

House File 2442 - Introduced

HOUSE FILE 2442
BY TUREK

A BILL FOR

- 1 An Act providing for the repair of certain equipment associated
- 2 with farm implements, and providing penalties.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

unofficial

1 Section 1. NEW SECTION. **322E.1 Short title.**

2 This chapter shall be known and may be cited as the "Iowa Fair
3 Repair for Farm Implements Act".

4 Sec. 2. NEW SECTION. **322E.2 Definitions.**

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "Authorized repair provider" means a person other than an
8 original farm equipment manufacturer with whom the manufacturer
9 has entered into an oral or written agreement for a definite
10 or indefinite period, if the manufacturer grants to the person
11 a license to use a trade name, service mark, or related
12 characteristic for the purposes of offering repair services under
13 the name of the manufacturer.

14 2. "Digital electronic equipment" means a product containing
15 an integrated circuit, or a replacement part for use in a
16 product containing an integrated circuit, if manufactured for
17 distribution and sale in the United States, for installation in
18 a farm implement.

19 3. a. "Embedded software" means programmable instructions
20 provided on firmware delivered with digital electronic equipment
21 for the purposes of product operation, including all relevant
22 patches and fixes made by the original equipment manufacturer.

23 b. "Embedded software" includes but is not limited to a
24 basic internal operating system, an internal operating system, a
25 machine code, an assembly code, a root code, and a microcode.

26 4. "Fair and reasonable terms" means an equitable price in
27 light of relevant factors, including but not limited to all of
28 the following:

29 a. The net cost to the authorized repair provider for similar
30 information obtained from an original equipment manufacturer,
31 less any discounts, rebates, or other incentive programs.

32 b. The cost to an original farm equipment manufacturer
33 for preparing and distributing the information, excluding
34 any research and development costs incurred in designing,
35 implementing, upgrading, or altering digital electronic

1 equipment, but including amortized capital costs for the
2 preparation and distribution of the information.

3 c. The price charged by an original farm equipment
4 manufacturer for similar information.

5 d. The price charged by an original farm equipment
6 manufacturer for similar information prior to the launch of a
7 manufacturer's internet site.

8 e. The ability of aftermarket technicians or shops to afford
9 the information.

10 f. The means by which the information is distributed.

11 g. The extent to which the information is used, including the
12 number of users, and the frequency, duration, and volume of use.

13 h. Inflation.

14 5. "*Farm implement*" means any of the following:

15 a. A type of motorized equipment that is designed or
16 adapted and used exclusively for the production of agricultural
17 commodities, including a crop as defined in section 202.1 or
18 livestock as defined in section 717.1.

19 b. Farm machinery and equipment exempt from sales tax as
20 provided in section 423.3, subsection 8, if the farm machinery
21 and equipment is a self-propelled implement of husbandry or is
22 customarily drawn or attached to a self-propelled implement of
23 husbandry.

24 c. A farm tractor, fence-line feeder, or implement of
25 husbandry, as defined in section 321.1.

26 6. "*Firmware*" means a software program or set of instructions
27 programmed on a hardware device to allow the device to
28 communicate with other computer hardware.

29 7. a. "*Independent repair provider*" means a person operating
30 a business in this state, if all of the following apply:

31 (1) The business is engaged in the diagnosis, service,
32 maintenance, or repair of digital electronic equipment.

33 (2) The business is not affiliated with an original farm
34 equipment manufacturer or the authorized repair provider of a
35 manufacturer.

1 *b. "Independent repair provider"* does not include an original
2 farm equipment manufacturer engaged in the diagnosis, service,
3 maintenance, or repair of digital electronic equipment that is
4 not affiliated with the manufacturer.

5 8. *"Interest holder"* means a person who holds a legal
6 interest in digital electronic equipment, including as an owner,
7 lessee, or licensee.

8 9. *a. "Motor vehicle"* means any self-propelled vehicle
9 subject to registration under chapter 321.

10 *b. "Motor vehicle"* does not include a farm implement.

11 10. *"Motor vehicle dealer"* means a person engaged in the
12 business of selling at retail motor vehicles or representing or
13 advertising that the person is engaged or intends to engage in
14 such business in this state as provided in section 322.4.

