



PennState Law

Center for Agricultural
and Shale Law

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

National Agricultural Law Center Webinar Series

September 16, 2020





Today's Webinar:

- **Property Basics**
- Overview of Right to Repair Issue
- Development of Right to Repair in Auto Industry
- Right to Repair in Agriculture
 - Stakeholder Support and Concerns
 - Methods of Possible Implementation
- Right to Repair Legislation
- Moving Forward



Property Basics

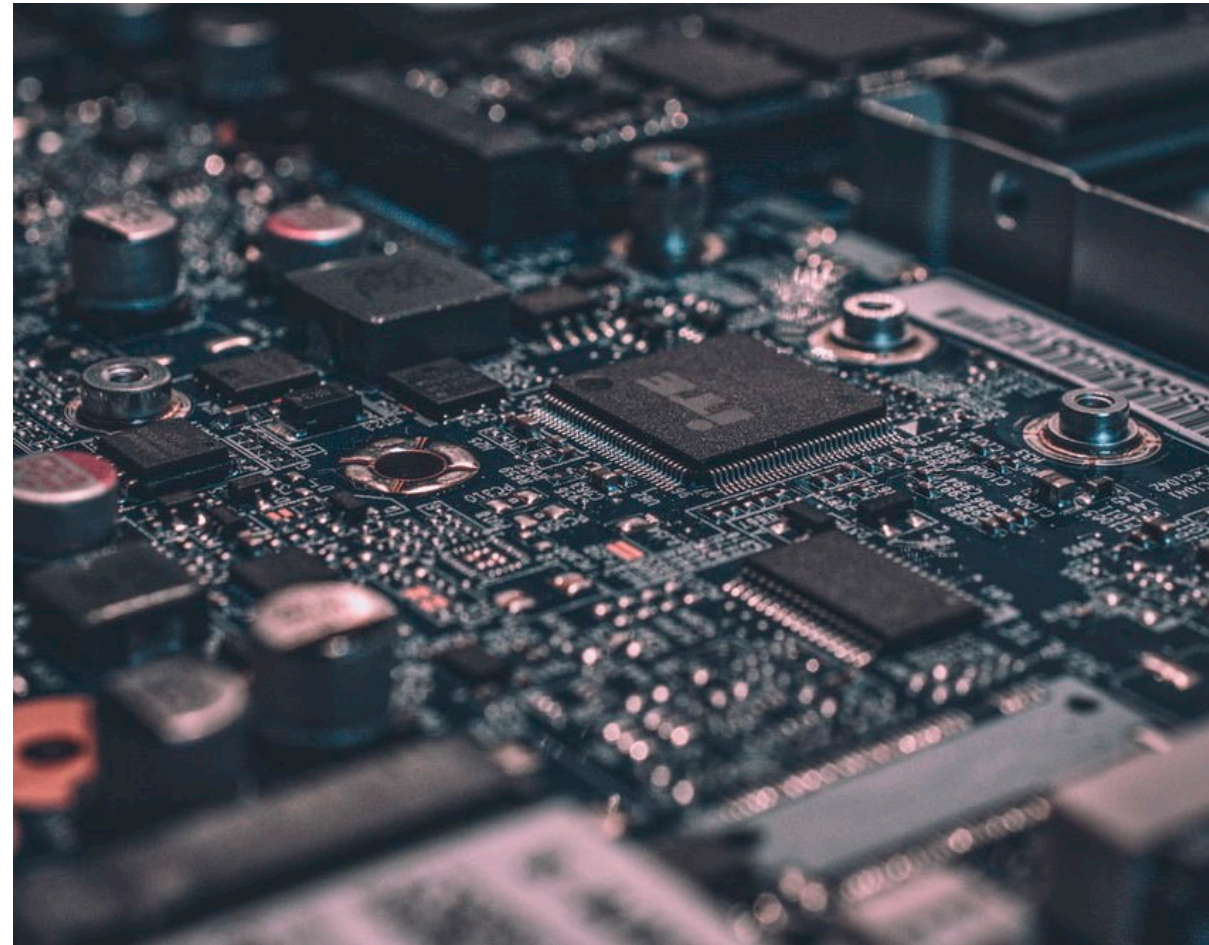
- What does it mean to own property?
- Property owner is generally viewed as holding a bundle of rights with regard to the property.





