

IN THE SENATE

SENATE BILL NO. 1300

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO THE RIGHT TO REPAIR; AMENDING SECTION 48-603, IDAHO CODE, TO PRO-
2 VIDE FOR ADDITIONAL UNFAIR METHODS AND PRACTICES AND TO MAKE TECHNICAL
3 CORRECTIONS; AMENDING CHAPTER 6, TITLE 48, IDAHO CODE, BY THE ADDITION
4 OF A NEW SECTION 48-603G, IDAHO CODE, TO PROVIDE FOR THE RIGHT TO RE-
5 PAIR ELECTRONIC EQUIPMENT; AMENDING SECTION 48-103, IDAHO CODE, TO PRO-
6 VIDE DEFINITIONS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING CHAPTER 1,
7 TITLE 48, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 48-105A, IDAHO
8 CODE TO PROVIDE FOR LEGISLATIVE INTENT; AND AMENDING CHAPTER 1, TITLE
9 48, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 48-105B, IDAHO CODE,
10 TO ESTABLISH A RIGHT TO REPAIR, TO PROVIDE THAT CERTAIN REPAIR RESTRIC-
11 TIONS SHALL CONSTITUTE AN UNFAIR RESTRAINT OF TRADE OR COMMERCE AS WELL
12 AS AN ATTEMPT TO MONOPOLIZE A LINE OF IDAHO COMMERCE AND TO PROVIDE AN
13 EXCEPTION, AND TO MAKE TECHNICAL CORRECTIONS.
14

15 Be It Enacted by the Legislature of the State of Idaho:

16 SECTION 1. That Section 48-603, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 48-603. UNFAIR METHODS AND PRACTICES. The following unfair methods of
19 competition and unfair or deceptive acts or practices in the conduct of any
20 trade or commerce are hereby declared to be unlawful, where a person knows,
21 or in the exercise of due care should know, that he has in the past, or is:

- 22 (1) Passing off goods or services as those of another;
- 23 (2) Causing likelihood of confusion or of misunderstanding as to the
24 source, sponsorship, approval, or certification of goods or services;
- 25 (3) Causing likelihood of confusion or of misunderstanding as to affil-
26 iation, connection, or association with, or certification by, another;
- 27 (4) Using deceptive representations or designations of geographic ori-
28 gin in connection with goods or services;
- 29 (5) Representing that goods or services have sponsorship, approval,
30 characteristics, ingredients, uses, benefits, or quantities that they do
31 not have or that a person has a sponsorship, approval, status, affiliation,
32 connection, qualifications or license that he does not have;
- 33 (6) Representing that goods are original or new if they are deterio-
34 rated, altered, reconditioned, reclaimed, used, or secondhand;
- 35 (7) Representing that goods or services are of a particular standard,
36 quality, or grade, or that goods are of a particular style or model, if they
37 are of another;
- 38 (8) Failing to make service literature, functional parts, and any nec-
39 essary diagnostic equipment and proprietary tools available to independent
40 repair facilities and consumers as required by 48-603G, Idaho Code;
- 41 (9) Failing to make clear to a consumer any limitations on repair as re-
42 quired by 48-603G, Idaho Code;

1 (~~8~~10) Disparaging the goods, services, or business of another by false
2 or misleading representation of fact;

3 (~~9~~11) Advertising goods or services with intent not to sell them as ad-
4 vertised;

5 (102) Advertising goods or services with intent not to supply reason-
6 ably expectable public demand, unless the advertisement discloses a limita-
7 tion of quantity;

8 (113) Making false or misleading statements of fact concerning the rea-
9 sons for, existence of, or amounts of price reductions;

10 (124) Obtaining the signature of the buyer to a contract when it con-
11 tains blank spaces to be filled in after it has been signed;

12 (135) Failing to deliver to the consumer at the time of the consumer's
13 signature a legible copy of the contract or of any other document which the
14 seller or lender has required or requested the buyer to sign, and ~~which~~ that
15 he has signed, during or after the contract negotiation;

16 (146) Making false or misleading statements of fact concerning the age,
17 extent of use, or mileage of any goods;