15 11. *"Motor vehicle lessor"* means a person engaged in the
16 business of leasing motor vehicles for use by others for
17 compensation as provided in chapter 321F.

18 12. *"Original farm equipment manufacturer"* or *"manufacturer"*
19 means a person who, in the ordinary course of business, is
20 engaged in the business of doing all of the following:

21 *a. Selling or leasing a new farm implement that includes*
22 *new digital electronic equipment, including replacement parts of*
23 *equipment, to any person.*

24 *b. Diagnosing, servicing, maintaining, or repairing digital*
25 *electronic equipment that is part of a new farm implement,*
26 *including parts of such digital electronic equipment.*

27 13. *a. "Replacement part"* means any new or used tangible
28 personal property made available by an original farm equipment
29 manufacturer to an authorized repair provider for purposes of
30 effecting a repair.

31 *b. "Replacement part"* includes a component of digital
32 electronic equipment that performs the same or similar function
33 as the component being replaced and that restores digital
34 electronic equipment to an operational condition or improves the
35 efficiency or capability of digital electronic equipment that is

1 part of a farm implement.

2 14. "Trade secret" means anything tangible or intangible
3 or electronically stored or kept that constitutes, represents,
4 evidences, or records intellectual property, including secret
5 or confidentially held designs, processes, procedures, formulas,
6 inventions, or improvements, or secret or confidentially held
7 scientific, technical, merchandising, production, financial,
8 business, or management information, or any other trade secret as
9 defined in 18 U.S.C. §1839.

10 Sec. 3. NEW SECTION. **322E.3 Requirements.**

11 1. An original farm equipment manufacturer of a farm
12 implement that includes digital electronic equipment shall make
13 diagnostic and repair information, including repair technical
14 updates and embedded software updates and corrections, available
15 to any independent repair provider or interest holder of
16 digital electronic equipment manufactured by the original farm
17 equipment manufacturer for no charge or in the same manner as
18 the manufacturer makes such diagnostic and repair information
19 available to authorized repair providers.

20 2. An original farm equipment manufacturer of a farm
21 implement that includes digital electronic equipment that sells
22 any diagnostic and repair information to any independent repair
23 provider or to any interest holder in a format that is
24 standardized with other original farm equipment manufacturers,
25 and on terms and conditions more favorable than the manner and
26 the terms and conditions pursuant to which the authorized repair
27 provider obtains the same diagnostic and repair information,
28 shall not require an authorized repair provider or interest
29 holder to continue purchasing diagnostic and repair information
30 in a proprietary format, unless such proprietary format includes
31 diagnostic and repair information or functionality that is not
32 available in such standardized format.

33 3. An original farm equipment manufacturer of a farm
34 implement that includes digital electronic equipment sold or used
35 in this state shall make available for purchase by independent

1 repair providers and interest holders all diagnostic repair
2 tools incorporating the same diagnostic, repair, and remote
3 communications capabilities that the original farm equipment
4 manufacturer makes available to the repair or engineering
5 personnel employed by the original farm equipment manufacturer or
6 to any authorized repair provider. An original farm equipment
7 manufacturer shall offer such tools for sale to any independent
8 repair provider or interest holder upon fair and reasonable
9 terms. An original farm equipment manufacturer that provides
10 diagnostic repair information to aftermarket diagnostic tool
11 manufacturers, diagnostics providers, or service information
12 publications and systems shall not be responsible for the
13 content and functionality of such aftermarket diagnostic tools,
14 diagnostics, or service information systems.

15 4. Digital electronic equipment included in a farm
16 implement sold or used in this state for the purpose
17 of providing security-related functions shall not exclude
18 diagnostic and repair information necessary to reset a
19 security-related electronic function from the information
20 provided to an independent repair provider or an interest holder.
21 Information necessary to reset an immobilizer system or other
22 security-related electronic module shall be obtained by an
23 independent repair provider or interest holder, or through the
24 appropriate secure data release systems of the original farm
25 equipment manufacturer.

26 Sec. 4. NEW SECTION. **322E.4 Applicability.**

27 1. This chapter does not require an original farm equipment
28 manufacturer to sell replacement parts if the replacement parts
29 are no longer available to the manufacturer or an authorized
30 repair provider of the manufacturer.

