

Senate Study Bill 3124 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON DRISCOLL)

A BILL FOR

1 An Act providing for the repair of a diesel exhaust fluid system
2 that is part of farm equipment, and providing penalties.
3 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. "*Authorized repair provider*" means a person other than an
5 original farm equipment manufacturer with whom the manufacturer
6 has entered into an oral or written agreement for a definite
7 or indefinite period, if the manufacturer grants to the person
8 a license to use a trade name, service mark, or related
9 characteristic for the purposes of offering repair services under
10 the name of the manufacturer.

11 2. "*Diesel exhaust fluid*" means the same as defined in 40
12 C.F.R. §1036.801.

13 3. "*Diesel exhaust fluid system*" or "*system*" means a system
14 that utilizes diesel exhaust fluid as part of a selective
15 catalytic reduction process that is operated by one or more
16 digital electronic components.

17 4. "*Digital electronic component*" means an item containing an
18 integrated circuit, if manufactured as part of a diesel exhaust
19 fluid system that is integrated into farm equipment.

20 5. a. "*Embedded software*" means programmable instructions
21 provided on firmware delivered with digital electronic components
22 for the purposes of operating a diesel exhaust fluid system
23 integrated into farm equipment, including all relevant patches
24 and fixes made by the original equipment manufacturer.

25 b. "*Embedded software*" includes but is not limited to an
26 internal operating system, a machine code, an assembly code, a
27 root code, or a microcode.

28 6. "*Farm equipment*" means a type of diesel-powered motorized
29 equipment that is designed or adapted and used exclusively for
30 the production of agricultural commodities, including a crop as
31 defined in section 202.1 or livestock as defined in section
32 717.1.

33 7. "*Firmware*" means a software program or set of instructions
34 programmed on a hardware device to allow the device to
35 communicate with other computer hardware.

1 8. "Interest holder" means a person who holds a legal
2 interest in farm equipment that includes a diesel exhaust fluid
3 system, if the person is the owner, lessee, or licensee of a
4 digital electronic component that operates a diesel exhaust fluid
5 system integrated into the farm equipment.

6 9. "Original farm equipment manufacturer" or "manufacturer"
7 means a person who, in the ordinary course of business, is
8 engaged in the business of doing all of the following:

9 a. Manufacturing and assembling parts of new farm equipment
10 for sale or lease, if the new farm equipment includes a diesel
11 exhaust fluid system.

12 b. Providing items and documentation for servicing,
13 maintaining, or repairing a diesel exhaust fluid system that
14 is integrated into the new farm equipment, including providing
15 replacement parts.

16 10. "Replacement part" means a part of a digital electronic
17 component that is an element of a diesel exhaust fluid system
18 integrated into farm equipment, if the part is manufactured
19 to perform the same or a similar function as the part being
20 replaced, and the part restores digital electronic components to
21 an operational condition or improves the efficiency or capability
22 of the digital electronic components.

23 11. "Trade secret" means anything tangible or intangible
24 or electronically stored or kept that constitutes, represents,
25 evidences, or records intellectual property, including secret
26 or confidentially held designs, processes, procedures, formulas,
27 inventions, or improvements; secret or confidentially held
28 scientific, technical, merchandising, production, financial,
29 business, or management information; or any other trade secret as
30 defined in 18 U.S.C. §1839.

31 Sec. 2. NEW SECTION. **322E.2 Rulemaking authority.**

32 The attorney general shall adopt rules pursuant to chapter 17A
33 to administer this chapter.

34 Sec. 3. NEW SECTION. **322E.3 Enforcement authority.**

35 1. The attorney general shall enforce this chapter, including

1 rules adopted under this chapter.

2 2. A district court may prevent and restrain a violation of
3 this chapter through the issuance of an injunction. The attorney
4 general or a county attorney shall institute suits on behalf of
5 the state to prevent and restrain violations of this chapter.

6 Sec. 4. NEW SECTION. **322E.4 Application.**

7 1. This chapter shall not be construed to require an original
8 equipment manufacturer to divulge a trade secret.

9 2. a. Except as provided in paragraph "b", this chapter
10 shall not abrogate, interfere with, contradict, or alter the
11 terms of any agreement executed by an interest holder and
12 another party relating to farm equipment, including performance,
13 a warranty, or recall repair work.

14 b. A provision in an agreement entered into by an interest
15 holder and another party that waives, limits, or disclaims the
16 rights set forth in this chapter is void as contrary to public
17 policy.

18 3. This chapter shall not require an original farm equipment
19 manufacturer or an authorized repair provider to provide an
20 interest holder access to nondiagnostic or nonrepair information
21 provided by the manufacturer to the authorized repair provider
22 pursuant to the terms of an agreement.

