

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

19 (5) “Independent repair provider” means a person operating in this State,
20 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 (6) “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 (7) “Owner” means an individual or business that owns or leases
7 agricultural or forestry equipment purchased or used in this State.

8 (8) “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 (9) “Tools” means any software program, hardware implement, or other
14 apparatus used for diagnosis, maintenance, or repair of agricultural or forestry
15 equipment, including software or other mechanisms that provision, program, or
16 pair a new part, calibrate functionality, or perform any other function required
17 to bring the product back to fully functional condition, including any updates.

18 (10)(A) “Trade secret” means information, including a formula, pattern,
19 compilation, program, device, method, technique, or process, that:

20 (i) derives independent economic value, actual or potential, from
21 not being generally known to, and not being readily ascertainable by proper

1 means by, other persons who can obtain economic value from its disclosure or
2 use; and

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

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

7 (i) is necessary to perform diagnosis, maintenance, or repair of
8 agricultural or forestry equipment; and

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

13 **§ 4052. AVAILABILITY OF PARTS, TOOLS, AND DOCUMENTATION**

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

15 (1) An original equipment manufacturer shall offer for sale or otherwise
16 make available to an independent repair provider or owner the parts, tools, and
17 documentation that the original equipment manufacturer offers for sale or
18 otherwise makes available to an authorized repair provider:

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

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

3 (2) If agricultural or forestry equipment includes an electronic security
4 lock or other security-related function that must be unlocked or disabled to
5 perform diagnosis, maintenance, or repair of the equipment, an original
6 equipment manufacturer shall make available to an independent repair provider
7 or owner, any parts, tools, and documentation necessary to unlock or disable
8 the function, and to reset the lock or function after the diagnosis, maintenance,
9 or repair is complete.

10 (3) 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 owner:

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 owner; 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 § 4053. ENFORCEMENT

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

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

16 § 4054. APPLICATION; LIMITATIONS

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

19 (b) This chapter does not alter the terms of any arrangement described in
20 subdivision **4051(2)(A)** of this section in force between an authorized repair
21 provider and an original equipment manufacturer, including the performance

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

6 Sec. 3. EFFECTIVE DATE

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

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11 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE

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