

By: Kolkhorst

S.B. No. 1654

A BILL TO BE ENTITLED

AN ACT

relating to the diagnosis, maintenance, and repair of electronics-enabled implements of agriculture.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act may be cited as the Texas Agricultural Right to Repair Act.

SECTION 2. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 121 to read as follows:

CHAPTER 121. DIAGNOSIS, MAINTENANCE, AND REPAIR OF

ELECTRONICS-ENABLED IMPLEMENTS OF AGRICULTURE

Sec. 121.001. DEFINITIONS. In this chapter:

(1) "Authorized repair provider" means a person that has an arrangement with an original equipment manufacturer under which the original equipment manufacturer 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 an electronics-enabled implement of agriculture on behalf of the person or the original equipment manufacturer. The term includes an original equipment manufacturer that offers diagnosis, maintenance, or repair services for the digital electronic equipment that the original equipment manufacturer manufactures or offers for sale.

(2) "Commonly available" means any item that is:

(A) commercially available for purchase from

1 more than one seller; and

2 (B) not solely made available by an original
3 equipment manufacturer for use on the original equipment
4 manufacturer's products.

5 (3) "Digital electronic equipment" means any product
6 that depends for the product's functioning, wholly or partly, on
7 digital electronics embedded in or attached to the product.

8 (4) "Documentation" means any manual, diagram,
9 reporting output, service code description, schematic, library of
10 diagnosed issues, or other information used in the diagnosis,
11 maintenance, or repair of an electronics-enabled implement of
12 agriculture.

13 (5) "Electronics-enabled implement of agriculture"
14 means equipment that:

15 (A) is designed for agricultural purposes;

16 (B) is exclusively used by the owner of the
17 equipment in the conduct of the agricultural operations of the
18 owner; and

19 (C) depends for the equipment's functioning,
20 wholly or partly, on digital electronic equipment.

21 (6) "Embedded software" means a programmable
22 instruction provided on firmware delivered with an
23 electronics-enabled implement of agriculture.

24 (7) "Fair and reasonable terms" means, with respect to
25 making available a part, tool, software, or documentation, making
26 the part, tool, software, or documentation available at a cost and
27 on terms equivalent to the lowest cost and most favorable terms

1 offered by an original equipment manufacturer to an authorized
2 repair provider, including:

3 (A) in general, with respect to costs, making
4 available any discount, rebate, or financial incentive the original
5 equipment manufacturer offers to an authorized repair provider;

6 (B) in general, with respect to other terms,
7 ensuring the terms:

8 (i) include equivalent methods of
9 timeliness of delivery of the part, tool, software, or
10 documentation that the original equipment manufacturer offers to an
11 authorized repair provider;

12 (ii) do not impose on an owner or
13 independent repair provider any substantial obligation to use or
14 put a restriction on the use of the part, tool, software, or
15 documentation to diagnose, maintain, or repair an
16 electronics-enabled implement of agriculture, including a
17 condition that the owner or independent repair provider become an
18 authorized repair provider or a requirement that a part or tool be
19 registered, paired with, or approved by the original equipment
20 manufacturer before the part or tool is operational; and

21 (iii) prohibit an original equipment
22 manufacturer or an authorized repair provider from imposing any
23 additional cost or burden that is not reasonably necessary or is
24 designed to be an impediment on an owner or independent repair
25 provider;

26 (C) with respect to making available
27 documentation, making documentation available at no cost, except

1 that an original equipment manufacturer may charge the reasonable
2 actual cost of preparing and sending a copy of the documentation
3 when the documentation is requested in physical printed form; and

4 (D) with respect to making available software
5 tools, making the software tools available:

6 (i) at no cost;

7 (ii) without requiring authorization or
8 Internet access;

9 (iii) without imposing impediments to
10 access or use in the course of effecting the diagnosis,
11 maintenance, or repair of an electronics-enabled implement of
12 agriculture; and

13 (iv) in a manner that does not impair the
14 efficient and cost-effective diagnosis, maintenance, or repair of
15 an electronics-enabled implement of agriculture to enable full
16 functionality of the implement.

17 (8) "Firmware" means a software program or set of
18 instructions programmed on an electronics-enabled implement of
19 agriculture or on a part for the implement that allows the implement
20 or part to communicate with a networked product or system or with
21 other computer hardware, including any relevant patch or fix made
22 by the original equipment manufacturer of the implement or part.

