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4
5 By: Senator T. Garner
6

A Bill

SENATE BILL 461

For An Act To Be Entitled

8 AN ACT TO ESTABLISH THE FARMERS RIGHT TO REPAIR ACT;
9 TO REQUIRE AN ORIGINAL MANUFACTURER TO PROVIDE
10 ESSENTIAL INFORMATION TO FARMERS TO REPAIR FARM
11 EQUIPMENT; AND FOR OTHER PURPOSES.

Subtitle

15 TO ESTABLISH THE FARMERS RIGHT TO REPAIR
16 ACT; AND TO REQUIRE AN ORIGINAL
17 MANUFACTURER TO PROVIDE ESSENTIAL
18 INFORMATION TO FARMERS TO REPAIR FARM
19 EQUIPMENT.

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24 SECTION 1. Arkansas Code Title 4, Chapter 88, is amended to add an
25 additional subchapter to read as follows:

26 Subchapter 11 – Farmers Right to Repair Act

28 4-88-1101. Title.

29 This subchapter shall be known and may be cited as the "Farmers Right
30 to Repair Act".

32 4-88-1102. Definitions.

33 As used in this subchapter:

34 (1) "Authorized repair provider" means:

35 (A) An individual or business that is unaffiliated with an
36 original equipment manufacturer; or



1 (B) An original equipment manufacturer that:

2 (i) Provides diagnostic, maintenance, or repair
3 services for farm equipment sold by the original equipment manufacturer; and

4 (ii) Does not have an authorized repair provider
5 arrangement with an independent repair provider;

6 (2) "Authorized repair provider arrangement" means an
7 arrangement between an authorized repair provider and an original equipment
8 manufacturer, for a definite or indefinite period, under which:

9 (A) The original equipment manufacturer grants to the
10 authorized repair provider a license to use a trade name, service mark, or
11 other proprietary identifier of the original equipment manufacturer to offer
12 diagnostic, maintenance, or repair services for farm equipment under the name
13 of the original equipment manufacturer; or

14 (B) The authorized repair provider offers diagnostic,
15 maintenance, or repair services for farm equipment on behalf of the original
16 equipment manufacturer;

17 (3) "Documentation" means a manual, diagram, reporting output,
18 service code description, schematic diagram, or other similar kind of
19 information provided to an authorized repair provider for the purpose of
20 performing diagnostic, maintenance, or repair services on farm equipment;

21 (4) "Embedded software" means any programmable instructions
22 provided on firmware that is delivered with farm equipment or with a part for
23 farm equipment, for the operation of the farm equipment, including any
24 relevant patch or fix made by the original equipment manufacturer;

25 (5)(A) "Fair and reasonable terms" means the terms required to
26 obtain a part, tool, or documentation at a cost, including convenience of
27 delivery and rights of use, equivalent to the net cost that would be incurred
28 by an authorized repair provider in obtaining an equivalent part, tool, or
29 documentation from the original equipment manufacturer, minus any discounts,
30 rebates, or other incentive programs.

31 (B) "Fair and reasonable terms" includes, for
32 documentation purposes, the providing of any relevant updates for farm
33 equipment:

34 (i) At no charge if the documentation is delivered
35 electronically; or

36 (ii) For a reasonable fee that reflects the actual

1 costs of preparing and sending the documentation if a physical, printed copy
2 of the documentation is requested by an independent repair provider;

3 (6) "Farm equipment" means a product or part, including farm
4 implements, machinery, utility and industrial equipment, lawn and garden
5 outdoor powered machinery and equipment, or attachments, that depends for its
6 functioning, in whole or in part, on digital electronics embedded in or
7 attached to the product or part;

8 (7) "Firmware" means a software program or set of instructions
9 programmed on farm equipment or on a part that allows the farm equipment or
10 part to communicate with other computer hardware;

11 (8) "Independent repair provider" means:

12 (A) An individual or business operating in this state
13 that:

14 (i) Does not have an authorized repair provider
15 arrangement with an original equipment manufacturer;

16 (ii) Is not affiliated with an individual or
17 business that has an authorized repair provider arrangement with the original
18 equipment manufacturer; and

19 (iii) Provides diagnostic, maintenance, or repair
20 services for farm equipment sold by the original equipment manufacturer; or

21 (B) An original equipment manufacturer, authorized repair
22 provider, or affiliate of an authorized repair provider that is engaged in
23 diagnostic, maintenance, or repair services for farm equipment that is not
24 sold by the original equipment manufacturer;

25 (9) "Legacy equipment" means farm equipment that is:

26 (A) At least ten (10) years old; and

27 (B) Sold aftermarket;

28 (10) "Manufacturer of motor vehicle equipment" means a business
29 engaged in manufacturing or supplying components that are used in the
30 manufacture, maintenance, or repair of a motor vehicle;

31 (11)(A) "Motor vehicle" means a self-propelled vehicle that is:

32 (i) Designed for personal or commercial use;

33 (ii) Designed for highway use;

34 (iii) Subject to registration under § 27-14-701 et
35 seq.; and

36 (iv) Certified by the motor vehicle manufacturer

1 under all applicable federal safety and emissions standards and requirements
 2 for distribution and sale in the United States.

