HOUSE BILL NO. 475

INTRODUCED BY T. FRANCE, M. MALONE, G. NIKOLAKAKOS, K. ZOLNIKOV, K. SULLIVAN, J. READ, D. HARVEY, D. BAUM

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE RIGHT TO REPAIR; REQUIRING MANUFACTURERS OF AGRICULTURAL EQUIPMENT TO MAKE AVAILABLE TO OWNERS AND INDEPENDENT REPAIR PROVIDERS, ON FAIR AND REASONABLE TERMS, THE DOCUMENTATION, PARTS, AND TOOLS USED TO DIAGNOSE, MAINTAIN, AND REPAIR THE EQUIPMENT; PROVIDING FOR ENFORCEMENT UNDER THE MONTANA CONSUMER PROTECTION ACT; PROVIDING LIMITATIONS; PROVIDING DEFINITIONS; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 6] may be cited as the "Agricultural Right to Repair Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 6], unless the context clearly indicates otherwise, the following definitions apply:

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

2. The term does not include a motor vehicle.

3. "Authorized repair provider" means an individual or business who:
   i. has an arrangement with the original equipment manufacturer under which the original equipment manufacturer grants to the individual or business a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering the services of diagnosis, maintenance, or repair of equipment under the name of the original equipment manufacturer; or
   ii. has an arrangement with the original equipment manufacturer to offer the services described in
subsection (2)(a)(i) on behalf of the original equipment manufacturer.

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

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

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

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

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

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

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

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

(10) “Owner” means an individual or business who owns or leases equipment purchased or used in
this state.

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

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

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

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

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

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

NEW SECTION. Section 4. Fair and reasonable -- definition. For the purposes of [sections 1
through 6], “fair and reasonable” is defined in subsections (1) through (3) as follows:

(1) For parts, “fair and reasonable” means:

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

(b) terms that:

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

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

(2) For tools, software, and documentation, “fair and reasonable” means:

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

(b) terms that:

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

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

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

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

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

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

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

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

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

NEW SECTION. Section 8. Effective date. [This act] is effective July 1, 2024.
NEW SECTION. Section 9. Applicability. [This act] applies to equipment sold or in use on or after July 1, 2024.

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