

HOUSE BILL 2029

By Jones

AN ACT to amend Tennessee Code Annotated, Title 43
and Title 47, Chapter 18, relative to agricultural
equipment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-18-104(b), is amended by adding
the following as a new, appropriately designated subdivision:

() Violating § 47-18-5702(a);

SECTION 2. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding
the following as a new part:

47-18-5701.

As used in this part:

(1) "Agricultural equipment" or "equipment":

(A) Includes:

(i) A tractor, trailer, combine, sprayer, tillage implement,
baler, or other equipment used to plat, cultivate, or harvest
agricultural products or to ranch; and

(ii) An attachment to or replacement part for the
equipment described in subdivision (1)(A)(i); and

(B) Does not include:

(i) A self-propelled vehicle designed primarily for the
transportation of an individual or property on a street or highway;

(ii) A powersports vehicle;

(iii) An aircraft used in an agricultural aircraft operation, as defined in 14 CFR 137.3; or

(iv) Any equipment designed and used primarily for irrigation purposes;

(2) "Agricultural equipment part" or "part" means a new or used replacement part for agricultural equipment that a manufacturer offers for sale or otherwise makes available for the purpose of providing services;

(3) "Authorized repair provider":

(A) Means a person or entity that is unaffiliated with a manufacturer other than through an arrangement with the manufacturer, whether for a definite or an indefinite period, in which the manufacturer, for the purpose of offering to provide services to an agricultural equipment owner regarding the owner's agricultural equipment or agricultural part, grants the person or entity:

(i) A license to use a trade name, service mark, or other proprietary identifier; or

(ii) Authorization under another arrangement to act on behalf of the manufacturer; and

(B) Includes a manufacturer that offers to provide services to an owner of the manufacturer's agricultural equipment regarding the owner's equipment or part, if the manufacturer does not have an arrangement with an unaffiliated person, as described in subsection (3)(A);

(4) "Data" means transmitted or compiled information arising from the operation of an owner's agricultural equipment or its parts;

(5) "Documentation" means a manual; diagram, including a schematic diagram; reporting output; service code description; security code or password; or similar type of guidance or information, whether in an electronic or tangible format, that a manufacturer provides to an authorized repair provider to assist the authorized repair provider with services performed on the manufacturer's equipment or its parts;

(6) "Embedded software":

(A) Means programmable instructions provided on firmware delivered with or loaded to the agricultural equipment, with respect to the agricultural equipment; and

(B) Includes all relevant patches and fixes that the manufacturer makes to agricultural equipment or to an agricultural equipment part for the purpose of restoring or improving the equipment or part;

(7) "Equipment dealer" means a person, partnership, corporation, association, or other form of business enterprise that is primarily engaged in the retail sale of agricultural equipment;

(8) "Fair and reasonable terms and costs" means:

(A) With respect to obtaining documentation, agricultural equipment parts, embedded software, firmware, or tools from a manufacturer to provide services, terms that are equivalent to the most favorable terms that the manufacturer offers to an authorized repair provider, and costs that are no greater than the manufacturer's suggested retail price, that are calculated using net costs incurred, and that account for discounts, rebates, or incentives offered;

(B) With respect to documentation, the manufacturer provides the documentation, including relevant updates to the documentation, at no charge, excluding a charge by the manufacturer for a fee for a printed copy of the documentation, if the amount of the fee covers only the manufacturer's actual cost to prepare and send the printed copy of the documentation; and

(C) With respect to tools that are software programs, the manufacturer provides the tools that are software programs:

(i) At no charge and without requiring authorization or internet access or otherwise imposing impediments to access or use;

(ii) In the course of effectuating the diagnosis, maintenance, or repair and enabling the full functionality of agricultural equipment or an agricultural equipment part; and

(iii) In a manner that does not impair the efficient and cost-effective performance of the equipment or part;

(9) "Firmware" means a software program or set of instructions programmed on agricultural equipment or an agricultural equipment part to allow the equipment or part to communicate with itself or with other computer hardware;

(10) "Independent repair provider":

(A) Means a person or entity in this state that is engaged in offering or providing services;

(B) Does not include a manufacturer's authorized repair provider or an affiliate of a manufacturer's authorized repair provider; and

(C) Includes:

(i) An authorized repair provider, if the authorized repair provider is offering or providing services for a manufacturer other than a manufacturer with which the authorized repair provider has an arrangement, as described in subdivision (3)(A); and

(ii) A manufacturer, with respect to offering or providing services for another manufacturer's agricultural equipment or agricultural equipment part;

(11) "Manufacturer" means a person or entity doing business in this state and engaged in the business of selling, leasing, or otherwise supplying agricultural equipment or agricultural equipment parts manufactured by or on behalf of itself to a person or entity;

(12) "Owner" means a person or entity that owns agricultural equipment or an agent of the owner;

