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H.81

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An act relating to fair repair of agricultural equipment

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The House concurs in the Senate proposal of amendment with further

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proposal of amendment thereto by striking out all after the enacting clause and

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inserting in lieu thereof the following:

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Sec. 1. FINDINGS AND PURPOSE

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(a) Findings. The General Assembly finds:

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(1) The Vermont food, agriculture, and forest sectors are significant

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components of the State's economy, its rural heritage, and its identity as a

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State.

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(A) According to the Working Lands Enterprise Initiative, about

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20 percent of Vermont's land is used for agriculture, while another 78 percent

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is forested. In surveys conducted by the Initiative, over 97 percent of

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Vermonters expressed that they value the working landscape.

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(B) The 2023 U.S. Food and Agriculture Industries Economic Impact

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Study found that the food and agriculture industries in Vermont were

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associated with nearly 104,000 jobs, \$5.2 billion in wages, and \$19.3 billion in

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economic output.

1 (C) The Vermont Sustainable Jobs Fund estimates that Vermont’s
2 forest products industry generates an annual economic output of \$1.4 billion
3 and supports 10,500 jobs.

4 (2) Agricultural and forestry activity varies by season, is weather-
5 dependent, and is heavily reliant on having access to increasingly sophisticated
6 agricultural and forestry equipment. Vermont farmers’ and foresters’ access to
7 safe and reliable equipment is essential to timely planting, cultivating, tilling,
8 and harvesting of produce, protein, grain, timber, and other wood forest
9 products.

10 (3) The COVID-19 pandemic further highlighted the increased and
11 ongoing need for functional agricultural and forestry equipment as individuals
12 in Vermont increasingly rely on the equipment to guarantee access to food and
13 wood products during periods of supply chain disruption, raw material and
14 commodities shortages, and heightened food insecurity.

15 (4) Authorized repair providers are important Vermont businesses that
16 play a critical role for farmers and foresters by offering access to diagnosis,
17 maintenance, and repair services for agricultural and forestry equipment.

18 (5) In general, original equipment manufacturers and authorized repair
19 providers are able to provide independent repair providers and owners with
20 adequate access to necessary parts for agricultural and forestry equipment.

1 However, in order to maintain complex safety and emissions systems,
2 limitations on software-related repairs implemented by original equipment
3 manufacturers have led to frustration for some customers.

4 (6) Due to workforce, seasonal workload, and geographic constraints,
5 authorized repair providers are not always able to meet the demand for timely
6 diagnosis, maintenance, or repair services to farmers and foresters in this State.

7 (7) As for many Vermont employers, critical workforce shortages
8 prevent authorized repair providers from operating at full staff capacity, which
9 can contribute to costly delays in performing diagnosis, maintenance, and
10 repair services.

11 (8) The need for more accessible and affordable repair options is felt
12 more acutely among specific sectors of the population, notably Vermont
13 residents in more rural and remote areas.

14 (9) Original equipment manufacturer shops and authorized repair
15 providers are sometimes not located close to owners or independent repair
16 providers, which may require owners or independent repair providers to travel
17 long distances for repair or to be without functioning agricultural or forestry
18 equipment for longer periods of time.

19 (10) Owners may be capable of performing their own diagnosis,
20 maintenance, and repair services for their equipment.

1 (11) Independent repair providers play a vital role in Vermont's
2 economy. Providing access to information, parts, and diagnostic and repair
3 tools is essential in contributing to a competitive repair market and allowing
4 independent repair shop employees to fix equipment safely.

5 (12) Extending the useful life and efficient operation of equipment may
6 provide additional benefits for farmers, foresters, and the environment.

7 (A) Computerized components of modern agricultural and forestry
8 equipment include precious metals that are finite.

9 (B) Emissions of agricultural and forestry equipment are better
10 regulated and limited by functional software and hardware computer elements,
11 thereby increasing the need for access to timely and effective repairs to ensure
12 optimal functionality that is within the confines of federal regulatory
13 limitations and existing technology needed to preserve intellectual property.

14 (13) Broader distribution of the information, tools, and parts necessary
15 to repair modern agricultural and forestry equipment may shorten repair times,
16 lengthen the useful lives of the equipment, lower costs for users, and benefit
17 the environment.

18 (b) Purpose. The purpose of this act is to ensure equitable access to the
19 parts, tools, and documentation that are necessary for independent repair

1 providers and owners to perform timely repair of agricultural and forestry
2 equipment in a safe, secure, reliable, and sustainable manner.

3 Sec. 2. SHORT TITLE

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

5 Sec. 3. 9 V.S.A. chapter 106 is added to read:

6 CHAPTER 106. AGRICULTURAL AND FORESTRY EQUIPMENT;

7 FAIR REPAIR

8 § 4051. DEFINITIONS

9 As used in this chapter:

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

15 (2)(A) “Authorized repair provider” means an individual or business
16 that has an arrangement with the original equipment manufacturer under which
17 the original equipment manufacturer grants to the individual or business a
18 license to use a trade name, service mark, or other proprietary identifier for the
19 purposes of offering the services of diagnosis, maintenance, or repair of
20 equipment under the name of the original equipment manufacturer or other

1 arrangement with the original equipment manufacturer to offer such services
2 on behalf of the original equipment manufacturer.

