

# HOUSE BILL NO. 4609

May 23, 2023, Introduced by Reps. VanderWall, Borton, Neyer, BeGole, Markkanen, Alexander, Outman, Aragona, Prestin, DeSana, DeBoyer, Wozniak, Slagh, Roth, Johnsen, Smit, Kunse, Friske and Schuette and referred to the Committee on Agriculture.

A bill to require original equipment manufacturers of certain agricultural equipment to make certain parts, tools, and documentation available to certain persons; to prescribe civil sanctions; and to provide for the powers and duties of certain state governmental officers and entities.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act may be cited as the "agricultural equipment  
2 repair act".

3           Sec. 2. As used in this act:

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

17           (b) "Documentation" means any manual, diagram, reporting  
18 output, service code description, schematic, product guide, or  
19 other guidance or information used for purposes of diagnosis,  
20 maintenance, or repair services of electronics-enabled agricultural  
21 equipment.

22           (c) "Electronics-enabled agricultural equipment" means any  
23 product, part of a product, or attachment to a product, when sold  
24 or leased for use in farming, ranching, or other agriculture, that  
25 depends, in whole or in part, on digital electronics embedded in or  
26 attached to the product to function. The term includes, but is not  
27 limited to, a tractor, trailer, combine, tillage, planting,  
28 irrigation, or cultivating implement, baler, unmanned aircraft  
29 system, or off-road vehicle. The term does not include a motor

1 vehicle or a wireless communication device, computer, or other  
2 consumer electronic device.

3 (d) "Embedded software" means any programmable instructions  
4 provided on firmware delivered with electronics-enabled  
5 agricultural equipment, or with a part for electronics-enabled  
6 agricultural equipment, for purposes of equipment operation,  
7 including all relevant patches and fixes made by the original  
8 equipment manufacturer for this purpose.

9 (e) "Fair and reasonable terms" means costs and terms that  
10 meet all of the following requirements:

11 (i) For obtaining a part or tool, documentation, or software,  
12 costs and terms that meet all of the following:

13 (A) Are equivalent to the most favorable costs and terms under  
14 which an original equipment manufacturer offers the part, tool,  
15 documentation, or software to an authorized repair provider,  
16 accounting for any discount, rebate, convenient means of delivery,  
17 means of enabling fully restored and updated functionality, rights  
18 of use, or other incentive or preference the original equipment  
19 manufacturer offers to an authorized repair provider, or any  
20 additional cost, burden, or impediment the original equipment  
21 manufacturer imposes on an independent repair provider.

22 (B) Are not conditioned on entering an arrangement described  
23 in subdivision (a).

24 (C) Are not conditioned on or do not impose a substantial  
25 obligation or restriction that is not reasonably necessary for  
26 enabling the owner or independent repair provider to engage in the  
27 diagnosis, maintenance, or repair of electronics-enabled  
28 agricultural equipment made by or on behalf of the original  
29 equipment manufacturer.

1           (ii) For documentation, including any relevant updates, at no  
2 charge, except that, if the documentation is required in physical  
3 printed form, a charge may be included for the reasonable actual  
4 costs of preparing and sending the copy.

5           (iii) For software tools, without requiring authorization or  
6 internet access, or imposing impediments to access or use, in the  
7 course of effecting the diagnosis, maintenance, or repair and  
8 enabling full functionality of electronics-enabled agricultural  
9 equipment, in a manner that impairs the efficient and cost-  
10 effective performance of any of those activities.

11           (f) "Firmware" means a software program or set of instructions  
12 programmed on electronics-enabled agricultural equipment or on a  
13 part for that equipment, to allow the equipment or part to  
14 communicate within itself or with other computer hardware.

15           (g) "Independent repair provider" means, with respect to an  
16 original equipment manufacturer, a person operating in this state  
17 that does not have an arrangement described in subdivision (a) with  
18 the original equipment manufacturer, and that is not affiliated  
19 with any person that has such an arrangement, and that is engaged  
20 in diagnosis, maintenance, or repair services of electronics-  
21 enabled agricultural equipment. An original equipment manufacturer  
22 or, with respect to that original equipment manufacturer, a person  
23 that has an arrangement described in subdivision (a) with that  
24 original equipment manufacturer, or that is affiliated with a  
25 person that has such an arrangement with that original equipment  
26 manufacturer, is considered an independent repair provider for  
27 purposes of those instances in which it engages in diagnosis,  
28 maintenance, or repair services of electronics-enabled agricultural  
29 equipment that is not manufactured by or sold under the name of

1 that original equipment manufacturer.

2 (h) "Motor vehicle" means a vehicle that is designed for  
3 transporting persons or property on a street or highway and is  
4 certified by the manufacturer under all applicable federal safety  
5 and emissions standards and requirements for distribution and sale  
6 in the United States.