Property Basics

- How does new technology impact property ownership?
- Development of technology has created a number of legal issues and practical problems related to property ownership.





Property Basics

- More than one entity can have rights to a specific item of property.
 - Home mortgage
 - Equipment lien
 - Property subject to intellectual property rights





Property Basics

- Intellectual property rights and/or contracts can impose limitations on the use of property by its owner.





Property Basics - Summary

- Farmer owns equipment subject to intellectual property rights of manufacturer.
 - What does this mean at a practical level?
 - What limitations exist on the farmer's ownership and use of property?
- Right to Repair is fundamentally a property rights issue.





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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



Where is Right to Repair sought?

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



Who is Interested in Right to Repair?

- Consumer groups
- Repair organizations and businesses
- Manufacturers / Developers of technology



Who is Interested in Right to Repair?



**RIGHT
TO REPAIR**

U.S. PIRG

We generate way too much waste, and companies intentionally make things harder to repair. We're backing reforms to give you what you need to fix your stuff.

Who is Interested in Right to Repair?



We Have the Right to Repair Everything We Own

You bought it, you should own it. Period. You should have the right to use it, modify it, and repair it wherever, whenever, and however you want. We fight for your right to fix.



Who is Interested in Right to Repair?



Association of
Equipment Manufacturers

Overly-broad “Right to Repair” legislation is not only unnecessary, it would risk the safety, durability and environmental sustainability of equipment. To encourage innovation and regulatory compliance, manufacturers and dealers will not allow access to back-end source code which can be used to reset safety features, reprogram control units, or change settings that affect emissions and safety compliance. Learn more at R2RSolutions.org.



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Right to Repair in Automobile Industry



For Immediate Release
September 26, 2002

Alliance Contact: Charles Territo (202) 326-5523
AIAM Contact: Paul Ryan (703) 247-2103
ASA Contact: Bob Redding (202) 543-1440

Automakers and Independent Repairers Reach Historic Agreement on Service Information

Washington, D.C. — In a [joint letter to Senator Byron Dorgan](#) (D-ND), Chairman of the Senate Commerce Subcommittee on Consumer Affairs, Foreign Commerce and Tourism, the Alliance of Automobile Manufacturers (Alliance), the Association of International Automobile Manufacturers (AIAM) and the Automotive Service Association (ASA) announced today that they have reached an understanding regarding the type of service information and diagnostic tools available to independent repairers. Under the agreement, automakers have committed to providing independent repair shops with the same service and training information related to vehicle repair as is available to franchised dealerships.

At a July 30, 2002 hearing on Senate Bill 2617 (“The Motor Vehicle Owners Right to Repair Act”), automakers pledged to work with independent repairers to resolve all outstanding issues relating the availability of service and repair information. This agreement is the outcome of those discussions.



Right to Repair in Automobile Industry

- Some stakeholders believed that the 2002 Agreement was inadequate as it lacked a legal remedy for violations.
- Motor Vehicle Owners' Right to Repair Act continued to be introduced in Congress through 112th Congress (2011-12).
 - H.R.2048 (2006) approved 14-13 by House Energy and Commerce Subcommittee on Commerce, Trade and Consumer Protection
- No legislation was passed by Congress.



Right to Repair in Automobile Industry

- Nov. 26, 2013 – Massachusetts enacts first RTR statute (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.



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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.”



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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).



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Right to Repair in Agriculture

- Widespread support for concept of Right to Repair throughout major agricultural organizations.
- Differences emerge in exactly what is meant by Right to Repair as well as how to implement it.



