



Testimony of

DANA A. DORAN
Executive Director
Professional Logging Contractors of the Northeast

**Before the Senate Committee on Agriculture regarding H.81, An Act Relating to
Fair Repair of Agricultural Equipment**

Thursday, February 15, 2024

Senator Starr, Senator Collamore and members of the Senate Committee on Agriculture, my name is Dana Doran, and I am the Executive Director of the Professional Logging Contractors of the Northeast (PLC). The PLC is a trade association that represents logging and associated trucking contractors throughout the Northeast, including here in the state of Vermont.

As background, the PLC is a trade association that was created in 1995 to represent logging and associated trucking contractors throughout the state of Maine. In May 2023, the membership voted to expand its presence to become a regional trade organization and begin representing contractors in the region, including the state of Vermont. The PLC now has three Board Members from Vermont, Sam Lincoln, Lincoln Farm Timber Harvesting, Randolph Center; Jack Bell, Longview Forest, Inc., Hartland; and Gabe Russo, Southwind Forestry, LLC, Pawlet and has also accepted 15 new contractor members from the state of Vermont since early October. The PLC is excited to represent VT harvesters and haulers during the 2024 legislative session.

I appear before you today on behalf of the membership of the PLC from Vermont to testify in qualified support of H.81, An Act Relating to Fair Repair of Agricultural Equipment. Our organization was not involved in the formulation of this legislation, nor were we involved in its dispensation in the House of Representatives in 2023. With that in mind, we have provided our opinion on similar legislation in the state of Maine (attached) and feel qualified to provide similar testimony here in Vermont.

I would like to state at the outset that the issue that this bill is trying to solve is not a state-based issue in reality and it likely deserves attention at a national level. Thus, ultimately, it is our opinion that Congress should take up issues like this as they involve interstate commerce and really should be settled at the federal level in the end. State based action could be challenged if they create one off solutions that put states at odds with one another. I can see something like this occurring if this bill does move forward and one of our members operates in multiple states, which occurs quite often in this industry. If a Vermont based contractor works in Massachusetts, New Hampshire or New York, what would happen if a machine breaks down? Would Vermont law still govern from this perspective or would it be state to state. I will not go

further into this issue for now as that is not what you asked me to testify on, but I did want to highlight it for your consideration.

With that in mind, the bill before you would empower our members and loggers in the state to make faster and less expensive repairs to the machines they use every day; the machines they use to support the forest economy and provide meaningful employment to hundreds of individuals in some of the most rural areas of the state. It would accomplish this by requiring original equipment manufacturers (OEMs) to make all the necessary tools, parts, manuals and diagnostic equipment needed to perform repairs available to loggers and the independent repair shops we often use. We believe that this is important, but we do not believe it should not be done for free, nor should it put the safety of individuals and/or warranties at risk.

We do not represent OEM's on this issue, but our members do have a lot in common as both loggers and equipment manufacturers are in business at the end of the day to make a profit. OEM's, like contractors, are not ATM machines and they should not be expected to give their intellectual property away without compensation and control. We live in a capitalistic economy and a free market is critical to its success. A free market with the ability to achieve upward mobility relies upon investment, creativity and taking risk with the opportunity for reward. Without this fundamental underpinning, it would put business investment at risk for fear that this type of ingenuity could be undermined, removing the incentive to be in business in the first place.

From our perspective, as long as the contractor that purchases the equipment can also purchase necessary tools, parts, manuals, diagnostic equipment and necessary training to troubleshoot and repair their own equipment, keeping in mind warranty and other legal requirements, we believe that this should satisfy our membership in terms of the issues that this legislation intends to correct. However, there must be an understanding that not all repairs nor diagnostics can be done safely by anyone who can turn a wrench. These are complex machines with complex electronics. Some of the systems in the machines have chemicals in them that require special training and certifications to handle. Some of these chemicals have been mandated for use by Congress, such as diesel exhaust fluid in Tier IV engines, and not everyone is certified to work on some of these systems because of consumer protection and chemical safe handling law. Providing everyone who can pay a fee unlimited access does not necessarily ensure safety and does not ensure success. Therefore, please be cognizant that a one sized fits all approach is not necessarily cut and dry.

