

House Study Bill 751 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON WULF)

A BILL FOR

- 1 An Act providing for services relating to agricultural equipment.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

unofficial

1 Section 1. NEW SECTION. **322E.1 Definitions.**

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. a. "Agricultural equipment" means equipment that is
5 primarily designed for use in a farming operation.

6 b. "Agricultural equipment" includes any of the following:

7 (1) A tractor, trailer, combine, sprayer, tillage implement,
8 baler, and other equipment used to plant, cultivate, or harvest
9 agricultural products.

10 (2) An attachment to and repair part for equipment described
11 in subparagraph (1).

12 (3) "Agricultural equipment" does not include any of the
13 following:

14 (a) A self-propelled vehicle designed primarily for the
15 transportation of individuals or property on a street or highway.

16 (b) A powersports vehicle, including any of the following:

17 (i) A vehicle for off-road operation.

18 (ii) A personal watercraft that is a motorboat that is
19 designed to be operated by a person sitting, standing, or
20 kneeling on the vessel, rather than the conventional manner of
21 sitting or standing inside the vessel, and that is designed
22 primarily for use off of the public highways, and that uses
23 either an inboard motor powering a water jet pump or an outboard
24 motor-driven propeller.

25 (iii) A snowmobile.

26 (c) Any aircraft used in an agricultural aircraft operation,
27 as defined in 14 C.F.R. §137.3.

28 (d) Any equipment designed and used primarily for irrigation
29 purposes.

30 2. a. "Authorized repair provider" means a person that
31 is unaffiliated with a manufacturer other than through an
32 arrangement with the manufacturer, whether for a definite or an
33 indefinite period, in which the manufacturer, for the purpose
34 of offering to provide services to an equipment owner regarding
35 the owner's equipment or a part, grants the person any of the

1 following:

2 (1) A license to use a trade name, service mark, or other
3 proprietary identifier.

4 (2) Authorization under any other arrangement to act on
5 behalf of the manufacturer.

6 b. "*Authorized repair provider*" includes a manufacturer that
7 offers to provide services to an owner of the manufacturer's
8 agricultural equipment regarding the owner's agricultural
9 equipment or a part if the manufacturer does not have an
10 arrangement with an unaffiliated person, as described in
11 paragraph "a".

12 3. "*Data*" means, with the consent of an owner, transmitted
13 or compiled information arising from the operation of an owner's
14 agricultural equipment or its parts.

15 4. "*Documentation*" means a manual; diagram, including a
16 schematic diagram; reporting output; service code description;
17 security code or password; or similar type of guidance or
18 information, whether in an electronic or tangible format, that a
19 manufacturer provides to an authorized repair provider to assist
20 the authorized repair provider with services performed on the
21 manufacturer's agricultural equipment or a part.

22 5. a. "*Embedded software for agricultural equipment*" means
23 any programmable instructions provided on firmware delivered
24 with or loaded to the agricultural equipment, with respect to
25 agricultural equipment operation.

26 b. "*Embedded software for agricultural equipment*" includes
27 all relevant patches and fixes that the manufacturer makes,
28 including but not limited to items described as a basic internal
29 operating system, internal operating system, machine code,
30 assembly code, root code, and microcode.

31 6. "*Equipment dealer*" means any person primarily engaged in
32 the retail sale of agricultural equipment.

33 7. "*Fair and reasonable terms and costs*" means the following:

34 a. (1) With respect to obtaining documentation, parts,
35 embedded software, firmware, or tools from a manufacturer to

1 provide services, terms that are equivalent to the most favorable
2 terms that the manufacturer offers to an authorized repair
3 provider and costs that are no greater than the manufacturer's
4 suggested retail price.

5 (2) Except as provided in paragraph "d", costs considered
6 under subparagraph (1) are calculated using net costs incurred,
7 accounting for any discounts, rebates, or incentives offered.

8 b. With respect to documentation, the manufacturer provides
9 the documentation, including any relevant updates to the
10 documentation, at no charge, except that the manufacturer may
11 charge a fee for a printed copy of the documentation if the
12 amount of the fee covers only the manufacturer's actual cost to
13 prepare and send the printed copy of the documentation.

14 c. With respect to tools that are software programs, the
15 manufacturer provides the tools that are software programs
16 subject to all of the following:

17 (1) At no charge and without requiring authorization or
18 internet access or otherwise imposing impediments to access or
19 use.

20 (2) In the course of effectuating the diagnosis, maintenance,
21 or repair and enabling the full functionality of the agricultural
22 equipment or part.

23 (3) In a manner that does not impair the efficient and
24 cost-effective performance of the agricultural equipment or part.

