

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 712

(Delegate Hornberger, *et al.*)

Economic Matters

Consumer Protection - Right to Repair - Farm Equipment

This bill requires an original equipment manufacturer (OEM) to make available, on fair and reasonable terms, certain documentation, parts, and tools (inclusive of any updates) to an independent repair provider (or owner) of farm equipment to allow for the diagnosis, maintenance, or repair of the farm equipment. Any contractual agreement purporting to waive, avoid, or limit a farm equipment manufacturer's compliance with the bill is void. A farm equipment manufacturer is prohibited from knowingly misrepresenting or withholding farm equipment part numbers from a customer for the purpose of preventing the customer from shopping for a competitive price on a replacement part. 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: The bill applies only to farm equipment that is sold or used in the State.

Agreements Between Original Equipment Manufacturers and Authorized Repair Providers

The bill may not be construed to require an equipment manufacturer or authorized repair provider to (1) divulge a trade secret to an owner or to an independent repair provider except as necessary to provide documentation, parts, and tools on fair and reasonable terms or (2) provide access to documentation that does not serve a security reset, diagnostic, service, or repair purpose.

Moreover, the bill may not be construed to (1) alter the terms of an arrangement in force between an authorized repair provider and an OEM, including the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an OEM under the arrangement or (2) require an OEM to make available a part that is no longer available. However, any term in an arrangement between an authorized repair provider and an OEM that purports to waive, avoid, restrict, or limit the OEM's obligations to comply with the bill is void and unenforceable.

Security Functions

A farm equipment manufacturer that sells farm equipment that contains a security-related function must make available to an owner or independent repair provider (on fair and reasonable terms) any special documentation, tools, and parts 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.

Current Law:

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 that 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 businesses 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: Similar legislation has been introduced within the last three years. See HB 562 of 2022 and HB 799 of 2020.

Designated Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2023
km/jkb

Analysis by: Eric F. Pierce

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