18 (157) Promising or offering to pay, credit, or allow to any buyer or
19 lessee, any compensation or reward in consideration of his giving to the
20 seller or lessor the names of prospective purchasers or lessees, or other-
21 wise aiding the seller or lessor in making a sale or lease to another person,
22 if the earning of the rebate, discount or other value is contingent upon the
23 occurrence of an event subsequent to the time the buyer or lessee agrees to
24 buy or lease;

25 (168) Representing that services, replacements or repairs are needed if
26 they are not needed, or providing services, replacements or repairs that are
27 not needed;

28 (179) Engaging in any act or practice ~~which~~ that is otherwise mislead-
29 ing, false, or deceptive to the consumer;

30 (~~18~~20) Engaging in any unconscionable method, act or practice in the
31 conduct of trade or commerce, as provided in section 48-603C, Idaho Code,
32 provided, however, that the provisions of this subsection shall not apply to
33 a regulated lender as that term is defined in section 28-41-301, Idaho Code;

34 (~~19~~21) Taking advantage of a disaster or emergency declared by the gov-
35 ernor under chapter 10, title 46, Idaho Code, or the president of the United
36 States under the provisions of the disaster relief act of 1974, 42 U.S.C.
37 ~~section~~ 5121 et seq., by selling or offering to sell to the ultimate consumer
38 fuel or food, pharmaceuticals, or water for human consumption at an exorbi-
39 tant or excessive price; provided however, this subsection shall apply only
40 to the location and for the duration of the declaration of emergency. In de-
41 termining whether a price is exorbitant or excessive, the court shall take
42 into consideration the facts and circumstances including, but not limited
43 to:

44 (a) A comparison between the price paid by the alleged violator for the
45 fuel, food, pharmaceuticals, or water and the price for which the al-
46 leged violator sold those same items to the ultimate consumer immedi-
47 ately before and after the period specified by the disaster or emergency
48 declaration;

49 (b) Additional costs of doing business incurred by the alleged violator
50 because of the disaster or emergency; and

1 (c) The duration of the disaster or emergency declaration.
2 Notwithstanding anything to the contrary contained elsewhere in ~~the~~ this
3 act, no private cause of action exists under this subsection.

4 SECTION 2. That Chapter 6, Title 48, Idaho Code, be, and the same is
5 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
6 ignated as Section 48-603G, Idaho Code, and to read as follows:

7 48-603G. RIGHT TO REPAIR ELECTRONIC EQUIPMENT. (1) For the purpose of
8 this section:

9 (a) "Consumer" means any person or entity that purchases electronic
10 equipment. This shall include any person or entity that purchases elec-
11 tronic equipment that was previously used by another person or entity.
12 This definition does not create or change current warranty requirements
13 provided by the original equipment manufacturer.

14 (b) "Electronic equipment" means an electronic device containing a mi-
15 croprocessor and originally manufactured for distribution and sale in
16 the United States for general consumer purchase, including but not lim-
17 ited to:

18 (i) Smartphones, electronic reading devices, tablets, and per-
19 sonal computers, including laptop computers;

20 (ii) Home appliances, including ovens, stoves, microwave ovens,
21 dishwashers, washing machines, clothes dryers, air conditioning
22 units, furnaces, or other similar equipment;

23 (iii) Electronic entertainment products, including televisions,
24 video game consoles, and home audio equipment;

25 (iv) Farm equipment, including combines, tractors, implements,
26 self-propelled equipment, and related attachments and imple-
27 ments;

28 (v) Motorcycles and mopeds, as defined in section 49-114, Idaho
29 Code;

30 (vi) All-terrain vehicles, utility type vehicles, specialty off-
31 highway vehicles, snowmobiles, and motorbikes, as defined in sec-
32 tion 67-7101, Idaho Code; and

33 (vii) Recreational vehicles, including motor homes, travel trail-
34 ers, and camping trailers, with or without motive power. Elec-
35 tronic equipment included as part of the original equipment pack-
36 age that is not integrated into an engine or permanently attached
37 as a fixture shall not be considered part of a recreational vehicle
38 for purposes of this section.

