

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Agriculture, Food Resiliency, and Forestry to which was  
3 referred House Bill No. 81 entitled “An act relating to fair repair of agricultural  
4 equipment” respectfully reports that it has considered the same and  
5 recommends that the bill be amended by striking out all after the enacting  
6 clause and inserting in lieu thereof the following:

7 Sec. 1. SHORT TITLE

8 This act may be cited as the Fair Repair Act.

9 Sec. 2. 9 V.S.A. chapter 106 is added to read:

10 CHAPTER 106. AGRICULTURAL EQUIPMENT; FAIR REPAIR

11 § 4051. DEFINITIONS

12 As used in this chapter:

13 (1) “Agricultural equipment” means a device, part of a device, or an  
14 attachment to a device designed to be used principally for an agricultural  
15 purpose, including a tractor, trailer, or combine; implements for tillage,  
16 planting, or cultivation; and other equipment associated with livestock or crop  
17 production, horticulture, or floriculture.

18 (2)(A) “Authorized repair provider” means an individual or business  
19 that has an arrangement with the original equipment manufacturer under which  
20 the original equipment manufacturer grants to the individual or business a  
21 license to use a trade name, service mark, or other proprietary identifier for the

1 purposes of offering the services of diagnosis, maintenance, or repair of  
2 equipment under the name of the original equipment manufacturer or other  
3 arrangement with the original equipment manufacturer to offer such services  
4 on behalf of the original equipment manufacturer.

5 (B) An original equipment manufacturer that offers the services of  
6 diagnosis, maintenance, or repair of its own equipment and that does not have  
7 an arrangement described in this subdivision with an unaffiliated individual or  
8 business shall be considered an authorized repair provider with respect to such  
9 equipment.

10 (3) “Documentation” means any manual, diagram, reporting output,  
11 service code description, schematic diagram, security code, password, or other  
12 guidance or information used in effecting the services of diagnosis,  
13 maintenance, or repair of agricultural or forestry equipment.

14 (4) “Fair and reasonable terms” with respect to a part, tool, or  
15 documentation offered by an original equipment manufacturer, means the  
16 following:

17 (A) For parts:

18 (i) Cost. The cost for the part is fair to both parties, considering  
19 the agreed-upon conditions, promised quality, and timeliness of delivery.

20 (ii) Terms.

1                   (I) The terms governing the sale of the part do not impose on  
2                   an owner or an independent repair provider any substantial obligation to use, or  
3                   any restriction on the use of, the part to diagnose, maintain, or repair  
4                   equipment sold, leased, or otherwise supplied by the original farm equipment  
5                   manufacturer, including:

6                           (aa) a condition that the owner or independent repair  
7                           provider become an authorized repair provider of the original equipment  
8                           manufacturer; or

9                           (bb) a requirement that a part be registered, paired with, or  
10                           approved by the original equipment manufacturer or an authorized repair  
11                           provider before the part is operational.

12                   (II) Under the terms governing the sale of the part an original  
13                   equipment manufacturer does not impose any additional cost or burden that is  
14                   not reasonably necessary or is designed to be an impediment on the owner or  
15                   independent repair provider.

16                   (B) For tools:

17                           (i)(I) Cost. **Subject to subdivision (4)(i)(II) of this subsection,** the  
18                           cost for the tool does not exceed the lowest actual cost for which the original  
19                           equipment manufacturer offers the tool to an authorized repair provider,  
20                           including any discount, rebate, or other financial incentive offered to an  
21                           authorized repair provider.

1                    (II) An original equipment manufacturer may impose an  
2 additional charge if, and only to the extent to which, it incurs reasonable  
3 additional costs to make a tool available for sale to an independent repair  
4 provider or owner.

5                    (ii) Terms.

6                    (I) The terms governing the sale of the tool are equivalent to  
7 the most favorable terms under which an original equipment manufacturer  
8 offers the tool to an authorized repair provider, including the methods and  
9 timeliness of delivery of the tool.

10                    (II) The terms governing the sale of the tool do not impose on  
11 an owner or an independent repair provider any substantial obligation to use or  
12 any restriction on the use of the tool to diagnose, maintain, or repair equipment  
13 sold, leased, or otherwise supplied by the original equipment manufacturer,  
14 including:

15                    (aa) a condition that the owner or independent repair  
16 provider become an authorized repair provider of the original equipment  
17 manufacturer; or

18                    (bb) a requirement that a tool be registered, paired with, or  
19 approved by the original equipment manufacturer or an authorized repair  
20 provider before such part or tool is operational.

