

**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Agriculture

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BILL: SB 374

INTRODUCER: Senator Bradley

SUBJECT: Fair Repair of Agricultural Equipment

DATE: January 25, 2021      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Argote</u>	<u>Becker</u>	<u>AG</u>	<b>Favorable</b>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>RC</u>	_____

**I. Summary:**

SB 374 creates the “Agricultural Equipment Fair Repair Act” requiring original equipment manufacturers of agricultural equipment to provide certain manufacturing, diagnostic, and repair information to independent repair providers and owners. Original equipment manufacturers are prohibited from excluding certain information concerning security-related functions. The bill does not apply to motor vehicle manufacturers or motor vehicle dealers. Additionally, a civil penalty may be collected from any original equipment manufacturer who is found to be in violation.

The bill takes effect July 1, 2021.

**II. Present Situation:**

**Agricultural Equipment Manufacturers and Dealers Act**

S. 686.401, F.S., states that the distribution and sale of equipment primarily designed for or used in agriculture affects the general economy of the state, the public interest, and the public welfare.<sup>1</sup> It is therefore deemed necessary to regulate the conduct of manufacturers, distributors, and dealers of agricultural equipment doing business in Florida in order to prevent fraud, unfair business practices, unfair methods of competition, impositions, and other abuses upon its citizens.<sup>2</sup> Currently, the State does not regulate the distribution of information related to manufacturing, diagnostic, and repair between original equipment manufacturers (OEM) and independent repair providers and owners.

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<sup>1</sup> See ch. 686.401, F.S.

<sup>2</sup> *Id.*

## **Right to Repair Legislation**

Over 32 states have considered right to repair legislation and 20 of those states introduced legislation in 2019 alone. Though related to vehicle manufacturers, Massachusetts<sup>3</sup> has been the only state successful in this endeavor to date. Georgia,<sup>4</sup> New York,<sup>5</sup> Washington,<sup>6</sup> Missouri,<sup>7</sup> Kansas,<sup>8</sup> and Nebraska<sup>9</sup> are among the states that have introduced legislation surrounding the availability of diagnostic and repair information to any independent repair provider or owner of products manufactured by an OEM.

### ***Massachusetts***

Mass. Gen. Laws Ann. ch. 165, § 93K (2013)<sup>10</sup> requires vehicle owners and independent repair facilities in Massachusetts to have access to the same vehicle diagnostic and repair information made available to the manufacturers, dealers located in Massachusetts, and authorized repair facilities. This legislation includes provisions similar to that of SB 374, including protections surrounding trade secrets and the terms of an authorized repair agreement.

### **Association of Equipment Manufacturers and Equipment Dealers Association**

The Association of Equipment Manufacturers and the Equipment Dealers Association created R2R Solutions<sup>11</sup> which compiles maintenance, diagnostic, and repair information for tractors and combines.<sup>12</sup> The publication is available online and includes access to manuals, product guides, product service demonstrations, fleet management information, and more. R2R Solutions provides owners with access to descriptions for fault codes on equipment, allowing owners the ability to choose whether to repair machinery independently or turn to an authorized repair provider.

## **III. Effect of Proposed Changes:**

### **The Agricultural Equipment Fair Repair Act**

The bill creates s. 686.35, F.S., known as the “Agricultural Equipment Fair Repair Act.” The bill requires that original equipment manufacturers (OEM) provide diagnostic and repair documentation, including updates and corrections to embedded software, to any independent repair provider or owner of equipment manufactured by the OEM. Such information must be available free of charge or provided to an independent repair provider or owner in the same manner that the OEM would divulge such information to an authorized repair provider.

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<sup>3</sup> Mass. Gen. Laws Ann. ch. 165, § 93K (2013).

<sup>4</sup> Georgia HB 286 (2019).

<sup>5</sup> New York SB 710 (2020).

<sup>6</sup> Washington HB 1342 (2020).

<sup>7</sup> Missouri HB 1079 (2019).

<sup>8</sup> Kansas HB 2122 (2017).

<sup>9</sup> Nebraska LB 67 (2017).

<sup>10</sup> Mass. Gen. Laws Ann. ch. 165, § 93K (2013).

<sup>11</sup> Association of Equipment Manufacturers and Equipment Dealers Association, *Right to Repair Solutions*, R2R Solutions.org, <https://r2rsolutions.org/> (last visited Jan. 26, 2021).

<sup>12</sup> Association of Equipment Manufacturers, *Right to Repair*, <https://www.aem.org/advocacy-old/right-to-repair> (last visited Jan. 26, 2021).

Following the dissemination of this information, the OEM is not responsible for the content and functionality of such aftermarket diagnostic tools, diagnostics, or service information systems.

### **Definitions**

The bill provides definitions for the terms:

- Authorized repair provider,
- Embedded software,
- Equipment,
- Fair and reasonable terms,
- Firmware,
- Independent repair provider,
- Motor vehicle,
- Motor vehicle dealer,
- Motor vehicle manufacturer,
- Original equipment manufacturer,
- Owner,
- Part, and
- Trade secret.

### **Information Concerning Security-Related Functions**

The bill requires that diagnostic, service, and repair documentation needed to reset a security-related electronic function be provided to an owner or independent repair provider as long as this documentation is not excluded under the terms defined within this bill. If so, the necessary documentation must be obtained by an owner or independent repair provider through the appropriate secure data release systems.

### **Exclusions**

The bill explicitly does not:

- Require that an OEM divulge a trade secret.
- Interfere with the terms of an agreement between the OEM and an authorized repair provider with the exception of any provision within the agreement that waives, avoids, restricts, or limits and OEM's compliance with the terms defined within this bill.
- Require that OEMs or authorized repair providers give an owner or independent repair provider access to non-diagnostic and repair documentation provided by an OEM to an authorized repair provider pursuant the terms of an authorized repair agreement.
- Apply to motor vehicle manufacturers, any product or service of a motor vehicle manufacturer, or motor vehicle dealers.

### **Other Provisions**

The bill provides that any OEM found in violation is liable to a civil penalty of not more than \$500 for each violation.

**Effective Date**

This bill takes effect July 1, 2021.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Original equipment manufacturers may be susceptible to liability if modifications are made on equipment that result in serious injury. Original equipment manufacturers may also be subject to a decrease in revenue related to repairs as owners will be authorized to seek repair services from independent repair providers and may be subject to a civil penalty of not more than \$500.

Owners of equipment will acquire the ability to maintain, service, repair, and rebuild their agricultural equipment on their own accord or by the repair shop of their choice as a result of the provisions implemented by this bill. This may cause a positive fiscal impact for owners as they will no longer bear the cost of transportation of faulty equipment to an authorized repair provider or dealer for service.

**C. Government Sector Impact:**

The bill creates a new civil penalty of not more than \$500, which may increase revenue if the provisions set forth by this bill are violated.

**VI. Technical Deficiencies:**

Line 41 defines “fair and reasonable terms,” but that definition is not used in the substance of the bill.

**VII. Related Issues:**

As written, the bill allows equipment owners autonomy over repairs. Equipment owners will have the ability to make modifications that may lead to environmental, safety, and liability implications for customers and dealers.

**VIII. Statutes Affected:**

This bill creates section 686.35 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.