39 (c) "Independent repair facility" means a person or business operating
40 in Idaho that is not affiliated with or controlled by an original equip-
41 ment manufacturer or an original equipment manufacturer's authorized
42 dealer of electronic equipment that diagnoses, services, maintains, or
43 repairs electronic equipment.

44 (d) "Original equipment manufacturer" means any person engaged in the
45 business of making or assembling electronic equipment.

46 (e) "Programming" means altering electronic equipment's internal op-
47 erations to increase or alter performance beyond the original equipment
48 manufacturer's factory settings. This definition shall not include any

1 changes made to the electronic equipment's internal operations as part
2 of regular and proper maintenance of the electronic equipment.

3 (f) "Service life" means a time period that begins at the time of deliv-
4 ery of the product and extends for the time during which the product can
5 be expected to be "serviceable." For the purposes of this chapter, "time
6 of delivery" means the time of delivery of a product to its first pur-
7 chaser or lessee who was not engaged in the business of either selling
8 such products or using them as component parts of another product to be
9 sold. Service life of a product shall be:

10 (i) Five (5) years for a product with an original sale price of
11 one hundred dollars (\$100) or greater, but less than three hundred
12 dollars (\$300);

13 (ii) Ten (10) years for a product with an original sale price of
14 three hundred dollars (\$300) or greater, but less than five thou-
15 sand dollars (\$5,000);

16 (iii) Fifteen (15) years for a product with an original sale price
17 of five thousand dollars (\$5,000) or greater, but less than fifty
18 thousand dollars (\$50,000); and

19 (iv) Twenty (20) years for a product with an original sale price of
20 fifty thousand dollars (\$50,000) or greater.

21 (g) "Tuned" means the modification of electronic equipment to increase
22 or alter performance beyond the original equipment manufacturer's fac-
23 tory settings, but shall not include regular and proper maintenance of
24 electronic equipment.

25 (2) Every original equipment manufacturer of electronic equipment sold
26 in Idaho shall make available to independent repair facilities and consumers
27 sufficient service literature, functional parts, diagnostic equipment, and
28 proprietary tools to effect the repair of a product or device for the dura-
29 tion of its service life, regardless of whether such period exceeds the war-
30 ranty period for the product or device.

31 (3) An original equipment manufacturer, retailer, or wholesaler, at
32 the time of a sale of electronic equipment to a consumer, shall make clear
33 to such consumer any post-purchase limitations on equipment repair, includ-
34 ing information regarding any necessary diagnostic equipment, proprietary
35 tools, and any pertinent warranty restrictions. Such information shall be
36 provided to consumers in plain language before the completion of a sale.

37 (4) A violation of this section is a violation of the Idaho consumer
38 protection act, chapter 6, title 48, Idaho Code.

39 (5) An original equipment manufacturer, retailer, or wholesaler that
40 fails to make available to an independent repair facility or a consumer suf-
41 ficient service literature and functional parts to effect the repair of a
42 product or device for the duration of its service life as required by subsec-
43 tion (3) of this section shall be subject to actual and punitive damages as
44 provided in section 48-608, Idaho Code. Independent repair facilities and
45 consumers shall be entitled to recover such actual and punitive damages pur-
46 suant to section 48-608(1), Idaho Code.

47 (6) Pursuant to the memorandum of understanding between the automotive
48 aftermarket industry association, coalition for auto repair equality, al-
49 liance of automobile manufacturers, and association of global automakers
50 dated January 15, 2014, and the memorandum of understanding between the

1 commercial vehicle solutions network, the truck and engine manufacturers
 2 association, the equipment and tool institute, the auto care association,
 3 and heavy duty aftermarket Canada, dated August 12, 2015, that collectively
 4 provide for new car and truck manufacturers to make service literature and
 5 functional parts, including tools, available to independent repair facili-
 6 ties, the provisions of this section shall not apply to:

7 (a) A motor vehicle manufacturer, manufacturer of motor vehicle equip-
 8 ment, or motor vehicle dealer acting in that capacity; or

9 (b) Any product or service of a motor vehicle manufacturer, manufac-
 10 turer of motor vehicle equipment, or motor vehicle dealer acting in that
 11 capacity.

