



PennState Law

Center for Agricultural
and Shale Law

Right to Repair and Agriculture

National Agricultural Law Center Webinar Series

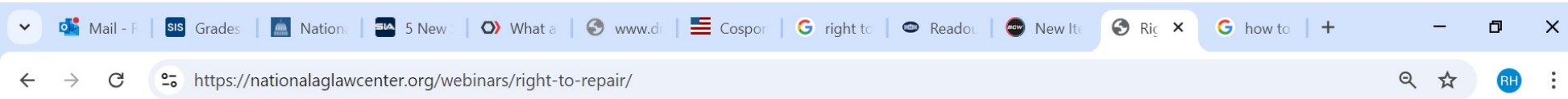
September 18, 2024





Today's Webinar:

- **Background of Right to Repair Issue**
- State Right to Repair Legislation
- Legal Developments at Federal Level
- Memoranda of Understanding
- Litigation



 **The National Agricultural Law Center**
The Nation's Leading Source of Agricultural and Food Law Research and Information

Check out... [The Ag & Food Law Update >](#)

NAVIGATION

- ABOUT THE CENTER
- PROFESSIONAL STAFF
- PARTNERS
- RESEARCH BY TOPIC
- CENTER PUBLICATIONS
- WEBINAR SERIES
- STATE COMPILATIONS
- FARM BILL RESOURCES
- AG LAW BIBLIOGRAPHY
- AG LAW GLOSSARY
- AG LAW REPORTER
- GENERAL RESOURCES

Right to Repair Statutes: Overview, Issues Presented, and Current Status of State Legislation

Topic:

The equipment and machinery on today's farms contains and utilizes highly advanced technology. With the extensive technology embedded into this equipment, legal questions arise as to farmers ability to perform routine maintenance and repairs on their equipment and machinery. The movement to enact Right to Repair statutes has been pursued as a means to ensure that agricultural producers have certain rights and legal protections to engage in this maintenance and repair.

In this webinar, we will provide an overview of this topic by reviewing the arguments for and against the enactment of these Right to Repair statutes. We will then discuss the current status of legislation and legislative proposals in various states as well as reviewing the core components of the legislative proposals that have been considered.

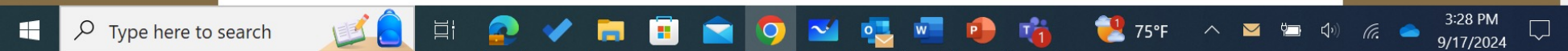


Time and Date:

Wednesday, September 16th, 2020

12:00 – 1:00 (EDT)

2020 Webinar





What is Right to Repair?

- Limit restrictions on the repair or maintenance of property
 - Allow owner to repair
 - Allow owner to choose who will repair
- Provide an affirmative duty upon manufacturer to provide materials to enable repair of property by its owner
 - Publish repair manuals
 - Sell parts, diagnostic software, and tools to enable repair
- Product construction and design enables repair



Where is Right to Repair sought?

- Automobiles
- Computers
- Smartphones
- Consumer electronics
- Farm equipment



Right to Repair in Automobile Industry

- Massachusetts enacts first RTR statute
 - Aug. 6, 2012 (H.4362) / Nov. 26, 2013 (H.3757)
 - All manufacturers doing business in Massachusetts must comply with RTR requirements
 - Establishes process for filing complaint where manufacturer fails to comply
 - Violation is an unfair trade practice



Right to Repair in Automobile Industry

- For model year 2002, manufacturers shall make certain information and tools available for purchase by owners and independent repair facilities:
 - “diagnostic and repair information, including repair technical updates”
 - “all diagnostic repair tools”
- For model year 2018, manufacturers “shall provide access to their onboard diagnostic and repair information system . . . using an off-the-shelf personal computer”



Right to Repair in Automobile Industry

- Jan. 15, 2014 – Agreement to impose Massachusetts standards throughout U.S.
- Parties agree to oppose any new state RTR legislation.
- Did not address end users.



