

CREATE RIGHT-TO-REPAIR ACT FOR FARM EQUIPMENT

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House Bill 4673 (H-2) as reported from committee

Sponsor: Rep. Reggie Miller

Committee: Agriculture

Complete to 10-28-23

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

BRIEF 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 beginning January 1, 2025.

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.

THE APPARENT PROBLEM:

“Right to repair” is a phrase used to describe the aims of a movement to legally codify an owner’s ability to repair an item they own by requiring manufacturers to make certain parts and repair equipment available for purchase and use by those owners. Supporters of this movement believe that once an item has been purchased, the owner should be allowed to maintain and service that item without that work requiring proprietary tools or manuals that the owner cannot access. In the case of farm equipment, the issue mostly relates to the software which governs its operation. Manufacturers have been integrating software into new machinery, which has also increased its price. Because of the substantial prices associated with purchasing a new piece of farm equipment compared to implements of 20 or more years ago, owners of that equipment want the ability to diagnose and repair their equipment without having to rely on the manufacturer or manufacturer’s designated repair provider. Equipment owners say that, while they can perform the physical repair of the machinery (for example, replacing a nozzle on a sprayer), the issue occurs when their equipment requires the error code to be cleared and the only way to do so is to have an authorized repair representative of the manufacturer perform that action. Legislation has been proposed to address these issues.

THE CONTENT OF THE BILL:

With some exceptions, the bill would require that, beginning January 1, 2025, an *original equipment manufacturer* (OEM) or *authorized repair provider of agricultural equipment* sold and used in Michigan must make available to an *independent repair provider* or *owner*, at *fair and reasonable costs* and on *fair and reasonable 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 component embedded in or attached to the equipment, that is specifically designed to be 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 specifically designed to be 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 specifically for the transportation of individuals or property on a highway or roadway 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 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, but would *not* include machinery used strictly for the grooming of snowmobile trails or ski slopes.
- Any ***construction equipment***, which would mean a vehicle or machinery to which all of the following apply:
 - The vehicle or machinery is designed and specifically used for any of the following:
 - The grading of, paving of, or other work on a highway or roadway, or earth moving.
 - The construction of a structure, including but not limited to, a dwelling.
 - The construction or maintenance of railroad rights of way.
 - The vehicle or machinery is only incidentally operated or moved over a highway or roadway.
 - The vehicle or machinery is not designed or specifically used for the transportation of persons or property.

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 diagnostic, 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 diagram, library of diagnosed issues, security code, password, or other guidance or information, whether electronic or tangible, that is required to diagnose problems with, or perform maintenance or repair of, agricultural equipment.

Fair and reasonable costs would mean all of the following:

- For a tool that is not software or a part, costs to which both of the following apply:
 - The costs are fair to the OEM or authorized repair provider and the independent repair provider or owner, considering the market value of

the tool or part in Michigan, any conditions that are agreed to by the parties, the promised quality, and timeliness of delivery.

- The costs do not discourage or disincentivize an independent repair provider or owner from making a repair to agricultural equipment.
- For a tool that is software, costs that are equivalent to the actual cost for which an OEM offers a tool or documentation to an authorized repair provider, except that the OEM or authorized repair provider may charge additional fees related to necessary or additional services utilized in making the software available to the independent repair provider or owner, including but not limited to, training or installation assistance.
- For documentation, costs that are equivalent to the actual cost for which the OEM offers the documentation to an authorized repair provider, unless the documentation is requested in physical form, in which case the costs may include a fee that is equivalent to the actual cost of preparing and sending the documentation in physical form.

Fair and reasonable terms would mean a burden or condition that is necessary for the provisions of the part, tool, or documentation, within the ordinary course of business and that is not designed to be an impediment on an independent repair provider or owner. Fair and reasonable terms would *not* include any of the following:

- Imposing an obligation on an independent repair provider or owner to use a part, tool, or documentation to diagnose, maintain, or repair agricultural equipment.
- Requiring an independent repair provider or owner to become an authorized repair provider.
- Requiring a part, tool, or documentation to be registered with, paired with, or approved by an OEM or an authorized repair provider before the use of the part, tool, or documentation.
- For a tool that is software, imposing an unreasonable 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 an alternative method.

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

Original equipment manufacturer would mean a person that manufactures agricultural equipment and sells the equipment to another person.

Owner would mean a person that owns 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 and that is necessary for diagnosing, maintaining, or repairing the agricultural equipment.

Tool would mean a software program, hardware implement, or other apparatus that is necessary for diagnosing, maintaining, or repairing agricultural equipment, including

software or other mechanisms that provision, program, or pair a new part, calibrate functionality, or perform any other function required to bring the product back to fully functional condition.

