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S.67

Introduced by Senators Pearson, Perchlik, Pollina and Sirotkin

Referred to Committee on

Date:

Subject: Commerce and trade; agriculture

Statement of purpose of bill as introduced: This bill proposes to promote choice and competition by requiring manufacturers of electronics-enabled equipment used in agriculture, animal husbandry, and ranching to make available to farmers, ranchers, and independent repair providers, on fair and reasonable terms, the documentation, parts, and tools used to diagnose, maintain, and repair such equipment.

An act relating to creating a right to repair agricultural equipment

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. SHORT TITLE

This act may be cited as the Agricultural Right-to-Repair Act.

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

CHAPTER 106: AGRICULTURAL EQUIPMENT; RIGHT TO REPAIR

§ 4151. DEFINITIONS

As used in this chapter:

1 (1) “Authorized repair provider” means an individual or business who is
2 unaffiliated with an original equipment manufacturer and who has an
3 arrangement with the original equipment manufacturer, for a definite or
4 indefinite period, under which the original equipment manufacturer grants to
5 the individual or business a license to use a trade name, service mark, or other
6 proprietary identifier for the purposes of offering the services of diagnosis,
7 maintenance, or repair of electronics-enabled agricultural equipment under the
8 name of the original equipment manufacturer, or other arrangement with the
9 original equipment manufacturer to offer such services on behalf of the
10 original equipment manufacturer. An original equipment manufacturer who
11 offers the services of diagnosis, maintenance, or repair of its own electronics-
12 enabled agricultural equipment, and who does not have an arrangement
13 described in this subdivision with an unaffiliated individual or business, shall
14 be considered an authorized repair provider with respect to such equipment.

15 (2) “Electronics-enabled agricultural equipment” or “equipment” means
16 any product, part of a product, or attachment to a product, when sold or leased
17 for use in farming, ranching, or other agriculture, that depends for its
18 functioning, in whole or in part, on digital electronics embedded in or attached
19 to it. The term includes a tractor, trailer, combine, tillage, planting, irrigation,
20 or cultivating implement, baler, unmanned aircraft system, or off-road vehicle.

1 “Electronics-enabled agricultural equipment” or “equipment” does not include
2 motor vehicles as defined in subdivision (8) of this section.

3 (3) “Documentation” means any manual, diagram, reporting output,
4 service code description, schematic, or other guidance or information used in
5 effecting the services of diagnosis, maintenance, or repair of electronics-
6 enabled agricultural equipment.

7 (4) “Embedded software” means any programmable instructions
8 provided on firmware delivered with electronics-enabled agricultural
9 equipment, or with a part for such equipment, for purposes of equipment
10 operation, including all relevant patches and fixes made by the manufacturer of
11 such equipment or part for these purposes.

12 (5) “Fair and reasonable terms” means the following in the context
13 specified:

14 (A) For obtaining a part or tool or documentation, “fair and
15 reasonable terms” means at costs and terms that are equivalent to the most
16 favorable costs and terms under which an original equipment manufacturer
17 offers the part, tool, or documentation to an authorized repair provider:

18 (i) accounting for any discount, rebate, convenient means of
19 delivery, means of enabling fully restored and updated functionality, rights of
20 use, or other incentive or preference the original equipment manufacturer
21 offers to an authorized repair provider, or any additional cost, burden, or

1 impediment the original equipment manufacturer imposes on an independent
2 repair provider;

3 (ii) not conditioned on or imposing a substantial obligation or
4 restriction that is not reasonably necessary for enabling the owner or
5 independent repair provider to engage in the diagnosis, maintenance, or repair
6 of electronics-enabled agricultural equipment made by or on behalf of the
7 original equipment manufacturer; and

8 (iii) not conditioned on an arrangement described in subdivision
9 (1) of this section.

10 (B) For documentation, including any relevant updates, “fair and
11 reasonable terms” also means at no charge, except that, when the
12 documentation is requested in physical printed form, a charge may be included
13 for the reasonable actual costs of preparing and sending the copy.

14 (C) For software tools, “fair and reasonable terms” also means at no
15 charge and without requiring authorization or internet access, or imposing
16 impediments to access or use, in the course of effecting the diagnosis,
17 maintenance, or repair and enabling full functionality of electronics-enabled
18 agricultural equipment, in a manner that impairs the efficient and cost-effective
19 performance of any of those activities.

