

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

SENATE BILL 461

By: Senator T. Garner

For An Act To Be Entitled

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

Subtitle

TO ESTABLISH THE FARMERS RIGHT TO REPAIR
ACT; AND TO REQUIRE AN ORIGINAL
MANUFACTURER TO PROVIDE ESSENTIAL
INFORMATION TO FARMERS TO REPAIR FARM
EQUIPMENT.

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

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

Subchapter 11 – Farmers Right to Repair Act

4-88-1101. Title.

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

4-88-1102. Definitions.

As used in this subchapter:

(1) "Authorized repair provider" means:

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



(B) An original equipment manufacturer that:

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

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

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

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

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

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

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

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

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

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

(ii) For a reasonable fee that reflects the actual

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

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

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

(8) "Independent repair provider" means:

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

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

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

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

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

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

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

(B) Sold aftermarket;

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

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

(i) Designed for personal or commercial use;

(ii) Designed for highway use;

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

(iv) Certified by the motor vehicle manufacturer

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

(B) "Motor vehicle" does not include:

(i) A motorcycle;

(ii) A recreational vehicle; or

(iii) A vehicle equipped for habitation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4-88-1106. Limitations.

This subchapter does not:

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

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

arrangement.

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

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

4-88-1107. Exclusions.

This subchapter does not apply to:

(1) A person that is:

(A) A motor vehicle manufacturer;

(B) A manufacturer of motor vehicle equipment; or

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

(2) Any product or service of:

(A) A motor vehicle manufacturer;

(B) A manufacturer of motor vehicle equipment; or

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

4-88-1108. Applicability.

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

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