7 (i) "Original equipment manufacturer" means a person engaged  
8 in the business of selling, leasing, or otherwise supplying new  
9 electronics-enabled agricultural equipment manufactured by or on  
10 behalf of itself.

11 (j) "Owner" means a person that owns or leases electronics-  
12 enabled agricultural equipment purchased or used in this state.

13 (k) "Part" means any replacement part, either new or used,  
14 made available by an original equipment manufacturer for purposes  
15 of maintenance or repair services of electronics-enabled  
16 agricultural equipment manufactured by or on behalf of, sold by, or  
17 otherwise supplied by the original equipment manufacturer.

18 (l) "Person" means an individual, partnership, corporation,  
19 association, or other legal entity.

20 (m) "Tool" means any software program, hardware implement, or  
21 other apparatus used for diagnosis, maintenance, or repair of  
22 electronics-enabled agricultural equipment, including software or  
23 other mechanisms that provision, program, or pair a new part,  
24 calibrate functionality, or perform any other function required to  
25 bring the product back to fully functional condition.

26 (n) "Trade secret" means that term as defined in section 2 of  
27 the uniform trade secrets act, 1998 PA 448, MCL 445.1902.

28 Sec. 3. (1) For electronics-enabled agricultural equipment and  
29 parts of electronics-enabled agricultural equipment sold or used in

1 this state, an original equipment manufacturer shall make  
2 available, for purposes of diagnosis, maintenance, or repair of  
3 that equipment, to any independent repair provider or to the owner  
4 of the electronics-enabled agricultural equipment manufactured by  
5 or on behalf of or sold or otherwise supplied by the original  
6 equipment manufacturer, on fair and reasonable terms,  
7 documentation, parts, and tools, including any updates to  
8 information or embedded software. After providing the required  
9 documentation, parts, tools, and updates, the original equipment  
10 manufacturer is not responsible for the content and functionality  
11 of the aftermarket diagnostic tools, diagnostics, or service  
12 information systems. This subsection does not require an original  
13 equipment manufacturer to make a part available if the part is no  
14 longer available to the original equipment manufacturer.

15 (2) For equipment that contains an electronic security lock or  
16 other security-related function, the original equipment  
17 manufacturer shall make available to the owner and to independent  
18 repair providers, on fair and reasonable terms, any special part,  
19 tool, and documentation needed to disable the lock or function and  
20 to reset it when disabled in the course of diagnosis, maintenance,  
21 or repair of the equipment. The original equipment manufacturer may  
22 make the part, tool, and documentation described in this subsection  
23 available by means of an appropriate secure system.

24 (3) When the original equipment manufacturer has made an  
25 express warranty with respect to electronics-enabled agricultural  
26 equipment and the wholesale price of the equipment is \$100.00 or  
27 more, the manufacturer shall provide the part, tool, and  
28 documentation to enable the equipment to be repaired during the  
29 warranty period at an equitable price, with a convenient means of

1 delivery, and to fully restore functionality in consideration of  
2 all of the following:

3 (a) The actual cost to the original equipment manufacturer to  
4 prepare and distribute the part, tool, or documentation, exclusive  
5 of any research and development costs incurred.

6 (b) The ability of owners and independent repair providers to  
7 afford the part, tool, or documentation.

8 (c) The means by which the part, tool, or documentation is  
9 distributed.

10 Sec. 5. A person that violates this act is responsible for a  
11 state civil infraction and may be ordered to pay a civil fine of  
12 not more than \$500.00.

13 Sec. 7. (1) This act does not require an original equipment  
14 manufacturer to divulge a trade secret.

15 (2) This act does not require an original equipment  
16 manufacturer or authorized repair provider to provide an owner or  
17 independent repair provider access to nondiagnostic and repair  
18 documentation provided by an original equipment manufacturer to an  
19 authorized repair provider under the terms of an arrangement  
20 described in section 2(a).

21 (3) Except as otherwise provided in this subsection, this act  
22 does not alter the terms of an arrangement described in section  
23 2(a) that is in force between an authorized repair provider and an  
24 original equipment manufacturer, including, but not limited to, a  
25 performance provision of warranty or recall work by an authorized  
26 repair provider on behalf of an original equipment manufacturer  
27 under that arrangement. A provision of an arrangement described in  
28 section 2(a) that purports to waive, avoid, restrict, or limit an  
29 original equipment manufacturer's obligations to comply with this

1 act is void and unenforceable.

2       Sec. 9. This act applies to electronics-enabled agricultural  
3 equipment that is sold or in use on or after the effective date of  
4 this act.