

1 HOUSE BILL NO. 475
 2 INTRODUCED BY T. FRANCE, M. MALONE, G. NIKOLAKAKOS, K. ZOLNIKOV, K. SULLIVAN, J. READ, D.
 3 HARVEY, D. BAUM
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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE RIGHT TO
 6 REPAIR; REQUIRING MANUFACTURERS OF AGRICULTURAL EQUIPMENT TO MAKE AVAILABLE TO
 7 OWNERS AND INDEPENDENT REPAIR PROVIDERS, ON FAIR AND REASONABLE TERMS, THE
 8 DOCUMENTATION, PARTS, AND TOOLS USED TO DIAGNOSE, MAINTAIN, AND REPAIR THE
 9 EQUIPMENT; PROVIDING FOR ENFORCEMENT UNDER THE MONTANA CONSUMER PROTECTION
 10 ACT; PROVIDING LIMITATIONS; PROVIDING DEFINITIONS; AND PROVIDING A DELAYED EFFECTIVE
 11 DATE AND AN APPLICABILITY DATE."

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 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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15 NEW SECTION. Section 1. Short title. [Sections 1 through 6] may be cited as the "Agricultural Right
 16 to Repair Act".
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18 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 6], unless the context clearly
 19 indicates otherwise, the following definitions apply:

20 (1) (a) "Agricultural equipment" means equipment that is designed primarily for use in a farm
 21 operation, including but not limited to a combine, tractor, sprayer, implement, or attachment.

22 (b) The term does not include a motor vehicle.

23 (2) (a) "Authorized repair provider" means an individual or business who:

24 (i) has an arrangement with the original equipment manufacturer under which the original
 25 equipment manufacturer grants to the individual or business a license to use a trade name, service mark, or
 26 other proprietary identifier for the purposes of offering the services of diagnosis, maintenance, or repair of
 27 equipment under the name of the original equipment manufacturer; or

28 (ii) has an arrangement with the original equipment manufacturer to offer the services described in

1 subsection (2)(a)(i) on behalf of the original equipment manufacturer.

2 (b) An original equipment manufacturer who offers the services of diagnosis, maintenance, or
3 repair of its own equipment and who does not have an arrangement described in subsection (2)(a)(i) or (2)(a)(ii)
4 with an unaffiliated individual or business must be considered an authorized repair provider with respect to the
5 equipment.

6 (3) "Documentation" means any manual, diagram, reporting output, service code description,
7 schematic diagram, security codes, passwords, or other guidance or information used in effecting the services
8 of diagnosis, maintenance, or repair of agricultural equipment.

9 (4) "Electronics-enabled implement of husbandry" means an implement of husbandry as defined in
10 61-1-101 that depends for its functioning, in whole or in part, on digital electronics embedded in or attached to
11 it.

12 (5) "Embedded software" means any programmable instruction provided on firmware delivered
13 with electronics-enabled implements of husbandry or with a part for an implement of husbandry for the
14 purposes of equipment operation, including all relevant patches and fixes made by the manufacturer of the
15 equipment or part for these purposes.

16 (6) "Firmware" means an embedded software program or set of instructions programmed on
17 electronics-enabled implements of husbandry or on a part of an implement of husbandry to allow the
18 electronics-enabled implement of husbandry or part to communicate within itself or with other computer
19 hardware.

20 (7) "Independent repair provider" means an individual or business operating in the state that does
21 not have an arrangement with an original equipment provider as described in subsection (2)(a)(i) or (2)(a)(ii)
22 and who is engaged in the services of diagnosis, maintenance, or repair of equipment.

23 (8) "Motor vehicle" means a vehicle that is designed for transporting persons or property on a
24 street or highway and is certified by the manufacturer under all applicable federal safety and emissions
25 standards and requirements for distribution and sale in the United States.

26 (9) "Original equipment manufacturer" means a business engaged in selling, leasing, or otherwise
27 supplying new equipment manufactured by or on behalf of itself to an individual or business.

28 (10) "Owner" means an individual or business who owns or leases equipment purchased or used in

1 this state.

2 (11) "Part" means any replacement part, either new or used, made available by an original
3 equipment manufacturer for the purposes of effecting the services of maintenance or repair of agricultural
4 equipment manufactured by or on behalf of or sold or otherwise supplied by the original equipment
5 manufacturer.

6 (12) "Tool" means any software program, hardware implement, or other apparatus used for the
7 diagnosis, maintenance, or repair of agricultural equipment, including software or other mechanisms that
8 provision, program, or pair a new part, calibrate functionality, or perform any other function required to bring the
9 product back to fully functional condition, including any updates to information.

10 (13) "Trade secret" has the meaning provided in 30-14-402.