31 2. This chapter does not apply to a motor vehicle, or any
32 product or service of a motor vehicle manufacturer, motor vehicle
33 dealer, or motor vehicle lessor.

34 Sec. 5. NEW SECTION. **322E.5 Statutory construction.**

35 This chapter shall not be construed to do any of the

1 following:

2 1. Require an original equipment manufacturer to divulge a
3 trade secret.

4 2. Except as provided in section 322E.8, abrogate, interfere
5 with, contradict, or alter the terms of any agreement executed
6 and in effect between an authorized repair provider and an
7 original farm equipment manufacturer, including but not limited
8 to the performance or provision of warranty or recall repair
9 work by an authorized repair provider on behalf of a manufacturer
10 pursuant to such agreement.

11 3. Require an original farm equipment manufacturer or an
12 authorized repair provider to provide an interest holder or
13 independent repair provider access to nondiagnostic and nonrepair
14 information provided by a manufacturer to an authorized repair
15 provider pursuant to the terms of an agreement.

16 Sec. 6. NEW SECTION. **322E.6 Rulemaking authority.**

17 1. The attorney general shall adopt rules under chapter 17A
18 and forms as necessary to implement this chapter.

19 2. In prescribing rules and forms under this chapter, the
20 attorney general may cooperate with agencies that perform similar
21 functions in other states with a view to effectuating the policy
22 of this chapter to achieve maximum uniformity in the form and
23 content of certification, regulation, and procedural evaluation
24 of manufacturer-established programs, required recordkeeping,
25 required reporting wherever practicable, and required notices to
26 consumers.

27 Sec. 7. NEW SECTION. **322E.7 Subpoenas.**

28 The attorney general may enforce and ensure compliance with
29 the provisions of this chapter and rules adopted pursuant to
30 section 322E.6, may issue subpoenas requiring the attendance
31 of witnesses and the production of evidence, and may petition
32 any court having jurisdiction to compel compliance with the
33 subpoenas.

34 Sec. 8. NEW SECTION. **322E.8 Certain provisions in**
35 **agreements void.**

1 1. A provision in an agreement entered into by a consumer
2 that waives, limits, or disclaims the rights set forth in this
3 chapter is void as contrary to public policy.

4 2. A provision in an agreement that waives, avoids,
5 restricts, or limits an original farm equipment manufacturer's
6 compliance with this chapter shall be void and unenforceable.

7 Sec. 9. NEW SECTION. **322E.9 Unfair or deceptive trade**
8 **practice.**

9 An original farm equipment manufacturer who violates this
10 chapter commits an unfair or deceptive trade practice as provided
11 in section 714.16, subsection 2, paragraph "a".

12 EXPLANATION

13 The inclusion of this explanation does not constitute agreement with
14 the explanation's substance by the members of the general assembly.

15 This bill creates the "Iowa Fair Repair for Farm Implements
16 Act", which restricts certain practices by an original farm
17 equipment manufacturer of digital electronic equipment that is
18 part of a farm implement such as a tractor subject to repair by
19 the manufacturer, an authorized repair provider affiliated with
20 the manufacturer, an independent repair provider, or a person who
21 holds a legal interest in the equipment.

22 The bill provides that a manufacturer must make certain items
23 available to an independent repair provider or a person holding
24 a legal interest in the digital electronic equipment, including
25 diagnostic and repair information. The manufacturer must also
26 provide diagnostic repair tools to an independent repair provider
27 or a person holding a legal interest in the digital electronic
28 equipment, in the same manner as provided to an authorized repair
29 provider. The sales terms must be fair and reasonable as defined
30 in the bill. The bill provides that a manufacturer is not
31 required to provide replacement parts if no longer available to
32 the manufacturer or an authorized repair provider. The bill does
33 not require a manufacturer to divulge a trade secret or abrogate
34 warranty provisions. A provision in an agreement that is entered
35 into by a consumer that waives a right provided in the bill is

1 void.

2 The attorney general is responsible for enforcing the
3 provisions of the bill and is required to adopt rules necessary
4 to implement the bill's provisions. A violation of the bill
5 by a manufacturer is considered an unfair or deceptive trade
6 practice. The attorney general may bring a civil action against
7 the manufacturer, including by seeking injunctive relief or by
8 asking a court to impose a civil penalty not to exceed \$40,000
9 per violation.

unofficial