

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 HOUSE BILL 2551

By: Hardin

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5
6 AS INTRODUCED

7 An Act relating to contracts; creating the Right to
8 Repair Farming Equipment Act; defining terms;
9 requiring manufacturer of digital electronic products
10 to provide certain information; requiring certain
11 tools and software be available for purchase;
12 prohibiting manufacturer from requiring provider to
13 continue to purchase certain information; requiring
14 certain diagnostic repair tools be available for
15 purchase; requiring digital electronic products
16 include certain diagnostic and repair information;
17 providing manufacturer shall not be required to sell
18 certain unavailable parts; providing penalty and
19 fine; specifying manufacturer shall not be required
20 to divulge trade secrets; specifying certain
21 contracts shall not be altered; specifying certain
22 information shall not be required to be provided;
23 exempting motor vehicles from scope of the Act;
24 providing for codification; and providing an
effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 903 of Title 15, unless there is
created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Right to Repair
Farming Equipment Act".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 904 of Title 15, unless there is
3 created a duplication in numbering, reads as follows:

4 As used in the Right to Repair Farming Equipment Act:

5 1. "Authorized repair provider" means an individual or entity
6 separate from a manufacturer with whom the manufacturer has entered
7 into an oral or written agreement for a definite or indefinite
8 period in which the manufacturer grants to such individual or entity
9 a license to use a trade name, service mark or related
10 characteristic for the purposes of offering repair services under
11 the name of the manufacturer;

12 2. "Digital electronic product" means equipment containing an
13 integrated circuit, or a part for such equipment, manufactured for
14 distribution and sale in the United States, and installed in a farm
15 tractor, farm trailer or implement of husbandry;

16 3. "Embedded software" means any programmable instructions
17 provided on firmware delivered with a digital electronic product for
18 the purposes of product operation, including all relevant patches
19 and fixes made by the manufacturer for this purpose, including, but
20 not limited to, basic internal operating systems, internal operating
21 systems, machine code, assembly code, root code and microcode;

22 4. "Fair and reasonable terms" means an equitable price in
23 light of relevant factors, including, but not limited to:

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- a. the net cost to the authorized repair provider for similar information obtained from a manufacturer, less any discounts, rebates or other incentive programs,
- b. the cost to the manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing, implementing, upgrading or altering the digital electronic product, but including amortized capital costs for the preparation and distribution of the information,
- c. the price charged by manufacturers for similar information,
- d. the price charged by a manufacturer for similar information prior to the launch of a manufacturer website,
- e. the ability of aftermarket technicians or shops to afford the information,
- f. the means by which the information is distributed,
- g. the extent to which the information is used, including the number of users, and the frequency, duration and volume of use, and
- h. inflation;

5. "Farm tractor" means every motor vehicle designed and used as a farm implement power unit operated with or without other

1 attached farm implements in any manner consistent with the
2 structural design of such power unit;

3 6. "Farm trailer" means trailer and semitrailer designed and
4 used primarily as a farm vehicle;

5 7. "Firmware" means a software program or set of instructions
6 programmed on a hardware device to allow the device to communicate
7 with other computer hardware;

8 8. "Implement of husbandry" means every vehicle designed or
9 adapted and used exclusively for agricultural operations, including
10 feedlots, and only incidentally moved or operated upon the highways.
11 Such term shall include, but not be limited to:

12 a. a self-propelled farm implement,

13 b. a fertilizer spreader, nurse tank or truck permanently
14 mounted with a spreader used exclusively for
15 dispensing or spreading water, dust or liquid
16 fertilizers or agricultural chemicals, regardless of
17 ownership,

18 c. a truck mounted with a fertilizer spreader used or
19 manufactured principally to spread animal dung,

20 d. a mixer-feed truck owned and used by a feedlot and
21 specially designed and used exclusively for dispensing
22 food to livestock in such feedlot;

23 9. "Independent repair provider" means a person or business
24 operating in this state that is not affiliated with a manufacturer

1 or a manufacturer's authorized repair provider, and that is engaged
2 in the diagnosis, service, maintenance or repair of digital
3 electronic products, except that a manufacturer shall be considered
4 an independent repair provider in those instances when such
5 manufacturer engages in the diagnosis, service, maintenance or
6 repair of digital electronic products that are not affiliated with
7 such manufacturer;

8 10. "Manufacturer" means any person or entity that, in the
9 ordinary course of business, is engaged in the business of selling
10 or leasing digital electronic products and is engaged in the
11 diagnosis, service, maintenance or repair of such products;

12 11. "Motor vehicle" means any vehicle that is designed for
13 transporting persons or property on a street or highway and is
14 certified by the motor vehicle manufacturer under all applicable
15 federal safety and emissions standards and requirements for
16 distribution and sale in the United States. The term "motor
17 vehicle" does not include any farm tractor, farm trailer or
18 implement of husbandry;

19 12. "Motor vehicle dealer" means any person or entity that, in
20 the ordinary course of business, is engaged in the business of
21 selling or leasing motor vehicles;