AUTO ALLIANCE
DRIVING INNOVATION®

AAIA[®]
Automotive Aftermarket
Industry Association

GlobalAutomakers 

CARE


MEMORANDUM of UNDERSTANDING

The Automotive Aftermarket Industry Association (“AAIA”), Coalition for Auto Repair Equality (“CARE”), Alliance of Automobile Manufacturers (“Alliance”) and Association of Global Automakers (“Global Automakers”) (“the Original Parties”) enter into this Memorandum of Understanding (MOU) on this Fifteenth (15th) day of January, 2014 and voluntarily agree as follows:

1. The Original Parties fully support this MOU and attached “Right to Repair” (R2R) agreement (“R2R Agreement”). Automobile manufacturer members of the Alliance and Global Automakers indicate their individual company’s agreement to comply with the MOU and R2R Agreement in all fifty (50) States and the District of Columbia through their individual letters of endorsement.



Right to Repair in Automobile Industry

- AGA President – “A patchwork of 50 differing state bills, each with its own interpretations and compliance parameters, doesn’t make sense. This agreement provides the uniform clarity our industry needs.”



AUTO ALLIANCE
DRIVING INNOVATION®

AAIA[®]
Automotive Aftermarket
Industry Association

GlobalAutomakers 

CARE


MEMORANDUM of UNDERSTANDING

The Automotive Aftermarket Industry Association (“AAIA”), Coalition for Auto Repair Equality (“CARE”), Alliance of Automobile Manufacturers (“Alliance”) and Association of Global Automakers (“Global Automakers”) (“the Original Parties”) enter into this Memorandum of Understanding (MOU) on this Fifteenth (15th) day of January, 2014 and voluntarily agree as follows:

1. The Original Parties fully support this MOU and attached “Right to Repair” (R2R) agreement (“R2R Agreement”). Automobile manufacturer members of the Alliance and Global Automakers indicate their individual company’s agreement to comply with the MOU and R2R Agreement in all fifty (50) States and the District of Columbia through their individual letters of endorsement.



Right to Repair in Automobile Industry

- 2014 MOU administered by National Automotive Service Task Force (NASTF).
- MA Initiative 1 – Nov. 3, 2020 – would update Massachusetts law to include wireless technology and telematic information (onboard vehicle communications systems).
 - Approved by voters but implementation continues to be delayed due to litigation.



Today's Webinar:

- Background of Right to Repair Issue
- **State Right to Repair Legislation**
- Legal Developments at Federal Level
- Memoranda of Understanding
- Litigation



Right to Repair – Enacted State Legislation

- Massachusetts (2012-13, 2020) – automobiles
- New York (2022) – consumer electronics
- Colorado (2022, 2023, 2024) – wheelchairs / agriculture / consumer electronics
- California (2023) – electronics and small appliances
- Maine (2023 referendum) – automobiles
- Minnesota (2023) – consumer electronics
- Oregon (2024) – consumer electronics



Maine Right to Repair Question 4 (2023)

- Addresses automobile repairs
- An Act Concerning Automotive Right to Repair (HP1200) enacted in 2024
- Ballot initiative received 84% of vote
 - Massachusetts 2012 Question 2 received 87.7%
 - Massachusetts 2020 Question 1 received 75.0%



Colorado Consumer Right to Repair Agricultural Equipment Act



Photo credit:
Ted Gotwals | TPIN



Colorado Consumer Right to Repair Agricultural Equipment Act (H 1011)

- Full title – “Concerning a requirement that an agricultural equipment manufacturer facilitate the repair of its equipment by providing certain other persons with the resources needed to repair the manufacturer’s agricultural equipment.”



Colorado Consumer Right to Repair Agricultural Equipment Act (H 1011)

- Section 1 – amends title of Colorado Revised Statutes 6-1-1501 from Consumer Wheelchair Repair Bill of Rights Act to Consumer Repair Bill of Rights Act.
- Section 2 – Definitions – defines scope of bill's coverage



Colorado Consumer Right to Repair Agricultural Equipment Act (H 1011)

- Definitions:
 - Agricultural equipment – “equipment that is primarily designed for use in a farm or ranch operation.”
 - Includes – “tractor, trailer, combine, sprayer, tillage implement, baler, and other equipment used to plant, cultivate, or harvest agricultural products or to ranch;” and “attachment to and repair parts for equipment”



Colorado Consumer Right to Repair Agricultural Equipment Act (H 1011)

- Definitions:
 - Agricultural equipment does not include:
 - Self-propelled vehicles primarily for transportation of people;
 - Powersports vehicle;
 - Aircraft;
 - Equipment primarily used for irrigation



Colorado Consumer Right to Repair Agricultural Equipment Act (H 1011)

- Section 3 – Obligations of equipment manufacturer:
 - “make available to an independent repair provider or owner of . . . Equipment”
 - under “fair and reasonable terms”
 - “any documentation, parts, . . . embedded software for agricultural equipment, firmware, tools, or, with owner authorization, data that are intended for use with the equipment. . . .”



