

HOUSE BILL NO. 4673

May 25, 2023, Introduced by Reps. Miller, Byrnes, Farhat, Scott, Paiz, Coffia, McKinney, Wilson, Witwer, Grant, Arbit, Koleszar, Martus, MacDonell, Dievendorf, Edwards, Morgan, Hoskins, McFall, Hill, Puri, Coleman, Liberati, Brixie, Steckloff, Brabec, Churches, Brenda Carter, O'Neal, Hope, Rheingans, Mentzer, Fitzgerald, Haadsma, Glanville, Young and Aiyash and referred to the Committee on Agriculture.

A bill to require certain original equipment manufacturers and authorized repair providers of agricultural equipment to make diagnostic, maintenance, and repair parts, tools, and documentation available to independent repair providers and owners of that equipment; and to provide remedies.

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. 3. As used in this act:

1 (a) "Agricultural equipment" means a tractor, trailer,
2 combine, sprayer, tillage implement, baler, or other personal
3 property, including any digital electronic embedded in or attached
4 to the equipment, that is used on a farm or ranch and used for
5 planting, growing, or harvesting agricultural products or used for
6 raising or breeding livestock. Agricultural equipment includes any
7 mechanical system used on a farm or ranch for the conveyance or
8 storage of agriculture or animal products in a raw or unprocessed
9 state, regardless of whether the mechanical system is affixed to
10 real property. Agricultural equipment does not include any of the
11 following:

12 (i) A self-propelled vehicle designed primarily for the
13 transportation of individuals or property on a street or highway
14 and that is certified by the manufacturer under any applicable
15 federal safety and emission standards and requirements for
16 distribution and sale in the United States.

17 (ii) An off-highway vehicle.

18 (iii) A personal watercraft.

19 (iv) A snowmobile.

20 (b) "Authorized repair provider" means a person that has an
21 arrangement with an original equipment manufacturer under which the
22 original equipment manufacturer grants to the person a license to
23 use a trade name, service mark, or other proprietary identifier for
24 the purposes of offering diagnosis, maintenance, or repair services
25 for agricultural equipment on behalf of the person or the original
26 equipment manufacturer.

27 (c) "Documentation" means a manual, diagram, reporting output,
28 service code description, schematic, library of diagnosed issues,
29 software bill of material, or other guidance or information used in

1 effectuating diagnosis, maintenance, or repair services for
2 agricultural equipment.

3 (d) "Fair and reasonable costs and terms" means any of the
4 following as relates to obtaining a part, tool, or documentation,
5 as applicable:

6 (i) Costs for parts that are fair to the original equipment
7 manufacturer or authorized repair provider and the independent
8 repair provider or owner and that are agreed to by both parties,
9 considering the promised quality and terms for the parts.

10 (ii) Subject to subparagraphs (iv) and (v), costs that are
11 equivalent to the lowest actual cost for which an original
12 equipment manufacturer offers a tool or documentation to an
13 authorized repair provider, including, but not limited to, any
14 discount, rebate, or other financial incentive offered to an
15 authorized repair provider.

16 (iii) Subject to subparagraphs (iv) and (v), terms to which all
17 of the following apply:

18 (A) The terms are equivalent to the most favorable terms under
19 which an original equipment manufacturer offers a part, tool, or
20 documentation to an authorized repair provider, including, but not
21 limited to, the methods and timeliness of delivery of the part,
22 tool, or documentation.

23 (B) The terms do not do any of the following:

24 (I) Impose an obligation on an independent repair provider or
25 owner to use a part, tool, or documentation to diagnose, maintain,
26 or repair agricultural equipment.

27 (II) Require an independent repair provider or owner to become
28 an authorized repair provider.

29 (III) Require a part or tool to be registered with, paired

1 with, or approved by an original equipment manufacturer or an
2 authorized repair provider.

3 (iv) In addition to the costs and term conditions described in
4 subparagraphs (ii) and (iii), the costs and terms for obtaining
5 documentation must not include a fee for making the documentation
6 available to an independent repair provider or owner, unless the
7 documentation is requested in physical form, in which case the fee
8 must be equivalent to the actual cost of preparing and sending the
9 documentation in physical form.

10 (v) In addition to the costs and term conditions described in
11 subparagraphs (ii) and (iii), the costs and terms for obtaining a tool
12 that is software must not include any of the following:

13 (A) A fee for making the software available to an independent
14 repair provider or owner.

