

1 A bill to be entitled
 2 An act relating to the fair repair of agricultural
 3 equipment; providing a short title; creating s.
 4 686.35, F.S.; defining terms; requiring original
 5 equipment manufacturers of agricultural equipment to
 6 provide certain manufacturing, diagnostic, and repair
 7 information to independent repair providers and
 8 owners; prohibiting the original equipment
 9 manufacturers from excluding certain information
 10 concerning security-related functions; providing
 11 construction and applicability; providing civil
 12 liability; providing an effective date.

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 14 Be It Enacted by the Legislature of the State of Florida:

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 16 Section 1. This act may be cited as the "Agricultural
 17 Equipment Fair Repair Act."

18 Section 2. Section 686.35, Florida Statutes, is created to
 19 read:

20 686.35 Fair repair of agricultural equipment.-

21 (1) As used in this section, the term:

22 (a) "Authorized repair provider" means an individual or an
 23 entity that has an arrangement for a definite or indefinite
 24 period in which an original equipment manufacturer grants to a
 25 separate individual or entity a license to use a trade name,

26 service mark, or related characteristic for the purpose of
27 offering repair services under the name of the original
28 equipment manufacturer.

29 (b) "Embedded software" means any programmable
30 instructions provided on firmware delivered with the equipment
31 for the purpose of equipment operation, including all relevant
32 patches and fixes made by the original equipment manufacturer
33 for this purpose. The term includes, but is not limited to, a
34 basic internal operating system, an internal operating system, a
35 machine code, an assembly code, a robot code, or a microcode.

36 (c) "Equipment" means digital electronic equipment, or a
37 part for such equipment, which is originally manufactured for
38 farm equipment, including combines, tractors, implements, self-
39 propelled equipment, and related attachments and implements, and
40 that is manufactured for distribution and sale in this state.

41 (d) "Fair and reasonable terms" means an equitable price
42 in light of relevant factors, including, but not limited to:

43 1. The net cost to the authorized repair provider for
44 similar information obtained from an original equipment
45 manufacturer, excluding any discounts, rebates, or other
46 incentive programs;

47 2. The cost to the original equipment manufacturer for
48 preparing and distributing the information, excluding any
49 research and development costs incurred in designing and
50 implementing, upgrading, or altering the product, but including

51 amortized capital costs for the preparation and distribution of
52 the information;

53 3. The price charged by other original equipment
54 manufacturers for similar information;

55 4. The price charged by original equipment manufacturers
56 for similar information before the launch of original equipment
57 manufacturer websites;

58 5. The ability of aftermarket technicians or shops to
59 afford the information;

60 6. The means by which the information is distributed;

61 7. The extent to which the information is used, including
62 the number of users and the frequency, duration, and volume of
63 use; and

64 8. Inflation.

65 (e) "Firmware" means a software program or set of
66 instructions programmed on a hardware device to allow the device
67 to communicate with other computer hardware.

68 (f) "Independent repair provider" means a person or
69 business operating in this state which is not affiliated with an
70 original equipment manufacturer or an original equipment
71 manufacturer's authorized repair provider and which is engaged
72 in the diagnosis, service, maintenance, or repair of equipment.
73 However, an original equipment manufacturer meets the definition
74 of an independent repair provider when such original equipment
75 manufacturer engages in the diagnosis, service, maintenance, or

76 | repair of equipment that is not affiliated with the original
 77 | equipment manufacturer.

78 | (g) "Motor vehicle" means any vehicle that is designed for
 79 | transporting persons or property on a street or highway and
 80 | certified by the motor vehicle manufacturer under all applicable
 81 | federal safety and emissions standards and requirements for
 82 | distribution and sale in the United States. The term does not
 83 | include a motorcycle or a recreational vehicle or manufactured
 84 | home equipped for habitation.

85 | (h) "Motor vehicle dealer" means a person or business
 86 | that, in the ordinary course of business, is engaged in the
 87 | selling or leasing of new motor vehicles to a person or business
 88 | pursuant to a franchise agreement; is engaged in the diagnosis,
 89 | service, maintenance, or repair of motor vehicles or motor
 90 | vehicle engines pursuant to such franchise agreement; and has
 91 | obtained a license under s. 320.27.

92 | (i) "Motor vehicle manufacturer" means a person or
 93 | business engaged in the manufacturing or assembling of new motor
 94 | vehicles.

95 | (j) "Original equipment manufacturer" means a person or
 96 | business that, in the ordinary course of business, is engaged in
 97 | the selling or leasing of new equipment to a person or business
 98 | and is engaged in the diagnosis, service, maintenance, or repair
 99 | of such equipment.

100 | (k) "Owner" means a person or business that owns or leases

101 a digital electronic product purchased or used in this state.

102 (1) "Part" means a replacement part, either new or used,
103 which the original equipment manufacturer makes available to the
104 authorized repair provider for purposes of effecting repair.

105 (m) "Trade secret" means anything tangible or intangible
106 or electronically stored or kept which constitutes, represents,
107 evidences, or records intellectual property, including secret or
108 confidentially held designs, processes, procedures, formulas,
109 inventions, or improvements or secret or confidentially held
110 scientific, technical, merchandising, production, financial,
111 business, or management information. The term also includes any
112 other trade secret as defined in 18 U.S.C. 1839, as such section
113 existed on January 1, 2020.

114 (2) For equipment sold and used in this state, the
115 original equipment manufacturer shall make available diagnostic
116 and repair documentation, including repair technical updates and
117 updates and corrections to embedded software, to any independent
118 repair provider or owner of equipment manufactured by such
119 original equipment manufacturer. The information must be made
120 available for no charge or provided in the same manner as the
121 original equipment manufacturer makes such diagnostic and repair
122 documentation available to an authorized repair provider.
123 Thereafter, the original equipment manufacturer is not
124 responsible for the content and functionality of such
125 aftermarket diagnostic tools, diagnostics, or service

126 information systems.

127 (3) Original equipment manufactured by the original
128 equipment manufacturer which is sold or used in this state to
129 provide security-related functions may not exclude diagnostic,
130 service, and repair documentation that is necessary to reset a
131 security-related electronic function from information provided
132 to an owner or independent repair provider. If such
133 documentation is excluded under this section, the documentation
134 necessary to reset an immobilizer system or a security-related
135 electronic module must be obtained by an owner or independent
136 repair provider through the appropriate secure data release
137 systems.

138 (4) This section may not be construed to do any of the
139 following:

140 (a) Require an original equipment manufacturer to divulge
141 a trade secret.

142 (b) Abrogate, interfere with, contradict, or alter the
143 terms of an agreement executed and in force between an
144 authorized repair provider and an original equipment
145 manufacturer, including, but not limited to, the performance or
146 provision of warranty or recall repair work by an authorized
147 repair provider on behalf of an original equipment manufacturer
148 pursuant to such authorized repair agreement, except that any
149 provision in such an authorized repair agreement which purports
150 to waive, avoid, restrict, or limit an original equipment

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151 manufacturer's compliance with this section is void and
152 unenforceable.

153 (c) Require original equipment manufacturers or authorized
154 repair providers to provide an owner or independent repair
155 provider access to nondiagnostic and repair documentation
156 provided by an original equipment manufacturer to an authorized
157 repair provider pursuant to the terms of an authorized repair
158 agreement.

159 (5) This section does not apply to motor vehicle
160 manufacturers, any product or service of a motor vehicle
161 manufacturer, or motor vehicle dealers.

162 (6) Any original equipment manufacturer found in violation
163 of this section is liable to a civil penalty of not more than
164 \$500 for each violation.

165 Section 3. This act shall take effect July 1, 2021.