

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

H.B. 663  
Apr 6, 2017  
HOUSE PRINCIPAL CLERK

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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.