25 d. Notwithstanding paragraph "a", subparagraph (1), parts
26 shall be sold to an owner or an independent repair provider under
27 equitable terms for access to or receipt of any part pertaining
28 to agricultural equipment and in a manner that is any of the
29 following:

30 (1) Is fair to both parties in light of any agreed-upon
31 conditions, the promised quality, and the timeliness of the
32 delivery.

33 (2) Does not discourage or disincentivize repairs to be made
34 by an owner or an independent repair provider.

35 e. Terms are fair if the terms do not impose on an owner or

1 independent repair provider any of the following:

2 (1) Substantial obligation to use, or any restriction on
3 the use of, a part, embedded software, embedded software
4 for agricultural equipment, firmware, or tool, including a
5 condition that the owner or independent repair provider become an
6 authorized repair provider of the manufacturer.

7 (2) A requirement that a part, embedded software, embedded
8 software for agricultural equipment, firmware, or tool be
9 registered or paired with or approved by the manufacturer or an
10 authorized repair provider before the part, embedded software,
11 embedded software for agricultural equipment, firmware, or tool
12 is operational.

13 8. "Firmware" means a software program or set of instructions
14 programmed on equipment or a part to allow the equipment or part
15 to function or communicate with itself or with other computer
16 hardware.

17 9. a. "Independent repair provider", except as otherwise
18 provided in paragraph "b", means a person in the state that is
19 all of the following:

20 (1) Neither a manufacturer's authorized repair provider nor
21 affiliated with a manufacturer's authorized repair provider.

22 (2) Engaged in offering or providing services.

23 b. "Independent repair provider" includes all of the
24 following:

25 (1) An authorized repair provider if the authorized repair
26 provider is offering or providing services for a manufacturer
27 other than a manufacturer with which the authorized repair
28 provider has an arrangement described in subsection 2.

29 (2) A manufacturer with respect to offering or providing
30 services for another manufacturer's agricultural equipment or
31 part.

32 10. "Original equipment manufacturer" or "manufacturer" means
33 a person doing business in the state and engaged in the
34 business of selling, leasing, or otherwise supplying agricultural
35 equipment or parts manufactured by or on behalf of itself to any

1 individual, business, or other entity.

2 11. "Owner" means a person that owns agricultural equipment,
3 or an agent of the owner.

4 12. "Part" means a new or used replacement part for
5 agricultural equipment that a manufacturer offers for sale or
6 otherwise makes available for the purpose of providing services.

7 13. "Services" means diagnostic, maintenance, or repair
8 services performed on agricultural equipment.

9 14. "Tools" means any software program, hardware implement,
10 or other apparatus used for diagnosis, maintenance, or repair
11 of agricultural equipment or parts, including software or
12 another mechanism that provides, programs, or pairs a new
13 part, calibrates functionality, or performs any other function
14 required to return the agricultural equipment or part to a fully
15 functional condition.

16 15. a. "Trade secret" means the whole or any portion
17 or phase of any scientific or technical information, design,
18 process, procedure, formula, improvement, or confidential
19 business or financial information; a listing of names, addresses,
20 or telephone numbers; or other information relating to any
21 business or profession that is secret and of value.

22 b. To be a trade secret, the owner thereof must have taken
23 measures to prevent the secret from becoming available to persons
24 other than those selected by the owner to have access thereto for
25 limited purposes.

26 Sec. 2. NEW SECTION. **322E.2 Agricultural equipment —**
27 **obligations regarding services — exemption.**

28 1. Except as provided in subsection 2, all of the following
29 apply:

30 a. For the purpose of providing services for agricultural
31 equipment in the state, an original equipment manufacturer shall,
32 with fair and reasonable terms and costs, make available to
33 an independent repair provider or owner of the manufacturer's
34 equipment any documentation, parts, embedded software, embedded
35 software for agricultural equipment, firmware, tools, or, with

1 owner authorization, data that are intended for use with the
2 equipment or any part, including updates to documentation, parts,
3 embedded software, embedded software for agricultural equipment,
4 firmware, tools, or, with owner authorization, data.

5 b. With respect to agricultural equipment that contains an
6 electronic security lock or other security-related function, a
7 manufacturer shall, with fair and reasonable terms and costs,
8 make available to independent repair providers and owners
9 any documentation, parts, embedded software, embedded software
10 for agricultural equipment, firmware, tools, or, with owner
11 authorization, data needed to reset the lock or function when
12 disabled in the course of providing services. The manufacturer
13 may make the documentation, parts, embedded software, embedded
14 software for agricultural equipment, firmware, tools, or,
15 with owner authorization, data available to independent repair
16 providers and owners through appropriate secure release systems.

17 2. Subsection 1 does not apply to any of the following:

18 a. A part that is no longer available to the original
19 equipment manufacturer.

