

SENATE BILL NO. 347

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING LAWS RELATING TO THE RIGHT TO REPAIR AGRICULTURAL EQUIPMENT; REQUIRING MANUFACTURERS TO ENSURE FAIR AND REASONABLE ACCESS TO INFORMATION AND EQUIPMENT FOR REPAIR, INCLUDING SPECIALTY TOOLS AND SOFTWARE; PROVIDING FOR INDEPENDENT REPAIR FACILITIES' ACCESS TO SPECIALTY TOOLS AND SOFTWARE; PROVIDING LIMITATIONS; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Obligations of manufacturer -- general -- provisions -- repair --**

limitations -- definitions. (1) (a) A manufacturer shall ensure that any farmer, including any staff or independent technician, and any independent repair facility that provides assistance to farmers in the state, has electronic access on fair and reasonable terms to any tools, specialty tools, software, and documentation used in effecting the services of diagnosis, maintenance, or repair of agricultural equipment, including:

- (i) software;
- (ii) manuals;
- (iii) product service demonstrations, training, seminars, or clinics;
- (iv) on-board diagnostics through a diagnostic port or wireless interface;
- (v) other publications with information on service, parts, operation, and safety; and
- (vi) embedded software required to authorize a repair and return agricultural equipment to full,

working order.

(b) A manufacturer shall ensure that farmers and independent repair facilities in the state will be able to access and obtain, per subscription or sale, a manufacturer's tools, specialty tools, software, and documentation, as provided in subsection (1)(a), from the manufacturer or from authorized repair facilities on

1 fair and reasonable terms.

2 (c) A manufacturer shall ensure that any farmer, including any staff or independent technician
3 assisting a farmer, and any independent repair facility in this state that provides assistance to farmers, have
4 electronic access, on fair and reasonable terms, to software, which is available for farmers and independent
5 repair facilities to purchase from authorized repair facilities or online directly from the manufacturer in the United
6 States.

7 (d) A manufacturer shall ensure that a farmer in this state has electronic access on fair and
8 reasonable terms to a manufacturer's codes and data and, with farmer authorization, codes and data will be
9 available to a farmer's selected independent repair facility.

10 (e) This section may not be interpreted or construed to require a manufacturer to:

11 (i) divulge trade secrets;

12 (ii) allow owners or independent repair facilities to override safety features or emissions controls or
13 to adjust agricultural equipment power levels; or

14 (iii) violate any federal, state, or local laws or regulations.

15 (2) (a) If a manufacturer provides to authorized repair facilities any tools, specialty tools, software,
16 and documentation for functions listed in subsection (1), separately or as fully or partially integrated software,
17 the manufacturer shall ensure that these are available to farmers and independent repair facilities on a fair and
18 reasonable basis, whether the tools, as part of software or otherwise, or specialty tools are purchased, leased,
19 or subscribed to, and whether or not fulfillment is provided directly by the manufacturer or an authorized repair
20 facility.

21 (b) When a manufacturer receives any codes, or real-time data with respect to the in-field
22 operation of a farmer's agricultural equipment, the manufacturer shall ensure that such codes and data are also
23 available to the farmer using the agricultural equipment and, with farmer authorization, to independent repair
24 facilities.

25 (c) Subject to the limitations of subsection (1)(e), a manufacturer shall make available, on fair and
26 reasonable terms, tools, specialty tools, software, and documentation, inclusive of any updates to information or
27 embedded software, for purposes of diagnosis, maintenance, or repair of agricultural equipment to any farmer
28 that owns or leases agricultural equipment manufactured by or on behalf of the manufacturer and any

1 independent repair facility.

2 (d) For agricultural equipment that contains an electronic lock, immobilizer, or other security-
3 related function, and subject to the limitations of subsection (1)(e), the manufacturer shall make available to the
4 farmer and an independent repair facility, on fair and reasonable terms, any special documentation and tools
5 needed to disable the lock, immobilizer, or function and to reset it when disabled in the ordinary course of
6 diagnosis, maintenance, or repair of the agricultural equipment.

7 (e) To the extent practical and the manufacturer considers secure, and subject to the limitations of
8 subsection (5), tools, specialty tools, software, and documentation must be provided on a remote, immediate
9 basis, whether delivery is made from the manufacturer or through an authorized repair facility.

10 (f) A manufacturer shall provide farmers and independent repair facilities with an opportunity, on
11 fair and reasonable terms, to acquire any software integrally with or within a tool, or subsequently as necessary
12 for operation, maintenance, repair, or upgrade of agricultural equipment or a mechanical part.

13 (g) A manufacturer may not be required to sell tools, specialty tools, software, and documentation
14 if the tools, specialty tools, software, and documentation are no longer available to the manufacturer or the
15 authorized repair facility of the manufacturer.

16 (h) A manufacturer may not prevent farmers and independent repair facilities from legally
17 fabricating or otherwise obtaining tools, specialty tools, software, and documentation from a third party, whether
18 or not the tools, specialty tools, software, and documentation are currently available from the manufacturer or
19 an authorized repair facility, for use solely in the ordinary course of their own lawful businesses and not for
20 resale or distribution. In no event will the provisions of this subsection (2)(h) be construed to prevent or
21 preclude the manufacturer from pursuing any action to enforce a trademark, copyright, or other claim of
22 infringement regarding the manufacturer's intellectual property.

