



Testimony of VPIRG Consumer Protection Advocate Zachary Tomanelli on H.81 - An Act Relating to the Fair Repair of Agricultural Equipment

Testimony before the House Committee on Commerce and Economic Development
April 12, 2023

Introduction

Good morning. My name is Zachary Tomanelli and I am the consumer protection advocate for VPIRG, the Vermont Public Interest Research Group. For over 50 years, VPIRG has advocated for the public interest in policy debates concerning the environment, health care, consumer protection, and democracy, and so I thank you for this opportunity to share our thoughts on H.81.

Overview

As a consumer protection organization, VPIRG has long been a supporter of fair repair. It's our position that once a consumer buys and owns a product, device, or piece of equipment, that individual should have some reasonable expectation that they will be able to repair that product should it break, and, critically, that they or a trusted independent repair provider will have access to the parts, tools, information, documentation, and software necessary to make those repairs.

Manufacturers absolutely have the right to offer repair services to consumers for the products they manufacture. But withholding the parts, tools or information necessary to make those repairs, so that they as manufacturers maintain an effective monopoly on the repair process, is fundamentally unfair. The end result of this lack of competition in the repair marketplace is often higher costs and longer repair times for consumers.

The issue of repair monopolies is of particular concern for farmers – as the committee has heard – because of the often time-sensitive nature of agricultural work. H.81 is a commonsense bill that rectifies this imbalance by ensuring that farmers and independent repair providers have, on fair and reasonable terms, access to all of the parts, tools, documentation, software, etc. needed to fix the equipment they own.

I'll also note and emphasize that Vermont is not alone in, nor would we be the first state to adopt some kind of fair repair legislation. Last year, Colorado enacted legislation that establishes a right-to-repair for powered wheelchairs. Just a few months ago, New York enacted a law that establishes a right-to-repair for personal electronic devices. On March 1, the West Virginia Senate passed an agricultural right-to-repair bill that is very similar to the bill you are considering. And just yesterday, the Colorado House gave final approval to their agricultural fair repair bill – on a 44-16 vote. That legislation will now go to the Colorado governor for his signature.

Fair repair is a growing movement, and it appears that it is coming one way or another. Failure to act will only leave Vermonters unprotected. It's for this reason that we strongly support H.81 and urge you to advance this bill with a favorable recommendation.

Points of emphasis:

➤ **Ultimately, this is about giving farmers more repair options.**

Currently our farmers rely on dealers and/or local manufacturer-authorized service technicians for their repairs, and there are some repairs where they have no choice but to rely on those technicians because the tools, information, etc. is not otherwise available.

It is our understanding that, generally speaking, Vermont farmers are happy with the service providers in our state. They're knowledgeable, trustworthy, dependable, and fair. And it's important to recognize that, were this bill to be enacted, in no way would it prevent Vermont farmers from continuing to use the dealers and authorized service techs they are currently using for repairs.

This bill is simply about providing Vermonters *more options*. If a piece of agricultural or forestry equipment breaks and the authorized tech is not available for two weeks, farmers should at least have the option of making the repair themselves (if they are confident and have the know-how) or be able to have an independent repair technician fix the equipment and *know* that they will have access to all of the parts, tools, information, codes, etc. needed to get the equipment working again. Right now, they don't have that guarantee.

Similarly, if the repair is something relatively simple where the farmer could save some serious money by making the fix themselves, they should be able to do so and *know* that they can access all of the parts, tools, information, codes, etc. they need to make the fix. Right now, they don't have that guarantee.

➤ **It's our opinion that advancing an agricultural right-to-repair is likely to be environmentally beneficial.**

It's important to note, tampering with emissions control equipment is illegal now, and, if this bill were enacted, it would still be illegal. Nothing in H.81 changes that.

Further, to our knowledge, none of the parts, tools, information, etc. that would be made available to consumers or independent repair techs as a result of this law would make it significantly easier for individuals to tamper with or override emissions controls.

And, even if it were the case that they did somehow make it easier, it's our position that the answer to that issue is not to continue withholding the tools and information necessary for farmers to make legitimate repairs on their equipment, but to ensure that we have robust enforcement of those emissions standards.