12 Provided, however, that if either or both memoranda of understanding refer-
 13 enced in this subsection are withdrawn, allowed to expire, or renegotiated
 14 to provide less favorable terms for consumers, then motor vehicles within
 15 the scope of such expired or renegotiated memoranda of understanding shall
 16 no longer be exempt from the provisions of this section.

17 (7) The provisions of this section shall not apply with respect to any
 18 industry that, after July 1, 2020, adopts a comprehensive memorandum of
 19 understanding, such as those identified in subsection (6) of this section,
 20 that provides for all original equipment manufacturers in such industry to
 21 make service literature and functional parts, including tools and diagnos-
 22 tic equipment, available to independent repair facilities. This exemption
 23 shall apply only during the effective date of any such applicable memorandum
 24 of understanding.

25 (8) The provisions of subsection (5) of this section shall not apply
 26 with respect to any vehicle or engine that has been tuned or modified for the
 27 purpose of altering engine performance from original manufacturer settings,
 28 or to any vehicle or engine for which such an attempt to tune or modify has
 29 been made, including:

30 (a) Reset of an immobilizer system or security-related electronic mod-
 31 ule or deleting emissions settings;

32 (b) Reprogramming of an electronic processing unit or engine control
 33 unit;

34 (c) Change of any equipment or engine setting negatively affecting
 35 emissions or safety compliance; or

36 (d) Use of any software or device meant to alter factory engine settings
 37 in order to modify engine performance.

38 (9) This section applies with respect to electronic equipment sold on
 39 or after July 1, 2020.

40 SECTION 3. That Section 48-103, Idaho Code, be, and the same is hereby
 41 amended to read as follows:

42 48-103. DEFINITIONS. As used in this act:

43 (1) "Consumer" means any person or entity that purchases electronic
 44 equipment. This shall include any person or entity that purchases elec-
 45 tronic equipment that was previously used by another person or entity. This
 46 definition does not create or change current warranty requirements provided
 47 by the original equipment manufacturer.

1 (2) "Electronic equipment" means an electronic device containing a mi-
 2 croprocessor and originally manufactured for distribution and sale in the
 3 United States for general consumer purchase, including but not limited to:

4 (a) Smartphones, electronic reading devices, tablets, and personal
 5 computers, including laptop computers;

6 (b) Home appliances, including ovens, stoves, microwave ovens, dish-
 7 washers, washing machines, clothes dryers, air conditioning units,
 8 furnaces, or other similar equipment;

9 (c) Electronic entertainment products, including televisions, video
 10 game consoles, and home audio equipment;

11 (d) Farm equipment, including combines, tractors, implements, self-
 12 propelled equipment, and related attachments and implements;

13 (e) Motorcycles and mopeds, as defined in section 49-114, Idaho Code;

14 (f) All-terrain vehicles, utility type vehicles, specialty off-high-
 15 way vehicles, snowmobiles, and motorbikes, as defined in section
 16 67-7101, Idaho Code; and

17 (g) Recreational vehicles, including motor homes, travel trailers, and
 18 camping trailers, with or without motive power. Electronic equipment
 19 included as part of the original equipment package that is not inte-
 20 grated into an engine or permanently attached as a fixture shall not be
 21 considered part of a recreational vehicle for purposes of this section.

22 (3) "Idaho commerce" means any economic activity occurring wholly or
 23 partly within the state of Idaho, or ~~which~~ that affects economic activity
 24 within the state of Idaho.

25 (24) "Independent repair facility" means a person or business operat-
 26 ing in Idaho that is not affiliated with or controlled by an original equip-
 27 ment manufacturer or an original equipment manufacturer's authorized dealer
 28 that diagnoses, services, maintains, or repairs electronic equipment.

29 (5) "Original equipment manufacturer" means any person engaged in the
 30 business of making or assembling electronic equipment.

31 (6) "Person" means any natural person, corporation, partnership,
 32 trust, association, or any other legal or commercial entity.

