

1 H.81

2 Representatives Templeman of Brownington, Priestley of Bradford, Carroll
3 of Bennington, Chase of Chester, Cole of Hartford, Duke of Burlington,
4 Durfee of Shaftsbury, Graning of Jericho, Jerome of Brandon, Leavitt of Grand
5 Isle, Marcotte of Coventry, Nicoll of Ludlow, O’Brien of Tunbridge, Pearl of
6 Danville, Rice of Dorset, Sammis of Castleton, Surprenant of Barnard, White
7 of Bethel, and Williams of Barre City move that the House concur in the
8 Senate proposal of amendment with further proposal of amendment by striking
9 out all after the enacting clause and inserting in lieu thereof the following:

10 Sec. 1. FINDINGS AND PURPOSE

11 (a) Findings. The General Assembly finds:

12 (1) The Vermont food, agriculture, and forest sectors are significant
13 components of the State’s economy, its rural heritage, and its identity as a
14 State.

15 (A) According to the Working Lands Enterprise Initiative, about 20
16 percent of Vermont’s land is used for agriculture, while another 78 percent is
17 forested. In surveys conducted by the Initiative, over 97 percent of
18 Vermonters expressed that they value the working landscape.

19 (B) The 2023 U.S. Food and Agriculture Industries Economic Impact
20 Study found that the food and agriculture industries in Vermont were

1 associated with nearly 104,000 jobs, \$5.2 billion in wages, and \$19.3 billion in
2 economic output.

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

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

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

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

20 (5) In general, original equipment manufacturers and authorized repair
21 providers are able to provide independent repair providers and owners with

1 adequate access to necessary parts for agricultural and forestry equipment.

2 However, in order to maintain complex safety and emissions systems,

3 limitations on software-related repairs implemented by original equipment

4 manufacturers have led to frustration for some customers.

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

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

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

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

20 (10) Owners may be capable of performing their own diagnosis,
21 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
20 providers and owners to perform timely repair of agricultural and forestry
21 equipment in a safe, secure, reliable, and sustainable manner.

1 Sec. 2. SHORT TITLE

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

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

4 CHAPTER 106. AGRICULTURAL AND FORESTRY EQUIPMENT;

5 FAIR REPAIR

6 § 4051. DEFINITIONS

7 As used in this chapter:

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

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

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

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

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

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

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

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

2 (B) not legally binding; and

3 (C) between the original equipment manufacturer and the American

4 Farm Bureau Federation or similar organization that advocates on behalf of

5 farmers or loggers.

6 (7) “Original equipment manufacturer” means a person engaged in the

7 business of selling, leasing, or otherwise supplying new agricultural or forestry

8 equipment manufactured by or on behalf of itself to any individual or business.

9 (8) “Owner” means an individual or business that owns or leases

10 agricultural or forestry equipment used in this State.

11 (9) “Part” means any replacement part, either new or used, made

12 available by an original equipment manufacturer for purposes of effecting the

13 services of maintenance or repair of agricultural or forestry equipment

14 manufactured by or on behalf of, sold or otherwise supplied by, the original

15 equipment manufacturer.

16 (10) “Repair” means to maintain, diagnose, or fix agricultural or forestry

17 equipment, resulting in the equipment being restored to its fully functional

18 condition, including any updates. “Repair” does not include the ability to:

19 (A) permanently modify from original equipment specifications the

20 embedded software or code;

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

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

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

12 (12) “Trade secret” has the same meaning as provided in 18 U.S.C.
13 § 1839.

14 § 4052. AVAILABILITY OF PARTS, TOOLS, AND DOCUMENTATION

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

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

20 (2) If agricultural or forestry equipment includes an electronic security
21 lock or other security-related function that must be unlocked, enabled, or

1 disabled to perform diagnosis, maintenance, or repair of the equipment, an
2 original equipment manufacturer shall make available to an independent repair
3 provider or owner any parts, tools, and documentation necessary to unlock or
4 disable the function and to reset the lock or function after the diagnosis,
5 maintenance, or repair is complete.

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

10 (b) Terms; limitations. Under the terms governing the sale or provision of
11 parts, tools, and documentation, an original equipment manufacturer shall not
12 impose on an independent repair provider or owner an additional cost or
13 burden that is not reasonably necessary within the ordinary course of business
14 or is designed to be an impediment on the independent repair provider or
15 owner, including:

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

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

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

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

7 § 4053. ATTORNEY GENERAL ENFORCEMENT; NOTICE

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

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

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

17 § 4054. APPLICATION; LIMITATIONS

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

20 (b) This chapter does not alter the terms of any arrangement described in
21 subdivision 4051(2)(A) of this title in force between an authorized repair

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Sec. 4. EFFECTIVE DATE

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