23 Sec. 5. NEW SECTION. **322E.5 Terms and conditions of use —**
24 **diagnostic and repair information.**

25 1. a. An original farm equipment manufacturer shall make
26 diagnostic and repair information regarding the operation of
27 a diesel exhaust fluid system, including technical updates
28 and embedded software updates and corrections, available to
29 any interest holder for no charge or in the same manner as
30 the manufacturer makes such diagnostic and repair information
31 available to the manufacturer's authorized repair providers doing
32 business in the same region as the interest holder when using the
33 farm equipment.

34 b. The original farm equipment manufacturer is not required
35 to make the diagnostic and repair information available in a

1 print format.

2 2. An original farm equipment manufacturer shall not require
3 an interest holder to purchase diagnostic and repair information
4 regarding the operation of a diesel exhaust fluid system if the
5 manufacturer sells the diagnostic and repair information to the
6 manufacturer's authorized repair providers on terms that are more
7 favorable than the terms offered to the interest holder.

8 Sec. 6. NEW SECTION. **322E.6 Terms and conditions of use —**
9 **replacement parts and diagnostic and repair tools.**

10 1. a. An original farm equipment manufacturer shall make
11 available for purchase by an interest holder a replacement part
12 necessary to operate a diesel exhaust fluid system to the same
13 extent that the manufacturer makes available the same digital
14 electronic component to an authorized repair provider doing
15 business in the same region as the interest holder when using the
16 farm equipment.

17 b. The terms and conditions of the purchase described in
18 paragraph "a" shall be fair and reasonable according to criteria
19 provided in rules adopted by the attorney general. The criteria
20 may be based on the terms and conditions of agreements entered
21 into by the original farm equipment manufacturer and authorized
22 repair providers doing business in the same region as the
23 interest holder when using the farm equipment.

24 2. a. An original farm equipment manufacturer shall make
25 available for purchase by an interest holder a diagnostic repair
26 tool necessary to operate a diesel exhaust fluid system to the
27 same extent that the manufacturer makes available the diagnostic
28 repair tool to an authorized repair provider doing business in
29 the same region as the interest holder when using the farm
30 equipment. The diagnostic repair tool shall incorporate the same
31 diagnostic, repair, and remote communications capabilities that
32 the manufacturer makes available to the repair or engineering
33 personnel employed by the manufacturer or to any authorized
34 repair provider.

35 b. The terms and conditions of the purchase described in

1 paragraph "a" shall be fair and reasonable according to criteria
2 provided in rules adopted by the attorney general. The criteria
3 may be based on the terms and conditions of agreements entered
4 into by the original farm equipment manufacturer and authorized
5 repair providers doing business in the same region as the
6 interest holder when using the farm equipment.

7 3. The original farm equipment manufacturer shall not
8 condition the availability of a replacement part described in
9 subsection 1 or a diagnostic repair tool described in subsection
10 2 on a requirement that a replacement part or diagnostic repair
11 tool be registered, paired with, or approved by the manufacturer
12 or an authorized repair provider before the replacement part
13 or diagnostic repair tool is used. The manufacturer shall not
14 impose any additional cost or burden that is not reasonably
15 necessary or that may unreasonably impede the interest holder.

16 Sec. 7. NEW SECTION. **322E.7 Unfair or deceptive trade**
17 **practice.**

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

21 EXPLANATION

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

24 This bill restricts certain practices by an original farm
25 equipment manufacturer (manufacturer), if the manufacturer sells
26 diesel-powered farm equipment integrated with a diesel exhaust
27 fluid (DEF) system operated by digital electronic components
28 designed to reduce certain emissions (nitrogen oxides) under
29 regulations promulgated by the United States environmental
30 protection agency (see 40 C.F.R. §1065.735). The bill provides
31 for circumstances in which farm equipment is subject to repair
32 due to a fault in the DEF system. The bill provides that a
33 manufacturer must make certain items related to the DEF system
34 available to a person holding a legal interest in the farm
35 equipment (interest holder) in the same manner and to the same

1 extent as the manufacturer makes such items available to the
2 manufacturer's authorized repair providers doing business in
3 the same region as the interest holder. The items include
4 diagnostic and repair information, including technical updates,
5 replacement parts, and diagnostic repair tools. A manufacturer
6 is not required to provide a replacement part that is no longer
7 available to the manufacturer. The bill does not require a
8 manufacturer to divulge a trade secret and the manufacturer
9 cannot abrogate warranty provisions. A provision in an agreement
10 that is entered into by an interest holder that waives a
11 right provided in the bill is void. The attorney general
12 is responsible for enforcing the provisions of the bill and
13 is required to adopt rules necessary to implement the bill's
14 provisions. A violation of the bill by a manufacturer is
15 considered an unfair or deceptive trade practice. The attorney
16 general or county attorney may bring a civil action against the
17 manufacturer, including by seeking injunctive relief or by asking
18 a court to impose a civil penalty not to exceed \$40,000 per
19 violation.