Colorado Consumer Right to Repair Agricultural Equipment Act (H 1011)

- Section 3 – Obligations of equipment manufacturer:
 - provide information or tools to “reset the lock or function when disabled in the course of providing services.”



Colorado Consumer Right to Repair Agricultural Equipment Act (H 1011)

- Section 3 – Obligations of equipment manufacturer:
 - Not required to divulge a trade secret or provide information that is a trade secret
 - Not responsible for faulty repairs
 - Not responsible for misuse of data by repair provider



Colorado Consumer Right to Repair Agricultural Equipment Act (H 1011)

- Section 4 – Limitations:
 - Repair provider may not deactivate safety or emissions feature.
 - Equipment manufacturer cannot contract around requirements of Act.
 - Equipment manufacturer cannot avoid compliance with Act by entering into a national RTR Memorandum of Understanding.



Colorado Consumer Right to Repair Agricultural Equipment Act (H 1011)

- Section 5 – Federal legislation:
 - This Act is repealed if federal right to repair legislation on agricultural equipment is enacted.
- Section 6 – Effective date of January 1, 2024



Oregon Right to Repair Act (SB 1596)

- Signed by Gov. Kotek on Mar. 27, 2024.
- Becomes effective on Jan. 1, 2025.
- Specifically exempts “farm and utility tractors, farm implements and machinery. . .”
 - As well as electric toothbrushes, video game consoles, medical devices, etc.



Pending State RTR Legislation

- According to National Conference of State Legislatures, thirty-three states considered Right to Repair legislation in 2023.



Pending State RTR Legislation Addressing Agriculture

- Alabama – HB261
- Hawaii – SB2700
- Illinois – SB2669
- Indiana – SB53 / HB1155
- Kentucky – HB698
- Michigan – HB4673
- Minnesota – HF4800 / SF5318
- Missouri – HB2475
- Mississippi – SB2005
- Rhode Island – H7229
- Tennessee – SB2035 / HB2029
- Utah – SB269
- Vermont – H81
- Washington – HB1933 / SB6276
- West Virginia – SB306 / HB4605



Today's Webinar:

- Background of Right to Repair Issue
- State Right to Repair Legislation
- **Legal Developments at Federal Level**
- Memoranda of Understanding
- Litigation



Introduced Federal Legislation

- Agricultural Right to Repair Act (H.R. 5604)
 - Introduced on Sep. 22, 2023 by Rep. Gluesenkamp (D-WA)
 - Follows S. 3549 introduced by Sen. Tester (D-MT) in 2022
- REPAIR ACT (H.R. 906 / S. 3170)
 - Addresses automobiles
- Fair Repair Act (H.R. 8544 / S. 4422)



Introduced Federal Legislation

- Agricultural Right to Repair Act (H.R. 5604)
 - OEM must provide:
 - “any documentation, part, software, firmware, or tool intended for use in order to diagnose, maintain, or repair farm equipment” and
 - “farm equipment data generated by the farm equipment of the owner”



Federal Legislation

- Calls for federal legislation:
 - Mar. 24, 2023 – letter from 28 state attorneys general to US House and Senate energy and commerce committee leadership
 - Alaska, Arizona, California, Connecticut, Delaware, District of Columbia, Guam, Hawaii, Idaho, Illinois, Indiana, Louisiana, Maine, Maryland, Michigan, Minnesota, Nevada, New Mexico, Northern Mariana Islands, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Washington, and Wisconsin
 - Focused on demands and needs of consumers
 - Specifically mentioned agricultural equipment



Federal Legislation

TECH

Apple lines up to support nationwide right-to-repair legislation

PUBLISHED TUE, OCT 24 2023 4:49 PM EDT



Kif Leswing
@KIFLESWING

SHARE    

In a short talk, Apple service VP Brian Naumann said that Apple makes parts, tools, and manuals available to independent repair stores in the U.S., highlighting the company’s current policy under [its self-service repair program](#).

“Apple also supports a uniform federal law that balances repairability with product integrity, data security, usability, and physical safety,” Naumann said.