Additionally, it's our understanding that the repair monopoly status quo has caused more and more farmers to rely on much older equipment because they have confidence that should that equipment break they will not be locked out of the repair process and can obtain the parts, tools, information, etc. necessary to fix it themselves. In a national survey of farmers, U.S. PIRG

found that 77% of farmers had bought older-model equipment to avoid the software in newer equipment. The problem with this, from an environmental standpoint, is that those older models were engineered with less rigorous emissions controls. That means the current repair monopoly situation actually incentivizes the use of older, more polluting equipment.

➤ **Right-to-repair has the opportunity to enhance repair safety**

Currently if a farmer's equipment breaks and they are unable to get it serviced by an authorized technician in a timely or cost-effective manner, they may feel compelled to rely on secondary (and in some cases illegitimate) sources for the parts, tools, information, etc. they need to fix their equipment.

Ensuring that farmers and independent technicians have access to the same parts, tools, information, etc. that authorized technicians have would not pose an additional safety risk – to the contrary, it would ensure that those making these repairs have access to accurate information to perform these repairs safely.

Further, it's worth recognizing that nothing in the bill changes existing liability laws. In no way, does enacting right-to-repair expose manufacturers to any sort of additional liability for improper repairs.

An instructive comparison in this area is automotive repair – the one area where consumers currently do have a fairly broad right-to-repair. Cars are large, complex and, if repaired incorrectly, potentially dangerous machines. Nevertheless, car manufacturers provide individuals and independent mechanics the parts, tools, information, etc. necessary to repair the vehicles they own. Consumers ultimately make the decision as to whether they can make a fix on their own, or whether they want to bring their car to an independent mechanic or the dealership for repair. This doesn't mean zero unsafe repairs ever happen. It's impossible to prevent 100% of unsafe repairs. But we extend individual consumers the trust and options to decide where and how they repair their vehicles. Why wouldn't we extend the same trust to farmers with regard to agricultural equipment?

➤ **Farmers and independent repair technicians do not currently have access to all of the tools and information they need to make repairs to the agricultural equipment they own.**

Manufacturers often claim that the parts, information, tools, software, etc. are already available for farmers to make all or some large percentage of repairs on their equipment. A few points to consider on this:

- 1.) It's simply not true that farmers and independent repair techs have access to all the same tools that are provided to manufacturer-authorized repair techs. One specific example that demonstrates this relates to the Customer Service ADVISOR diagnostic tool that John Deere has made available for the public. USPIRG and Repair.org conducted a side-by-side comparison of the publicly available tool and the version of the tool that Deere provides authorized techs and found that the public tool is essentially a redacted version of the tool with more limited functionality.

- 2.) Even if it were true that farmers currently have the option of making 95% of the repairs necessary with their current access to parts, tools, etc. – the remaining 5% of repairs that they do not have the option of fixing with someone other than an authorized tech could prove critical, time-consuming and ultimately very costly for the farmer. Again, this isn't to say that a farmer will have the know-how or comfort to make those repairs on their own, and they may still avail themselves of the dealer's services to fix their equipment. But at the moment, they don't even have the option to make that determination because they don't have access to all the necessary tools and information.
- 3.) And finally, if it were true that manufacturers already provide *everything* a farmer or independent repair tech needs to make these repairs, then there would be no reason for them to oppose this legislation, as they wouldn't be required to do anything they aren't already doing. Since they do oppose this legislation, it can only mean that there are at least some parts, tools, information, etc. that they are withholding from farmers or independent repair techs so that they remain the exclusive providers of those repairs.

➤ **The John Deere Memorandum of Understanding does not go far enough**

With the regard to the recent MOU between John Deere and the American Farm Bureau Federation: this is a positive step insofar as it demonstrates that John Deere recognizes that fair repair is, indeed, a problem. Nevertheless, this MOU alone is insufficient to solve that problem.

As a private MOU, it's completely without enforcement. If John Deere fails to live up to its end of the bargain, there are no real consequences for them – whereas there are potentially grave consequences for farmers if they are unable to access the tools and information they need to repair their equipment.

Further, if John Deere decides that the MOU is not working for them, they can walk away from it at any time. This does not provide real protection and real assurances for farmers that they will have access to the parts, tools and information needed to repair their equipment.

Conclusion

In summary, VPIRG appreciates the Committee's time and attention to this matter. We support H.81 and urge you to advance this bill. Thank you for the opportunity to present this testimony.