

# SENATE, No. 3090

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED OCTOBER 18, 2018

**Sponsored by:**

**Senator LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

Concerns right to repair farm equipment and lawn mowers.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the repair of certain equipment and  
2 supplementing Title 56 of the Revised Statutes.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. As used in this act:

8 “Authorized repair provider” means a person or entity that has an  
9 arrangement for a definite or indefinite period in which a  
10 manufacturer grants to a separate person or entity a license to use a  
11 tradename, service mark, or related characteristic for purposes of  
12 offering repair services under the name of the manufacturer.

13 “Embedded software” means any programmable instructions  
14 provided on firmware, and all relevant patches and fixes made by  
15 the manufacturer, delivered with farm equipment or a lawn mower  
16 and used for its operation. “Embedded software” includes a basic  
17 internal operating system, an internal operating system, a machine  
18 code, an assembly code, a root code, and a microcode, and other  
19 similar components.

20 “Fair and reasonable terms” means an equitable price in light of  
21 relevant factors including, but not limited to: (1) the net cost to the  
22 authorized repair provider for similar information obtained from a  
23 manufacturer, less any discounts, rebates, or other incentive  
24 programs; (2) the cost to the manufacturer for preparing and  
25 distributing the information, including amortized capital costs for  
26 the preparation and distribution of the information, but excluding  
27 any research and development costs incurred in designing and  
28 implementing, upgrading, or altering the product; (3) the price  
29 charged by other manufacturers for similar information; (4) the  
30 price charged by other manufacturers for similar information prior  
31 to the launch of manufacturer websites; (5) the ability of  
32 aftermarket facilities or providers to afford the information; (6) the  
33 means by which the information is distributed; (7) the extent to  
34 which the information is used, which includes the number of users  
35 and the frequency, duration, and volume of use; and (8) inflation.

36 “Farm equipment” means equipment that is used or intended for  
37 use in a farm or ranch operation, including a combine, farm tractor  
38 as defined in R.S.39:1-1, implement, engine, motor, or attachment,  
39 but excluding a motor vehicle designed primarily for transporting  
40 persons or property on public roadways.

41 “Firmware” means a software program or set of instructions  
42 programmed on a hardware device to allow the device to  
43 communicate with other computer hardware.

44 “Independent repair provider” means a person or business  
45 operating in the State that is not affiliated with a manufacturer or its  
46 authorized repair provider, which is engaged in the diagnosis,  
47 service, maintenance, or repair of farm equipment or lawn mowers.  
48 An “independent repair provider” includes a manufacturer when it

1 engages in the diagnosis, service, maintenance, or repair of farm  
2 equipment or lawn mowers that are not affiliated with the original  
3 manufacturer.

4 “Manufacturer” means a person or business engaged in the  
5 manufacturing or assembling of new farm equipment or lawn  
6 mowers, and engaged in the selling or leasing of new farm  
7 equipment or lawn mowers or the diagnosis, service, maintenance,  
8 or repair of farm equipment or lawn mowers.

9 “Owner” means a person who owns or leases farm equipment or  
10 lawn mowers in this State.

11 “Part” means any replacement part, whether new or used, made  
12 available by a manufacturer to an authorized repair provider for  
13 purposes of effecting repair.

14 “Trade Secret” means the same as defined in 18 U.S.C.  
15 s.1839(3).

16

17 2. a. A manufacturer of farm equipment or lawn mowers sold,  
18 offered for sale, or used in this State shall make available:

19 (1) to any independent repair provider or owner of farm  
20 equipment or lawn mowers manufactured by that manufacturer, the  
21 same diagnostic, service, or repair documentation, including repair  
22 technical updates and updates and corrections to embedded  
23 software, at no charge or in the same manner and in the same  
24 timeframe as the manufacturer makes diagnostic, service, or repair  
25 documentation available to an authorized repair provider; and

26 (2) farm equipment, lawn mowers, or service parts, including  
27 any updates to the embedded software, for purchase by the owner,  
28 an authorized agent, or any independent repair provider under fair  
29 and reasonable terms.

30 A manufacturer shall not be required to sell farm equipment,  
31 lawn mowers, or service parts if the parts are no longer available to  
32 the manufacturer or an authorized repair provider.

33 b. A manufacturer that sells farm equipment or lawn mower  
34 diagnostic, service, or repair documentation to an independent  
35 repair provider or owner in a format that is standardized with other  
36 manufacturers, and on terms and conditions more favorable than  
37 those in which the authorized repair provider obtains the same  
38 documentation, shall be prohibited from requiring an authorized  
39 repair provider to continue purchasing the documentation in a  
40 proprietary format unless the proprietary format includes  
41 diagnostic, service, or repair documentation or functionality that is  
42 not available in a standardized format.