As I mentioned before, we are providing qualified support for this legislation and for the concept. If this bill is to move forward, it is our perspective that Section 4052, subsection #3b-c should be removed. We do not believe that the government should determine what is fair in terms of the provision, distribution, sale or pricing of intellectual property unless it defies current anti-trust law in Vermont and/or the United States. From our perspective, this Section goes too far in dictating terms of independent business relationships and dictating markets.

In closing, we believe that that this is a potential solution, but might need further deliberation, potentially at the federal level, to ensure it helps those in need, but doesn't create a law of unintended consequences.

I would like to thank the committee for providing the opportunity to present the opinion of our membership today and I would be happy to answer any questions you may have.

Proposed Amendment to LD 1487

LD 1487

Draft For Review by IDEA Committee

Proposed by Rep. Roberts

LD 1487 – An Act to Ensure That Residents of the State Have the Right to Repair Their Own Electronic Devices

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

§1500-O. Right to repair

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. “Authorized repair provider” means an individual or business that has an arrangement with an original equipment manufacturer for a definite or indefinite period under which the manufacturer grants to the individual or business a license to use a trade name, service mark or other proprietary identifier for the purposes of offering the services of diagnosis, maintenance or repair of digital electronic equipment under the name of the manufacturer or that has some other arrangement with the original equipment manufacturer to offer such diagnosis, maintenance and repair services on behalf of the manufacturer.

B. “Diagnosis” means the process of identifying the issue or issues causing digital electronic equipment to not be in fully working order.

C. “Digital electronic equipment” or “equipment” means any hardware product sold at retail for personal, household, family or home office use that has a wholesale price to a retailer, or to others outside of direct retail sale, of not less than fifty dollars and that depends in whole or in part on digital electronics embedded in or attached to the product for the product to function and for which the original equipment manufacturer makes available to authorized repair providers documentation, tools and parts.

“Digital electronic equipment” does not include:

(1) Any hardware product sold under a business-to-government or business-to-business contract that is not typically offered for sale directly by a retailer;

(2) Information technology equipment that is intended for use in critical infrastructure as defined in 42 U.S.C. § 5195c(e);

(3) Any product offered or sold by a motor vehicle manufacturer, manufacturer of motor vehicle equipment or motor vehicle dealer acting in such capacity;

(4) A medical device or a digital electronic product found in a medical setting including diagnostic, monitoring or control equipment or any product or service offered through such device or product;

(5) Off-road or non-road equipment offered or sold by a manufacturer, distributor, importer or dealer of such equipment, including, but not limited to, farm and utility tractors; farm implements; farm machinery; forestry equipment; industrial equipment; utility equipment; construction equipment; compact construction equipment; mining equipment; turf, yard and garden equipment; outdoor power equipment including portable generators; aviation, marine, all-terrain sports and recreational vehicles including racing vehicles; stand-alone or integrated stationary or mobile internal combustion engines; other power sources including, but not limited to, generator sets, electric or battery and fuel cell power; power tools; and any tools, technology, attachments, accessories, components or repair parts for any such equipment;

(6) Commercial and industrial electrical equipment, including power distribution equipment such as telecommunications network infrastructure; commercial visual display equipment; medium or low voltage switchgear and transformers; power control equipment such as medium or low voltage motor control and drives; power quality equipment such as uninterruptable power supplies; remote power panels; power distribution units and static or transfer switches; and any tools, technology, attachments, accessories, components or repair parts for any such equipment;

(7) An electronic bicycle offered or sold by the manufacturer, distributor, importer, retailer or dealer of the electronic bicycle;

(8) A home appliance that has a digital electronic product embedded within it including, but not limited to, refrigerators, ovens, microwaves, air conditioning, heating units, motorized shades, lighting control systems and security devices or alarm systems, including any related software or components;

(9) Safety communications equipment intended to be used for emergency response or prevention purposes by a police, fire or medical and emergency rescue services agency or other emergency service organization; and

(10) A video game console including, but not limited to, a video game console machine, a handheld video game console device or other similar device or system, including any associated components or peripherals.