23 (9) "Independent repair provider" means a person that:

24 (A) is not an authorized repair provider of an
25 electronics-enabled implement of agriculture; and

26 (B) provides diagnosis, maintenance, or repair
27 services for the electronics-enabled implement of agriculture.

1 (10) "Original equipment manufacturer" means a person
2 that manufactures an electronics-enabled implement of agriculture
3 and sells, leases, or otherwise supplies the implement to any other
4 person.

5 (11) "Owner" means a person that owns or leases an
6 electronics-enabled implement of agriculture other than the
7 original equipment manufacturer of the implement.

8 (12) "Part" means any component or subcomponent of an
9 electronics-enabled implement of agriculture that is sold,
10 supplied, or otherwise made available by an original equipment
11 manufacturer for the purposes of maintaining, repairing, or
12 diagnosing the implement.

13 (13) "Tool" means a software program, including a
14 software update, hardware implement, or other apparatus used for
15 repair-related diagnostic testing, maintenance, or repair of an
16 electronics-enabled implement of agriculture. The term includes
17 software or another mechanism that provides, programs, or pairs a
18 new part, calibrates functionality, or performs any other function
19 required to bring the implement to a fully functional condition.

20 (14) "Trade secret" has the meaning assigned by 18
21 U.S.C. Section 1839, as that section existed on January 1, 2023.

22 Sec. 121.002. APPLICABILITY. This chapter applies to an
23 electronics-enabled implement of agriculture sold or leased in this
24 state.

25 Sec. 121.003. REQUIREMENTS FOR ORIGINAL EQUIPMENT
26 MANUFACTURERS. An original equipment manufacturer shall make
27 available on fair and reasonable terms to any owner or independent

1 repair provider:

2 (1) any part, tool, software, or documentation,
3 including any updates to information or embedded software, for that
4 equipment or part; and

5 (2) for equipment containing an electronic security
6 lock or other security-related function, any part, tool, or
7 documentation required to disable or enable an electronic security
8 lock or other security-related function of an electronics-enabled
9 implement of agriculture.

10 Sec. 121.004. PART REPLACEMENT; ACCESSIBILITY. An original
11 equipment manufacturer shall ensure that any part required by the
12 original equipment manufacturer's electronics-enabled implement of
13 agriculture can be replaced without causing damage to the implement
14 using:

15 (1) a commonly available tool; or

16 (2) a tool that is not commonly available that is made
17 available to owners or independent repair providers by the original
18 equipment manufacturer on fair and reasonable terms.

19 Sec. 121.005. CONSTRUCTION OF CHAPTER. Nothing in this
20 chapter may be construed to:

21 (1) require an original equipment manufacturer to
22 divulge a trade secret to an owner or an independent repair
23 provider, except as necessary to make available any necessary part,
24 tool, software, or documentation on fair and reasonable terms as
25 required by this chapter;

26 (2) alter the terms of an agreement between an
27 original equipment manufacturer and an authorized repair provider,

1 except with respect to any provision of an agreement that would
2 limit the obligations of an original equipment manufacturer under
3 this chapter;

4 (3) require an authorized repair provider to make any
5 part, tool, software, or documentation relating to an
6 electronics-enabled implement of agriculture available on fair and
7 reasonable terms, unless the authorized repair provider is the
8 original equipment manufacturer of the implement;

9 (4) require an original equipment manufacturer to
10 provide any part or equipment solely used in the development of the
11 manufacturer's products; or

12 (5) allow:

13 (A) any modification that permanently
14 deactivates a safety notification system when an
15 electronics-enabled implement of agriculture is being repaired;

16 (B) access to any function of a tool that enables
17 the owner or independent repair provider to change the settings of
18 an electronics-enabled implement of agriculture so as to bring the
19 equipment permanently out of compliance with any applicable safety
20 or emissions laws;

21 (C) the evasion of emissions laws or copyright
22 laws; or

23 (D) any other illegal modification activities.

24 Sec. 121.006. DECEPTIVE TRADE PRACTICE. A violation of
25 this chapter is a deceptive trade practice in addition to the
26 practices described by Subchapter E, Chapter 17, and is actionable
27 under that subchapter.

1 SECTION 3. To the extent of a conflict between Chapter 121,
2 Business & Commerce Code, as added by this Act, and a provision of
3 an agreement entered into before the effective date of this Act, the
4 provision of the agreement prevails.

5 SECTION 4. This Act takes effect September 1, 2023.