43 c. A manufacturer of farm equipment or lawn mowers sold,  
44 offered for sale, or used in this State shall make available for  
45 purchase by independent repair providers and owners all diagnostic  
46 repair tools incorporating the same diagnostic, repair, and remote  
47 communications capabilities that the manufacturer makes available  
48 to its own repair or engineering staff or any authorized repair

1 provider. A manufacturer shall offer tools for sale to an  
2 independent repair provider or owner under fair and reasonable  
3 terms.

4 A manufacturer that provides diagnostic, service, or repair  
5 documentation to aftermarket diagnostic tool manufacturers,  
6 diagnostics providers, or service information publications and  
7 systems shall have fully satisfied its obligations under this  
8 subsection and shall not be responsible for the content and  
9 functionality of aftermarket diagnostic tools, diagnostics, or service  
10 information systems.

11 d. A manufacturer selling or offering for sale in this State farm  
12 equipment or lawn mowers with security-related functions shall  
13 include diagnostic, service, and repair documentation necessary to  
14 reset a security-related electronic function from information  
15 provided to an independent repair provider or owner. If excluded  
16 during the transaction, the manufacturer shall provide the  
17 documentation necessary to reset an immobilizer system or  
18 security-related electronic module to an independent repair provider  
19 or owner through the appropriate secure data release systems.  
20

21 3. Nothing in P.L. , c. (C. ) (pending before the  
22 Legislature as this bill) shall be construed to:

23 a. require a manufacturer or authorized repair provider to  
24 provide an owner or independent repair provider access to non-  
25 diagnostic and repair documentation provided by the manufacturer  
26 to an authorized repair provider pursuant to the terms of an  
27 authorizing agreement;

28 b. abrogate, interfere with, contradict, or alter the terms of any  
29 authorized repair agreement executed and in force between an  
30 authorized repair provider and manufacturer including, but not  
31 limited to, the performance or provision of warranty or recall repair  
32 work by an authorized repair provider on behalf of a manufacturer  
33 pursuant to the agreement, except that any provision in the  
34 agreement purporting to waive, avoid, restrict, or limit the  
35 manufacturer's compliance with this section shall be void; or

36 c. require a manufacturer to divulge a trade secret.  
37

38 4. A manufacturer that violates any provision of P.L. , c. (C. )  
39 (pending before the Legislature as this bill) shall be subject to a  
40 civil penalty of not more than \$500 for each offense, to be collected  
41 in a civil action by a summary proceeding under the "Penalty  
42 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).  
43 The Superior Court or municipal court shall have jurisdiction of  
44 proceedings for the enforcement of the penalty provided by this  
45 section.  
46

47 5. This act shall take effect on the first day of the fourth month  
48 next following enactment.

## STATEMENT

This bill establishes the right to repair farm equipment and lawn mowers with repair providers other than the original manufacturer. This essentially allows independent repair providers, owners, and authorized repair providers to have the same access to diagnostic repair information for farm equipment and lawn mowers.

Specifically, the bill requires a manufacturer of farm equipment or lawn mowers sold, offered for sale, or used in this State to make available to any independent repair provider or owner the same diagnostic, service, or repair documentation at no charge or in the same manner and in the same timeframe as the manufacturer makes the documentation available to an authorized repair provider. The bill also requires a manufacturer to provide farm equipment, lawn mowers, or service parts for purchase by the owner, an authorized agent, or any independent repair provider. A manufacturer is not required to sell parts that are no longer available.

The bill prohibits a manufacturer that sells farm equipment or lawn mower diagnostic, service, or repair documentation in a standardized format from requiring an authorized repair provider to purchase it in a proprietary format unless the proprietary format includes documentation or functionality that is not available in the standardized format.

Under the bill, a manufacturer of farm equipment or lawn mowers sold, offered for sale, or used in this State is to make available for purchase by independent repair providers and owners all diagnostic repair tools incorporating the same diagnostic, repair, and remote communications capabilities that the manufacturer makes available to its own repair or engineering staff or any authorized repair provider. A manufacturer is also required to offer tools for sale to an independent repair provider or owner under fair and reasonable terms.

Farm equipment or lawn mowers with security-related functions are required to include diagnostic, service, and repair documentation necessary to reset a security-related electronic function. In the alternative, the manufacturer is to provide the documentation necessary to reset an immobilizer system or security-related electronic module through the appropriate secure data release systems.

The bill imposes a civil penalty of not more than \$500 for each violation of its provisions.

It is increasingly difficult to repair lawn mowers and farm equipment, such as tractors, without going directly to the manufacturer. This puts consumers at a disadvantage because fewer repair options are available and market competition is decreased.