23 (3) If an independent repair facility requests a manufacturer to provide any tools, specialty tools,
24 software, and documentation as provided to farmers pursuant to subsections (2)(a) through (2)(h), or if a farmer
25 makes such a request in connection with their own agricultural equipment, the manufacturer shall provide the
26 tools, specialty tools, software, and documentation on fair and reasonable terms with respect to the
27 independent repair facility.

28 (4) Nothing in this section:

1 (a) legalizes an illegal modification of protective measures through the compromising of safety
2 control or protocols installed for the benefit of agricultural equipment owners, operators, and bystanders.

3 (b) legalizes an illegal modification of emissions control measures installed for the purpose of
4 complying with applicable state and federal clean air acts and other environmental laws and regulations.

5 (c) requires a manufacturer to provide intellectual property that is fully protected from illegal
6 infringement through the modification of embedded software.

7 (5) For the purposes of this section, the following definitions apply:

8 (a) "Agricultural equipment" means any product, originating from the manufacturer when sold or
9 leased for use in farming, or other forms of agriculture and animal husbandry, that depends for its functioning,
10 in whole or in part, on digital electronics embedded in or attached to it. The term includes but is not limited to a
11 tractor, combine, harvesting equipment, tillage, planting, irrigation or cultivating implement, baler, or other off-
12 road vehicles primarily designed for use in an agricultural operation. The term does not include motor vehicles
13 designed and sold primarily for passenger or property transportation on public roadways.

14 (b) "Authorized repair facility" means:

15 (i) an individual or business that has an arrangement for a definite or indefinite period with a
16 manufacturer pursuant to which the manufacturer grants to the individual or business a permission, license, or
17 franchise to use a trade name, service mark, or related characteristic for the purposes of offering diagnosis,
18 repair, or maintenance services of agricultural equipment under the name of or on behalf of the manufacturer;

19 or

20 (ii) an individual or business otherwise utilized by the manufacturer to provide repair or
21 maintenance services.

22 (c) "Code" means, subject to the limitations of subsection (1)(e):

23 (i) human- or machine-readable information related to a performance issue arising from operation
24 of a farmer's agricultural equipment; or

25 (ii) information necessary to be transmitted to a farmer's agricultural equipment in order to
26 maintain, repair, or activate the agricultural equipment or any part of the agricultural equipment.

27 (d) "Data" means transmitted or compiled information arising from the operation of a farmer's
28 agricultural equipment or its parts.

1 (e) "Documentation" means, subject to the limitations of subsection (1)(e), any manual, diagram,
2 reporting output, service code description, schematic, or other guidance or information used in effecting the
3 services of diagnosis, maintenance, repair, or upgrade of agricultural equipment.

4 (f) "Embedded software" means any programmable instructions provided on firmware delivered
5 with or loaded to the agricultural equipment, with respect to agricultural equipment operation, including all
6 relevant patches and fixes made by the manufacturer, including but not limited to items described as "basic
7 internal operating system", "internal operating system", "machine code", "assembly code", "root code", and
8 "microcode".

9 (g) "Fair and reasonable" means equitable terms for access to or receipt of any item pertaining to
10 agricultural equipment, including any tools, specialty tools, software, and documentation, in light of relevant
11 factors, including and subject to the limitations of subsection (1)(e), the manufacturer's suggested retail price,
12 the price and terms on which the tools, specialty tools, software, and documentation are provided to authorized
13 repair providers, and the distribution model of any respective item.

14 (h) (i) "Farmer" means an individual or business engaged in agriculture as a means of livelihood or
15 commerce, including but not limited to the production of crops, livestock, or aquaculture and who owns or
16 leases agricultural equipment.

17 (ii) The term does not include recreational fishing.

18 (i) "Firmware" means a software program or set of instructions programmed on agricultural
19 equipment, or on a part of the agricultural equipment, to allow the agricultural equipment or part to
20 communicate within itself or with other computer hardware.

21 (j) "Independent repair facility" means an individual or business that is not affiliated with an
22 authorized repair facility or a manufacturer with respect to agricultural equipment but is:

23 (i) engaged in diagnosing, maintaining, or repairing agricultural equipment generally; and

24 (ii) engaged in the services of diagnosis, maintenance, or repair of agricultural equipment, whether
25 or not that individual or business is a farmer.

26 (k) "Manufacturer" means a business engaged in the business of selling, leasing, or otherwise
27 supplying new agricultural equipment manufactured by or on behalf of itself to any individual or business.

28 (l) "Software" means a software program or other digital mechanism, or its equivalent, required to

1 provision, program, or pair a new part, calibrate functionality, or perform any other function required to bring the
2 agricultural equipment back to full functional condition, including any updates.

3 (m) "Specialty tool" means a mechanical implement originating from the manufacturer that is
4 necessary for facilitation of mechanical or electronic maintenance, repair, or upgrade of a manufacturer's
5 agricultural equipment that is not generally available other than from the manufacturer's authorized repair
6 facilities.

7 (n) "Tool" means software, any hardware implement, specialty or otherwise, or other apparatus
8 originating from the manufacturer used for data readout, diagnosis, maintenance, or repair of agricultural
9 equipment, including software or other mechanisms that calibrate functionality or perform any other function
10 required to operate, maintain, upgrade, activate, or bring the agricultural equipment back to fully functional
11 condition.

12

13 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an
14 integral part of Title 80, and the provisions of Title 80 apply to [section 1].

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16 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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