H.81


Referred to Committee on

Date:

Subject: Commerce and trade; consumer protection

Statement of purpose of bill as introduced: This bill proposes to ensure the fair repair of agricultural equipment.

An act relating to fair repair of 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 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) “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. 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 this subdivision 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) “Fair and reasonable terms” with respect to a part, tool, software, or documentation offered by an original equipment manufacturer, means the following:

(A) For parts:

(i) Costs are fair to both parties, considering the agreed-upon conditions, promised quality, and timeliness of delivery. Fair and reasonable costs are subject to statutory and regulatory limitations.

(ii) Terms:

(I) do not impose on an owner or an independent repair provider any substantial obligation to use or any restriction on the use of the part to diagnose, maintain, or repair equipment sold, leased, or otherwise supplied by the original farm equipment manufacturer, including a condition that the owner or independent repair provider become an authorized repair provider of the original equipment manufacturer, or a requirement that a part
be registered, paired with, or approved by the original equipment manufacturer or an authorized repair provider before such part is operational; and

(II) prohibit an original equipment manufacturer from imposing any additional cost or burden that is not reasonably necessary or is designed to be an impediment on the owner or independent repair provider.

(B) For tools and documentation:

(i) Costs are equivalent to the lowest actual cost for which the original equipment manufacturer offers the tool, software, or documentation to an authorized repair provider, including any discount, rebate, or other financial incentive offered to an authorized repair provider.

(ii) Terms:

(I) are equivalent to the most favorable terms under which an original equipment manufacturer offers the part, tool, software, or documentation to an authorized repair provider, including the methods and timeliness of delivery of the part, tool, software, or documentation;

(II) do not impose on an owner or an independent repair provider any substantial obligation to use or any restriction on the use of the tool, software, or documentation to diagnose, maintain, or repair equipment sold, leased, or otherwise supplied by the original equipment manufacturer, including a condition that the owner or independent repair provider become an authorized repair provider of the original equipment manufacturer, or a
requirement that a tool be registered, paired with, or approved by the original
equipment manufacturer or an authorized repair provider before such part or
tool is operational; and

   (III) prohibit an original equipment manufacturer from
imposing any additional cost or burden that is not reasonably necessary or is
designed to be an impediment on the owner or independent repair provider.

   (C) For documentation, the documentation is made available by the
original equipment manufacturer at no charge, except that, when the
documentation is requested in physical printed form, a charge may be included
for the reasonable actual costs of preparing and sending the copy.

   (5) “Forestry equipment” means nondivisible equipment, implements,
accessories, and contrivances used directly and principally in cutting or
removing timber or other sold wood forest products, including equipment used
to construct, maintain, or install infrastructure necessary to and associated with
a logging operation.

   (6) “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.
(7) “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.

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

(9) “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.

(10) “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.

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

§ 4052. REQUIREMENTS.

(a) For agricultural or forestry equipment, and parts for such equipment, sold or used in this State, an original equipment manufacturer shall make available, for purposes of diagnosis, maintenance, or repair of such equipment,
to any independent repair provider, or to the owner of electronics-enabled
agricultural equipment manufactured by or on behalf of, or sold or otherwise
supplied by, the original equipment manufacturer, on fair and reasonable
terms, documentation, parts, and tools, required for the diagnosis, maintenance,
or repair of such equipment and parts for such equipment, including any
updates to information. An original equipment manufacturer shall make the
documentation, parts, and tools available either directly or through an
authorized repair provider.

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

§ 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 9 V.S.A § 2453.

(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. LIMITATION

(a) Nothing in this chapter shall be construed to require an original equipment manufacturer to divulge a trade secret to an owner or an independent service provider.

(b) No provision in this chapter shall be construed to alter the terms of any arrangement described in subdivision 4151(1) of this section 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 in such terms that purports to waive, avoid, restrict, or limit the original equipment manufacturer’s obligations to comply with this chapter shall be void and unenforceable.

Sec. 3. APPLICABILITY

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

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2023.