

# Legislative Analysis



## CREATE RIGHT-TO-REPAIR ACT FOR SELF-REPAIR OF FARM EQUIPMENT

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<http://www.house.mi.gov/hfa>

**House Bill 4673 as introduced**  
**Sponsor: Rep. Reggie Miller**  
**Committee: Agriculture**  
**Complete to 6-6-23**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

House Bill 4673 would create a new act, the Agricultural Equipment Repair Act, which would provide that certain tools and repair equipment, including software, must be made available to the owner of *agricultural equipment*.

Specifically, the bill would, with some exceptions, require that an *original equipment manufacturer* (OEM) or *authorized repair provider* of agricultural equipment sold or used in Michigan must make available to an *independent repair provider* or *owner*, on *fair and reasonable costs and terms*, any *part*, tool, or *documentation* needed to diagnose, maintain, or repair the agricultural equipment.

*Agricultural equipment* would mean a tractor, trailer, combine, sprayer, tillage implement, baler, or other personal property, including any digital electronic embedded in or attached to the equipment, that is used on a farm or ranch for planting, growing, or harvesting agricultural products or for raising or breeding livestock. Agricultural equipment would include any mechanical system used on a farm or ranch for conveying or storing agriculture or animal products in a raw or unprocessed state, regardless of whether the mechanical system is affixed to real property. The term *would not* include any of the following:

- A self-propelled vehicle that is designed primarily for the transportation of individuals or property on a street or highway and that is certified by the manufacturer under any applicable federal safety and emission standards and requirements for distribution and sale in the United States.
- An *off-highway vehicle*, which would mean a self-propelled vehicle that is designed to travel on wheels or tracks in contact with the ground, designed primarily for use off of highways, and generally and commonly used to transport individuals for recreational purposes. Off-highway vehicle *would not* include any of the following:
  - A military vehicle.
  - A golf cart.
  - A vehicle designed and used to carry a person with a disability.
  - A vehicle designed and used specifically for agricultural, logging, or mining purposes.
- A personal watercraft.
- A *snowmobile*, which would mean a self-propelled vehicle primarily designed or altered for travel on snow or ice when supported in part by skis, belts, or cleats and designed primarily for use off of highways. Snowmobile *would not* include machinery used strictly for the grooming of snowmobile trails or ski slopes.

**Authorized repair provider** would mean a person that has an arrangement with an OEM under which the OEM grants to the person a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering diagnosis, maintenance, or repair services for agricultural equipment on behalf of the person or the OEM.

**Documentation** would mean a manual, diagram, reporting output, service code description, schematic, library of diagnosed issues, **software bill of material** (defined as a formal record containing the details and supply chain relationships of components used to build software), or other guidance or information used in effectuating diagnosis, maintenance, or repair services for agricultural equipment.

**Fair and reasonable costs and terms** would mean any of the following as related to obtaining a part, tool, or documentation, as applicable:

- Costs for parts that are fair to the OEM or authorized repair provider and the independent repair provider or owner and that are agreed to by both parties, considering the promised quality and terms for the parts.
- Costs that are equivalent to the lowest actual cost for which an OEM offers a tool or documentation to an authorized repair provider, including any discount, rebate, or other financial incentive offered to an authorized repair provider.
- Terms that are equivalent to the most favorable terms under which an OEM offers a part, tool, or documentation to an authorized repair provider, including the methods and timeliness of delivery of the part, tool, or documentation.

Except for costs and terms agreed to by both parties under the first bulleted provision above, **fair and reasonable costs and terms** could not do any of the following:

- Impose an obligation on an independent repair provider or owner to use a part, tool, or documentation to diagnose, maintain, or repair agricultural equipment.
- Require an independent repair provider or owner to become an authorized repair provider.
- Require a part or tool to be registered with, paired with, or approved by an OEM or an authorized repair provider.
- Include a fee for making the documentation available to an independent repair provider or owner, unless the documentation is requested in physical form, in which case the fee would have to be equivalent to the actual cost of preparing and sending the documentation in physical form.
- Include a fee for making the software available to an independent repair provider or owner.
- Include any impediment to accessing the software, including requiring internet access, requiring prior authorization by the OEM for use of the software, or denying a request for the software to be downloaded or delivered via physical storage medium.

**Independent repair provider** would mean a person operating in Michigan that is not an authorized repair provider and that is engaged in diagnosis, maintenance, or repair services for agricultural equipment.

**Original equipment manufacturer** would mean a person that manufactures agricultural equipment and sells, leases, or otherwise supplies the equipment to another person

**Owner** would mean a person that owns or leases agricultural equipment. Owner *would not* include an OEM.

**Part** would mean a component or subcomponent of agricultural equipment that is sold, supplied, or made available by an OEM for the purposes of diagnosing, maintaining, or repairing agricultural equipment.

The bill contains provisions specifying that the new act *would not* do any of the following:

- Require an OEM to divulge a **trade secret** to an independent service provider or owner, except as necessary to provide a part, tool, or documentation on fair and reasonable costs and terms as required under the act.
- Require an OEM to provide any part used by the OEM to develop its products, except as required under the act.
- Alter the terms of an arrangement between an authorized repair provider and an OEM, except that a provision of the agreement that limits the OEM's or authorized repair provider's obligation to comply with the act would be void and unenforceable.
- Authorize a repair to agricultural equipment that permanently deactivates a safety notification system or is otherwise illegal.
- Authorize access to a tool function that enables an independent repair provider or owner to change the settings of agricultural equipment in a manner that brings the equipment permanently out of compliance with an applicable safety or emission law.
- Authorize the evasion of an emission or copyright law.

**Trade secret**, as used in the bill, would have the same definition as it does in section 2 of the Uniform Trade Secrets Act. The term would mean information, including a formula, pattern, compilation, program, device, method, technique, or process, that is both of the following:

- Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

If an OEM or authorized repair provider failed to provide the part, tool, or documentation needed to diagnose, maintain, or repair agricultural equipment as required by the act, an independent repair provider or owner could bring an action to do either or both of the following (regardless of whether they seek damages or have an adequate remedy at law):

- Obtain a declaratory judgment that an OEM or authorized repair provider has violated that requirement.
- Enjoin, in accordance with the principles of equity, an OEM or authorized repair provider that is engaging in or is about to engage in a violation of that requirement.

If an independent repair provider or owner suffered loss as a result of the failure of an OEM or authorized repair provider to provide the part, tool, or documentation needed to diagnose, maintain, or repair agricultural equipment as required by the act, the independent repair provider or owner could bring an action to recover actual damages or \$2,500, whichever is greater, together with reasonable attorney fees.

## **FISCAL IMPACT:**

House Bill 4673 would have an indeterminate fiscal impact on local courts. Depending on the number of individuals that choose to file lawsuits for declaratory judgments, injunctions, or damages, the fiscal impact on local court systems would depend on how these provisions affect court caseloads and related administrative costs.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.