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12 **NEW SECTION. Section 3. Requirements.** (1) For agricultural equipment and parts for agricultural
13 equipment that are sold or used in this state, an original equipment manufacturer shall make available to any
14 owner or independent repair provider of equipment manufactured by or on behalf of or sold or otherwise
15 supplied by the original equipment manufacturer, on fair and reasonable terms, any documentation, parts, and
16 tools required for the diagnosis, maintenance, or repair of the equipment and parts for the equipment, inclusive
17 of any updates to information. The documentation, parts, and tools must be made available either directly by
18 the original equipment manufacturer or via an authorized repair provider.

19 (2) For equipment that contains an electronic security lock or other security-related function, the
20 original equipment manufacturer shall make available to any owner or independent repair provider, on fair and
21 reasonable terms, any special documentation, parts, and tools needed to access and reset the lock or function
22 when disabled during diagnosis, maintenance, or repair of the equipment. The documentation, parts, and tools
23 may be made available through appropriate secure release systems.

24 (3) Documentation provided electronically pursuant to this section must be provided at no cost.
25 Documentation provided in print pursuant to this section may include a charge for the actual cost of preparing
26 and sending the documentation.

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28 **NEW SECTION. Section 4. Fair and reasonable -- definition.** For the purposes of [sections 1

1 through 6], "fair and reasonable" is defined in subsections (1) through (3) as follows:

2 (1) For parts, "fair and reasonable" means:

3 (a) costs that are fair to both parties, considering the agreed-on conditions, promised quality, and
4 timeliness of delivery. Fair and reasonable costs are subject to statutory and regulatory limitations.

5 (b) terms that:

6 (i) do not impose on an owner or an independent repair provider any substantial obligation to use
7 or any restriction on the use of the part to diagnose, maintain, or repair agricultural equipment sold, leased, or
8 otherwise supplied by the original equipment manufacturer, including a condition that the owner or independent
9 repair provider become an authorized repair provider of the original equipment manufacturer or a requirement
10 that a part be registered, paired with, or approved by the original equipment manufacturer or an authorized
11 repair provider before the part is operational; and

12 (ii) prohibit an original equipment manufacturer from imposing any additional cost or burden that is
13 not reasonably necessary or is designed to be an impediment on the owner or independent repair provider.

14 (2) For tools, software, and documentation, "fair and reasonable" means:

15 (a) costs that are equivalent to the lowest actual cost for which the original equipment
16 manufacturer offers the tool, software, or documentation to an authorized repair provider, including any
17 discount, rebate, or other financial incentive offered to an authorized repair provider; and

18 (b) terms that:

19 (i) are equivalent to the most favorable terms under which an original equipment manufacturer
20 offers the part, tool, software, or documentation to an authorized repair provider, including the methods and
21 timeliness of delivery of the part, tool, software, or documentation;

22 (ii) do not impose on an owner or an independent repair provider any substantial obligation to use
23 or any restriction on the use of the tool, software, or documentation to diagnose, maintain, or repair agricultural
24 equipment sold, leased, or otherwise supplied by the original equipment manufacturer, including a condition
25 that the owner or independent repair provider become an authorized repair provider of the original equipment
26 manufacturer or a requirement that a tool be registered, paired with, or approved by the original equipment
27 manufacturer or an authorized repair provider before the tool is operational; and

28 (iii) prohibit an original equipment manufacturer from imposing any additional cost or burden that is

1 not reasonably necessary or is designed to be an impediment on the owner or independent repair provider.

2 (3) For documentation, "fair and reasonable terms" also means that the documentation is made
3 available by the original equipment manufacturer at no charge, except that when the documentation is
4 requested in physical printed form a charge may be included for the reasonable actual costs of preparing and
5 sending the documentation.

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7 **NEW SECTION. Section 5. Enforcement.** Violation of [section 3] is an unfair method of competition
8 and an unfair act or practice. The department of justice may bring actions for violations of [section 3] pursuant
9 to 30-14-111.

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11 **NEW SECTION. Section 6. Limitations.** (1) A provision of [sections 1 through 6] may not be
12 construed to require an original equipment manufacturer to divulge any trade secret to any owner or
13 independent repair provider.

14 (2) A provision of [sections 1 through 6] may not be construed to alter the terms of any
15 arrangement between an original equipment manufacturer and an authorized repair provider, including but not
16 limited to the performance or provision of warranty or recall repair work by an authorized repair provider on
17 behalf of an original equipment manufacturer and pursuant to the arrangement, except that any provision in the
18 terms that purports to waive, avoid, restrict, or limit the original equipment manufacturer's obligations to comply
19 with this section must be void and unenforceable.

20 (3) An original equipment manufacturer or authorized repair provider may not be liable for any
21 damage or injury caused to any equipment by an owner or independent repair provider that occurs during
22 diagnosis, maintenance, or repair.

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24 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 6] are intended to be
25 codified as an integral part of Title 80, and the provisions of Title 80 apply to [sections 1 through 6].

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27 **NEW SECTION. Section 8. Effective date.** [This act] is effective July 1, 2024.

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