

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 799

(Delegate Hornberger, *et al.*)

Economic Matters

Consumer Protection - Right to Repair Farm Equipment

This bill requires a farm equipment manufacturer to make diagnostic and repair documentation available to an independent repair provider or owner of the manufacturer's farm equipment. A farm equipment manufacturer that sells farm equipment that contains a security-related function must make available to an owner or independent repair provider any repair documentation or updates needed to reset the lock or function. If necessary for security purposes, a farm equipment manufacturer may provide information necessary to reset an immobilizer system or security-related electronic module through a secure data release system. The bill only applies prospectively and may not be applied or interpreted to abrogate, interfere with, contradict, or alter the terms of any contract that is executed between an authorized repair provider and a farm equipment manufacturer before the bill's effective date. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General, Consumer Protection Division, can handle the bill's requirements with existing resources.

Local Effect: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An “authorized repair provider” means a person that has an arrangement with the farm equipment manufacturer under which the farm equipment manufacturer authorizes the person to, among other things, offer diagnosis, maintenance, or repair services of farm equipment under the name, or on behalf, of the farm equipment manufacturer; it also includes a farm equipment manufacturer that offers such services of its own equipment.

“Documentation” means any manual, diagram, reporting output, service code description, schematic diagram, or other information provided to an authorized repair provider for the diagnosis, maintenance, or repair of farm equipment.

An “independent repair provider” is a person operating in the State that is not affiliated with a farm equipment manufacturer or its authorized repair provider and that is engaged in the diagnosis, service, maintenance, or repair of farm equipment.

Applicability

The bill applies only to farm equipment that is sold or used in the State. The bill does not apply to a farm equipment manufacturer that provides diagnostic repair documentation to aftermarket diagnostic tool manufacturers, diagnostic providers, or service information publications and systems.

The bill may not be construed to require an equipment manufacturer or authorized repair provider to (1) divulge a trade secret or (2) provide access to documentation that does not serve a security reset, diagnostic, service, or repair purpose.

Any provision in an authorized repair agreement purporting to waive, avoid, or limit a farm equipment manufacturer’s compliance with the bill is void.

Current Law: According to [media reports](#), as farm equipment software has become increasingly sophisticated in recent years, equipment manufacturers have restricted the ability of farmers to modify the software embedded into the equipment. As a result, repairs must often be done by authorized dealerships.

Maryland Consumer Protection Act

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or

deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Small Business Effect: Small business entities (including farmers and independent repair providers) that utilize or repair farm equipment in the course of doing business may meaningfully benefit under the bill, which requires farm equipment manufacturers to make information available that allows for the diagnosis, maintenance, or repair of farm equipment. Authorized repair providers, to the extent they are small businesses, may face greater competition.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Maryland Department of Agriculture; *Bloomberg Businessweek*; Department of Legislative Services

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mr/ljm

Analysis by: Eric F. Pierce

Direct Inquiries to:
(410) 946-5510
(301) 970-5510