Right to Repair in Agriculture

- 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.



Right to Repair in Agriculture

NEWSWIRE

News For Nebraska's Farmers And Ranchers

Right to Repair – Update

“Right to Repair” began as a movement promoting federal legislation intended to allow consumers to repair and modify their own consumer electronic devices. As farm equipment becomes more sophisticated, the ability of farmers to repair parts has been impacted by copyrighted software, more recently, “Right to Repair” has been applied to agriculture machinery repair.

At the American Farm Bureau (AFBF) annual convention last week, delegates adopted language supporting an agreement between farmers/ranchers and equipment manufacturers to provide more capacity to fix their equipment. This language was only slightly modified from the initial language that was adopted at the Nebraska Farm Bureau annual convention.

The policy adopted does give AFBF and NEFB the ability to support legislation if an agreement isn't achieved. However, an agreement between the industries is our preferred path.



Right to Repair in Agriculture

Policy of the National Farmers Union

Enacted by delegates to the 117th anniversary convention

Bellevue, WA | March 3-5, 2019

We support:

3. Fair Repair and Right to Repair legislation that would allow farmers and independent mechanics access to diagnostic software, information, and other tools in order to repair modern equipment.



Right to Repair in Agriculture

National Grange Supports Right to Repair Act

BETHESDA, Md. — The nation's oldest national agricultural organization, the National Grange, calls on Congress to pass the Motor Vehicle Owners' Right to Repair Act (H.R. 1449)



in order to protect individual vehicle ownership rights, particularly for residents of farming and rural communities.

"On behalf of over 200,000 members of the National Grange, we fully support the Right to Repair Act because we believe in an owner's right to maintain, service, repair and rebuild their vehicle or farming equipment on their own accord or by the repair shop of their choice," said Nicole Palya Wood, legislative director for the National Grange. "Our members, most of them located in rural areas, value their ability and freedom to fix and repair their own vehicles, tractors and other farm equipment. Should they seek assistance elsewhere, local repair shops should have access to all necessary computer codes and service information in order to properly and efficiently make repairs.



Right to Repair in Agriculture

WASHINGTON, DC, JANUARY 23, 2020

AEM APPLAUDS FARM BUREAU'S SUPPORT FOR RIGHT TO REPAIR

Association of Equipment Manufacturers (AEM) president Dennis Slater issued the following statement in response to reports that the American Farm Bureau Federation is supporting farmers' right to repair their own equipment:

"We applaud the Farm Bureau for joining us in supporting a farmer's ability to repair their equipment," said Dennis Slater, president of AEM. "Our industries are inextricably linked – when farmers succeed, manufacturers prosper. That is why we are providing the tools and resources they need to maximize productivity and minimize downtime. We look forward to continuing our dialogue with the Farm Bureau and other stakeholders on farmers' ability to repair their own equipment, and how we can work together to address the unintended consequences of illegal tampering."



Right to Repair in Agriculture

Farmers and ranchers have the right to repair their equipment. Manufacturers and dealers are empowering users with the tools they need to complete repairs.





Right to Repair in Agriculture

Overly broad "Right to Repair" laws carry serious risks:

Safety: Allowing access to source code would risk allowing a user to override safety features required as part of modern farm equipment.

Sustainability: Farm equipment must comply with environmental and emissions standards, which could be jeopardized by granting access to source code.

Innovation: Manufacturers and dealers invest considerable resources in developing cutting-edge technology to help create better farming equipment; granting access to source code would jeopardize manufacturers' intellectual property and stifle innovation.





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



Right to Repair in Agriculture

Farm Equipment Manufacturers and Dealers are Committed to Providing Maintenance, Diagnostic, and Repair Tools to End Users

The “Right to Repair” is not the Right to Modify

The Association of Equipment Manufacturers (AEM), the Equipment Dealers Association (EDA), and their members are dedicated to supporting farmers and their equipment needs, reducing downtime and maximizing productivity. Therefore, AEM and EDA reiterate their joint commitment to provide end users with the information and tools needed to maintain, diagnose, and repair their equipment.

