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February 23, 2022

To: The Honorable C.T. Wilson  
Chair, Economic Matters Committee

From: Steven M. Sakamoto-Wengel  
Consumer Protection Counsel for Regulation, Legislation and Policy

Re: House Bill 562 – Consumer Protection – Right to Repair – Farm Equipment (SUPPORT)

The Consumer Protection Division of the Office of the Attorney General supports House Bill 562 sponsored by Delegate Homberger and 26 cosponsors, which would guarantee the Right to Repair farm equipment at the repair facility of the farmer's choosing. The attached article describes the problem faced by Maryland's farmers.

House Bill 562 ensures that Maryland consumers needing repairs to their farm equipment are not restricted to "authorized" repair facilities but, instead, may obtain repairs from independent repair facilities as well, thereby lowering repair costs for Maryland consumers and providing competition in the marketplace. The bill requires original equipment manufacturers, such as John Deere, to make available to independent repair shops and the owners of digital farm equipment the necessary documentation, parts, tools or updates to information or embedded software so that they are able to perform repairs to the equipment.

House Bill 562 requires that an original equipment manufacturer is not required to divulge trade secrets. The Division believes that the manufacturers' contentions that introducing competition in farm equipment repair will harm consumers' privacy and security is without foundation. There is no reason to believe that repairs made by an independent repair facility would put consumers' data at risk any more than repairs at an authorized repair facility. Further, restrictions on the ability to repair farm equipment results in increased disposal of such items, exacerbating problems of waste in the environment.

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The manufacturers' arguments against allowing independent repair shops to repair farm equipment are similar to those previously made by automobile manufacturers who opposed allowing consumers to have their cars repaired at the repair facility of their choice without voiding the vehicle warranty. After Massachusetts passed an automotive Right to Repair law, automobile manufacturers agreed to provide the tools and instructions necessary for independent repair shops to repair vehicles, resulting in more repair options and lower repair costs for consumers. There is no reason why farm equipment should be treated differently.

The opponents of Right to Repair legislation raise concerns about the repair instructions being used by unscrupulous repair facilities and farmers to disable pollution controls or otherwise improperly modify their farm equipment. However, the potential that a handful of individuals might engage in misconduct does not justify denying Maryland farmers the opportunity to get their farm equipment repaired promptly and at a competitive price.

For these reasons, we ask that the Economic Matters Committee return a favorable report on House Bill 562.

cc: The Honorable Kevin Hornberger  
Co-sponsors

**The Washington Post** *Democracy Dies in Darkness*

# The Biden administration thinks you should be allowed to fix the things you buy

Establishing a “right to repair” could offer a lifeline to independent shops — and save consumers money.

By Kyle Wiens

Kyle Wiens is the chief executive officer of iFixit.

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July 13, 2021 at 6:00 a.m. EDT

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On Friday, President Biden issued a sweeping executive order promising action on various fronts — from drug prices to fees charged by airlines — to improve competition within the American economy. Among the most consequential if often-overlooked issues the order addresses is the “right to repair.”

Right to repair is a David-vs-Goliath battle. Local repair businesses have been frustrated for years at being shut out from servicing the products we all depend on. Apple, for instance, does not allow independent shops to repair home buttons on iPhones. Nikon has stopped selling service parts to local camera shops, forcing many out of business. John Deere withholds software that farmers need to keep their modern tractors running, making farmers beholden to dealerships even for the most basic fixes. Farmers are so frustrated that they turn to sketchy sources — like Ukrainian firmware companies — for tools to fix their own equipment.

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The drafters of the order clearly had the John Deere issue in mind, as it condemns “anticompetitive restrictions on third-party repair or self-repair of items, such as the restrictions imposed by powerful manufacturers that prevent farmers from repairing their own equipment.”

Right to repair isn’t a new concept. The Federal Trade Commission has been investigating anticompetitive repair practices for years, but trade associations have blocked real reforms (often at the state level). A sign that the FTC is getting more aggressive on this issue came in May, when it released a bipartisan report (signed on to by all its commissioners), “Nixing the Fix,” that concluded that “there is scant evidence to support manufacturers’ justifications for repair restrictions.” (Typically, manufacturers argue that the repair work they do is superior to that of third-party shops, and that they need to protect their brands.)