Naumann outlined Apple’s priorities on Tuesday:

“We believe that a uniform federal repair law should do the following: Maintain privacy, data and device security features which help to thwart theft; Ensure transparency for consumers about the type of parts used in a repair; Apply prospectively, to allow manufacturers to focus on building new products that can comply with the proposals; And finally, create a strong national standard that benefits consumers across the US and reduces the confusion created by potentially conflicting state approaches.”



PennState Law

Center for Agricultural
and Shale Law

Federal Executive Branch Developments

THE WHITE HOUSE



JULY 09, 2021

Executive Order on Promoting Competition in the American Economy



▶ BRIEFING ROOM

▶ PRESIDENTIAL ACTIONS



Executive Order on Promoting Competition

- (h) To address persistent and recurrent practices that inhibit competition, the Chair of the FTC, in the Chair's discretion, is also encouraged to consider working with the rest of the Commission to exercise the FTC's statutory rulemaking authority, as appropriate and consistent with applicable law, in areas such as:
- (i) unfair data collection and surveillance practices that may damage competition, consumer autonomy, and consumer privacy;
 - (ii) unfair 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;



Federal Trade Commission Actions

- Report highlighted how restrictions on repairs harm consumers by increasing costs, limiting consumer choices, and contributing to electronic waste.
- Led Report with a discussion of Magnuson-Moss Warranty Act.





Federal Trade Commission Actions

- July 21, 2021 – Adopted policy statement “aimed at manufacturers’ practices that make it extremely difficult for purchasers to repair their products.”
 - Acknowledged that “unlawful repair restrictions have generally not been an enforcement priority for the Commission for a number of years.”
 - Voted unanimously to “ramp up enforcement against repair restrictions that prevent small businesses, workers, consumers, and even government entities from fixing their own products.”



FTC Warns Companies to Stop Warranty Practices That Harm Consumers' Right to Repair

Letters to eight companies warn about tying warranty to use of branded parts and affixing "warranty void if removed" stickers to their products

July 3, 2024 | [f](#) [X](#) [in](#)

The warning letters inform the companies of FTC staff's concerns that their practices violate the Magnuson-Moss Warranty Act (MMWA), a law that governs consumer product warranties and is enforced by the FTC.

"These warning letters put companies on notice that restricting consumers' right to repair violates the law," said Samuel Levine, Director of the FTC's Bureau of Consumer Protection. "The Commission will continue our efforts to protect consumers' right to repair and independent dealers' right to compete."



FTC Warns Companies to Stop Warranty Practices That Harm Consumers' Right to Repair

Letters to eight companies warn about tying warranty to use of branded parts and affixing "warranty void if removed" stickers to their products

July 3, 2024



The letters to five of the companies warn that FTC staff has concerns about the companies' statements that consumers must use specified parts or service providers to keep their warranties intact. Unless warrantors provide the parts or services for free or receive a waiver from the FTC, such statements are generally prohibited by the MMWA. Similarly, such statements may be deceptive under the FTC Act.

These letters were issued to air purifier sellers [aeris Health](#), [Blueair](#), [Medify Air](#), and [Oransi](#), along with treadmill company [InMovement](#).



PennState Law

Center for Agricultural
and Shale Law

THE WHITE HOUSE



OCTOBER 25, 2023

Readout of the White House Convening on Right to Repair



[BRIEFING ROOM](#)



[STATEMENTS AND RELEASES](#)



White House Convening on Right to Repair

Since President Biden's Executive Order, the Administration and states have taken a number of actions to further the right to repair across industries, including:

- The Federal Trade Commission (FTC) voted unanimously ↗ to ramp up law enforcement of right to repair restrictions that prevent small businesses, workers, consumers from fixing their own products. Since then, they've announced settlements ↗ in multiple right to repair cases.
- The Environmental Protection Agency (EPA) wrote a letter ↗ to the National Farmers Union affirming its support for the right to repair and clarifying that the right to repair is compatible with Clean Air Act provisions, illustrating how a right to repair goes hand in hand with environmental laws.



White House Convening on Right to Repair

- The [EPA released a report ↗](#) on how the improper disposal of lithium-ion batteries, commonly found in cellphones and laptops, can cause dangerous fires in waste handling and recycling facilities. When batteries in consumer devices are easy to remove, consumers benefit from devices with a longer life, waste is reduced, and batteries can more easily be removed and recycled safely.
- The [U.S. Copyright office ↗](#) included expanded exemptions to the Digital Millennium Copyright Act that support more access to diagnosis, maintenance, and repair capabilities.
- Over 30 states have introduced right to repair legislation covering a broad range of sectors, with new laws passed in Colorado, Massachusetts, Minnesota, and New York in just the last three years.