D. "Documentation" means, with respect to digital electronic equipment, a manual, diagram, reporting output, service code description or similar kind of information required for effecting the services of diagnosis, maintenance or repair of equipment manufactured or sold by an original equipment manufacturer and made available to an

authorized repair provider by the manufacturer to facilitate the diagnosis, maintenance or repair of the equipment.

E. “Fair and reasonable terms” means, with respect to documentation, parts and tools required for the diagnosis, maintenance and repair of digital electronic equipment, that such documentation, parts and tools are made available by the original equipment manufacturer on commercially reasonable terms that are fair to all parties, including the original equipment manufacturer and authorized repair providers and that:

(1) With respect to documentation required for repair, that such documentation is made available by the original equipment manufacturer:

(a) On terms that do not require the recipient of the documentation to be or to become an authorized repair provider; and

(b) At no charge, except that, when the documentation is requested in physical printed form, the manufacturer may require payment for the reasonable actual costs of preparing and sending the printed documentation;

(2) With respect to tools required for repair, that such tools are made available by the original equipment manufacturer:

(a) On terms that do not require the recipient of the tool to be or to become an authorized repair provider;

(b) Without any impediments to use, unless such impediments apply to an authorized repair provider accessing or using the tool to diagnose, maintain or repair the equipment using parts provided by the manufacturer; and

(c) At no charge for use or operation of the tool, except that:

(i) The manufacturer may require the payment of costs for use or operation of the tool if those costs are equivalent to the lowest actual costs the manufacturer requires an authorized repair provider to pay for the use or operation of the tool and include any discount, rebate or other financial incentive offered to the authorized repair provider by the manufacturer; and

(ii) When the tool is requested in physical form, the manufacturer may require payment for the reasonable, actual costs of procuring, preparing and sending the tool; and

(3) With respect to parts required for repair, that such parts are made available by the original equipment manufacturer either directly or through an authorized distributor or repair provider:

(a) At reasonable costs and on terms under which an original equipment manufacturer offers the part to an authorized repair provider; and

(b) On terms that do not require the recipient of the part to be or to become an authorized repair provider;

F. "Independent repair provider" means an individual or business operating in the State, that is not and is not affiliated with an authorized repair provider and that is engaged in diagnosing, maintaining and repairing digital electronic equipment.

G. "Maintenance" means, with respect to digital electronic equipment, any action necessary to keep currently working digital electronic equipment in fully working order.

H. "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant or other similar or related article, including a component part or accessory, as defined in the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h) that is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease in humans or other animals.

I. "Modification" or "modify" means, with respect to digital electronic equipment, any alteration to the equipment that is not maintenance and not repair.

J. "Motor vehicle" has the same meaning as in section 1171, subsection 11 and includes any component part of the motor vehicle

K. "Motor vehicle dealer" means an individual or business engaged in the selling or leasing motor vehicles pursuant to a franchise agreement, that has obtained a license under applicable vehicle and traffic laws and that, pursuant to the franchise agreement, is engaged in diagnosing, maintaining and repairing motor vehicles and motor vehicle engines.

L. "Motor vehicle manufacturer" means a business engaged in the manufacturing or assembling of motor vehicles.

M. "Original equipment manufacturer" or "manufacturer" means a business engaged in the selling or leasing of or in otherwise supplying new digital electronic equipment manufactured by or on behalf of the business.

N. "Owner" means an individual or business that owns or leases digital electronic equipment purchased or used in the State.

O. "Part" means, with respect to digital electronic equipment, any replacement part or assembly of parts, either new or used, or their equivalents, made available by an original equipment manufacturer to an authorized repair provider for maintaining or repairing digital electronic equipment manufactured or sold by the manufacturer. "Part" does not include printed circuit board assemblies that may allow device cloning in violation of 18 U.S.C. §1029 or other applicable law.

