

Testimony in opposition of HB 84
House Economics Matters Committee

January 27, 2021 1:30 p.m.

- Chairman Davis and members of the House Economics Matters Committee
- Thank you for the opportunity to present to you today on HB 84.
- My name is Mel Goldsmith and I represent Atlantic Tractors as the CEO - an agriculture equipment dealership organization with 8 (#) locations in Maryland. We employ a total of 275 employees with approximately 215 of those employees in Maryland. In brief, we oppose the passage of HB 84.
- Our dealership strives to bring our customers value in all we do. To do so, we spend significant capital each and every year to ensure our technicians have the latest tools, equipment, safety and technology training available.
- While John Deere equipment has become more sophisticated, **Deere supports the customer's right to repair** and has built advanced diagnostic capabilities into equipment that are available to the owner, dealers, or others. And for those customers who require even greater diagnostic capabilities, John Deere provides subscription access to **"Customer Service Advisor"** – a specialized diagnostic tool very similar to the one we as dealers use in the field to support our customers. Additionally, end users have access to on-board diagnostic tools via in-cab display or wireless interface, as well as manuals, product guides, mobile apps and product service information. All of this is available in the marketplace today and has been for several years.
- Furthermore, **US Clean Air Act requires** equipment manufacturers to build in base level tampering safeguards. Restricting access to the software that defines the machines emissions performance is part of these base level tampering safeguards put in place to meet the requirements of the act. Simply put, providing easy access to the software file for reprogramming,

or “flashing”, a controller makes it much easier to tamper with the emissions systems. Due to these facts, we believe that the proposed language in the bill allowing for third party access to the software is a direct contradiction of the US Clean Air Act.

- Acknowledging that the owner has the right to lawfully repair his or her equipment, John Deere **recommends against unauthorized modification of the embedded software code**. Providing access to the software not only undermines manufacturers' innovation and intellectual property rights, it also creates significant data privacy risks. In addition, unauthorized and illegal tampering such as changing engine horsepower, speed limits, or defeating emissions systems creates unknown liability issues for the individuals who modified the code, dealers who subsequently traded-in that equipment to resale, and/or any subsequent owners of that modified equipment.
- More importantly, beyond the liability concerns, is the risk for potential safety impacts. It is my responsibility as a dealer to ensure that my employees return to their families safely each night. Working on or operating equipment that has been modified (many times in unknown ways) poses a serious threat to the safety of our employees as well as any customer who may purchase that equipment in the used market.
- I would also like to highlight the fact that an off-road sector coalition has been established because of this very important issue. To our knowledge, it is the largest off-road coalition for any state matter, which signifies the seriousness of the issue. Coalition members represent such sectors as:
 - Marine manufactures & dealers
 - Snowmobiles
 - Portable generators
 - Power tools
 - Remanufactured products
 - Off-highway recreational vehicles

- Equipment lenders and
- Major customers organizations such as the National Association of Landscape Professionals

The reason these organizations oppose this legislation is because of the very significant public safety and environmental concerns I have raised in my comments. I believe that your Committee has also received a letter of opposition to HB 84 from the Coalition.

- Right to Repair is a complicated, yet important, issue. As mentioned, our customers currently have the ability today to lawfully repair their equipment. These solutions were enacted not as a result of a legislative mandate, but rather to fulfill a need in the marketplace. For all of the reasons I have highlighted today, we oppose HB 84.

- Thank you for your consideration of our opposition against this bill.
- Questions