

119TH CONGRESS
1ST SESSION

S. _____

To require original equipment manufacturers to make available certain documentation, parts, software, and tools with respect to farm equipment, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WELCH (for himself, Mr. FETTERMAN, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To require original equipment manufacturers to make available certain documentation, parts, software, and tools with respect to farm equipment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Freedom for Agricul-
5 tural Repair and Maintenance Act” or the “FARM Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **AUTHORIZED REPAIR PROVIDER.**—The term
9 “authorized repair provider”—

1 (A) means, with respect to farm equipment
2 of an original equipment manufacturer, a per-
3 son that has an arrangement with an OEM
4 under which the OEM grants such person a li-
5 cense to use a trade name, service mark, or
6 other proprietary identifier for the purposes of
7 offering diagnosis, maintenance, or repair serv-
8 ices for the farm equipment on behalf of such
9 person or the OEM; and

10 (B) includes, with respect to farm equip-
11 ment, an OEM who offers diagnosis, mainte-
12 nance, or repair services for the farm equip-
13 ment that the OEM manufactures or offers for
14 sale.

15 (2) COMMONLY AVAILABLE.—The term “com-
16 monly available” means any item that is commer-
17 cially available for purchase from more than a single
18 seller and is not solely made available by an OEM
19 for use on such OEM’s products.

20 (3) DOCUMENTATION.—The term “documenta-
21 tion” means any manual, diagram, reporting output,
22 service code description, schematic, library of diag-
23 nosed issues, software bill of material, or other guid-
24 ance or information used in effecting the services of
25 diagnosis, maintenance, or repair of farm equipment.

1 (4) FARM EQUIPMENT.—The term “farm equip-
2 ment” means equipment that is designed primarily
3 for use in a farm operation, including any combine,
4 tractor, sprayer, pivot, implement, or attachment, in-
5 cluding attachments and repair parts thereof used in
6 the planting, cultivating, irrigating, harvesting, or
7 ranching of agricultural products, excluding self-pro-
8 pelled machines designed primarily for the transpor-
9 tation of persons or property on a street or highway.

10 (5) FARM EQUIPMENT DATA.—The term “farm
11 equipment data” means transmitted or compiled in-
12 formation arising from the operation of farm equip-
13 ment or any part of farm equipment.

14 (6) FAIR AND REASONABLE TERMS.—The term
15 “fair and reasonable terms” means a part, tool, soft-
16 ware, or documentation that is made available either
17 directly from an OEM or through an authorized re-
18 pair provider and, with respect to a part, tool, soft-
19 ware, or documentation, the following:

20 (A) PARTS.—For parts, the following:

21 (i) COSTS.—Costs that are fair to
22 both parties, considering the agreed-upon
23 conditions, promised quality, and timeli-
24 ness of delivery.

25 (ii) TERMS.—Terms that—

1 (I) do not impose on an owner or
2 an independent repair provider any
3 substantial obligation to use or any
4 restriction on the use of the part to
5 diagnose, maintain, upgrade, repro-
6 gram, or repair farm equipment sold,
7 leased, or otherwise supplied by the
8 manufacturer, including a condition
9 that the owner or independent repair
10 provider become an authorized repair
11 provider of the manufacturer, or a re-
12 quirement that a part be registered,
13 paired with, or approved by the manu-
14 facturer or an authorized repair pro-
15 vider before such part is operational;
16 and

17 (II) prohibit a manufacturer
18 from imposing any additional cost or
19 burden that is not reasonably nec-
20 essary or is designed to be an impedi-
21 ment on the owner or independent re-
22 pair provider.

23 (B) TOOLS.—For tools, the following:

24 (i) COSTS FOR EQUIPMENT OWN-
25 ERS.—No charge for the tool, except for a

case in which a tool is requested in physical form, a charge may be included for the reasonable actual costs of preparing and sending the tool.

(ii) COSTS FOR INDEPENDENT REPAIR PROVIDERS.—Costs that are equivalent to the lowest actual cost for which the manufacturer offers the tool to an authorized repair provider, including any discount, rebate, or other financial incentive offered to an authorized repair provider.

(iii) TERMS.—Terms that—

(I) are equivalent to the most favorable terms under which a manufacturer offers the tools to an authorized repair provider, including the methods and timeliness of delivery of the tools;

(II) do not impose on an owner or an independent repair provider any substantial obligation to use or any restriction on the use of the tool to diagnose, maintain, upgrade, reprogram, or repair farm equipment sold, leased, or otherwise supplied by the manufacturer, including a condition

1 that the owner or independent repair
2 provider become an authorized repair
3 provider of the manufacturer, that the
4 owner or independent repair provider
5 have internet access to use the tool, or
6 a requirement that a tool be reg-
7 istered, paired with, or approved by
8 the manufacturer or an authorized re-
9 pair provider before such part or tool
10 is operational; and

11 (III) prohibit a manufacturer
12 from imposing any additional cost or
13 burden that is not reasonably nec-
14 essary or is designed to be an impedi-
15 ment on the owner or independent re-
16 pair provider.