P. "Repair" means, with respect to digital electronic equipment, any action necessary to restore the equipment to fully working order. "Repair" does not include post-sale modifications that alter the originally intended functioning of the digital electronic equipment.

Q. "Tool" means, with respect to digital electronic equipment, a software program, hardware implement or other apparatus, or its equivalent, made available by an original manufacturer to an authorized repair provider and used for diagnosing, maintaining or repairing digital electronic equipment manufactured or sold by the manufacturer, including software or other mechanisms that provide, program or pair a new part, calibrate functionality or perform any other function required to repair the original part.

R. "Trade secret" means anything tangible or intangible or electronically stored or kept that constitutes, represents, evidences or records intellectual property, including secret or confidentially-held designs, processes, procedures, formulas, inventions or improvements or secret or confidentially-held scientific, technical, merchandising, production, financial, business or management information or other intellectual property that falls within the meaning of a trade secret under 18 U.S.C. §1839.

2. Original equipment manufacturers; requirement. Beginning August 1, 2025 and except as otherwise provided in this section, an original equipment manufacturer of digital electronic equipment shall make available on fair and reasonable terms to any independent repair provider or owner of the equipment any documentation, parts or tools, or their equivalents, required for the diagnosis, maintenance or repair of the equipment and that the manufacturer makes available to an authorized repair provider.

A. Documentation, parts or tools must be made available pursuant to this subsection within one year after the date the digital electronic equipment is first sold in the State, except that the requirements of this section do not apply to digital electronic equipment that was originally manufactured by the original equipment manufacturer and first sold or used in the State prior to August 1, 2025.

B. The requirements in this subsection apply only to documentation, parts and tools for the diagnosis, maintenance and repair of digital electronic equipment outside of the original equipment manufacturer's warranty and do not apply to documentation, parts and tools provided by the original equipment manufacturer for in-warranty repairs.

C. An original equipment manufacturer may elect to alternatively comply with the requirements of this section by providing to the original purchaser of digital electronic

equipment subject to the requirements of this section a reimbursement or the equivalent or better and readily available replacement digital electronic equipment at a price that is no more than the total cost of the sum of the parts of the equipment.

3. Additional limitations and exclusions. Notwithstanding any provision of this section to the contrary:

A. An original equipment manufacturer is not required to:

(1) Provide or make available documentation, parts or tools to a repair provider or owner, if:

(a) The documentation, part or tool is not or is no longer provided by the original equipment manufacturer or made available to authorized repair providers of the manufacturer, including where the manufacturer performs related repairs solely in-house or through a corporate affiliate;

(b) The documentation, part or tool is no longer available to the original equipment manufacturer; or

(c) The documentation or tool is used by the original equipment manufacturer only to perform no-cost diagnostic services virtually through telephone, internet, chat, email or similar means that do not involve the manufacturer physically handling the owner's equipment, unless the manufacturer also makes that documentation or tool available to persons unaffiliated with the manufacturer;

(2) Divulge any trade secret, including documentation that includes, but is not limited to, schematics and bill of materials involving printed motherboards;

(3) License any intellectual property, including copyrights or patents, to any independent repair provider or owner;

(4) Make available to an independent repair provider or owner documentation, parts or tools that would disable, reset or override electronic security locks or other security-related measures or functions or disable or override anti-theft security measures set by the owner of the equipment;

(5) Provide documentation, parts or tools for any digital electronic equipment where reconditioning or repair of the equipment is prohibited by law, regulation or building or electrical code;

(6) Provide or make available source code.

