

HOUSE BILL NO. 5563

November 30, 2021, Introduced by Rep. Bellino and referred to the Committee on Regulatory Reform.

A bill to require original equipment manufacturers of certain agricultural equipment to make certain parts, tools, and documentation available to certain persons; to provide remedies; and to provide for the powers and duties of certain state governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "agricultural equipment
2 repair act".

3 Sec. 2. As used in this act:

1 (a) "Authorized repair provider" means, with respect to an
2 original equipment manufacturer, a person that is unaffiliated with
3 the original equipment manufacturer and that has an arrangement
4 with the original equipment manufacturer, for a definite or
5 indefinite period, under which the original equipment manufacturer
6 grants to the person a license to use a trade name, service mark,
7 or other proprietary identifier for the purposes of offering the
8 services of diagnosis, maintenance, or repair of electronics-
9 enabled agricultural equipment under the name of the original
10 equipment manufacturer, or otherwise to offer those services on
11 behalf of the original equipment manufacturer. An original
12 equipment manufacturer that offers diagnosis, maintenance, or
13 repair services of its own electronics-enabled agricultural
14 equipment and that does not have an arrangement described in this
15 subdivision with an unaffiliated person is considered an authorized
16 repair provider with respect to that equipment.

17 (b) "Documentation" means any manual, diagram, reporting
18 output, service code description, schematic, product guide, or
19 other guidance or information used for purposes of diagnosis,
20 maintenance, or repair services of electronics-enabled agricultural
21 equipment.

22 (c) "Electronics-enabled agricultural equipment" means any
23 product, part of a product, or attachment to a product, when sold
24 or leased for use in farming, ranching, or other agriculture, that
25 depends for its functioning, in whole or in part, on digital
26 electronics embedded in or attached to the product. The term
27 includes, but is not limited to, a tractor, trailer, combine,
28 tillage, planting, irrigation, or cultivating implement, baler,
29 unmanned aircraft system, or off-road vehicle. The term does not

1 include motor vehicles and consumer electronic devices, including
2 wireless communication devices and computers.

3 (d) "Embedded software" means any programmable instructions
4 provided on firmware delivered with electronics-enabled
5 agricultural equipment, or with a part for electronics-enabled
6 agricultural equipment, for purposes of equipment operation,
7 including all relevant patches and fixes made by the original
8 equipment manufacturer for this purpose.

9 (e) "Fair and reasonable terms" means costs and terms that
10 meet all of the following requirements:

11 (i) For obtaining a part or tool, documentation, or software,
12 costs and terms that meet all of the following:

13 (A) Are equivalent to the most favorable costs and terms under
14 which an original equipment manufacturer offers the part, tool,
15 documentation, or software to an authorized repair provider,
16 accounting for any discount, rebate, convenient means of delivery,
17 means of enabling fully restored and updated functionality, rights
18 of use, or other incentive or preference the original equipment
19 manufacturer offers to an authorized repair provider, or any
20 additional cost, burden, or impediment the original equipment
21 manufacturer imposes on an independent repair provider.

22 (B) Are not conditioned on entering an arrangement described
23 in subdivision (a).

24 (C) Are not conditioned on or do not impose a substantial
25 obligation or restriction that is not reasonably necessary for
26 enabling the owner or independent repair provider to engage in the
27 diagnosis, maintenance, or repair of electronics-enabled
28 agricultural equipment made by or on behalf of the original
29 equipment manufacturer.

1 (ii) For documentation, including any relevant updates, at no
2 charge, except that, if the documentation is required in physical
3 printed form, a charge may be included for the reasonable actual
4 costs of preparing and sending the copy.

5 (iii) For software tools, without requiring authorization or
6 internet access, or imposing impediments to access or use, in the
7 course of effecting the diagnosis, maintenance, or repair and
8 enabling full functionality of electronics-enabled agricultural
9 equipment, in a manner that impairs the efficient and cost-
10 effective performance of any of those activities.

11 (f) "Firmware" means a software program or set of instructions
12 programmed on electronics-enabled agricultural equipment or on a
13 part for that equipment, to allow the equipment or part to
14 communicate within itself or with other computer hardware.

15 (g) "Independent repair provider" means, with respect to an
16 original equipment manufacturer, a person operating in this state
17 that does not have an arrangement described in subdivision (a) with
18 the original equipment manufacturer, and that is not affiliated
19 with any person that has such an arrangement, and that is engaged
20 in diagnosis, maintenance, or repair services of electronics-
21 enabled agricultural equipment. An original equipment manufacturer
22 or, with respect to that original equipment manufacturer, a person
23 that has an arrangement described in subdivision (a) with that
24 original equipment manufacturer, or that is affiliated with a
25 person that has such an arrangement with that original equipment
26 manufacturer, is considered an independent repair provider for
27 purposes of those instances in which it engages in diagnosis,
28 maintenance, or repair services of electronics-enabled agricultural
29 equipment that is not manufactured by or sold under the name of

1 that original equipment manufacturer.