22 13. "Owner" means a person or entity that owns or leases a
23 digital electronic product purchased or used in this state;

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1 14. "Part" means any replacement part, new or used, made
2 available by the manufacturer to the authorized repair provider for
3 purposes of effecting repair;

4 15. "Semitrailer" means every vehicle of the trailer type so
5 designed and used in conjunction with a motor vehicle that some part
6 of its own weight and that of its own load rests upon or is carried
7 by another vehicle;

8 16. "Trade secret" means anything tangible or intangible or
9 electronically stored or kept which constitutes, represents,
10 evidences or records intellectual property, including secret or
11 confidentially held designs, processes, procedures, formulas,
12 inventions or improvements, or secret or confidentially held
13 scientific, technical, merchandising, production, financial,
14 business or management information, or any other trade secret as
15 defined in 18 U.S.C., Section 1839, in effect on January 1, 2016;
16 and

17 17. "Trailer" means every vehicle without motive power designed
18 to carry property or passengers wholly on its own structure and to
19 be drawn by a motor vehicle.

20 SECTION 3. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 905 of Title 15, unless there is
22 created a duplication in numbering, reads as follows:

23 A. For digital electronic products sold and used in this state,
24 the manufacturer of such products shall:

1 1. Make diagnostic and repair information, including repair
2 technical updates and embedded software updates and corrections,
3 available to any independent repair provider or owner of products
4 manufactured by such manufacturer for no charge or in the same
5 manner as the manufacturer makes such diagnostic and repair
6 information available to authorized repair providers; and

7 2. Make diagnostic and repair tools and software, including any
8 embedded software updates and corrections, available for purchase by
9 the owner, the owner's agent or any independent repair provider upon
10 fair and reasonable terms.

11 B. Any manufacturer that sells any diagnostic and repair
12 information to any independent repair provider or to any owner in a
13 format that is standardized with other manufacturers, and on terms
14 and conditions more favorable than the manner and the terms and
15 conditions pursuant to which the authorized repair provider obtains
16 the same diagnostic and repair information, shall be prohibited from
17 requiring any authorized repair provider to continue purchasing
18 diagnostic and repair information in a proprietary format, unless
19 such proprietary format includes diagnostic and repair information
20 or functionality that is not available in such standardized format.

21 C. Each manufacturer of digital electronic products sold or
22 used in this state shall make available for purchase by owners and
23 independent repair providers all diagnostic repair tools
24 incorporating the same diagnostic, repair and remote communications

1 capabilities that such manufacturer makes available to the repair or
2 engineering personnel employed by such manufacturer or to any
3 authorized repair provider. Each manufacturer shall offer such
4 tools for sale to any owner or independent repair provider upon fair
5 and reasonable terms. Each manufacturer that provides diagnostic
6 repair information to aftermarket diagnostic tool manufacturers,
7 diagnostics providers or service information publications and
8 systems shall have fully satisfied its obligations under this
9 section and thereafter shall not be responsible for the content and
10 functionality of such aftermarket diagnostic tools, diagnostics or
11 service information systems.

12 D. Digital electronic products sold or used in this state for
13 the purpose of providing security-related functions shall include
14 diagnostic and repair information necessary to reset a security-
15 related electronic function from the information provided to an
16 owner or independent repair provider. Information necessary to
17 reset an immobilizer system or other security-related electronic
18 module shall be obtained by an owner or independent repair provider
19 through the appropriate secure data release.

20 E. Nothing in this section shall require the manufacturer to
21 sell parts if the parts are no longer available to the manufacturer
22 or an authorized repair provider of the manufacturer.

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1 F. Any person who violates any of the provisions of this
2 section shall be guilty of a misdemeanor punishable by a fine of
3 Five Thousand Dollars (\$5,000.00).

4 SECTION 4. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 906 of Title 15, unless there is
6 created a duplication in numbering, reads as follows:

7 Nothing in the Right to Repair Farming Equipment Act:

8 1. Shall be construed to require a manufacturer to divulge a
9 trade secret;

10 2. Shall be read, interpreted or construed to abrogate,
11 interfere with, contradict or alter the terms of any agreement
12 executed and in force between an authorized repair provider and a
13 manufacturer, including, but not limited to, the performance or
14 provision of warranty or recall repair work by an authorized repair
15 provider on behalf of a manufacturer pursuant to such agreement,
16 except that any provision in such an agreement that purports to
17 waive, avoid, restrict or limit a manufacturer's compliance with
18 this section shall be void and unenforceable;

19 3. Shall be construed to require a manufacturer or an
20 authorized repair provider to provide an owner or independent repair
21 provider access to nondiagnostic and repair information provided by
22 a manufacturer to an authorized repair provider pursuant to the
23 terms of an agreement; or
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1 4. Shall apply to motor vehicles, any product or service of a
2 motor vehicle manufacturer or motor vehicle dealers.

3 SECTION 5. This act shall become effective November 1, 2018.

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