



**Written Testimony of Daniel B. Fisher, Senior Vice President
of Associated Equipment Distributors**

**Before the
Senate Commerce And Consumer Protection
Committee**

S.F. 1598-Digital Fair Repair Act

Chair Klein, Vice Chair Seeburger, Ranking Minority Member Dahms, and other committee members, Associated Equipment Distributors (AED) appreciates the opportunity to offer this testimony in conjunction with the Senate Commerce And Consumer Protection Committee's hearing related to S.F. 1598.

AED is the trade association representing companies that sell, rent, and service construction, farm, energy, forestry, and industrial equipment. Our members, which are predominantly small-medium-sized, independent, family-owned businesses, employ workers across Minnesota, providing well-paying jobs and serving as a positive force within communities throughout the state. Below please find a list of AED member companies and locations in Minnesota.

"Right to repair" is a simple slogan; however, the policy proposals surrounding the issue are complex with significant consequences.

S.F. 1598 is based on a false narrative that customers are unable to fix their own tractors and machinery. To the contrary, equipment manufacturers and distributors make available diagnostic tools, repair information, parts, and remote customer support. Idle, non-functioning equipment equals lost time and money. Whether it's on a farm during harvest or a road building project there is absolutely zero incentive to not do everything we can as equipment dealers and manufacturers to keep a machine running. That can mean repairs completed by a dealership service technician, the customer, or a third-party provider. The equipment industry is highly competitive, and if one company isn't providing proper and timely service, nothing is stopping the customer from moving to a competitor and their products.

In fact, a significant percentage of parts sales are sold directly to customers so they can repair their own equipment. However, the tractors AED members are selling today are not the same as those sold decades ago. While customers can complete most repairs to their machinery, government environmental and safety regulations, as well as technological developments that have made equipment more efficient and productive, necessitate restrictions in access to source code and software that ensure key operational functions aren't modified or disabled.

Consequently, while AED members support the right for customers to repair their machinery, we don't support unfettered access to critical on-board software and information pertaining to environmental and safety protections. Unfortunately, right to repair proposals, including S.F. 1598, have serious environmental, safety, legal, economic, intellectual property and cybersecurity implications.

The Environment, Safety & Legal Liability

The equipment industry has invested significant time and resources to meet the Environmental Protection Administration's (EPA) Tier 4 diesel emissions standards. These specifications, applicable to engines used in off-road equipment, have resulted in a significant reduction in emissions. Of great concern, S.F. 1598 threatens important environmental gains as it would permit unfettered access to embedded software to circumvent emissions protections.

Similarly, modern equipment has numerous safety features to protect both equipment operators and the public, the latter who oftentimes are driving or walking past construction sites and other areas while machinery is in use. Granting access to override safety features poses undue risk for operators and bystanders. Additionally, equipment dealers invest countless resources to train certified technicians to work on complex machinery. By mandating access to embedded source code, unqualified individuals will attempt to repair the world's most advanced and sophisticated equipment, at significant risk to themselves,

operators, and the public.

The aforementioned begs the question, why would someone want to circumvent emissions or safety protections? The answer is simple: machine performance. Limits on horsepower and other functions the machine might be able to carry out are necessary to ensure equipment meets government emissions and safety standards. A simple Google search yields a plethora of vendors offering products and services that assist equipment owners to illegally modify their machines. Requiring access to source code and embedded software will only proliferate this practice, with significant negative ramifications for the environment and safety.

Proponents of S.F. 1598 tout the environmental benefits because customers won't need to discard products as readily if they are able to fix products themselves. However, heavy equipment is among the most durable manufactured products commercially available. Equipment will oftentimes be sold to a customer, traded-in when the customer purchases a new machine, and subsequently either resold or rented. Improper maintenance or modifications, related to granting unfettered access to source code, jeopardizes a machine's operation and longevity, which may cause negative environmental and safety impacts, and shorten its productive life.

S.F. 1598 will also create enormous liability issues for equipment dealers and manufacturers. Permitting access to source code allows end-users the ability to modify the equipment. If a tampered tractor causes personal injury or doesn't meet government regulatory standards, liability could fall on the dealer and manufacturer depending on product liability laws. While many equipment manufacturers are large companies that can absorb litigation costs, distributors, which are overwhelmingly small businesses, will be forced to endure costly litigation and possible judgments should modified machinery cause injury or not comply with laws and regulations.

Economic Impact

S.F. 1598 will completely alter the equipment industry's distribution model, putting countless small businesses at risk. Manufacturers of equipment rely on a network of independent, mostly family-owned small-to-medium-sized companies to sell, rent and service the equipment. These dealers make significant investments in their employees, including training service technicians to repair and maintain the latest high technology machinery. Many AED member facilities in Minnesota are in rural and underserved areas, creating well-paying careers and economic opportunity.

