

AMENDMENTS TO LB543

Introduced by Judiciary.

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 Section 1. Sections 1 to 6 of this act shall be known and may be
4 cited as the Agricultural Equipment Right-To-Repair Act.

5 Sec. 2. For purposes of the Agricultural Equipment Right-To-Repair
6 Act:

7 (1) Authorized repair provider means an individual or business who
8 is affiliated with an original equipment manufacturer and who has an
9 arrangement with the original equipment manufacturer, for a definite or
10 indefinite period, under which the original equipment manufacturer grants
11 to the individual or business a license to use a trade name, service
12 mark, or other proprietary identifier for the purposes of offering the
13 services of diagnosis, maintenance, or repair of electronics-enabled
14 agricultural equipment under the name of the original equipment
15 manufacturer, or other arrangement with the original equipment
16 manufacturer to offer such services on behalf of the original equipment
17 manufacturer. An original equipment manufacturer who offers the services
18 of diagnosis, maintenance, or repair of its own electronics-enabled
19 agricultural equipment, and who does not have an arrangement described in
20 this subsection with an affiliated individual or business, shall be
21 considered an authorized repair provider with respect to such equipment;

22 (2) Electronics-enabled agricultural equipment or equipment means
23 any product, part of a product, or attachment to a product, when sold or
24 leased for use in farming, ranching, or other agriculture, that depends
25 for its functioning, in whole or in part, on digital electronics embedded
26 in or attached to it. The term includes, but is not limited to, a
27 tractor, a trailer, a combine, a sprayer, a baler, or an implement used

1 for tillage, planting, irrigation, or cultivating. Electronics-enabled
2 agricultural equipment or equipment does not include motor vehicles and
3 does not include consumer electronic devices, including wireless
4 communication devices and computers;

5 (3) Documentation means any manual, diagram, reporting output,
6 service code description, schematic, product guide, product service
7 demonstration, training seminar, clinic, fleet management information,
8 connected support, mobile application, on-board diagnostic via
9 diagnostics port or wireless interface, or other guidance or information
10 on service, parts, operation, safety, electronic field diagnostic service
11 tools, or training for use in effecting the services of diagnosis,
12 maintenance, or repair of electronics-enabled agricultural equipment or
13 service that is required to bring the equipment back to full or upgraded
14 functionality;

15 (4) Embedded software means any programmable instructions provided
16 on firmware delivered with electronics-enabled agricultural equipment, or
17 with a part for such equipment, for purposes of equipment operation,
18 including all relevant updates, patches, and fixes made by the
19 manufacturer of such equipment or part for such purposes;

20 (5)(a) Fair and reasonable terms for obtaining a part, a tool,
21 documentation, or software means at fair and reasonable costs and terms
22 that do not impair the contracts and agreements between authorized repair
23 providers affiliated with the original equipment manufacturer. Fair and
24 reasonable terms shall prohibit an original equipment manufacturer and
25 its authorized repair providers from imposing additional costs or burdens
26 not reasonably necessary or designed to be an impediment on the
27 independent repair provider or equipment owner.

28 (b) For software tools, fair and reasonable terms also means without
29 requiring authorization or Internet access, or imposing impediments to
30 access or use, in the course of effecting the diagnosis, maintenance, or
31 repair and enabling full functionality of electronics-enabled

1 agricultural equipment, in a manner that impairs the efficient and cost-
2 effective performance of any of those activities unless authorization is
3 required to prevent access to source code or infringement of intellectual
4 property in software or hardware that is owned and licensed to the
5 original equipment manufacturer by a third party and subject to terms of
6 use;

7 (6) Firmware means a set of instructions programmed on electronics-
8 enabled agricultural equipment, or on a part for such equipment, to allow
9 the equipment or part to communicate within itself or with other computer
10 hardware;

11 (7) Independent repair provider means an individual or business
12 operating in this state, who does not have an arrangement described in
13 subdivision (1) of this section with an original equipment manufacturer,
14 and who is not affiliated with any individual or business who has such an
15 arrangement, and who is engaged in the services of diagnosis,
16 maintenance, or repair of electronics-enabled agricultural equipment,
17 except that an original equipment manufacturer or, with respect to that
18 original equipment manufacturer, an individual or business who has such
19 an arrangement with that original equipment manufacturer, or who is
20 affiliated with an individual or business who has such an arrangement
21 with that original equipment manufacturer, shall be considered an
22 independent repair provider for purposes of those instances in which it
23 engages in the services of diagnosis, maintenance, or repair of
24 electronics-enabled agricultural equipment that is not manufactured by or
25 sold under the name of that original equipment manufacturer;

