostic capabilities that the manufacturer makes available to
40 its own repair or engineering staff or any authorized repair providers, upon fair and reasonable
41 terms.

42 4. Manufacturers that provide repair information to aftermarket tools, diagnostics, or third-
43 party service information publications and systems have fully satisfied their obligations under this
44 section and thereafter are not responsible for the content and functionality of aftermarket diagnostic
45 tools or service information systems.

46 5. Manufacturers of products sold or used in the state for the purposes of providing security-
47 related functions shall not exclude diagnostic, service, and repair information necessary to reset a
48 security-related electronic function from information provided to owners and independent repair
49 facilities. If necessary for security purposes, manufacturers may provide information necessary to

1 reset and unlock system or security-related electronic modules to owners and independent repair
2 facilities through an appropriate secure data release system.

3 6. Nothing in this section shall require the manufacturer to divulge a trade secret.

4 7. Notwithstanding any law or rule to the contrary, this section shall not be read, interpreted,
5 or construed to abrogate, interfere with, contradict, or alter the terms of an agreement executed
6 between an authorized repair provider and a manufacturer including, but not limited to, performing
7 warranty or recall repair work by an authorized repair provider on behalf of a manufacturer pursuant
8 to the authorized repair agreement. Except in the case of a dispute arising between a manufacturer
9 and its authorized repair provider related to either party's compliance with an existing repair
10 agreement, an authorized repair provider has all the rights and remedies provided in this section.

11 8. This section shall not require manufacturers or authorized repair providers to provide an
12 owner or independent repair provider access to nondiagnostic and nonrepair information provided
13 by a manufacturer to an authorized repair provider pursuant to the terms of an authorizing
14 agreement.

15 9. (1) An independent repair provider or owner that believes that a manufacturer has failed
16 to provide information, including documentation, updates to firmware, safety and security
17 corrections, diagnostics, documentation, or a tool required by this section shall notify the
18 manufacturer in writing and give the manufacturer thirty days from the time the manufacturer
19 receives the complaint to cure the failure. If the manufacturer cures the complaint within thirty
20 days, damages are limited to actual damages in any subsequent litigation.

21 (2) If the manufacturer fails to respond to the notice provided in subdivision (1) of this
22 subsection or if an independent repair facility or owner is not satisfied with the manufacturer's cure,
23 the independent repair facility or owner may file a complaint in district court. The complaint shall
24 include:

25 (a) Written information confirming that the complainant attempted to acquire and use,
26 through the then-available standard support function provided by the manufacturer, all relevant
27 diagnostics, tools, service parts, documentation, and updates to embedded software, including
28 communication with customer assistance via the manufacturer's then-standard process, if made
29 available by the manufacturer; and

30 (b) Evidence of manufacturer notification as required in subdivision (1) of this subsection.

31 10. No manufacturer shall be required to provide any information or service parts under
32 subsection 1 of this section if the product for which the information or service parts are sought is
33 under a valid warranty for repair or replacement of the product.

34 11. The attorney general shall enforce this section. Each violation of this section shall be
35 punishable by a five-hundred-dollar fine, which shall be deposited in the general revenue fund
36 established under section 33.543."; and

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38 Further amend said bill by amending the title, enacting clause, and intersectional references
39 accordingly.