1                    (III) Under the terms governing the sale of the tool an original  
2                    equipment manufacturer does not impose any additional cost or burden that is  
3                    not reasonably necessary or is designed to be an impediment on the owner or  
4                    independent repair provider.

5                    (C) Documentation. The original equipment manufacturer makes  
6                    documentation available at no charge, except as follows:

7                    (i) If the documentation is requested in physical printed form, the  
8                    original equipment manufacturer may impose a charge for the reasonable  
9                    actual costs of preparing and sending the copy.

10                    (ii) If the original equipment manufacturer imposes a charge for  
11                    the documentation to an authorized repair provider in the normal course of  
12                    business, the manufacturer shall make the documentation available to an  
13                    independent repair provider or owner for the same cost and upon the same  
14                    terms.

15                    (5) “Forestry equipment” means nondivisible equipment, implements,  
16                    accessories, and contrivances used directly and principally in harvesting timber  
17                    or for on-site processing of wood forest products, including equipment used to  
18                    construct, maintain, or install infrastructure necessary to and associated with a  
19                    logging operation.

20                    (6) “Independent repair provider” means a person operating in this State,  
21                    that does not have an arrangement described in subdivision (2) of this section

1 with an original equipment manufacturer and that is engaged in the services of  
2 diagnosis, maintenance, or repair of agricultural or forestry equipment.

3 (7) “Original equipment manufacturer” means a person engaged in the  
4 business of selling, leasing, or otherwise supplying new agricultural or forestry  
5 equipment manufactured by or on behalf of itself to any individual or business.

6 (8) “Owner” means an individual or business that owns or leases  
7 agricultural or forestry equipment purchased or used in this State.

8 (9) “Part” means any replacement part, either new or used, made  
9 available by an original equipment manufacturer for purposes of effecting the  
10 services of maintenance or repair of agricultural or forestry equipment  
11 manufactured by or on behalf of, sold or otherwise supplied by, the original  
12 equipment manufacturer.

13 (10) “Tools” means any software program, hardware implement, or  
14 other apparatus used for diagnosis, maintenance, or repair of agricultural or  
15 forestry equipment, including software or other mechanisms that provision,  
16 program, or pair a new part, calibrate functionality, or perform any other  
17 function required to bring the product back to fully functional condition,  
18 including any updates.

19 ~~(11) “Trade secret” has the same meaning as in 9 V.S.A. § 4601.~~

20 (11)(A) “Trade secret” means information, including a formula, pattern,  
21 compilation, program, device, method, technique, or process, that:

1                    (i) derives independent economic value, actual or potential, from  
2                    not being generally known to, and not being readily ascertainable by proper  
3                    means by, other persons who can obtain economic value from its disclosure or  
4                    use; and

5                    (ii) is the subject of efforts that are reasonable under the  
6                    circumstances to maintain its secrecy.

7                    **(B) “Trade secret” does not include a part, tool, or documentation**  
8                    **that:**

9                    **(i) is necessary to perform diagnosis, maintenance, or repair of**  
10                    **original equipment; and**

11                    **(ii) an original equipment manufacturer sells or otherwise makes**  
12                    **available to an authorized repair provider in the ordinary course of business to**  
13                    **perform diagnosis, maintenance, or repair of original equipment.**

14                    § 4052. REQUIREMENTS.

15                    (a)(1) For agricultural or forestry equipment, and parts for such equipment,  
16                    sold or used in this State, an original equipment manufacturer shall make  
17                    available, for purposes of diagnosis, maintenance, or repair of such equipment,  
18                    to any independent repair provider, or to the owner of ~~electronics-enabled~~  
19                    agricultural or forestry equipment manufactured by or on behalf of, or sold or  
20                    otherwise supplied by, the original equipment manufacturer, on fair and  
21                    reasonable terms, documentation, parts, and tools required for the diagnosis,

1 maintenance, or repair of such equipment and parts for such equipment,  
2 including any updates to information.

3 (2) An original equipment manufacturer shall make the documentation,  
4 parts, and tools available either directly or through an authorized repair  
5 provider.

6 (b)(1) For equipment that contains an electronic security lock or other  
7 security-related function, the original equipment manufacturer shall make  
8 available to the owner and to independent repair providers, on fair and  
9 reasonable terms, any special documentation, tools, and parts needed to access  
10 and reset the lock or function when disabled in the course of diagnosis,  
11 maintenance, or repair of the equipment.

12 (2) The documentation, tools, and parts may be made available by  
13 means of an appropriate secure system.

14 § 4053. ENFORCEMENT

15 (a) A person who violates a provision of this chapter commits an unfair and  
16 deceptive act in trade and commerce in violation of 9 V.S.A. § 2453.