26 (8) Motor vehicle means a vehicle that is designed for transporting
27 persons or property on a street or highway and is certified by the
28 manufacturer under all applicable federal safety and emissions standards
29 and requirements for distribution and sale in the United States;

30 (9) Original equipment manufacturer means a business engaged in the
31 business of selling, leasing, or otherwise supplying new electronics-

1 enabled agricultural equipment manufactured by or on behalf of itself, to
2 any individual or business;

3 (10) Owner means an individual or business that owns or leases
4 electronics-enabled agricultural equipment purchased or used in this
5 state;

6 (11) Part means any replacement part, either new or used, made
7 available by an original equipment manufacturer or other supplier for
8 purposes of effecting the services of maintenance or repair of
9 electronics-enabled agricultural equipment manufactured by or on behalf
10 of, sold, or otherwise supplied by the original equipment manufacturer;

11 (12) Repair means to maintain, diagnose, service, and restore
12 machinery that results in the machine being returned to its original or
13 upgraded specifications. Repair does not include performing any
14 activities that result in the machine being modified outside of the
15 original equipment manufacturer specifications. Specifically, repair does
16 not include the ability to:

17 (a) Reset security-related electronic modules;

18 (b) Reprogram any electronic processing units or engine control
19 units and parameters;

20 (c) Change any equipment or engine settings that negatively affect
21 emissions or safety compliance; and

22 (d) Download or access the source code of any proprietary embedded
23 software or code;

24 (13) Tools means any software program, software upgrade, hardware
25 implement, product service demonstrations, service training, seminars,
26 clinics, on-board diagnostics via diagnostics port or wireless interface,
27 electronic field diagnostic service tools and training on how to use
28 them, or other apparatus used for diagnosis, maintenance, or repair of
29 electronics-enabled agricultural equipment, including software or other
30 mechanisms that provision, program, or pair a new part, calibrate
31 functionality, or perform any other function required to bring the

1 product back to specifications; and

2 (14) Trade secret has the same meaning as in section 87-502.

3 Sec. 3. For electronics-enabled agricultural equipment, and parts
4 for such equipment, sold or used in this state, an original equipment
5 manufacturer shall make available, for purposes of diagnosis,
6 maintenance, or repair of such equipment, to any independent repair
7 provider, or to the owner of electronics-enabled agricultural equipment
8 manufactured by or on behalf of, or sold or otherwise supplied by, the
9 original equipment manufacturer, on fair and reasonable terms,
10 documentation, parts, and tools, inclusive of any updates to information
11 or embedded software. Nothing in this subsection requires an original
12 equipment manufacturer to make available documentation, parts, and tools
13 if such documentation, parts, and tools are no longer available to the
14 original equipment manufacturer.

15 Sec. 4. Violation of the Agricultural Equipment Right-To-Repair Act
16 is an unlawful practice under the Uniform Deceptive Trade Practices Act.
17 All remedies, penalties, and authority granted to the Attorney General by
18 the Uniform Deceptive Trade Practices Act shall be available to the
19 Attorney General for the enforcement of the Agricultural Equipment Right-
20 To-Repair Act.

21 Sec. 5. (1) Nothing in the Agricultural Equipment Right-To-Repair
22 Act shall be construed to require an original equipment manufacturer to
23 divulge a trade secret to an owner or an independent service provider
24 except as necessary to provide documentation, parts, and tools on fair
25 and reasonable terms.

26 (2) No provision in the Agricultural Equipment Right-To-Repair Act
27 shall be construed to alter the terms of any arrangement described in
28 subdivision (1) of section 2 of this act in force between an authorized
29 repair provider and an original equipment manufacturer, including, but
30 not limited to, the performance or provision of warranty or recall repair
31 work by an authorized repair provider on behalf of an original equipment

1 manufacturer pursuant to such arrangement, except that any provision in
2 such terms that purports to waive, avoid, restrict, or limit the original
3 equipment manufacturer's obligations to comply with the act shall be void
4 and unenforceable.

5 Sec. 6. The Agricultural Equipment Right-To-Repair Act applies with
6 respect to equipment sold or in use on or after the effective date of
7 this act.