20 (6) “Firmware” means a software program or set of instructions
21 programmed on electronics-enabled agricultural equipment, or on a part for

1 such equipment, to allow the equipment or part to communicate within itself or
2 with other computer hardware.

3 (7) “Independent repair provider” means an individual or business
4 operating in this State, who does not have an arrangement described in
5 subdivision (1) of this section with an original equipment manufacturer, and
6 who is not affiliated with any individual or business who has such an
7 arrangement, and who is engaged in the services of diagnosis, maintenance, or
8 repair of electronics-enabled agricultural equipment, except that an original
9 equipment manufacturer or, with respect to that original equipment
10 manufacturer, an individual or business who has such an arrangement with that
11 original equipment manufacturer, or who is affiliated with an individual or
12 business who has such an arrangement with that original equipment
13 manufacturer, shall be considered an independent repair provider for purposes
14 of those instances in which it engages in the services of diagnosis,
15 maintenance, or repair of electronics-enabled agricultural equipment that is not
16 manufactured by or sold under the name of that original equipment
17 manufacturer.

18 (8) “Motor vehicle” means a vehicle that is designed for transporting
19 persons or property on a street or highway and is certified by the manufacturer
20 under all applicable federal safety and emissions standards and requirements
21 for distribution and sale in the United States. Motor vehicle does not include:

1 (A) a motorcycle; or

2 (B) a recreational vehicle or an auto home equipped for habitation.

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

7 (10) “Owner” means an individual or business who owns or leases
8 electronics-enabled agricultural equipment purchased or used in this State.

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

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

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

20 § 4152. REQUIREMENTS.

1 (a) For electronics-enabled agricultural equipment, and parts for such
2 equipment, sold or used in this State, an original equipment manufacturer shall
3 make available, for purposes of diagnosis, maintenance, or repair of such
4 equipment, to any independent repair provider, or to the owner of electronics-
5 enabled agricultural equipment manufactured by or on behalf of, or sold or
6 otherwise supplied by, the original equipment manufacturer, on fair and
7 reasonable terms, documentation, parts, and tools, inclusive of any updates to
8 information or embedded software. Nothing in this subsection requires an
9 original equipment manufacturer to make available a part if the part is no
10 longer available to the original equipment manufacturer.

11 (b) For equipment that contains an electronic security lock or other
12 security-related function, the original equipment manufacturer shall make
13 available to the owner and to independent repair providers, on fair and
14 reasonable terms, any special documentation, tools, and parts needed to disable
15 the lock or function and to reset it when disabled in the course of diagnosis,
16 maintenance, or repair of the equipment. Such documentation, tools, and parts
17 may be made available by means of an appropriate secure system.

18 (c) When the original equipment manufacturer has made an express
19 warranty with respect to electronics-enabled agricultural equipment and the
20 wholesale price of the equipment is \$100.00 or more, the manufacturer shall
21 provide such parts, tools, and documentation as to enable the repair of the

1 equipment during the warranty period, at an equitable price and convenience of
2 delivery and of enabling functionality, in light of:

3 (1) the actual cost to the original equipment manufacturer to prepare and
4 distribute the part, tool, or documentation, exclusive of any research and
5 development costs incurred;

6 (2) the ability of owners and independent repair providers to afford the
7 part, tool, or documentation; and

8 (3) the means by which the part, tool, or documentation is distributed.

9 § 4153. ENFORCEMENT

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

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

15 § 4154. LIMITATION

16 (a) Nothing in this chapter shall be construed to require an original
17 equipment manufacturer to divulge a trade secret to an owner or an
18 independent service provider except as necessary to provide documentation,
19 parts, and tools on fair and reasonable terms.

20 (b) No provision in this chapter shall be construed to alter the terms of any
21 arrangement described in subdivision 4151(1) of this section in force between

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

8 Sec. 3. APPLICABILITY

9 This act applies with respect to equipment sold or in use on or after the
10 effective date of this act.

11 Sec. 4. EFFECTIVE DATE

12 This act shall take effect on July 1, 2021.