

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3384

By Delegates Young and Cooper

[Introduced February 13, 2023; Referred to the
Committee on Agriculture and Natural Resources
then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §19-39-1, §19-39-2, §19-39-3, §19-39-4, §19-39-5, §19-39-6, and §19-39-7,
 3 all relating to the creation of the Agricultural Right to Repair Act; and promoting farmer
 4 repair choice and competition by requiring manufacturers of agriculture equipment to make
 5 available to owners and independent repair providers, on fair and reasonable terms, the
 6 documentation, parts, and tools used to diagnose, maintain, and repair such equipment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 39. AGRICULTURE RIGHT TO REPAIR ACT.

§19-39-1. Short title.

1 This article may be cited as the Agricultural Right to Repair Act.

§19-39-2. Definitions.

1 In this article:

2 (a) "Agricultural equipment" means equipment that is designed primarily for use in a farm
 3 operation, including, but not limited to, any combine, tractor, sprayer, implement, or attachment,
 4 but excluding a motor vehicle.

5 (b) "Authorized Repair Provider" means an individual or business who has an arrangement
 6 with the original equipment manufacturer under which the original equipment manufacturer grants
 7 to the individual or business a license to use a trade name, service mark, or other proprietary
 8 identifier for the purposes of offering the services of diagnosis, maintenance, or repair of
 9 equipment under the name of the original equipment manufacturer, or other arrangement with the
 10 original equipment manufacturer to offer such services on behalf of the original equipment
 11 manufacturer. An original equipment manufacturer who offers the services of diagnosis,
 12 maintenance, or repair of its own equipment, and who does not have an arrangement described in
 13 this subdivision with an unaffiliated individual or business, shall be considered an authorized repair
 14 provider with respect to such equipment.

15 (c) "Documentation" means any manual, diagram, reporting output, service code

16 description, schematic diagram, security codes, passwords, or other guidance or information used
17 in effecting the services of diagnosis, maintenance, or repair of agricultural equipment.

18 (d) "Fair and reasonable terms" means, with respect to a part, tool, software, or
19 documentation offered by an original equipment manufacturer:

20 (1) For parts:

21 (A) Costs that are fair to both parties, considering the agreed-upon conditions, promised
22 quality, and timeliness of delivery. "Fair and reasonable" costs are subject to statutory and
23 regulatory limitations.

24 (B) Terms that:

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

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

35 (2) For tools and documentation: Costs that are equivalent to the lowest actual cost for
36 which the original equipment manufacturer offers the tool, software, or documentation to an
37 authorized repair provider, including any discount, rebate, or other financial incentive offered to an
38 authorized repair provider.

39 (C) Terms that:

40 (i) Are equivalent to the most favorable terms under which an original equipment
41 manufacturer offers the part, tool, software, or documentation to an authorized repair provider,

42 including the methods and timeliness of delivery of the part, tool, software, or documentation;

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

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

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

57 (e) "Independent repair provider" means an individual or business operating in the state,
58 that does not have an arrangement described in this subdivision with an original equipment
59 manufacturer, and who is engaged in the services of diagnosis, maintenance, or repair of
60 equipment.

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

64 (g) "Original equipment manufacturer" means a business engaged in the business of
65 selling, leasing, or otherwise supplying new equipment manufactured by or on behalf of itself, to
66 any individual or business.

67 (h) "Owner" means an individual or business who owns or leases equipment purchased or

68 used in this state.

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

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

78 (k) "Trade secret" has the meaning given in 18 U.S.C. 1839.

§19-39-3. Requirements.

1 (a) For agricultural equipment and parts for such equipment that are sold or used in this
2 State, an original equipment manufacturer shall make available to any independent repair provider
3 and owner of equipment manufactured by on behalf of, or sold by such original equipment
4 manufacturer, on fair and reasonable terms, any documentation, parts, and tools, required for the
5 diagnosis, maintenance, or repair of such equipment and parts for such equipment, inclusive of
6 any updates to information. Such documentation parts and tools shall be made available either
7 directly by such original equipment manufacturer or via an authorized repair provider.

8 (b) For equipment that contains an electronic security lock or other security-related
9 function, the original equipment manufacturer shall make available to any owner and independent
10 repair provider, on fair and reasonable terms, any special documentation, tools, and parts needed
11 to access and reset the lock or function when disabled in the course of diagnosis, maintenance, or
12 repair of such equipment. Such documentation, tools, and parts may be made available through
13 appropriate secure release systems.

§19-39-4. Enforcement by Attorney General.

1 Violation of any of the provisions of this article is an unlawful practice under the West
 2 Virginia Unfair Trade Practices Act. All remedies, penalties, and authority granted to the Attorney
 3 General by that article shall be available to him or her for the enforcement of this article.

§19-39-5. Limitations.

1 (a) Nothing in this section shall be construed to require an original equipment manufacturer
 2 to divulge any trade secret to any owner or independent service provider.

3 (b) Nothing in this section shall be construed to alter the terms of any arrangement
 4 described in paragraph (a) of subdivision one of this section in force between an authorized repair
 5 provider and an original equipment manufacturer, including, but not limited to, the performance or
 6 provision of warranty or recall repair work by an authorized repair provider on behalf of an original
 7 equipment manufacturer and pursuant to such arrangement, except that any provision in such
 8 terms that purports to waive, avoid, restrict or limit the original equipment manufacturer's
 9 obligations to comply with this section shall be void and unenforceable.

10 (c) No original equipment manufacturer or authorized repair provider shall be liable for any
 11 damage or injury caused to any equipment by an independent repair provider or owner which
 12 occurs during the course of repair, diagnosis, or maintenance.

§19-39-6. Applicability.

1 This article applies with respect to equipment sold or in use on or after the effective date of
 2 this article.

§19-39-7. Effective date.

1 This article shall take effect on July 1, 2023.

NOTE: The purpose of this bill is to create the Agricultural Right to Repair Act. The bill promotes farmer repair choice and competition by requiring manufacturers of agriculture 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 such equipment.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.