

UNITED STATES OF AMERICA
Federal Trade Commission
Washington, DC 20580



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March 22, 2024

VIA ELECTRONIC MAIL

Representative Kristi Pursell
Minnesota House of Representatives
523 State Office Building
St. Paul, MN 55155

Re: Minnesota HF 4800

Dear Representative Pursell:

We write this letter as the heads of the FTC's Bureau of Consumer Protection and its Office of Policy Planning.¹ We understand that the Minnesota legislature is considering a bill to further the right to repair by agricultural equipment owners and independent repair providers.

As Minnesota's recent right-to-repair legislation recognizes, and as the Commission stated in its bipartisan right to repair policy statement,² restricting consumers and businesses from choosing how they repair products can substantially increase the total cost of repairs, generate waste, and unnecessarily increase repair downtime. In contrast, eliminating repair restrictions can lead to

¹ The FTC's Office of Policy Planning provides advocacy and submits filings supporting competition and consumer protection principles to state legislatures, regulatory boards, and officials.

² *Policy Statement of the Federal Trade Commission on repair Restrictions Imposed by Manufacturers and Sellers*, available at https://www.ftc.gov/system/files/documents/public_statements/1592330/p194400repairrestrictionspolicystatement.pdf.

lower costs, reduce waste by extending the useful lifespan of products, enable more timely repairs, and provide economic opportunities for entrepreneurs and local businesses.

The FTC has heard in particular about the hardships that repair restrictions inflict on the farmers that feed our nation.³ Because weather often demands that farmers sow, tend, and harvest their crops in narrow windows, downtime for vital agricultural equipment due to repair restrictions can lead to reduced yields and even lost crops. Such losses can be catastrophic, particularly for small, family-owned farms.⁴

Some manufacturers attempt to justify repair restrictions by claiming that they are necessary to protect against tractor alterations that tamper with emission controls and to ensure compliance with the Clean Air Act.⁵ However, contrary to these claims, a letter sent last year from the Environmental Protection Agency (EPA) to the National Farmers Union explained, “[t]he Clean Air Act and the U.S. Environmental Protection Agency’s implementing regulations clearly support repair by parties other than manufacturers” and “the EPA and the Clean Air Act allow owners to repair emission-related components of their products to proper functioning.”⁶ The EPA made clear in that letter that the Clean Air Act and EPA regulation and policy seek to prevent emissions tampering “not by limiting access to independent repair, but rather by enforcing the prohibition against tampering against any party that does so.” The EPA further noted that it supports “efforts by anyone to enact legislation clarifying that independent repair is allowable, provided such efforts continue to clearly prohibit illegal tampering of emissions control systems.”

In addition, to the extent opponents of right-to-repair legislation argue that repair restrictions are necessary to protect the safety or cybersecurity of owners and independent repairers, the FTC has previously found such arguments to be without support. In the Commission’s May 2021 Nixing the Fix Report, issued unanimously by the bipartisan Commission to the United States Congress,⁷ the Commission found that there is scant evidence to support manufacturers’ justifications for repair restrictions, including those related to safety and cybersecurity.⁸

³ E.g., Federal Trade Commission, *Nixing the Fix: An FTC Report to Congress on Repair Restrictions* at 39 (May 2021), available at https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf.

⁴ E.g., Bedayn, Jesse, *Colorado Becomes the 1st to Pass “right to repair” for farmers*, APNews.com (April 25, 2023), <https://apnews.com/article/colorado-right-to-repair-farming-equipment-1da00ea957fd1057bf522cb4725e62d4>.

⁵ Clean Air Act, 42 U.S.C. 7401 *et seq.*; See e.g., Letter from Rob Larew, President, National Farmers Union to EPA Administrator Michael S. Regan dated June 13, 2023, available at <https://files.constantcontact.com/63400020701/e2cf116e-c8dc-427b-a9bb-474b7f4206af.pdf?rdr=true>; Federal Trade Commission, *Nixing the Fix: An FTC Report to Congress on Repair Restrictions* (May 2021) at n.205, available at https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf.

⁶ Letter from EPA Administrator Michael S. Regan to Rob Larew, President, National Farmers Union dated August 4, 2023, available at <https://files.constantcontact.com/63400020701/bfa78700-0f65-4f17-bfc8-1a9c05916b6f.pdf?rdr=true>.

⁷ Federal Trade Commission, *Nixing the Fix: An FTC Report to Congress on Repair Restrictions* (May 2021), available at https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf.

⁸ *Id.* at 6, 10, 24-38.

We understand that opponents of right-to-repair legislation also may point to the recently signed Memoranda of Understanding between the American Farm Bureau Federation and certain manufacturers, as well as a 2018 Statement of Principles issued by the Association of Equipment Manufacturers and the Equipment Dealers Association,⁹ to claim legislation is unnecessary. The MOUs, however, are easily terminable and have no enforcement mechanism—beyond “consultation”—upon which farmers and independent repair shops can depend. In contrast, violations of the proposed bill would be deemed unlawful practices under MN law and subject to enforcement by the MN Attorney General. Consumers would benefit significantly from the proposed bill.

As noted in the Nixing the Fix Report, the FTC stands ready to work with legislators at the state and federal levels to ensure that consumers have choices when they need to repair products that they purchase and own.

Sincerely,

s/ Sam Levine
Director
Bureau of Consumer Protection

s/ Hannah Garden-Monheit
Director
Office of Policy Planning

⁹ *E.g.*, Memorandum of Understanding between American Farm Bureau Federation and Deere & Company, available at https://www.fb.org/files/AFBF_John_Deere_MOU.pdf; Memorandum of Understanding between American Farm Bureau Federation and AGCO Corporation, available at <https://www.fb.org/files/MOU-R2R-AGCO-Final-Fully-Executed-5.17.23.pdf>; Memorandum of Understanding between American Farm Bureau Federation and Kubota Tractor Corporation, available at <https://www.fb.org/files/MOU-R2R-KUBOTA-Final-Fully-Executed-5.17.23.pdf>; Statement of Principles, available at https://s3.amazonaws.com/media.r2rsolutions.org/documents/r2r_statement_of_principles.pdf.