17 (C) DOCUMENTATION.—For documenta-
18 tion, the following:

19 (i) COSTS.—No charge for the docu-
20 mentation, except for a case in which docu-
21 mentation is requested in physical printed
22 form, a charge may be included for the
23 reasonable actual costs of preparing and
24 sending the copy.

1 (ii) TERMS.—Terms that are equiva-
2 lent to the most favorable terms under
3 which a manufacturer offers the docu-
4 mentation to an authorized repair provider,
5 including the methods and timeliness of
6 delivery of the part, tool, software, or docu-
7 mentation.

8 (7) FIRMWARE.—The term “firmware” means a
9 software program or set of instructions programmed
10 on farm equipment, or on a part for such equip-
11 ment, to allow the equipment or part to commu-
12 nicate within a networked product or system or with
13 other computer hardware, including any relevant
14 patch or fix made by the OEM of such equipment
15 or part.

16 (8) INDEPENDENT REPAIR PROVIDER.—The
17 term “independent repair provider” means, with re-
18 spect to farm equipment, a person who—

19 (A) is not an authorized repair provider of
20 the farm equipment; and

21 (B) provides diagnosis, maintenance, or re-
22 pair services for the farm equipment.

23 (9) MAINTENANCE.—The term “maintenance”
24 has the meaning given such term in section 117(d)
25 of title 17, United States Code.

1 (10) ORIGINAL EQUIPMENT MANUFACTURER;
2 OEM.—The term “original equipment manufacturer”
3 or “OEM” means any person that manufactures
4 farm equipment and sells, leases, or otherwise sup-
5 plies such farm equipment to any other person.

6 (11) OWNER.—The term “owner” means any
7 person that owns or leases farm equipment other
8 than the OEM of such farm equipment.

9 (12) PART.—The term “part” means any com-
10 ponent or subcomponent of farm equipment that is
11 sold, supplied, or otherwise made available by an
12 OEM for purposes of maintaining, repairing, or di-
13 agnosing such farm equipment.

14 (13) REPAIR.—The term “repair” has the
15 meaning given such term in section 117(d) of title
16 17, United States Code.

17 (14) SOFTWARE BILL OF MATERIAL.—The term
18 “software bill of material” means a formal record
19 containing the details and supply chain relationships
20 of various components used in building software.

21 (15) TOOL.—The term “tool” means any soft-
22 ware program (including any software update),
23 hardware implement, or other apparatus used for re-
24 pair-related diagnostic testing, maintenance, or re-
25 pair of farm equipment, including software or any

1 other mechanism that provisions the farm equip-
2 ment, programs the farm equipment, pairs a new
3 part, calibrates functionality, or performs any other
4 function required to bring the equipment back to
5 fully functional condition.

6 (16) TRADE SECRET.—The term “trade secret”
7 has the meaning given such term in section 1839 of
8 title 18, United States Code.

9 **SEC. 3. REQUIREMENTS FOR OEMS.**

10 (a) IN GENERAL.—An original equipment manufac-
11 turer shall make available, on fair and reasonable terms—

12 (1) to any owner or independent repair pro-
13 vider, any documentation, part, software, firmware,
14 or tool intended for use in order to diagnose, main-
15 tain, upgrade, reprogram, or repair farm equipment;
16 and

17 (2) to the owner or with the authorization of
18 the owner to an independent repair provider, any
19 farm equipment data generated by the farm equip-
20 ment of the owner.

21 (b) DISABLING SECURITY FUNCTIONS.—An OEM
22 shall make available to any owner or independent repair
23 provider, on fair and reasonable terms, any documenta-
24 tion, part, software, or tool required to disable or enable

1 a technological protection measure or other security-re-
2 lated function of farm equipment.

3 (c) INTERACTION WITH COPYRIGHT LAWS.—

4 (1) IN GENERAL.—Notwithstanding section
5 1201(a) of title 17, United States Code, a person
6 may circumvent a technological measure that effec-
7 tively controls access to a work protected under such
8 title in connection with an activity protected under
9 this Act if the purpose of such circumvention is—

10 (A) to diagnose, maintain, upgrade, repro-
11 gram, or repair farm equipment;

12 (B) to the extent not provided for in sec-
13 tion 1201(f) of title 17, United States Code, to
14 enable interoperability with any computer pro-
15 gram contained in and that controls the func-
16 tioning of farm equipment or any product used
17 to diagnose, maintain, upgrade, reprogram, or
18 repair farm equipment;

19 (C) to the extent not provided for in sub-
20 sections (g) and (j) of section 1201 of title 17,
21 United States Code, to conduct security re-
22 search relating to farm equipment; or

23 (D) to enable non-infringing modifications
24 of any computer program contained in and that
25 controls the functioning of farm equipment or

1 any device used to diagnose, maintain, upgrade,
2 reprogram, or repair farm equipment.

