

House Calendar

Thursday, April 6, 2023

93rd DAY OF THE BIENNIAL SESSION

House Convenes at 1:00 P.M.

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ORDERS OF THE DAY

ACTION CALENDAR

Third Reading

H. 282

An act relating to the Psychology Interjurisdictional Compact

Favorable with Amendment

H. 81

An act relating to fair repair of agricultural equipment

Rep. Templeman of Brownington, for the Committee on Agriculture, Food Resiliency, and Forestry, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. SHORT TITLE

This act may be cited as the Fair Repair Act.

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

CHAPTER 106. AGRICULTURAL EQUIPMENT; FAIR REPAIR

§ 4051. DEFINITIONS

As used in this chapter:

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

(2)(A) “Authorized repair provider” means an individual or business that has an arrangement with the original equipment manufacturer under which the original equipment 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 equipment under the name of the original equipment manufacturer or other arrangement with the original equipment manufacturer to offer such services on behalf of the original equipment manufacturer.

(B) An original equipment manufacturer that offers the services of diagnosis, maintenance, or repair of its own equipment and that does not have an arrangement described in subdivision (2)(A) of this section with an

unaffiliated individual or business shall be considered an authorized repair provider with respect to such equipment.

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

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

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

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

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

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

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

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

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

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

(B) "Trade secret" does not include a part, tool, or documentation that:

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

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

§ 4052. AVAILABILITY OF PARTS, TOOLS, AND DOCUMENTATION

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

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

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

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

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

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

(A) directly; or

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

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

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

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

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

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

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

(c) Costs; limitations.

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

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

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

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

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

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

§ 4053. ENFORCEMENT

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

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

§ 4054. APPLICATION; LIMITATIONS

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

(b) This chapter does not alter the terms of any arrangement described in subdivision 4051(2)(A) of this title in force between an authorized repair provider and an original equipment manufacturer, including 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 arrangement, except that any provision governing such an arrangement that purports to waive, avoid, restrict, or limit the original equipment manufacturer's obligations to comply with this chapter is void and unenforceable.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2023.

(Committee Vote: 9-2-0)

NOTICE CALENDAR

Favorable with Amendment

H. 495

An act relating to the approval of the amendment to the charter of the Town of Middlebury

Rep. Morgan of Milton, for the Committee on Government Operations and Military Affairs, recommends the bill be amended as follows:

In Sec. 3, transitional provision, by striking out “Annually, beginning” and inserting in lieu thereof the word “Beginning”.

(Committee Vote: 11-0-1)

Favorable

H. 488

An act relating to approval of the adoption of the charter of the Town of Ludlow

Rep. Boyden of Cambridge, for the Committee on Government Operations and Military Affairs, recommends the bill ought to pass.

(Committee Vote: 12-0-0)

H. 489

An act relating to approval of an amendment to the charter of the Town of Shelburne

Rep. Waters Evans of Charlotte, for the Committee on Government Operations and Military Affairs, recommends the bill ought to pass.

(Committee Vote: 12-0-0)

CONSENT CALENDAR

Concurrent Resolutions for Adoption Under Joint Rules 16a - 16d

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration in that member's chamber prior to adjournment of the next legislative day. Requests for floor consideration in either chamber should be communicated to the Senate Secretary's Office or the House Clerk's Office, as applicable. For text of resolutions, see Addendum to House Calendar.

H.C.R. 82

House concurrent resolution congratulating the 2022 St. Johnsbury Academy Hilltoppers boys' cross-country team on winning a second consecutive Division I championship

H.C.R. 83

House concurrent resolution congratulating the 2023 St. Johnsbury Academy Hilltoppers Division I boys' championship indoor track and field team

H.C.R. 84

House concurrent resolution congratulating the 2023 Burlington High School Seahorses girls' Nordic skiing team on winning a third consecutive Division I championship

H.C.R. 85

House concurrent resolution congratulating Sophia R. Boyle Hall on being named the recipient of the 2022 State and national school nursing awards

H.C.R. 86

House concurrent resolution designating April 18, 2023 as USS
VERMONT Day in Vermont

For Informational Purposes

NOTICE OF JFO GRANTS AND POSITIONS

Grants and Positions that have been submitted to the Joint Fiscal Committee by the Administration, under 32 V.S.A. §5(b)(3)(D):

JFO #3143: \$514,694.00 to the Agency of Human Services, Department of Vermont Health Access from the DHHS/ONC via Passthrough from the Association of State and Territorial Health Officials. Funds will be used to support Vermont's participation in the COVID-19 Immunization Data Exchange, Advancement and Sharing learning community with the aim of advancing immunization information and health information exchange sharing. *[Received March 23, 2023]*

JFO #3142: \$15,000.00 to Agency of Natural Resources, Department of Environmental Conservation from the Maine Geological Society. Funds will be used to identify contradictions in mapped geological formations across state lines in New England. *[Received March 23, 2023]*

JFO #3140: \$241,208.00 to Building and General Services, Vermont State Curator's Office from the Institute of Museum and Library Services. The FY2020 Save America's Treasures grant will restore and conserve Sculpture on the Highway, an outdoor collection of sixteen monumental marble and concrete sculptures created at two international sculpture symposia held in Vermont during the summers of 1968 and 1971. *[Received March 23, 2023]*

JFO #3139: \$644,469.00 to the Vermont Judiciary, Court Administrator's Office from the U.S. Department of Justice. The grant will support the VT Judiciary Commission on Mental Health, established in July 2022. The Commission is focused on addressing the needs of court-involved individuals with behavioral health issues. Funds will help develop training activities and materials for VT Judiciary staff. *[Received March 22, 2023]*

JFO #3138: One (1) limited-service position, Statewide Grants Administrator, to the Agency of Administration, Department of Finance and Management to cover increased grant activity due to the Covid-19 pandemic. The position is funded through Act 185 of 2022. Sec G.801 of the Act appropriates ARPA funds for administrative costs related to the pandemic. This position is funded through 12/31/2026. The grant packet can be found at:
<https://ljfo.vermont.gov/assets/grants-documents/ec01b0bea7/JFO-3138-packet.pdf>

[Received February 9, 2023]

JFO #3137: One (1) limited-service position to the Vermont Department of Health, Senior Health Asbestos and Lead Engineer, to perform senior professional level work to educate, advise on and enforce Vermont asbestos and lead control regulations. The position is funded through 9/30/2024 through an existing Environmental Protection Agency grant. The grant packet can be found at: <https://ljfo.vermont.gov/assets/grants-documents/a44b7c8cac/JFO-3137-packet-v2.pdf>

[Received 1/23/2023]

JFO #3136: \$5,000,000.00 to the Agency of Administration, Public Service Department, VT Community Broadband Board (VCBB) from the National Telecommunications and Information Administration, Broadband Equity, Access and Deployment Program to deliver broadband to unserved and underserved areas in Vermont. This is a 5-year grant and will fill in the technical gaps existing in the VCBB's program of broadband deployment. The grant packet can be found at: <https://ljfo.vermont.gov/assets/grants-documents/3d7b96fcb1/JFO-3136-packet.pdf>

[Received 1/23/2023]