

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 306

BY SENATORS HAMILTON AND DEEDS

[Originating in the Committee on Agriculture and
Natural Resources; reported February 21, 2024]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §19-39-1, §19-39-2, §19-39-3, §19-39-4, §19-39-5, §19-39-6, §19-39-7, §19-
3 39-8, and §19-39-9, all relating to creating the Equipment Right to Repair Act; creating a
4 short title; defining terms; establishing jurisdiction of the Commissioner of Agriculture;
5 establishing requirements; establishing limitations; providing for rulemaking; establishing
6 violations; imposing civil penalties; authorizing civil actions, penalties, and injunctive relief;
7 and providing for applicability and effective date of article.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. EQUIPMENT RIGHT TO REPAIR ACT.

§19-39-1. Short title.

1 This article shall be known and cited as the Equipment Right to Repair Act.

§19-39-2. Definitions.

1 As used in this article:

2 (1) "Authorized repair provider" means a person or entity that has an arrangement for a
3 definite or indefinite period in which a manufacturer grants, to a separate person or entity, a
4 license to use a tradename, service mark, or related characteristic for purposes of offering the
5 services of diagnosis, maintenance, or repair of equipment under the name of the original
6 equipment manufacturer. An original equipment manufacturer who offers the services of
7 diagnosis, maintenance, or repair of its own equipment, and who does not have an arrangement
8 described in this subsection with an unaffiliated individual or business, shall be considered an
9 authorized repair provider with respect to such equipment.

10 (2) "Commissioner" means the Commissioner of the Department of Agriculture.

11 (3) "Documentation" means any manual, diagram, reporting output, service code
12 description, schematic diagram, security codes, passwords, or other guidance or information used
13 in effecting the services of diagnosis, maintenance, or repair of equipment.

14 (4) "Embedded software" means any programmable instructions provided on firmware,
15 and all relevant patches and fixes made by the manufacturer, delivered with equipment, and used
16 for its operation. "Embedded software" includes a basic internal operating system, an internal
17 operating system, a machine code, an assembly code, a root code, a microcode, and other similar
18 components.

19 (5) "Farm equipment" means equipment that is used or intended for use in a farm or ranch
20 operation, including, but not limited to, a combine, farm tractor, trailer, sprayer, tillage implement,
21 baler, engine, motor, other equipment used to plant, cultivate, irrigate, or harvest agricultural
22 products or to ranch, and attachments and repair parts for farm equipment, but excluding a motor
23 vehicle designed primarily for transporting persons or property on public roadways.

24 (6) "Tools and documentation" means on terms that, upon expiration of the manufacturer's
25 new equipment warranty, do not impose on an owner or an independent repair provider any
26 substantial obligation to use or any restriction on the use of the tool, software, or documentation
27 to diagnose, maintain, or repair equipment sold, leased, or otherwise supplied by the original
28 equipment manufacturer, including a condition that the owner or independent repair provider
29 become an authorized repair provider of the original equipment manufacturer, or a requirement
30 that a tool be registered, paired with, or approved by the original equipment manufacturer or an
31 authorized repair provider before such part or tool is operational; and

32 For documentation, upon warranty expiration the documentation is made available by the
33 original equipment manufacturer.

34 (7) "Firmware" means a software program or set of instructions programmed on a
35 hardware device to allow the device to communicate with other computer hardware.

36 (8) "Independent repair provider" means a person or business operating in the state that
37 is not affiliated with an original equipment manufacturer, or its authorized repair provider, other
38 than through an arrangement with the manufacturer, whether for a definite or indefinite period,

39 which is engaged in the services of diagnosis, maintenance, or repair of equipment, and related
40 attachments and repair parts.

41 (9) "Original equipment manufacturer" or "manufacturer" means a business engaged in
42 the business of selling, leasing, or otherwise supplying new equipment manufactured by or on
43 behalf of itself, to any individual or business.

44 (10) "Owner" means an individual or business who owns or leases equipment purchased
45 or used in this state.