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

8 (3) “Documentation” means any manual, diagram, reporting output,
9 service code description, schematic diagram, security code, password, or other
10 guidance or information, whether in an electronic or tangible format, used to
11 perform the services of diagnosis, maintenance, or repair of agricultural or
12 forestry equipment.

13 (4) “Forestry equipment” means nondivisible equipment, implements,
14 accessories, and contrivances used principally off road and designed solely for
15 harvesting timber or for on-site processing of wood forest products necessary
16 to and associated with a logging operation.

17 (5) “Independent repair provider” means a person operating in this State,
18 either through a physical business location or through a mobile service that
19 offers on-site repairs in the State, that does not have an arrangement described
20 in subdivision (2) of this section with an original equipment manufacturer and

1 that is engaged in the services of diagnosis, maintenance, or repair of
2 agricultural or forestry equipment.

3 (6) “Memorandum of understanding” means an agreement that is:

4 (A) related to the right to repair of agricultural or forestry equipment;

5 (B) not legally binding; and

6 (C) between the original equipment manufacturer and the American
7 Farm Bureau Federation or similar organization that advocates on behalf of
8 farmers or loggers.

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

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

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

1 (10) “Repair” means to maintain, diagnose, or fix agricultural or forestry
2 equipment, resulting in the equipment being restored to its fully functional
3 condition, including any updates. “Repair” does not include the ability to:

4 (A) permanently modify from original equipment specifications the
5 embedded software or code;

6 (B) permanently change any equipment or engine settings that
7 negatively affect emissions or safety compliance; or

8 (C) download or access the source code of any embedded software or
9 code, unless doing so is required to restore the equipment to its fully functional
10 condition, including any updates.

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

17 (12) “Trade secret” has the same meaning as provided in 18 U.S.C.
18 § 1839.

19 § 4052. AVAILABILITY OF PARTS, TOOLS, AND DOCUMENTATION

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

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

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

12 (3) An original equipment manufacturer may satisfy its obligation to
13 make parts, tools, and documentation available to an independent repair
14 provider or owner through an authorized repair provider that consents to sell or
15 make available parts, tools, or documentation on behalf of the manufacturer.

16 (b) Terms; limitations. Under the terms governing the sale or provision of
17 parts, tools, and documentation, an original equipment manufacturer shall not
18 impose on an independent repair provider or owner an additional cost or
19 burden that is not reasonably necessary within the ordinary course of business

1 or is designed to be an impediment on the independent repair provider or
2 owner, including:

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

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

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

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

14 § 4053. ATTORNEY GENERAL ENFORCEMENT; NOTICE

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

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

1 (c) The Attorney General shall be notified in writing by the original
2 equipment manufacturer not later than 30 days after a memorandum of
3 understanding expires or has been terminated, withdrawn, or canceled by an
4 original equipment manufacturer subject to this chapter.

5 § 4054. APPLICATION; LIMITATIONS

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

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

16 (c) This chapter does not alter the terms of a lease of agricultural or forestry
17 equipment between an owner and another person.

18 (d) An independent repair provider or owner shall not:

1 (1) modify agricultural or forestry equipment to temporarily deactivate
2 safety notification systems, except as necessary to provide diagnosis,
3 maintenance, or repair services;

4 (2) access any function of a tool, excluding a tool strictly needed for a
5 software update or to correct a defect or safety issue, that enables the
6 independent repair provider or owner to change the settings for a piece of
7 agricultural or forestry equipment in a manner that brings the equipment out of
8 compliance with the original manufacturer specifications or any applicable
9 federal, state, or local safety or emissions laws; or

10 (3) obtain or use parts, tools, or documentation to evade or violate
11 emissions, copyright, trademark, or patent laws or to engage in any other
12 illegal activity.

13 (e) Original equipment manufacturers and authorized repair providers are
14 not liable for faulty or otherwise improper repairs completed by independent
15 repair providers or owners, including repairs that cause:

16 (1) damage to agricultural or forestry equipment that occurs during such
17 repairs; and

18 (2) an inability to use, or the reduced functionality of, agricultural or
19 forestry equipment resulting from the faulty or otherwise improper repair.

1 (f) In the event that federal law preempts part of the activity regulated by
2 this chapter, this chapter shall be construed to regulate activity that has not
3 been preempted.

4 (g) If an original equipment manufacturer is a party to a memorandum of
5 understanding:

6 (1) the original equipment manufacturer is still obligated to meet the
7 requirements established in this chapter; and

8 (2) the memorandum of understanding may be used, subject to the
9 provisions set forth in this chapter, to establish the processes and procedures
10 for an independent repair provider or owner to repair agricultural or forestry
11 equipment.

12 Sec. 4. EFFECTIVE DATE

13 This act shall take effect on January 1, 2025.