To the extent not already available, the maintenance, diagnostic and repair information listed below will be made available to end users through authorized agricultural dealers at fair and reasonable terms, beginning with tractors and combines put into service on or after January 1, 2021. End users will also be able to purchase or lease diagnostic tools through authorized agricultural dealers. Certain information and tools may be available earlier.



Right to Repair in Agriculture

Manufacturers, through authorized agricultural dealers, are committed to provide access to:

- Manuals (Operator, Parts, Service)
- Product Guides
- Product Service Demonstrations, Training, Seminars, or Clinics
- Fleet Management Information
- On-Board Diagnostics via diagnostics port or wireless interface
- Electronic Field Diagnostic Service Tools, and training on how to use them
- Other publications with information on service, parts, operation, and safety

Using this information and these tools, which will be available for purchase, lease, or subscription through authorized dealers, end users will be able to identify and repair numerous problems they may encounter with their equipment.



Right to Repair in Agriculture

The industry supports equipment users' ability to maintain, diagnose, and repair their machinery. However, the ability to diagnose and repair does not mean the right to modify. For safety, durability, environmental, and liability reasons, diagnostic and repair information and tools will not permit consumers to do the following:

- Reset an immobilizer system or security-related electronic modules,
- Reprogram any electronic processing units or engine control units,
- Change any equipment or engine settings negatively affecting emissions or safety compliance,
- Download or access the source code of any proprietary embedded software or code

This commitment to providing maintenance, diagnostic and repair tools is a reaffirmation of the importance of seeking commonsense solutions to meet users' needs. The industry is eager to continue working with end users to provide the most innovative and high-quality equipment to meet the needs of modern production agriculture.



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Legislation - Federal

- Farmers Bill of Rights – S.Con.Res. 36 and H.Con.Res. 88

(7) RIGHT TO REPAIR.—Huge corporations and their Wall Street backers have gone so far as to prevent local businesses and farmers from fixing their own tractors and equipment, forcing them to pay corporate technicians to make all repairs. A farmer should have the right to fix their own equipment as they see fit.

- Critical Medical Infrastructure Right to Repair Act of 2020 – H.R.7956
 - Introduced Aug. 7, 2020



Legislation - State

- More than 20 states have had Right to Repair legislation introduced in past two years.
- Right to Repair legislation generally has focused on consumer electronics.
- Right to Repair legislation generally has not advanced through legislative process.



Legislation - State

- Pennsylvania HB 2326
- Digital Fair Repair Act
- Manufacturer shall make certain information and software available to owner or independent repair provider.
- Motor vehicle exclusion

AUSTIN DAVIS, MEMBER
DEPUTY WHIP
35TH LEGISLATIVE DISTRICT
G-07 IRVIS OFFICE BUILDING
P.O. BOX 202036
HARRISBURG, PENNSYLVANIA 17120-2036
(717) 783-1018
FAX: (717) 780-4779

627 LYSLE BOULEVARD
MCKEESPORT, PENNSYLVANIA 15132
(412) 664-0035
FAX: (412) 664-0039

3910 MAIN STREET, SUITE 5
MUNHALL, PENNSYLVANIA 15120
(412) 476-3048
FAX: (412) 476-3048

551 RAVENSBURG BOULEVARD
CLAIRTON, PENNSYLVANIA 15025
(412) 233-2506
FAX: (412) 233-2507



House of Representatives
COMMONWEALTH OF PENNSYLVANIA
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DELEGATIONS

ALLEGHENY

MEMORANDUM

To: All House Members

From: Representative Austin Davis

Subject: Digital Right-to-Repair

Date: January 9, 2020

Purchasing a digital device is costly. When something goes awry with a device we rely upon, we, as consumers, have a right to the information needed to make the repair. Yet, manufacturers often withhold data and parts needed for repairs once a device is purchased, leaving consumers no option but to turn to them for service and parts or replace the device, both of which are costly.