Equipment dealers also invest extensive capital in parts inventories to ensure repairs and maintenance can occur as soon as possible. Out of service equipment isn't merely an inconvenience—it can ruin a farmer's harvest or delay completion of a bridge or roadway. However, S.F. 1598 requires original equipment manufacturers to sell parts and diagnostic tools directly to the public on "fair and reasonable terms", completely circumventing the equipment dealer. Aside from effectively dismantling the equipment distribution industry's aftermarket parts business and thereby putting many equipment dealers out of business, logistically it is impractical and would only exacerbate inflationary pressures in the equipment market and create long delays in parts availability.

Anyone can walk into an AED member facility (or go online) and buy OEM parts for their tractor. There's no restriction on who can purchase parts, whether it's an equipment owner, a third-party service provider, an equipment operator, or a member of the general public. However, there will be no incentive for an equipment dealer to carry parts inventory if the manufacturer (or the dealer) is forced to sell without the ability to make a profit.

Intellectual Property and Security Concerns

Manufacturers invest substantially in research and development to produce the most efficient, safe and environmentally conscious equipment possible. The technology is more complex than ever, but the benefits to consumers and the public are immense. As we move to electrification, autonomous tractors and precision agriculture and construction technologies, the complexity and sophistication of the machinery as well as the benefits to society will only increase.

It is this research and development and technological advancement that gives each manufacturer a competitive advantage in providing customer solutions. Forcing manufacturers to provide unfettered access to source code and software disincentivizes future research and development. Why would a manufacturer invest in research and development when the intellectual property developed will be available to anyone?

Additionally, the cyber and national security implications are substantial with broad access to embedded

software and source code on equipment. The dangers associated with someone remotely hacking into a machine for nefarious purposes or an adversary of the United States having access to this technology has broad security and economic ramifications.

Conclusion

For the equipment industry, S.F. 1598 is a solution in search of a problem. AED members provide customers and third-party repair providers with parts, tools, and other resources to complete most tractor repairs.

Enacting these proposals will stifle entrepreneurship and the result will be an unprecedented intrusion by government into the free enterprise system. The viability of the equipment distribution industry will be severely hampered, resulting in lost economic activity, job creation, and technological advancement.

In conclusion, end-users of machinery have the information and parts they need to repair and fix their equipment. The only reason for greater access contemplated by right-to-repair policies is to circumvent safety and emissions standards or to access proprietary intellectual property.

Thank you for the Committee's consideration of my testimony.

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AED's Minnesota Dealer Locations

American State Equipment Co., Inc.	Duluth
American State Equipment Co., Inc.	Columbus
C & B Operations	Edgerton
C & B Operations	Jackson
C & B Operations	Luverne
C & B Operations	Pipestone
C & B Operations	Slayton
C & B Operations	Saint James
C & B Operations	Tracy
C & B Operations	Truman
C & B Operations	Worthington
General Equipment & Supplies, Inc.	Shakopee
General Equipment & Supplies, Inc	Hibbing
Hayden-Murphy Equipment	Minneapolis
Interstate PowerSystems	Lakeville
Lano Equipment, Inc.	Anoka
Lano Equipment, Inc.	Loretto
Lano Equipment, Inc.	Shakopee
MacQueen Equipment Inc.	Saint Paul
McCoy Construction & Forestry	Duluth
McCoy Construction & Forestry	Bemidji
McCoy Construction & Forestry	Grand Rapids
Nuss Truck & Equipment	East Bethel
Nuss Truck & Equipment	Roseville
Nuss Truck & Equipment	St. Cloud
Nuss Truck & Equipment	Duluth

Nuss Truck & Equipment	Mankato
Nuss Truck & Equipment	Roseville
Nuss Truck & Equipment	Rochester
Nuss Truck & Equipment	Burnsville
RB Scott Equipment	Clearwater
RDO Equipment Co.	Burnsville
RDO Equipment Co.	Rochester
RDO Equipment Co.	Sauk Rapids
RDO Equipment Co.	North Mankato
RDO Equipment Co.	Marshall
RDO Equipment Co.	Moorhead
RDO Equipment Co.	Rogers
RMS Rentals	Savage
Road Machinery & Supplies Co.	Virginia
Road Machinery & Supplies Co.	Duluth
Road Machinery & Supplies Co.	Savage
Ruffridge-Johnson Equipment Co. Inc.	Centerville
Swanston Equipment	Fergus Falls
Titan Machinery Inc.	Ada
Titan Machinery Inc.	Fergus Falls
Titan Machinery Inc.	Herman
Titan Machinery Inc.	Elbow Lake
Titan Machinery Inc.	Moorhead
Titan Machinery Inc.	Roseau
Titan Machinery Inc.	Pipestone
Titan Machinery Inc.	Hermantown
Titan Machinery Inc.	Shakopee
Titan Machinery Inc.	Crookston
Titan Machinery Inc.	Marshall
Titan Machinery Inc.	Rogers
Titan Machinery Inc.	Winger
United Rentals, Inc.	Roseville
United Rentals, Inc.	Minneapolis
Vermeer Sales & Service	Burnsville