46 (11) "Part" means any replacement part, whether new or used, made available by an
47 original equipment manufacturer to an authorized repair provider for purposes of effecting the
48 services of maintenance or repair of equipment manufactured by or on behalf of, sold, or
49 otherwise supplied by the original equipment manufacturer.

50 (12) "Tools" means any software program, hardware implement, or other apparatus used
51 for diagnosis, maintenance, or repair of equipment, including software or other mechanisms that
52 provision, program, or pair a new part, calibrate functionality, or perform any other function
53 required to bring the product back to fully functional condition, including any updates.

54 (13) "Trade secret" means the same as defined in 18 U.S.C. § 1839(3).

§19-39-3. Jurisdiction of the commissioner.

1 The commissioner is vested with jurisdiction over all aspects of this article and has
2 exclusive authority to perform all acts necessary to implement this article.

§19-39-4. Requirements.

1 A manufacturer of equipment sold or leased, offered for sale or lease, or used in this state
2 shall make available upon expiration of the new equipment warranty to any independent repair
3 provider and owner of equipment for lease or sale any documentation, parts, and tools required
4 for the diagnosis, maintenance, or repair of the equipment, inclusive of any technical updates and
5 corrections to embedded software or information. This requirement also applies to any
6 attachments or parts for the equipment.

§19-39-5. Limitations.

1 (a) Nothing in this article shall require a manufacturer to divulge any trade secret to any
2 owner or independent repair provider.

3 (b) Nothing in this article shall abrogate, interfere with, contradict, or alter the terms of any
4 authorized repair agreement executed and in force between an authorized repair provider and
5 manufacturer, including, but not limited to, the performance or provision of warranty or recall repair
6 work by an authorized repair provider on behalf of a manufacturer pursuant to the agreement,
7 except that any provision in the agreement purporting to waive, avoid, restrict, or limit the
8 manufacturer's or authorized repair provider's compliance with this article shall be void.

9 (c) A manufacturer or authorized repair provider shall not be required to provide an owner
10 or independent repair provider access to non-diagnostic and repair documentation provided by
11 the manufacturer to an authorized repair provider pursuant to the terms of an authorizing
12 agreement.

13 (d) No original equipment manufacturer or authorized repair provider shall be liable for any
14 damage or injury caused to any equipment, attachments, or parts by an independent repair
15 provider or owner which occurs during the course of repair, diagnosis, or maintenance.

§19-39-6. Rulemaking.

1 The commissioner shall propose rules for legislative approval and promulgate emergency
2 rules in accordance with the provisions of §29A-3-1 et seq. of this code to implement this article,
3 including establishing a mechanism for the administrative resolution of violations of this article
4 and the assessment and collection of civil penalties by consent order or agreement as an
5 alternative to instituting a civil action.

§19-39-7. Violations; civil penalties; injunctive relief.

1 (a) Any manufacturer, authorized repair provider, independent repair provider, or owner
2 that violates any provision of this article or rule promulgated hereunder is liable for a civil penalty

3 of not less than \$1,000 for each violation. Each day a violation continues after notice by the
4 commissioner constitutes a separate violation. The penalty may be recovered by a civil action.

5 (b) Upon application by the commissioner, the circuit courts of the state or the judges
6 thereof in vacation may by injunction, compel compliance with, and enjoin any violation of this
7 article or rule promulgated hereunder or the terms and conditions of any consent order or
8 agreement. The court or the judge thereof in vacation may issue a temporary or preliminary
9 injunction in any case pending a decision on the merits of any injunction application filed.
10 Notwithstanding any other provision of this code to the contrary, the state is not required to furnish
11 bond as a prerequisite to obtaining injunctive relief under this article. An application for an
12 injunction under the provisions of this section may be filed and injunctive relief granted
13 notwithstanding that all the administrative remedies provided for in this article or rule have not
14 been pursued or invoked against the person or persons against whom such relief is sought.

§19-39-8. Applicability.

1 This bill applies to equipment, attachments, and parts sold, leased, or in use in this state
2 on and after the effective date of this article.

§19-39-9. Effective date.

1 This article shall take effect on July 1, 2024.