My legislation will require original equipment manufacturers to provide necessary information to assist consumers in repairing the digital devices they own. Specifically, consumer must be granted access to software, parts, and instruction required in making self-repairs safely.

It is an issue of fairness and consumers merit options besides the high cost of manufacturer repair and service. Allowing self-repair saves money and further aids in reducing the amount of e-waste in Pennsylvania. Please join me in supporting the rights of consumers in Pennsylvania.



Legislation - State

- States with introduced legislation include:
 - California (AB1163), Colorado (HB1195), Georgia (HB286), Hawaii (SB425), Idaho (HB452; S1300), Illinois (HB2026), Indiana (HB1413), Massachusetts (S107; H218), Minnesota (SF64), Missouri (HB1079), Montana (LC0512), North Dakota (HB1305), New Hampshire (HB462), New Jersey (A589; S1638), New York (S710), Oklahoma (HB3724), Oregon (HB2688), Pennsylvania (HB2326), South Dakota (HB1102), Vermont (S158), Virginia (HB1754), Washington (HB1342), West Virginia (HB2115)



Legislation - State

- Idaho S1300

Nelson sponsors Right to Repair equipment bill

Bill would allow farmers to save money by repairing their own equipment

By Garrett Cabeza, Daily News staff writer Feb 7, 2020 Updated Feb 7, 2020



Nelson



A bill aimed at allowing farmers and ranchers to save money on repairs for their high-tech equipment was printed Thursday and will receive a hearing in the Idaho Senate.

The Right to Repair legislation, which is sponsored by second-year Sen. David Nelson, D-Moscow, and Sen. Grant Burgoyne, D-Boise, is the first bill Nelson has sponsored.

Nelson said the bill would require manufacturers to sell parts, instruction manuals, special tools and diagnostic equipment to consumers or independent repair shops who wish to purchase the items to make repairs themselves.





Legislation - State

STATEMENT OF PURPOSE

RS27521 / S1300

This legislation provides for the fair repair of electronic equipment. It requires manufacturers to make available parts, service literature, diagnostic equipment, and proprietary tools to consumers and independent repair facilities. Electronic equipment ranges from smartphones to farm equipment where a microprocessor is part of the product. The legislative intent is to maintain freedom of commerce by preventing manufacturers of electronic equipment from controlling repair, so the only choice for the consumer is the manufacturer's owned or controlled facility.



Legislation - State

- Idaho S1300

(b) "Electronic equipment" means an electronic device containing a microprocessor and originally manufactured for distribution and sale in the United States for general consumer purchase, including but not limited to:

- (i) Smartphones, electronic reading devices, tablets, and personal computers, including laptop computers;
- (ii) Home appliances, including ovens, stoves, microwave ovens, dishwashers, washing machines, clothes dryers, air conditioning units, furnaces, or other similar equipment;
- (iii) Electronic entertainment products, including televisions, video game consoles, and home audio equipment;
- (iv) Farm equipment, including combines, tractors, implements, self-propelled equipment, and related attachments and implements;



Legislation - State

- Indiana HB1413

Sec. 3. (a) As used in this chapter, "consumer electronic device" means a product or component of a product that:

- (1) contains a microprocessor; and**
- (2) is manufactured for distribution and sale in the United States.**

(b) The term does not include:

- (1) a motor vehicle or component of a motor vehicle; or**
- (2) a medical device or component of a medical device.**



Moving Forward

- Widespread support for concept of Right to Repair
 - Devil is in the details.
 - What does Right to Repair mean?
- How best to implement?
- Role of non-ag in agricultural discussions?



Moving Forward

- Possible template with auto industry
 - But, did not address end users
- Legislation has been slow moving.
- Will R2R Solutions or other agreement satisfy farmer concerns?



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