The bill would allow an OEM to make parts, tools, and documentation available to an independent repair provider or owner through an authorized repair provider that consents to sell or make available parts, tools, or documentation on behalf of the OEM. If an OEM has entered into a nationwide memorandum of understanding (MOU) regarding a right to repair agricultural equipment, then the MOU would govern an owner's right to repair that equipment or right to engage the services of an independent repair provider for the repair of that equipment, as long as the requirements imposed on the OEM by the MOU comply with the requirements of the bill.

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.
- Require an OEM to provide a part that is used by the OEM only to design, develop, manufacture, test, or improve its products.
- 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 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 out of compliance with an applicable safety or emission law.
- Authorize the evasion of an emission or copyright law.
- Apply to leased or rented agricultural equipment.

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.

An OEM or authorized repair provider would not be liable under the bill for any of the following:

- A faulty or otherwise improper repair provided by an independent repair provider or owner, including the following:
 - Damage to the agricultural equipment during that repair.
 - An inability to use, or a reduced functionality of, the equipment resulting from that repair.
 - An injury or death of an individual resulting from that repair.
- A violation of a state emission or safety standard resulting from a faulty, illegal, or otherwise improper repair.

If the attorney general has probable cause to believe that an OEM is engaged in, or has engaged in, a violation of the requirement to provide an independent repair provider or owner with any part, tool, or documentation, needed to repair the agricultural equipment, then the attorney general could, after giving notice of the violation, bring an action in accordance with the principles of equity to restrain the OEM from engaging in the violation.

Unless waived by the court on good cause shown at least 30 days before the attorney general files with the court over a suspected violation, the attorney general would have to notify the OEM of the intended action and give that OEM an opportunity to cease and desist from the alleged violation, or to confer with the attorney general either in person or via counsel or other representative, as to the proposed action prior to the filing date.

If an action is brought, it would have to be in the circuit court of the county where the defendant is established or conducts business or, if the defendant is not established in Michigan, the circuit court of Ingham County. The prevailing party could be awarded costs, and the court could require damages be paid to the independent repair provider or owner affected by the violation.

An OEM that knowingly violates the terms of an injunction, order, decree, or judgment would forfeit and pay to the state a civil fine of up to \$25,000 for each violation. For purposes of court filings, the court issuing an injunction, order, decree, or judgment would retain jurisdiction, the cause would have to be continued, and the attorney general could petition for recovery of a civil fine.

ARGUMENTS:

For:

Supporters of the bill say that as farm equipment has become increasingly reliant on software to operate, the owners of those implements also become increasingly reliant on the machinery's manufacturer and authorized repair provider for service, even for minor repairs that could be handled by the owner if the necessary parts and tools were made available. Owners of farm machinery say manufacturers have restricted repair abilities on equipment to an unreasonable degree, limiting the owner's ability to use the equipment once purchased. This has led to delays in repairing equipment, adversely affecting their ability to plant, fertilize, spray, or harvest if the delay results in their missing a favorable weather window for that activity.

Against:

Critics of the bill say it would infringe on a manufacturer's right to protect its intellectual property, and authorized repair providers would be unfairly disadvantaged under the bill's provision relating to part pricing. Repair providers said during testimony that they carry tens, if not hundreds, of thousands of dollars of parts and related tools for repairs in their stores, and that dictating the price at which they can sell those parts would cause financial difficulties, resulting in additional consolidation and closures in an industry that has already encountered a reduction in the number of repair providers over the last 20 years.

POSITIONS:

Representatives of the following entities testified in support of the bill (6-7-23):

- Department of Agriculture and Rural Development
- Michigan Corn Growers Association
- Michigan Farmers Union
- Public Interest Resource Group
- Repair.org
- Sierra Club

The following entities indicated support for the bill:

- Department of the Attorney General (6-7-23)
- Center for Change Northern Michigan Advocacy (10-25-23)
- Michigan Democratic Party Rural Caucus (10-25-23)
- Michigan Environmental Council (10-25-23)
- Michigan League of Conservation Voters (10-25-23)
- Potato Growers of Michigan (6-7-23)
- Progress Michigan (10-25-23)
- State Innovation Exchange (6-7-23)

The Motorcycle Industry Council indicated a neutral position on the bill. (6-7-23)

The Michigan Farm Bureau indicated having no position on the bill. (6-7-23)

Representatives of the following entities testified in opposition to the bill (6-7-23):

- North American Equipment Dealers Association
- Tri County Equipment

The following entities indicated opposition to the bill:

- Burnips Equipment Company (10-25-23)
- Farm Depot (10-25-23)
- GreenMark Equipment (6-7-23)
- Hutson Incorporated (6-7-23)
- Michigan Manufacturers Association (10-25-23)
- Operating Engineers Local 324 (6-7-23)
- Ostentoski Farm Equipment (10-25-23)

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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.