

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 543

Introduced by Brandt, 32; Brewer, 43; Dorn, 30; Friesen, 34; Gragert, 40;
Murman, 38.

Read first time January 19, 2021

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to trade practices; to adopt the Agricultural
- 2 Equipment Right-To-Repair Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and may be
2 cited as the Agricultural Equipment Right-To-Repair Act.

3 Sec. 2. For purposes of the Agricultural Right-To-Repair Act:

4 (1) Authorized repair provider means an individual or business who
5 is unaffiliated with an original equipment manufacturer and who has an
6 arrangement with the original equipment manufacturer, for a definite or
7 indefinite period, under which the original equipment manufacturer grants
8 to the individual or business a license to use a trade name, service
9 mark, or other proprietary identifier for the purposes of offering the
10 services of diagnosis, maintenance, or repair of electronics-enabled
11 agricultural equipment under the name of the original equipment
12 manufacturer, or other arrangement with the original equipment
13 manufacturer to offer such services on behalf of the original equipment
14 manufacturer. An original equipment manufacturer who offers the services
15 of diagnosis, maintenance, or repair of its own electronics-enabled
16 agricultural equipment, and who does not have an arrangement described in
17 this subsection with an unaffiliated individual or business, shall be
18 considered an authorized repair provider with respect to such equipment;

19 (2) Electronics-enabled agricultural equipment or equipment means
20 any product, part of a product, or attachment to a product, when sold or
21 leased for use in farming, ranching, or other agriculture, that depends
22 for its functioning, in whole or in part, on digital electronics embedded
23 in or attached to it. The term includes, but is not limited to, a
24 tractor, trailer, combine, tillage, planting, irrigation, or cultivating
25 implement, baler, unmanned aircraft system, or off-road vehicle.
26 Electronics-enabled agricultural equipment or equipment does not include
27 motor vehicles, and does not include consumer electronic devices,
28 including wireless communication devices and computers;

29 (3) Documentation means any manual, diagram, reporting output,
30 service code description, schematic, product guides, or other guidance or
31 information used in effecting the services of diagnosis, maintenance, or

1 repair of electronics-enabled agricultural equipment;

2 (4) Embedded software means any programmable instructions provided
3 on firmware delivered with electronics-enabled agricultural equipment, or
4 with a part for such equipment, for purposes of equipment operation,
5 including all relevant patches and fixes made by the manufacturer of such
6 equipment or part for such purposes;

7 (5)(a) Fair and reasonable terms for obtaining a part, a tool,
8 documentation, or software means at costs and terms that are equivalent
9 to the most favorable costs and terms under which an original equipment
10 manufacturer offers the part, tool, or documentation to an authorized
11 repair provider;

12 (i) Accounting for any discount, rebate, convenient means of
13 delivery, means of enabling fully restored and updated functionality,
14 rights of use, or other incentive or preference the original equipment
15 manufacturer offers to an authorized repair provider, or any additional
16 cost, burden, or impediment the original equipment manufacturer imposes
17 on an independent repair provider;

18 (ii) Not conditioned on or imposing a substantial obligation or
19 restriction that is not reasonably necessary for enabling the owner or
20 independent repair provider to engage in the diagnosis, maintenance, or
21 repair of electronics-enabled agricultural equipment made by or on behalf
22 of the original equipment manufacturer; and

23 (iii) Not conditioned on an arrangement described in subdivision (1)
24 of this section.

25 (b) For documentation, including any relevant updates, fair and
26 reasonable terms also means at no charge, except that, when the
27 documentation is requested in physical printed form, a charge may be
28 included for the reasonable actual costs of preparing and sending the
29 copy.

30 (c) For software tools, fair and reasonable terms also means without
31 requiring authorization or Internet access, or imposing impediments to

1 access or use, in the course of effecting the diagnosis, maintenance, or
2 repair and enabling full functionality of electronics-enabled
3 agricultural equipment, in a manner that impairs the efficient and cost-
4 effective performance of any of those activities;

5 (6) Firmware means a software program or set of instructions
6 programmed on electronics-enabled agricultural equipment, or on a part
7 for such equipment, to allow the equipment or part to communicate within
8 itself or with other computer hardware;

9 (7) Independent repair provider means an individual or business
10 operating in this state, who does not have an arrangement described in
11 subdivision (1) of this section with an original equipment manufacturer,
12 and who is not affiliated with any individual or business who has such an
13 arrangement, and who is engaged in the services of diagnosis,
14 maintenance, or repair of electronics-enabled agricultural equipment,
15 except that an original equipment manufacturer or, with respect to that
16 original equipment manufacturer, an individual or business who has such
17 an arrangement with that original equipment manufacturer, or who is
18 affiliated with an individual or business who has such an arrangement
19 with that original equipment manufacturer, shall be considered an
20 independent repair provider for purposes of those instances in which it
21 engages in the services of diagnosis, maintenance, or repair of
22 electronics-enabled agricultural equipment that is not manufactured by or
23 sold under the name of that original equipment manufacturer;