3 (B) "Motor vehicle" does not include:

4 (i) A motorcycle;

5 (ii) A recreational vehicle; or

6 (iii) A vehicle equipped for habitation;

7 (12) "Motor vehicle dealer" means an individual or business
 8 that:

9 (A) Is engaged in the business of selling or leasing new
 10 motor vehicles to an individual or business under a franchise agreement;

11 (B) Has obtained a license under § 23-112-301 et seq.; and

12 (C) Provides diagnostic, maintenance, or repair services
 13 for motor vehicles or motor vehicle engines under the franchise agreement;

14 (13) "Motor vehicle manufacturer" means a business engaged in
 15 the business of manufacturing or assembling new motor vehicles;

16 (14) "Original equipment manufacturer" means a business engaged
 17 in the business of selling or leasing new farm equipment manufactured by or
 18 on behalf of the business to an individual or another business;

19 (15) "Owner" means an individual or business that owns or leases
 20 farm equipment that is purchased or used in this state;

21 (16) "Part" means a replacement part, new or used, made
 22 available by an original equipment manufacturer to service, maintain, or
 23 repair farm equipment sold by the original equipment manufacturer;

24 (17) "Product" means any tangible item or property that has
 25 physical characteristics; and

26 (18) "Trade secret" means the same as defined in § 4-75-601.

27
 28 4-88-1103. Requirements – Original equipment manufacturer.

29 (a)(1) An original equipment manufacturer shall make available to an
 30 independent repair provider or an owner of farm equipment sold by the
 31 original equipment manufacturer any documentation, parts, or tools, including
 32 any updates to the information or embedded software, necessary for the
 33 purpose of diagnosing, maintaining, or repairing farm equipment or parts sold
 34 or used in this state on fair and reasonable terms.

35 (2) This section requires an original equipment manufacturer to
 36 make available a part for legacy equipment even if the part is no longer

1 available to the original equipment manufacturer or a procedure to reverse
2 engineer the part for legacy equipment.

3 (b)(1) An original equipment manufacturer shall make available to an
4 owner or an independent repair provider any documentation, tools, or parts
5 needed to reset a lock or locking function that is disabled in the course of
6 diagnosing, maintaining, or repairing farm equipment that contains an
7 electronic security lock or other security-related function on fair and
8 reasonable terms.

9 (2) The documentation, tools, and parts may be made available
10 through an appropriate secure release system.

11
12 4-88-1104. Planned disruption of farm equipment – Prohibited.

13 An original equipment manufacturer shall not intentionally abandon or
14 disrupt embedded software on older versions of farm equipment through a
15 planned change or upgrades to firmware for the purpose of coercing the owner
16 of the farm equipment into buying a newer product.

17
18 4-88-1105. Violation of the Deceptive Trade Practices Act –
19 Enforcement.

20 (a) A violation of this subchapter is an unfair and deceptive act or
21 practice, as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq.

22 (b) All remedies, penalties, and authority granted to the Attorney
23 General under the Deceptive Trade Practices Act, § 4-88-101 et seq., shall be
24 available to the Attorney General for the enforcement of this subchapter.

25
26 4-88-1106. Limitations.

27 This subchapter does not:

28 (1) Require an original equipment manufacturer to disclose a
29 trade secret to an owner or an independent repair provider except as
30 necessary to provide documentation, parts, and tools on fair and reasonable
31 terms;

32 (2)(A) Except as provided in subdivision (2)(B) of this section,
33 alter the terms of an authorized repair provider arrangement in force,
34 including without limitation terms concerning the performance or provision of
35 warranty or recall repair work by an authorized repair provider on behalf of
36 an original equipment manufacturer under the authorized repair provider

1 arrangement.

2 (B) Terms of an authorized repair provider arrangement
3 that purport to waive, avoid, restrict, or limit the original equipment
4 manufacturer's obligations to comply with this subchapter are void; or

5 (3) Require an original equipment manufacturer or an authorized
6 repair provider to provide to an owner or independent repair provider access
7 to information, other than documentation, that is provided by the original
8 equipment manufacturer to an authorized repair provider under an authorized
9 repair provider arrangement.

10
11 4-88-1107. Exclusions.

12 This subchapter does not apply to:

13 (1) A person that is:

14 (A) A motor vehicle manufacturer;

15 (B) A manufacturer of motor vehicle equipment; or

16 (C) A motor vehicle dealer that is acting in the capacity
17 of a motor vehicle manufacturer or manufacturer of motor vehicle equipment;
18 or

19 (2) Any product or service of:

20 (A) A motor vehicle manufacturer;

21 (B) A manufacturer of motor vehicle equipment; or

22 (C) A motor vehicle dealer that is acting in the capacity
23 of a motor vehicle manufacturer or manufacturer of motor vehicle equipment.

24
25 4-88-1108. Applicability.

26 This subchapter applies to farm equipment sold or in use on or after
27 January 1, 2022.

28
29 SECTION 2. EFFECTIVE DATE. This act is effective on and after January
30 1, 2022.