17 (b) The Attorney General has the same authority to make rules, conduct  
18 civil investigations, enter into assurances of discontinuance, and bring civil  
19 actions as provided in chapter 63, subchapter 1 of this title.

20 **Option B – “Substantially the Same Terms”**

21 **§ 4053. AVAILABILITY OF PARTS, TOOLS, AND DOCUMENTATION**



1           (a) Duty to make available parts, tools, and documentation.

2                   (1) An original equipment manufacturer shall offer for sale or otherwise  
3 make available to an independent repair provider or a consumer the parts,  
4 tools, and documentation that the original equipment manufacturer offers for  
5 sale or otherwise makes available to an authorized repair provider:

6                           (A) subject to subsection (b) of this section, on substantially the same  
7 terms; and

8                           (B) subject to subsection (c) of this section, for substantially the same  
9 cost.

10           (2) An original equipment manufacturer may make parts, tools, and  
11 documentation available to an independent repair provider or owner:

12                   (A) directly; or

13                   (B) through an authorized repair provider, [if permitted by an  
14 agreement between the manufacturer and the dealer or provider].

15           (b) Terms; limitations. Under the terms governing the sale or provision of  
16 parts, tools, and documentation, an original equipment manufacturer shall not  
17 impose on an independent repair provider or consumer:

18                   (1) a substantial obligation to use, or a restriction on the use of, the  
19 parts, tools, or documentation necessary to diagnose, maintain, or repair  
20 agricultural or forestry equipment, including:

1                    (i) a condition that the independent repair provider or owner  
2                    become an authorized repair provider of the original equipment manufacturer;

3                    or

4                    (ii) a requirement that a part, tool, or documentation be registered,  
5                    paired with, or approved by the original equipment manufacturer or an  
6                    authorized repair provider before the part, tool, or documentation is  
7                    operational;

8                    (2) an additional cost or burden that is not reasonably necessary or is  
9                    designed to be an impediment on the independent repair provider or owner; or

10                   (3) an additional burden or material change that adversely affects the  
11                   timeliness or method of delivering parts, tools, or documentation.

12                   (c) Costs; limitations.

13                   (1) Subject to subdivision (2) of this subsection, an original equipment  
14                   manufacturer shall offer for sale or otherwise make available parts, tools, and  
15                   documentation to an independent repair provider or an owner at a cost:

16                   (A) that is fair to both parties, considering the agreed-upon  
17                   conditions, promised quality, and timeliness of delivery; and

18                   (B) that includes any discount, rebate, or other financial incentive  
19                   offered to an authorized repair provider in the original equipment  
20                   manufacturer's normal course of business.

1           (2) An original equipment manufacturer may impose an additional  
2 charge for parts, tools, or documentation:

3           (A) if, and only to the extent to which, the manufacturer incurs  
4 additional costs to make parts, tools, and documentation available for sale, or  
5 otherwise available, to an independent repair provider or consumer; or

6           (B) the parties agree to a material change in cost or terms concerning  
7 the sale or provision of the parts, tools, or documentation and agree to an  
8 additional charge that is reasonably related to the additional costs arising from  
9 the material change.

10          (d) Security-protected devices. If original equipment includes an electronic  
11 security lock or other security-related function that must be unlocked or  
12 disabled to perform diagnosis, maintenance, or repair of the equipment, an  
13 original equipment manufacturer shall make available to an independent repair  
14 provider or consumer, on fair and reasonable terms, any parts, tools, and  
15 documentation necessary to unlock or disable the function, and to reset the  
16 lock or function after the diagnosis, maintenance, or repair is complete.

17       § 4054. LIMITATION

18          (a) This chapter does not require an original equipment manufacturer to  
19 divulge a trade secret to an owner or an independent service provider.

20          (b) This chapter does not alter the terms of any arrangement described in  
21 subdivision 4151(1) of this section in force between an authorized repair

1 provider and an original equipment manufacturer, including the performance  
2 or provision of warranty or recall repair work by an authorized repair provider  
3 on behalf of an original equipment manufacturer pursuant to such arrangement,  
4 except that any provision governing such an arrangement that purports to  
5 waive, avoid, restrict, or limit the original equipment manufacturer's  
6 obligations to comply with this chapter is void and unenforceable.

7 **Sec. 3. EFFECTIVE DATE**

8 This act shall take effect on July 1, 2023.

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(Committee vote: \_\_\_\_\_)

\_\_\_\_\_

Representative \_\_\_\_\_

FOR THE COMMITTEE