In some sectors, notably the automotive industry, independent repair shops are thriving. The ability of individuals and third-party shops to obtain the same electronic-diagnostic information available to dealers was codified in a 2013 Massachusetts law (initiated by referendum in 2012); auto manufacturers agreed to abide by that rule nationwide to avoid a potential patchwork of legislation varying by states. Thanks to that agreement, you have the choice to get your car fixed at a local shop or at the dealership. Nationwide, independent mechanics perform about 70 percent of all automotive repairs. That competition keeps prices reasonable while also stabilizing car insurance rates.

But as more and more products integrate sophisticated electronics, other manufacturers have taken the opportunity to monopolize the repair aftermarket. Hospitals are one set of customers that pay the price — their licensed in-house repair technicians are increasingly shut out from performing common maintenance. This has become a particularly contentious issue during the pandemic, as hospitals scramble to keep crucial devices like ventilators working.

In response to concerns about manufacturer monopolization of repairs, politicians in more than two dozen states have filed right-to-repair bills this year alone. Some measures, like one in California that focuses on medical equipment, are industry specific. Others, like the bill that overwhelmingly passed the New York Senate, cover everything from home appliances to farm equipment. (New York's bill didn't make it to the Assembly in time for a vote. California's bill passed out of committee unanimously but was then sidelined by leadership.)

Minnesota state Sen. David Osmeck, a Republican, testified at an FTC "Nixing the Fix" workshop, in July 2019, about why he supported efforts to pass right-to-repair legislation in his state. He made the case that making repairs cheaper and more democratic would not just help consumers but also contribute to sustainability. He asked: "Why should we put all of our equipment into a landfill when we can repurpose it, save people a bunch of money, and have these things have a life beyond their existing, first use?"

In the absence of a legislative fix (there are two right-to-repair bills alive in Congress), FTC rulemaking could go a long way. In 1977, for example, the agency mandated that optometrists had to share patients' prescriptions with them; the optometrists could not insist that if you got your eyes examined at their shop, you had to buy your glasses from them. Similarly, a "fair repair" rule could require that manufacturers sell parts to independent shops and make the information and software used in diagnosis of problems available to consumers.

While the rulemaking process can take a long time, the FTC can also move nimbly when it wants to. It recently approved a rule that adds penalties for mislabeling products “Made in the USA”; proposed in June 2020, it went into effect July 1. Lina Khan, the ambitious new chairwoman of the FTC, got started last week with a burst of momentum, passing a number of motions to enable the agency to move faster than in the past. The FTC is planning to vote on a new policy statement on repair restrictions at their next meeting on July 21.

Software-based diagnosis can seem daunting. But the problems it identifies are often within the ability of the ordinary consumer to fix. The other day, for example, the check-engine light went on in my Toyota Highlander Hybrid. I plugged in a \$30 scanner and Googled the error code. The Internet said that my cylinder-two misfire error could be easily fixed with a new \$9 spark plug. Sure enough, popping in a new part fixed the issue. Without the ability to decode that error, I would have been stuck paying a lot more to have a dealership diagnose the problem with a proprietary tool.

Among those who support the right to repair is Apple co-founder Steve Wozniak. Last week, before the executive order was announced, he released a video in which he said “It’s time to recognize the right to repair more fully.” He lamented that Apple had changed from its roots supporting tinkerers and fixers; part of the original Apple II computer’s success was attributable to the fact it came with the full schematics and wiring diagrams, Wozniak noted. Now, Apple issues legal threats to repairers that share similar information about its latest models. Companies inhibit right to repair “because it gives the companies power, control, over everything,” Wozniak said. “And I guess in a lot of people’s minds power over others equates to money and profits. Hey, Is it your computer or is it some company’s computer? Think about that.”

The Biden administration is coming down on the side of the people who argue: If you own it, you should be allowed to repair it.

By Kyle Wiens

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