Right to Repair in the European Union



Council of the
European Union

SGS 24 / 000866

Brussels, 14/02/2024

Ms. Anna CAVAZZINI

Chair, Committee on the Internal Market and Consumer Protection
European Parliament
Rue Wiertz 60, B-1047 Bruxelles
Belgium

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL on common rules promoting the repair of goods and amending
Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828
[2023/0083 (COD)]



Today's Webinar:

- Background of Right to Repair Issue
- State Right to Repair Legislation
- Legal Developments at Federal Level
- **Memoranda of Understanding**
- Litigation



Right to Repair in Agriculture

- Industry Initiatives
 - Association of Equipment Manufacturers (AEM) and Equipment Dealers Association (EDA) develop R2R Solutions – www.R2RSolutions.org
 - AEM and EDA developed Statement of Principles in 2018.
 - Will provide access to resources to end users, through authorized dealers, by Jan. 1, 2021



Memoranda of Understanding Background

- American Farm Bureau Federation
 - Jan. 21, 2020 National Convention
 - Delegates expressed support for Right to Repair
 - Preferred method of implementation is agreement with equipment manufacturers.
 - Legislation could be supported if agreement isn't reached.



Memoranda of Understanding

- Jan. 8, 2023 – American Farm Bureau Federation entered into MOU with Deere & Co.
 - Ensure that farmers have access to necessary tools “through a voluntary private sector commitment to outcomes rather than legislative or regulatory measures.”
 - AFBF and Deere will meet at least semi-annually to assess
 - Either party may withdraw from MOU if they conclude it is no longer viable.



Memoranda of Understanding

- Jan. 8, 2023 – American Farm Bureau Federation entered into MOU with Deere & Co.
 - Deere agrees to provide farmers with tools, software, documentation, etc.
 - AFBF agrees to refrain from advocating for federal or state legislation “imposing obligations beyond the commitments in this MOU.”



Memoranda of Understanding

- Mar. 9, 2023 – American Farm Bureau Federation entered into MOU with CNH Industrial Brands
- May 22, 2023 – American Farm Bureau Federation entered into MOU with AGCO and Kubota
- June 14, 2023 – American Farm Bureau Federation entered into MOU with CLAAS of America



Memoranda of Understanding

- Issues Raised:
 - Scope of Coverage / Effectiveness
 - Is all relevant information included?
 - Enforceability
 - For failure to comply
 - Either party can withdraw



Today's Webinar:

- Background of Right to Repair Issue
- State Right to Repair Legislation
- Legal Developments at Federal Level
- Memoranda of Understanding
- **Litigation**



Multidistrict Litigation – *In re: Deere & Company Repair Services Antitrust Litigation*

- Allegations:
 - “Through various anticompetitive practices, Deere has monopolized the market for repair and maintenance services for Deere agricultural equipment equipped with engine control units by restricting access to necessary repair-related software and diagnostic tools.”
 - “deliberately designed its Tractors so that both the diagnosis and the completion of a repair frequently requires software tools and resources . . . that Deere keeps under tight lock.”



Multidistrict Litigation – *In re: Deere & Company Repair Services Antitrust Litigation*

- June 1, 2022 – U.S. Judicial Panel on Multidistrict Litigation entered order establishing U.S. District Court for the Northern District of Illinois as the district where all federal lawsuits shall be heard.
- Docket No. 3:22-cv-50188
- Cases transferred and consolidated from federal courts in Alabama, Illinois, Oklahoma, and Tennessee.



Multidistrict Litigation – *In re: Deere & Company Repair Services Antitrust Litigation*

- Nov. 27, 2023 – Court denied Deere’s Motion for Judgment on the Pleadings.
 - Ruled that Plaintiffs’ allegations were “plausible” and “sufficient” to support their claims.



Moving Forward – Key Questions

- Will momentum for state legislation continue?
 - Expansion of states; expansion of products
- Will there be federal legislation?
 - Does continued expansion of state legislation create demand for action at federal level?
 - How will agricultural equipment be addressed in any federal legislation?
 - Separately or together with other RTR subjects?



PennState Law

Center for Agricultural
and Shale Law



Penn State Law
Lewis Katz Building
University Park, Pennsylvania

Center for Agricultural and Shale Law
Ross Pifer, Director
rpifer@psu.edu