(7) Provide documentation, parts or tools for repair of digital electronic equipment critical to the safety of life or health of individuals or for repairs that

could threaten the safety of life or health of individuals, including repairs to digital electronic equipment with internal switch-mode power supplies;

(8) Provide documentation or tools used exclusively by the original equipment manufacturer for diagnosis, maintenance or repairs completed by machines that operate on several digital electronic equipment products simultaneously or otherwise for purposes of large scale efficiency as long as the manufacturer makes available to independent repair providers and owners sufficient alternative documentation and tools to diagnose, maintain or repair the equipment; or

(9) Warrant any repairs provided by independent repair providers or owners;

B. An original equipment manufacturer and an authorized repair provider are not required to:

(1) Provide an independent repair provider or owner any information, other than documentation, that is provided by the original equipment manufacturer to an authorized repair provider;

(2) Make available any documentation, parts or tools for the purposes of modifying or making modifications to any digital electronic equipment; or

(3) Make available any documentation, parts or tools in a manner that is inconsistent with or in violation of applicable federal or state law;

C. An original equipment manufacturer may:

(1) Make available documentation, parts or tools to an independent repair provider or owner directly or through an authorized repair provider or an authorized third-party provider.

(a) Nothing in this section may be construed to require an authorized repair provider or authorized third-party provider to provide such documentation, parts or tools to an independent repair provider or owner.

(b) An authorized repair provider may make documentation, parts or tools available to an independent repair provider or owner as long as the authorized repair provider is contractually permitted by the original equipment manufacturer to provide and not otherwise prohibited from providing the documentation, parts or tools;

(2) Restrict access to certain secure parts of a device by an independent repair provider or owner as long as the access restriction does not prevent the independent repair provider or owner from completing repairs that can otherwise be completed by an authorized repair provider;

(3) Require remote authorization or an internet connection before independent repair providers or owners may use provided parts or tools;

(4) Establish reasonable training and certification programs for repair providers and require ongoing certification to such programs as a condition for a repair provider's receipt of documentation, parts or tools;

(5) Require that independent repair providers and owners agree to reasonable commercial terms, including disclosures regarding the use of non-genuine or used parts; and

(6) Provide to independent repair providers or owners parts that pre-assembled with other parts rather than as individual components, such as integrated batteries, provided that such pre-assembled parts or their equivalents are also made available to authorized repair providers;

D. An original equipment manufacturer is not liable for:

(1) Any act in accordance with this section that is reasonably necessary to protect the privacy, security or digital safety of a user of digital electronic equipment; and

(2) Improper use of personal data or any data privacy or security breach in connection with repair, diagnosis, maintenance or modification of digital electronic equipment by an independent repair provider or owner; and

E. An original equipment manufacturer and an authorized repair provider are not liable for:

(1) Any damage or injury to any digital electronic equipment, person or property that occurs as a result of repair, diagnosis, maintenance or modification performed by an independent repair provider or owner; and

(2) Any other use of documentation, parts or tools provided by the manufacturer, including, but not limited to, any indirect, incidental, special or consequential damages, any loss of data, privacy or profits or any inability to use or reduced functionality of the digital electronic equipment.

Nothing in this section may be construed to abrogate, interfere with, contradict or alter the terms of any agreement between an original equipment manufacturer and an authorized repair provider, including, but not limited to, the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to such an authorized repair agreement, except that any provision in such an authorized repair agreement that purports to waive, avoid, restrict or limit an original manufacturer's compliance with this section is void and unenforceable.

4. Written notice required. Before repairing digital electronic equipment subject to the requirements of this section, an independent repair provider shall provide to a customer and publish on the provider's website and post in the provider's place of business a written notice that contains the following information:

A. Information that the independent repair provider is not an authorized repair provider for the digital electronic equipment;

B. Information that the consumer should review the terms and conditions of any warranty for the digital electronic equipment as repairs not performed by an authorized repair provider may affect the warranty;

C. Information that warranties for consumer products are governed by the federal Magnuson-Moss Warranty Act, 15 U.S.C. §2301, which:

(1) Gives consumers rights and protections that apply over conflicting provisions in the warranty for the consumer product;

(2) Provides that a warranty for the consumer product cannot require maintenance and repairs to be performed only by an authorized repair provider;