(13) "Powersport vehicle" means:

(A) An off-road vehicle, as defined in § 47-25-1902;

(B) A personal watercraft, as defined in § 69-9-501; or

(C) A snowmobile;

(14) "Service" means diagnostic, maintenance, or repair services performed on agricultural equipment or an agricultural equipment part;

(15) "Tool" means a software program, hardware implement, or other apparatus used for diagnosis, maintenance, or repair of agricultural equipment or agricultural equipment parts, including software or another mechanism that provides, programs, or pairs a new part; calibrates functionality; or performs

another function required to return the equipment or part to fully functional condition; and

(16) "Trade secret" means any scientific or technical information, design, process, procedure, formula, or improvement, in whole or in part; confidential business or financial information; listings of names, addresses, or telephone numbers; or other information relating to a business or profession that is secret and of value, and for which the owner of the trade secret has taken measures to prevent the secret from becoming available to persons or entities other than those selected by the owner to have access to the trade secret for limited purposes.

47-18-5702.

(a) Subject to subsections (b)-(f), a manufacturer shall, with fair and reasonable terms and costs:

(1) For the purpose of providing services for agricultural equipment in this state, make available to an independent repair provider or owner of the manufacturer's equipment any documentation, parts, embedded software, firmware, tools, or, with owner authorization, data that are intended for use with the equipment or part, including updates to documentation, parts, embedded software, firmware, or tools; and

(2) With respect to agricultural equipment that contains an electronic security lock or other security-related function, make available to an independent repair provider and owner any documentation, parts, embedded software, firmware, tools, or, with owner authorization, data needed to reset the lock or function when disabled in the course of providing services. The manufacturer may make the documentation, parts, embedded software, firmware, tools, or,

with owner authorization, data available to an independent repair provider and owner through appropriate secure release systems.

(b) Subsection (a) does not apply to:

(1) An agricultural equipment part that is no longer available to the manufacturer; and

(2) Conduct that would require the manufacturer to divulge a trade secret; except, that a manufacturer shall not refuse to make available to an independent repair provider or owner any documentation, part, embedded software, firmware, tool, or, with owner authorization, data necessary to provide services on grounds that the documentation, part, embedded software, firmware, or tool itself is a trade secret.

(c) A manufacturer may redact documentation to remove trade secrets from the documentation before providing access to the documentation, if the usability of the redacted documentation for the purpose of providing services is not diminished.

(d) A manufacturer may withhold information regarding a component, design, or functionality of, or process of developing, a part, embedded software, firmware, or a tool, if the information is a trade secret and the usability of the part, embedded software, firmware, or tool for the purpose of providing services is not diminished.

(e) A manufacturer or equipment dealer is not liable for faulty or otherwise improper repairs provided by an independent repair provider or owner, including a faulty or otherwise improper repair that causes:

(1) Damage to the agricultural equipment that occurs during the repair;

(2) Indirect, incidental, special, or consequential damages; or

(3) An inability to use, or a reduced functionality of, the agricultural equipment resulting from the faulty or otherwise improper repair.

(f) A manufacturer that provides, with owner authorization, data to an independent repair provider in compliance with this part is not liable to the owner, the independent repair provider, or another party for an action that the independent repair provider or another party takes while using or relying on the data.

47-18-5703.

(a) Subject to subsection (b), this part does not:

(1) Alter the terms of a contract or other arrangement in force between a manufacturer and an authorized repair provider, including the performance or provision of warranty or recall repair work and an exclusivity or noncompete clause in a contract;

(2) Require a manufacturer to provide an independent repair provider or owner access to information, other than documentation, that the manufacturer provides to an authorized repair provider pursuant to a contract or other arrangement with the authorized repair provider, except as necessary to comply with § 47-18-5702(a);

(3) Authorize an independent repair provider or owner to:

(A) Make a modification to the agricultural equipment that deactivates a safety notification system, except as necessary to provide services;

(B) Access a function of a tool that enables the independent repair provider or owner to change the settings for a piece of agricultural equipment in a manner that brings the equipment out of compliance with applicable state, federal, or local safety or emissions laws, except as necessary to provide services;

(C) Evade emissions, copyright, trademark, or patent laws; or

(D) Engage in other illegal equipment modification activity; or

(4) Exempt a manufacturer from a products liability claim that is otherwise authorized by law.

(b) With respect to a contract or other arrangement, or renewal of a contract or existing arrangement, that a manufacturer enters into on or after the effective date of this act, a contract term, provision, agreement, or language in the contract or arrangement that waives, avoids, restricts, or limits the manufacturer's obligations under this part is void and unenforceable as a matter of law and public policy.

SECTION 3. This act takes effect July 1, 2024, the public welfare requiring it, and applies to contracts and agreements entered into, amended, or renewed on or after that date.