3 (2) ACCESS TO CIRCUMVENTION TECH-
4 NOLOGIES.—Notwithstanding subsection (a) or (b)
5 of section 1201 of title 17, United States Code, a
6 person may, for the purposes described in paragraph
7 (1), manufacture, import, offer to the public, pro-
8 vide, or otherwise traffic in any technology, product,
9 service, device, component, or part thereof that is
10 primarily designed or produced for the purpose of or
11 use in circumventing—

12 (A) a technological measure that effectively
13 controls access to a work protected under such
14 title; or

15 (B) any protection afforded by a techno-
16 logical measure that effectively protects a right
17 of a copyright owner under such title in a work
18 or a portion thereof.

19 (d) ENSURING COMMON AVAILABILITY.—

20 (1) IN GENERAL.—An OEM that stops offering
21 any documentation, part, software, or tool to any
22 authorized repair provider, independent repair pro-
23 vider, or equipment owner shall be subject to civil
24 penalties under section 4(c).

1 (2) REPLACEMENT.—An OEM shall ensure
2 that any part required by the OEM's farm equip-
3 ment can be replaced without causing damage to the
4 equipment using—

5 (A) a commonly available tool; or

6 (B) a tool that is not commonly available
7 that is made available to owners or independent
8 repair providers by the OEM on fair and rea-
9 sonable terms.

10 **SEC. 4. ENFORCEMENT.**

11 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—
12 A violation of section 3 or a regulation promulgated under
13 this Act shall be treated as a violation of a rule defining
14 an unfair or deceptive act or practice under section
15 18(a)(1)(B) of the Federal Trade Commission Act (15
16 U.S.C. 57a(a)(1)(B)).

17 (b) POWERS OF THE COMMISSION.—

18 (1) IN GENERAL.—The Commission shall en-
19 force this Act and any regulations promulgated
20 under this Act in the same manner, by the same
21 means, and with the same jurisdiction, powers, and
22 duties as though all applicable terms and provisions
23 of the Federal Trade Commission Act (15 U.S.C. 41
24 et seq.) were incorporated into and made a part of
25 this Act.

1 (2) PRIVILEGES AND IMMUNITIES.—Subject to
2 subsection (c), any person who violates section 3 or
3 a regulation promulgated under this Act shall be
4 subject to the penalties and entitled to the privileges
5 and immunities provided in the Federal Trade Com-
6 mission Act (15 U.S.C. 41 et seq.).

7 (3) AUTHORITY PRESERVED.—Nothing in this
8 Act shall be construed to limit the authority of the
9 Commission under any other provision of law.

10 (c) ADDITIONAL PENALTIES AND AUTHORITY.—In
11 addition to the authority and penalties provided in the
12 Federal Trade Commission Act (15 U.S.C. 41 et seq.),
13 an OEM who violates section 3(d)(1) shall be subject to
14 a civil penalty—

15 (1) for the first violation, in an amount of
16 \$1,000 for each day such OEM was in violation;

17 (2) for the second violation, in an amount of
18 \$2,000 for each day such OEM was in violation; and

19 (3) for the third and subsequent violations, in
20 an amount of \$5,000 for each day such OEM was
21 in violation.

22 **SEC. 5. RULEMAKING.**

23 (a) IN GENERAL.—The Commission shall promulgate
24 rules as may be necessary to carry out this Act in accord-
25 ance with section 553 of title 5, United States Code.

1 (b) CLEAN AIR ACT.—The Commission shall promul-
2 gate rules that are consistent with the Clean Air Act (42
3 U.S.C. 7401 et seq.) and any related regulation, including
4 paragraphs (1) and (6) of section 1068.101(b) of title 40,
5 Code of Federal Regulations (or a successor regulation).

6 **SEC. 6. LIMITATIONS.**

7 Nothing in this Act may be construed—

8 (1) to require an OEM to divulge trade secrets
9 to an owner or an independent service provider, ex-
10 cept as necessary to provide access to repair mate-
11 rial or process on fair and reasonable terms, con-
12 sistent with this Act;

13 (2) to alter the terms of an agreement between
14 an OEM and an authorized repair provider, except
15 with respect to any provision of such an agreement
16 that would limit the obligations of an OEM under
17 this Act;

18 (3) to require an authorized repair provider to
19 make any documentation, part, or tool for farm
20 equipment made by an OEM with which the author-
21 ized repair provider does not have an arrangement
22 described in section 2(1);

23 (4) to require an OEM to provide any part or
24 equipment solely used in the development of their
25 products; or

1 (5) to allow—

2 (A) any modification that permanently de-
3 activates a safety notification system when farm
4 equipment is being repaired;

5 (B) access to any function of a tool that
6 enables the owner or independent repair pro-
7 vider to change the settings of farm equipment
8 so as to bring the equipment permanently out
9 of compliance with any applicable safety or
10 emissions laws;

11 (C) any violation of emissions laws or
12 copyright laws; or

13 (D) any other illegal modification activi-
14 ties.