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

28 (9) Original equipment manufacturer means a business engaged in the
29 business of selling, leasing, or otherwise supplying new electronics-
30 enabled agricultural equipment manufactured by or on behalf of itself, to
31 any individual or business;

1 (10) Owner means an individual or business that owns or leases
2 electronics-enabled agricultural equipment purchased or used in this
3 state;

4 (11) Part means any replacement part, either new or used, made
5 available by an original equipment manufacturer for purposes of effecting
6 the services of maintenance or repair of electronics-enabled agricultural
7 equipment manufactured by or on behalf of, sold or otherwise supplied by
8 the original equipment manufacturer;

9 (12) Repair means to maintain, diagnose, and repair machinery; but,
10 does not include modify. For safety, durability, environmental, and
11 liability reasons, diagnostic and repair information and tools does not
12 include the ability to:

13 (a) Reset an immobilizer system or security-related electronic
14 modules unless necessary for repair;

15 (b) Reprogram any electronic processing units or engine control
16 units unless necessary for repair;

17 (c) Change any equipment or engine settings negatively affecting
18 emissions or safety compliance; and

19 (d) Download or access the source code of any proprietary embedded
20 software or code;

21 (13) Tools means any software program, hardware implement, product
22 service demonstrations, training, seminars, clinics, on-board diagnostics
23 via diagnostics port or wireless interface, electronic field diagnostic
24 service tools and training on how to use them, or other apparatus used
25 for diagnosis, maintenance, or repair of electronics-enabled agricultural
26 equipment, including software or other mechanisms that provision,
27 program, or pair a new part, calibrate functionality, or perform any
28 other function required to bring the product back to fully functional
29 condition; and

30 (14) Trade secret has the same meaning as in section 87-502.

31 Sec. 3. (1) For electronics-enabled agricultural equipment, and

1 parts for such equipment, sold or used in this state, an original
2 equipment manufacturer shall make available, for purposes of diagnosis,
3 maintenance, or repair of such equipment, to any independent repair
4 provider, or to the owner of electronics-enabled agricultural equipment
5 manufactured by or on behalf of, or sold or otherwise supplied by, the
6 original equipment manufacturer, on fair and reasonable terms,
7 documentation, parts, and tools, inclusive of any updates to information
8 or embedded software. Nothing in this subsection requires an original
9 equipment manufacturer to make available a part if the part is no longer
10 available to the original equipment manufacturer.

11 (2) For equipment that contains an electronic security lock or other
12 security-related function, the original equipment manufacturer shall make
13 available to the owner and to independent repair providers, on fair and
14 reasonable terms, any special documentation, tools, and parts needed to
15 disable the lock or function, and to reset it when disabled in the course
16 of diagnosis, maintenance, or repair of the equipment. Such
17 documentation, tools, and parts may be made available by means of an
18 appropriate secure system.

19 (3) When the original equipment manufacturer has made an express
20 warranty with respect to electronics-enabled agricultural equipment and
21 the wholesale price of the equipment is one hundred dollars or more, the
22 manufacturer shall provide such parts, tools, and documentation as to
23 enable the repair of the equipment during the warranty period, at an
24 equitable price and convenience of delivery and of enabling
25 functionality, in consideration of:

26 (a) The actual cost to the original equipment manufacturer to
27 prepare and distribute the part, tool, or documentation, exclusive of any
28 research and development costs incurred;

29 (b) The ability of owners and independent repair providers to afford
30 the part, tool, or documentation; and

31 (c) The means by which the part, tool, or documentation is

1 distributed.

2 Sec. 4. Violation of the Agricultural Right-To-Repair Act is an
3 unlawful practice under the Uniform Deceptive Trade Practices Act. All
4 remedies, penalties, and authority granted to the Attorney General by the
5 Uniform Deceptive Trade Practices Act shall be available to the Attorney
6 General for the enforcement of the Agricultural Right-To-Repair Act.

7 Sec. 5. (1) Nothing in the Agricultural Right-To-Repair Act shall
8 be construed to require an original equipment manufacturer to divulge a
9 trade secret to an owner or an independent service provider except as
10 necessary to provide documentation, parts, and tools on fair and
11 reasonable terms.

12 (2) No provision in the Agricultural Right-To-Repair Act shall be
13 construed to alter the terms of any arrangement described in subdivision
14 (1) of section 2 of this act in force between an authorized repair
15 provider and an original equipment manufacturer, including, but not
16 limited to, the performance or provision of warranty or recall repair
17 work by an authorized repair provider on behalf of an original equipment
18 manufacturer pursuant to such arrangement, except that any provision in
19 such terms that purports to waive, avoid, restrict, or limit the original
20 equipment manufacturer's obligations to comply with the act shall be void
21 and unenforceable.

22 Sec. 6. The Agricultural Right-To-Repair Act applies with respect
23 to equipment sold or in use on or after the effective date of this act.