

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred House Bill No. 81 entitled “An act relating to fair repair of agricultural
4 equipment” respectfully reports that it has considered the same and
5 recommends that the bill, as amended by the Committee on Agriculture, Food
6 Resiliency, and Forestry be further amended by striking out all after the
7 enacting clause and inserting in lieu thereof the following:

8 Sec. 1. SHORT TITLE

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

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

11 CHAPTER 106. AGRICULTURAL EQUIPMENT; FAIR REPAIR

12 § 4051. DEFINITIONS

13 As used in this chapter:

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

19 (2)(A) “Authorized repair provider” means an individual or business
20 that has an arrangement with the original equipment manufacturer under which
21 the original equipment manufacturer grants to the individual or business a

1 license to use a trade name, service mark, or other proprietary identifier for the
2 purposes of offering the services of diagnosis, maintenance, or repair of
3 equipment under the name of the original equipment manufacturer or other
4 arrangement with the original equipment manufacturer to offer such services
5 on behalf of the original equipment manufacturer.

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

11 (3) “Documentation” means any manual, diagram, reporting output,
12 service code description, schematic diagram, security code, password, or other
13 guidance or information, **whether in an electronic or tangible format, that an**
14 **original equipment manufacturer provides to an authorized repair provider to**
15 **assist with the** services of diagnosis, maintenance, or repair of agricultural or
16 forestry equipment.

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

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

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

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

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

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

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

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

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

7 ~~(B) “Trade secret” does not include a part, tool, or documentation~~
8 ~~that:~~

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

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

15 § 4052. AVAILABILITY OF PARTS, TOOLS, AND DOCUMENTATION

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

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

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

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

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

12 (3) An original equipment manufacturer may make parts, tools, and
13 documentation available to an independent repair provider or owner through an
14 authorized repair provider that consents to sell or make available parts, tools,
15 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
20 or is designed to be an impediment on the independent repair provider or
21 owner, including:

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

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

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

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

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

14 (c) Costs; limitations.

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

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

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

4 ~~(2) that does not discourage or disincentivize repairs to be made by an~~
5 ~~owner or an independent repair provider.~~

6 ~~(2) An original equipment manufacturer may impose an additional~~
7 ~~charge for parts, tools, or documentation.~~

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

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

15 § 4053. ENFORCEMENT

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

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

1 § 4054. APPLICATION; LIMITATIONS

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

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

12 (c) An independent repair provider or owner shall not:

13 (1) modify agricultural or forestry equipment to deactivate a safety
14 notification system, except as necessary to provide services;

15 (2) access any function of a tool that enables the independent repair
16 provider or owner to change the settings for a piece of agricultural or forestry
17 equipment in a manner that brings the equipment out of compliance with any
18 applicable federal, State, or local safety or emissions law, except as necessary
19 to provide services;

20 (3) evade emissions, copyright, trademark, or patent laws; or

21 (4) engage in any other illegal equipment modification activities.

1 Sec. 3. EFFECTIVE DATE

2 This act shall take effect on ~~July 1, 2023.~~ January 1, 2025.

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6 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE

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16 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE