

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development 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, as amended by the Committee on Agriculture, Food
6 Resiliency, and Forestry be further amended by striking out all after the
7 enacting clause and inserting in lieu thereof the following:

8 Sec. 1. SHORT TITLE

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

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

11 CHAPTER 106. AGRICULTURAL EQUIPMENT; FAIR REPAIR

12 § 4051. DEFINITIONS

13 As used in this chapter:

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

19 (2)(A) “Authorized repair provider” means an individual or business
20 that has an arrangement with the original equipment manufacturer under which
21 the original equipment manufacturer grants to the individual or business a

1 license to use a trade name, service mark, or other proprietary identifier for the
2 purposes of offering the services of diagnosis, maintenance, or repair of
3 equipment under the name of the original equipment manufacturer or other
4 arrangement with the original equipment manufacturer to offer such services
5 on behalf of the original equipment manufacturer.

6 (B) An original equipment manufacturer that offers the services of
7 diagnosis, maintenance, or repair of its own equipment and that does not have
8 an arrangement described in subdivision (2)(A) of this section with an
9 unaffiliated individual or business shall be considered an authorized repair
10 provider with respect to such equipment.

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

15 (3) “Documentation” means diagnostic and repair information relative
16 to the equipment that the manufacturer makes available to its dealers and
17 authorized repair facilities.

18 (4) “Forestry equipment” means nondivisible equipment, implements,
19 accessories, and contrivances used directly and principally in harvesting timber
20 or for on-site processing of wood forest products, including equipment used to

1 construct, maintain, or install infrastructure necessary to and associated with a
2 logging operation.

3 (5) “Independent repair provider” means a person operating in this State
4 that does not have an arrangement described in subdivision (2) of this section
5 with an original equipment manufacturer and that is engaged in the services of
6 diagnosis, maintenance, or repair of agricultural or forestry equipment.

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

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

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

17
18
19
20

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

6 (9) “Tools” means any diagnostic and repair information required to
7 return the agricultural or forestry equipment or part to a fully operational
8 condition.

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

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

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

17 (B) “Trade secret” does not include a part, tool, or documentation
18 that:

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

1 ~~(ii) an original equipment manufacturer sells or otherwise makes~~
2 ~~available to an authorized repair provider in the ordinary course of business to~~
3 ~~perform diagnosis, maintenance, or repair of agricultural or forestry~~
4 ~~equipment.~~

5 § 4052. AVAILABILITY OF PARTS, TOOLS, AND DOCUMENTATION

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

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

11 ~~(A) subject to subsection (b) of this section, on substantially the same~~
12 ~~terms; and~~

13 ~~(B) subject to subsection (c) of this section, for substantially the same~~
14 ~~cost.~~

15 (2) If agricultural or forestry equipment includes an electronic security
16 lock or other security-related function that must be unlocked or disabled to
17 perform diagnosis, maintenance, or repair of the equipment, an original
18 equipment manufacturer shall make available to an independent repair provider
19 or owner any parts, tools, and documentation necessary to unlock or disable
20 the function and to reset the lock or function after the diagnosis, maintenance,
21 or repair is complete.

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

3 (A) directly; or

4 (B) through an authorized repair provider, if permitted by an
5 agreement between the manufacturer and the dealer or provider.

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

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

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

15 (ii) a requirement that a part, tool, or documentation be registered,
16 paired with, or approved by the original equipment manufacturer or an
17 authorized repair provider before the part, tool, or documentation is
18 operational;

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

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

3 (c) Costs; limitations.

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

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

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

12 Under equitable terms for access to or receipt of any part pertaining to
13 agricultural equipment and in a manner that is (A) fair to both parties in light
14 of any agreed-upon conditions, the promised quality, and the timeliness of the
15 delivery; or (B) does not discourage or disincentivize repairs to be made by an
16 owner or an independent repair provider.

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

19 (A) if, and only to the extent to which, the manufacturer incurs
20 additional costs to make parts, tools, and documentation available for sale, or
21 otherwise available, to an independent repair provider or owner; or

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

5 § 4053. ENFORCEMENT

6 (a) A person who violates a provision of this chapter commits an unfair and
7 deceptive act in trade and commerce in violation of section § 2453 of this title.

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

11 § 4054. APPLICATION; LIMITATIONS

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

14 (b) This chapter does not alter the terms of any arrangement described in
15 subdivision 4051(2)(A) of this title in force between an authorized repair
16 provider and an original equipment manufacturer, including the performance
17 or provision of warranty or recall repair work by an authorized repair provider
18 on behalf of an original equipment manufacturer pursuant to such arrangement,
19 except that any provision governing such an arrangement that purports to
20 waive, avoid, restrict, or limit the original equipment manufacturer's
21 obligations to comply with this chapter is void and unenforceable.

1 Sec. 3. EFFECTIVE DATE

2 This act shall take effect on ~~July 1, 2023.~~ July 1, 2025.

3

4

5

6 (Committee vote: _____)

7

8

Representative _____

9

FOR THE COMMITTEE

10

11

12

13

14

15

16 (Committee vote: _____)

17

18

Representative _____

19

FOR THE COMMITTEE