(3) Provides that if damage to the consumer product is shown to be caused by equipment not offered or sold by the original equipment manufacturer or by faulty repair performed by a non-authorized repair provider, that damage may not be covered by the warranty but the warranty may otherwise remain in effect; and

D. Information regarding the required disclosures outlined in subsection 5.

5. Consumer bill of rights. An independent repair provider that conducts repairs of digital electronic equipment subject to the requirements of this section using documentation, parts or tools provided by an original equipment manufacturer pursuant to this section is required to:

A. Disclose to consumers in writing and obtain a written acknowledgment of the following prior to the repair of such digital electronic equipment:

(1) For each instance of service provided, the parts, if any, that were not provided or produced by the original equipment manufacturer, the name of the parts provider and any complaints about the quality of such parts that the independent repair provider knows or has reason to know;

(2) If used parts are to be used during the repair, the duration and type of the part's previous use;

(3) The total anticipated cost of the repair, including the itemized cost of parts and labor;

(4) Whether the technician performing the repair is certified or has completed training to repair such digital electronic equipment, including whether the technician has undergone training required by the original equipment manufacturer to ensure safe and effective repairs;

(5) Whether the repair procedure complies with any applicable building or electrical code;

(6) That there is a risk of damage to digital electronic equipment during the repair, including, but not limited to, damage to battery life or software functionality;

(7) That there is a risk of physical harm to the consumer from an improper repair, including, but not limited to, increased risk of digital electronic equipment fire from faulty battery installation; and

(8) Any exposure of the consumer's personal data that may be involved in the repair, including access to personal data by independent repair provider's staff, and the protections that the independent repair provider will take to safeguard personal data;

B. Maintain documentation of all repairs, including whether such repairs involved parts not provided or produced by original equipment manufacturers and provide such documentation to consumers once repairs are completed; and

C. Submit to any publicly accessible registry of such repairs certain data regarding all digital electronic equipment repairs performed without original equipment manufacturer authorization, including the make, model, serial number, date of repair service and summary of service performed, but not including any personal data regarding the consumer.

The independent repair provider may alternatively comply with the requirements of this paragraph by permanently attaching a notice of repair containing the provider's own brand name to the digital electronic equipment with such brand name in a size no smaller than the brand name of the original equipment manufacturer.

6. Enforcement. The Attorney General shall enforce the requirements of this section and, in accordance with paragraph A, may initiate an action on behalf of the State to seek an injunction to restrain any violations of this section and obtain any relief as authorized pursuant to the Maine Unfair Trade Practices Act.

A. Prior to initiating any action in accordance with this subsection against any individual or business, the Attorney General shall provide the individual or business 30 days' written notice that identifies the specific provisions of this section the Attorney General alleges have been or are being violated.

(1) The written notice provided by the Attorney General must be delivered by certified mail and by first-class mail with proof of mailing.

(2) Except as provided in subparagraph (3), if within the 30-day period, the individual or business cures the violation described in the notice and provides the Attorney General an express written statement that the alleged violations have been cured and that no such further violations shall occur, the Attorney General may not initiate an action against the individual or business pursuant to this subsection.

(3) If subsequent to 30-day period or following the submission by the individual or business of the express written statement described in subparagraph (2), the individual or business continues to violate this section, the Attorney General may initiate an action in accordance with this subsection.

B. Nothing in section may be construed to create an individual or private right of action, or to provide the basis for, or be subject to, an individual or private right of action for violations of any parts of this section.

SUMMARY

This amendment replaces the bill. Like the bill, it establishes a requirement that, beginning August 1, 2025, the original equipment manufacturer of digital electronic equipment must make available on fair and reasonable terms to any independent repair provider or owner of the equipment any documentation, parts or tools required for the diagnosis, maintenance or repair of the equipment and that the manufacturer makes available to an authorized repair provider. Subject to additional limitations and exclusions provided in the amendment, the original equipment manufacturer must make such documentation, parts or tools available within one year after the date the digital electronic equipment is first sold in the State, excluding digital electronic equipment originally manufactured and first sold or used in the State prior to August 1, 2025.