

## Vermont S. 180: Vermont Fair Repair Act

### **Position:**

CNH Industrial (CNHI), manufacturers of Case IH and New Holland brands of farm equipment opposes Vermont S. 180 which seeks to make diagnostic and repair information, including repair technical updates and embedded software updates and corrections, available to any independent repair provider in the State.

### **Background:**

Digital Equipment Repair legislation was born out of the consumer electronics industry where consumers typically don't face potential costly risks associated with repair of consumer electronic products;



CNHI respects the long-standing tradition of equipment owners repairing their equipment and choosing their service providers. We work closely with our authorized dealer organization (Champlain Valley Equipment, in Vermont) to ensure that customers have access to highly trained, well equipped technical and repair personnel, who are supported by significant investment in repair parts, facilities and systems.

S. 180 is a consumer electronics bill that captures farm and construction equipment within. The issue of "Fair Repair" touches a number of critical topics ranging from environmental regulation, consumer safety, consumer training, dealer and manufacturer liability, to ultimate accountability that the customer's machine is operating in the manner and capability it was designed to. S. 180 addresses none of these critical topics.

### S. 180 fails to anticipate execution of the mandate in the off-road segment:

The "how and when" and realities of implementing diagnostics capability to consumers in an efficient and cost effective manner;

### S. 180 Over-reaches the intent of the bill:

- It is an over-reach to mandate the "release of diagnostic repair tools incorporating the same diagnostic, repair and remote communications capability that such manufacturer makes available to the "repair or engineering personnel employed by such manufacturer". Engineering personnel possess programming capabilities that allow for testing program code. This presents a clear opportunity for infringement of U.S. copyright law as well as dangerous machine manipulation.

- The U.S. Copyright Office ruling, issued in October, 2015, strikes a balance by giving the equipment owner limited access to embedded software for the purpose of assessing, repairing or modifying on-board control systems, while preventing the owner from transferring this authority to third parties. These limitations were deemed necessary to protect against potential infringement of the manufacturer's copyright interests.
- Access to information that would allow changes to a machine's data-management systems must be carefully controlled to ensure machine functionality, safety, and emissions compliance, and to preserve product warranties.
- S. 180 implies that manufacturers would be required to sell parts directly to consumers. This requirement infringes on existing contractual relationships with dealers.

**Industry is best equipped to solve the issue:**

- Over the last 12-months of research on the topic of "right-to-repair" we have been told by farmers, Farm Bureau representatives, state legislators, construction contractors and third party repair operations that:
  - Owners want to diagnose an equipment issue;
  - Owners want access to service manuals and;
  - Owners want to self-determine how to implement service for their equipment;
- The farm equipment industry has a long history of solving issues without legislative interference. The ultimate diagnostic solution must be efficient for farm producers and construction contractors e.g.:
  - Sensible standardization – where very little exists now;
  - Cost effective;
  - Scalable and executable in terms of access and ease of use;
  - Training and documentation;
  - Liability, licensing and warranty;
  - Third-party software commercial arrangements;

Industry is best served to satisfy this need, which is why the Association of Equipment Manufacturers (AEM and the Equipment Dealers Association (EDA) have announced an industry wide commitment (Statement of Principles) to provide electronic diagnostics, service tools, documentation and support to machine owners by the start of model year 2021.



We very much appreciate your consideration and we welcome the opportunity to create a solution that meets the needs of Vermont farmers and construction contractors..

Please feel free to call upon us if we may provide input.

Sincerely,

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**CNH Industrial America (CNHI)**

*CNHI is a global manufacturer of Case IH and New Holland brands of agricultural equipment, and, Case and New Holland brands of construction equipment. Our brands are sold and serviced by dealers in all 50 states and over 160 countries around the globe.*