33 SECTION 4. That Chapter 1, Title 48, Idaho Code, be, and the same is
 34 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 35 ignated as Section 48-105A, Idaho Code, and to read as follows:

36 48-105A. RIGHT TO REPAIR -- LIMITATION OF ORIGINAL EQUIPMENT MANUFAC-
 37 TURER REPAIR RESTRICTIONS -- LEGISLATIVE INTENT. (1) It is the intent of the
 38 legislature that antitrust laws maintain freedom of commerce by suppressing
 39 the restraint of competition and attempts to monopolize by individuals and
 40 corporations. Pursuant to this intent, such laws should preserve competi-
 41 tion by outlawing coercive and harmful business practices, including the re-
 42 straint of competition with respect to product repair.

43 (2) It is recognized by the legislature that the nature of electronic
 44 products presents a unique opportunity for original equipment manufacturers
 45 to control repair as to a broad range of products to the detriment of con-
 46 sumers as well as independent repair facilities and workers.

47 (3) It is the intent of the legislature that an original equipment man-
 48 ufacturer that sells electronic equipment in Idaho shall not control repair
 49 such that a consumer's only choice for repair of such electronic equipment is

1 through original equipment manufacturer-owned or manufacturer-controlled
2 repair facilities, whether by contract or otherwise.

3 (4) It is the intent of the legislature that an original equipment man-
4 ufacturer that controls repair of electronic equipment is engaged in an un-
5 reasonable restraint of trade or commerce as well as an attempt to monopolize
6 a line of Idaho commerce pursuant to this chapter.

7 SECTION 5. That Chapter 1, Title 48, Idaho Code, be, and the same is
8 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
9 ignated as Section 48-105B, Idaho Code, and to read as follows:

10 48-105B. RIGHT TO REPAIR -- LIMITATION OF ORIGINAL EQUIPMENT MANU-
11 FACTURER REPAIR RESTRICTIONS. (1) An original equipment manufacturer that
12 sells electronic equipment in Idaho shall not control repair such that a
13 consumer's only choice for repair of such electronic equipment is through
14 manufacturer-owned or manufacturer-controlled repair facilities, whether
15 by contract or otherwise. An original equipment manufacturer that controls
16 repair of electronic equipment is engaged in an unreasonable restraint of
17 trade or commerce as well as an attempt to monopolize a line of Idaho com-
18 merce.

19 (2) Original equipment manufacturer control of electronic equipment
20 repair shall include but not be limited to:

21 (a) Limiting repair to facilities that an original equipment manufac-
22 turer owns or controls, whether by contract or otherwise;

23 (b) Failing to make service literature and functional parts available
24 to independent repair facilities or consumers;

25 (c) Designing a product such that it cannot be diagnosed, repaired,
26 or disassembled without proprietary tools, diagnostic equipment, or
27 software that is not made available to independent repair shops and con-
28 sumers;

29 (d) Voiding the warranty of a product unless repair is conducted by an
30 original equipment manufacturer-owned or manufacturer-controlled re-
31 pair shop; or

32 (e) Causing a product to fail or its performance to be reduced if it
33 is not repaired by an original equipment manufacturer-owned or manufac-
34 turer-controlled repair shop or if it is repaired or attempted to be re-
35 paired by an independent repair shop or consumer.

36 (3) Notwithstanding the provisions of this section, it shall not be an
37 unreasonable restraint of trade or commerce or an attempt to monopolize a
38 line of Idaho commerce for an original equipment manufacturer to void the
39 warranty of any vehicle or engine that has been, or that has been attempted
40 to be, tuned or modified for the purpose of altering engine performance from
41 original manufacturer settings, including:

42 (a) Reset of an immobilizer system or security-related electronic mod-
43 ule or deleting emissions settings;

44 (b) Reprogramming of an electronic processing unit or engine control
45 unit;

46 (c) Change of any equipment or engine setting negatively affecting
47 emissions or safety compliance; or

48 (d) Use of any software or device meant to alter factory engine settings
49 in order to modify engine performance.