2 (h) "Motor vehicle" means a vehicle that is designed for
3 transporting persons or property on a street or highway and is
4 certified by the manufacturer under all applicable federal safety
5 and emissions standards and requirements for distribution and sale
6 in the United States.

7 (i) "Original equipment manufacturer" means a person engaged
8 in the business of selling, leasing, or otherwise supplying new
9 electronics-enabled agricultural equipment manufactured by or on
10 behalf of itself.

11 (j) "Owner" means a person that owns or leases electronics-
12 enabled agricultural equipment purchased or used in this state.

13 (k) "Part" means any replacement part, either new or used,
14 made available by an original equipment manufacturer for purposes
15 of maintenance or repair services of electronics-enabled
16 agricultural equipment manufactured by or on behalf of, sold by, or
17 otherwise supplied by the original equipment manufacturer.

18 (l) "Person" means an individual, partnership, corporation,
19 association, or other legal entity.

20 (m) "Tool" means any software program, hardware implement, or
21 other apparatus used for diagnosis, maintenance, or repair of
22 electronics-enabled agricultural equipment, including software or
23 other mechanisms that provision, program, or pair a new part,
24 calibrate functionality, or perform any other function required to
25 bring the product back to fully functional condition.

26 (n) "Trade secret" means that term as defined in section 2 of
27 the uniform trade secrets act, 1998 PA 448, MCL 445.1902.

28 Sec. 3. (1) For electronics-enabled agricultural equipment and
29 parts of electronics-enabled agricultural equipment sold or used in

1 this state, an original equipment manufacturer shall make
2 available, for purposes of diagnosis, maintenance, or repair of
3 that equipment, to any independent repair provider or to the owner
4 of the electronics-enabled agricultural equipment manufactured by
5 or on behalf of or sold or otherwise supplied by the original
6 equipment manufacturer, on fair and reasonable terms,
7 documentation, parts, and tools, including any updates to
8 information or embedded software. This subsection does not require
9 an original equipment manufacturer to make a part available if the
10 part is no longer available to the original equipment manufacturer.

11 (2) For equipment that contains an electronic security lock or
12 other security-related function, the original equipment
13 manufacturer shall make available to the owner and to independent
14 repair providers, on fair and reasonable terms, any special part,
15 tool, and documentation needed to disable the lock or function and
16 to reset it when disabled in the course of diagnosis, maintenance,
17 or repair of the equipment. The original equipment manufacturer may
18 make the part, tool, and documentation described in this subsection
19 available by means of an appropriate secure system.

20 (3) When the original equipment manufacturer has made an
21 express warranty with respect to electronics-enabled agricultural
22 equipment and the wholesale price of the equipment is \$100.00 or
23 more, the manufacturer shall provide the part, tool, and
24 documentation to enable the equipment to be repaired during the
25 warranty period at an equitable price and convenience of delivery
26 and of enabling functionality in consideration of all of the
27 following:

28 (a) The actual cost to the original equipment manufacturer to
29 prepare and distribute the part, tool, or documentation, exclusive

1 of any research and development costs incurred.

2 (b) The ability of owners and independent repair providers to
3 afford the part, tool, or documentation.

4 (c) The means by which the part, tool, or documentation is
5 distributed.

6 Sec. 5. The attorney general has the authority to bring a
7 civil action for damages or equitable relief for a violation of
8 this act and to otherwise enforce the provisions of this act.

9 Sec. 7. (1) This act does not require an original equipment
10 manufacturer to divulge a trade secret to an owner or an
11 independent service provider except as necessary to provide parts,
12 tools, and documentation on fair and reasonable terms.

13 (2) Except as otherwise provided in this subsection, this act
14 does not alter the terms or any arrangement described in section
15 2(a) that is in force between an authorized repair provider and an
16 original equipment manufacturer, including, but not limited to, a
17 performance provision of warranty or recall work by an authorized
18 repair provider on behalf of an original equipment manufacturer
19 under that arrangement. A provision of an arrangement described in
20 section 2(a) that purports to waive, avoid, restrict, or limit an
21 original equipment manufacturer's obligations to comply with this
22 act is void and unenforceable.

23 Sec. 9. This act applies to electronics-enabled agricultural
24 equipment that is sold or in use on or after the effective date of
25 this act.