15 (B) Any impediment to accessing the software, including, but
16 not limited to, requiring internet access, requiring prior
17 authorization by the original equipment manufacturer for use of the
18 software, or denying a request for the software to be downloaded or
19 delivered via physical storage medium.

20 (e) "Independent repair provider" means a person operating in
21 this state that is not an authorized repair provider and that is
22 engaged in diagnosis, maintenance, or repair services for
23 agricultural equipment.

24 (f) "Off-highway vehicle" means a self-propelled vehicle that
25 is designed to travel on wheels or tracks in contact with the
26 ground, designed primarily for use off of highways, and generally
27 and commonly used to transport individuals for recreational
28 purposes. Off-highway vehicle does not include any of the
29 following:

1 (i) A military vehicle.

2 (ii) A golf cart.

3 (iii) A vehicle designed and used to carry a person with a
4 disability.

5 (iv) A vehicle designed and used specifically for agricultural,
6 logging, or mining purposes.

7 (g) "Original equipment manufacturer" means a person that
8 manufactures agricultural equipment and sells, leases, or otherwise
9 supplies the equipment to another person.

10 (h) "Owner" means a person that owns or leases agricultural
11 equipment. Owner does not include an original equipment
12 manufacturer.

13 (i) "Part" means a component or subcomponent of agricultural
14 equipment that is sold, supplied, or made available by an original
15 equipment manufacturer for the purposes of diagnosing, maintaining,
16 or repairing agricultural equipment.

17 (j) "Snowmobile" means a self-propelled vehicle primarily
18 designed or altered for travel on snow or ice when supported in
19 part by skis, belts, or cleats and designed primarily for use off
20 of highways. Snowmobile does not include machinery used strictly
21 for the grooming of snowmobile trails or ski slopes.

22 (k) "Software bill of material" means a formal record
23 containing the details and supply chain relationships of components
24 used to build software.

25 (l) "Tool" means a software program, hardware implement, or
26 other apparatus used for diagnosing, maintaining, or repairing
27 agricultural equipment, including, but not limited to, software or
28 other mechanisms that provision, program, or pair a new part,
29 calibrate functionality, or perform any other function required to

1 bring the product back to fully functional condition.

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

4 Sec. 5. An original equipment manufacturer or authorized
5 repair provider of agricultural equipment that is sold or used in
6 this state on or after the effective date of this act shall make
7 available to an independent repair provider or owner, on fair and
8 reasonable costs and terms, any part, tool, or documentation needed
9 to diagnose, maintain, or repair the agricultural equipment.

10 Sec. 7. (1) This act does not require an original equipment
11 manufacturer to do any of the following:

12 (a) Divulge a trade secret to an independent service provider
13 or owner, except as necessary to provide a part, tool, or
14 documentation on fair and reasonable costs and terms as required
15 under this act.

16 (b) Provide any part used by the original equipment
17 manufacturer to develop its products, except as required under this
18 act.

19 (2) This act does not do any of the following:

20 (a) Alter the terms of an arrangement described in section
21 3(b) between an authorized repair provider and an original
22 equipment manufacturer, except that a provision of the agreement
23 that limits the original equipment manufacturer's or authorized
24 repair provider's obligation to comply with this act is void and
25 unenforceable.

26 (b) Authorize a repair to agricultural equipment that
27 permanently deactivates a safety notification system or that is
28 otherwise illegal.

29 (c) Authorize access to a tool function that enables an

1 independent repair provider or owner to change the settings of
2 agricultural equipment in a manner that brings the equipment
3 permanently out of compliance with an applicable safety or emission
4 law.

5 (d) Authorize the evasion of an emission or copyright law.

6 Sec. 9. (1) Whether or not an independent repair provider or
7 owner seeks damages or has an adequate remedy at law, an
8 independent repair provider or owner may bring an action to do
9 either or both of the following:

10 (a) Obtain a declaratory judgment that an original equipment
11 manufacturer or authorized repair provider has violated section 5.

12 (b) Enjoin in accordance with the principles of equity an
13 original equipment manufacturer or authorized repair provider that
14 is engaging or is about to engage in a violation of section 5.

15 (2) An independent repair provider or owner that suffers loss
16 as a result of a violation of section 5 may bring an action to
17 recover actual damages or \$2,500.00, whichever is greater, together
18 with reasonable attorney fees.