20 b. Conduct that would require the manufacturer to divulge
21 a trade secret, except that a manufacturer shall not refuse
22 to make available to an independent repair provider or owner
23 any documentation, part, embedded software, embedded software
24 for agricultural equipment, firmware, tool, or, with owner
25 authorization, data necessary to provide services on grounds that
26 the documentation, part, embedded software, embedded software
27 for agricultural equipment, firmware, tool, or, with owner
28 authorization, data itself is a trade secret.

29 3. Neither an original equipment manufacturer nor an
30 agricultural equipment dealer is liable for faulty or otherwise
31 improper repairs provided by an independent repair provider or
32 owner, including faulty or otherwise improper repairs that cause
33 any of the following:

34 a. Damage to agricultural equipment that occurs during such
35 repairs.

1 b. Any indirect, incidental, special, or consequential
2 damages.

3 c. An inability to use, or a reduced functionality of, a
4 piece of agricultural equipment resulting from the faulty or
5 otherwise improper repair.

6 4. A manufacturer that provides data to an independent repair
7 provider in compliance with this chapter is neither responsible
8 nor liable to the owner, the independent repair provider, or
9 another party for any action that the independent repair provider
10 or another party takes while using or relying on the data.

11 Sec. 3. NEW SECTION. **322E.3 Agricultural equipment —**
12 **limitations.**

13 1. Subject to subsection 2, nothing in this chapter does any
14 of the following:

15 a. Alters the terms of any contract or other arrangement
16 in force between an original equipment manufacturer and
17 an authorized repair provider, including the performance or
18 provision of warranty or recall repair work and any exclusivity
19 or noncompete clause in a contract.

20 b. Authorizes an independent repair provider or owner to do
21 any of the following:

22 (1) Make any modification to agricultural equipment that
23 deactivates a safety notification system, except as necessary to
24 provide services.

25 (2) Access any function of a tool that enables the
26 independent repair provider or owner to change the settings for
27 a piece of agricultural equipment in a manner that brings the
28 equipment out of compliance with any applicable federal, state,
29 or local safety or emissions law, except as necessary to provide
30 services.

31 (3) Evade emissions, copyright, trademark, or patent laws.

32 (4) Engage in any other illegal equipment modification
33 activity.

34 c. Requires a manufacturer to provide an independent
35 repair provider or owner access to information, other than

1 documentation, that the manufacturer provides to an authorized
2 repair provider pursuant to a contract or other arrangement with
3 the authorized repair provider except as necessary to comply with
4 section 322E.2.

5 d. Exempts a manufacturer from a product liability claim that
6 is otherwise authorized in law.

7 2. a. With respect to a contract or other arrangement, or
8 renewal of a contract or existing arrangement, that an original
9 equipment manufacturer enters into after the effective date of
10 this Act, any contract term, provision, agreement, or language
11 in the contract or arrangement that waives, avoids, restricts, or
12 limits the manufacturer's obligations under this chapter is void
13 and unenforceable.

14 b. If an agricultural equipment manufacturer enters into,
15 or is covered under, a nationwide memorandum of understanding
16 regarding a right to repair agricultural equipment, the
17 memorandum of understanding governs an owner's right to
18 provide services, or to engage the services of an independent
19 repair provider, for that manufacturer's brand of agricultural
20 equipment, except that if compliance with the memorandum of
21 understanding would deny the owner any rights afforded to the
22 owner in this chapter, including any rights to documentation,
23 data, tools, or embedded software for agricultural equipment
24 necessary for the diagnosis, maintenance, or repair of the
25 owner's agricultural equipment, the owner is entitled to
26 the documentation, data, tools, or embedded software for
27 agricultural equipment in accordance with this chapter. An
28 agricultural equipment manufacturer that enters into a memorandum
29 of understanding is still obligated to meet the requirements
30 established in this chapter.

31 EXPLANATION

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

34 This bill regulates practices by an original farm equipment
35 manufacturer (manufacturer). The manufacturer must make

1 available to an independent repair provider or owner of the
2 manufacturer's equipment any documentation, parts, embedded
3 software, embedded software for agricultural equipment, firmware,
4 tools, or, with owner authorization, data that are intended
5 for use with the equipment or any part, including updates
6 to documentation, parts, embedded software, embedded software
7 for agricultural equipment, firmware, tools, or, with owner
8 authorization, data. The original manufacturer must make those
9 items available at fair and reasonable terms and costs.
10 Generally, this includes terms that are equivalent to the
11 most favorable terms that the manufacturer offers for the same
12 item to an authorized repair provider and costs that are no
13 greater than the manufacturer's suggested retail price. The
14 requirements in the bill are subject to a number of limitations.
15 The bill does not require a manufacturer to evade emissions,
16 copyright, trademark, or patent laws. The bill does not
17 exempt a manufacturer from a product liability claim. Any
18 agreement entered into with a manufacturer that waives, avoids,
19 restricts, or limits the manufacturer's obligations under the
20 bill's requirements is void and unenforceable.