

118TH CONGRESS
1ST SESSION

H. R. 5604

To require original equipment manufacturers to make available certain documentation, parts, software, and tools with respect to electronics-enabled implements of agriculture, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2023

Ms. PEREZ introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To require original equipment manufacturers to make available certain documentation, parts, software, and tools with respect to electronics-enabled implements of agriculture, 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 “Agricultural Right to
5 Repair Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) AUTHORIZED REPAIR PROVIDER.—The term
2 “authorized repair provider”—

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

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

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

22 (3) DOCUMENTATION.—The term “documenta-
23 tion” means any manual, diagram, reporting output,
24 service code description, schematic, library of diag-
25 nosed issues, software bill of material, or other guid-

1 ance or information used in effecting the services of
2 diagnosis, maintenance, or repair of farm equipment.

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

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

16 (6) EMBEDDED SOFTWARE.—The term “em-
17 bedded software” means a programmable instruction
18 provided on firmware delivered with farm equipment.

19 (7) FAIR AND REASONABLE TERMS.—The term
20 “fair and reasonable terms” means a part, tool, soft-
21 ware, or documentation is made available either di-
22 rectly from an OEM or through an authorized repair
23 provider and, with respect to a part, tool, software,
24 or documentation, the following:

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

1 (i) COSTS.—Costs that are fair to
2 both parties, considering the agreed-upon
3 conditions, promised quality, and timeli-
4 ness of delivery.

5 (ii) TERMS.—Terms that—

6 (I) do not impose on an owner or
7 an independent repair provider any
8 substantial obligation to use or any
9 restriction on the use of the part to
10 diagnose, maintain, or repair farm
11 equipment sold, leased, or otherwise
12 supplied by the manufacturer, includ-
13 ing a condition that the owner or
14 independent repair provider become
15 an authorized repair provider of the
16 manufacturer, or a requirement that a
17 part be registered, paired with, or ap-
18 proved by the manufacturer or an au-
19 thorized repair provider before such
20 part is operational; and

21 (II) prohibit a manufacturer
22 from imposing any additional cost or
23 burden that is not reasonably nec-
24 essary or is designed to be an impedi-

1 ment on the owner or independent re-
2 pair provider.

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

4 (i) COSTS FOR FARMERS.—No charge
5 for the tool, except for a case in which a
6 tool is requested in physical form, a charge
7 may be included for the reasonable actual
8 costs of preparing and sending the tool.

9 (ii) COSTS FOR INDEPENDENT REPAIR
10 PROVIDERS.—Costs that are equivalent to
11 the lowest actual cost for which the manu-
12 facturer offers the tool to an authorized re-
13 pair provider, including any discount, re-
14 bate, or other financial incentive offered to
15 an authorized repair provider.

16 (iii) TERMS.—Terms that—

17 (I) are equivalent to the most fa-
18 vorable terms under which a manufac-
19 turer offers the tools to an authorized
20 repair provider, including the methods
21 and timeliness of delivery of the tools;

22 (II) do not impose on an owner
23 or an independent repair provider any
24 substantial obligation to use or any
25 restriction on the use of the tool to di-

1 agnose, maintain, or repair farm
2 equipment sold, leased, or otherwise
3 supplied by the manufacturer, includ-
4 ing a condition that the owner or
5 independent repair provider become
6 an authorized repair provider of the
7 manufacturer, that the owner or inde-
8 pendent repair provider have internet
9 access to use the tool, or a require-
10 ment that a tool be registered, paired
11 with, or approved by the manufac-
12 turer or an authorized repair provider
13 before such part or tool is operational;
14 and

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

21 (C) DOCUMENTATION.—For documenta-
22 tion the following:

23 (i) COSTS.—No charge for the docu-
24 mentation, except for a case in which docu-
25 mentation is requested in physical printed

1 form, a charge may be included for the
2 reasonable actual costs of preparing and
3 sending the copy.

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

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

19 (9) INDEPENDENT REPAIR PROVIDER.—The
20 term “independent repair provider” means, with re-
21 spect to farm equipment, a person who—

22 (A) is not an authorized repair provider of
23 the farm equipment; and

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

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

18 (14) TOOL.—The term “tool” means any soft-
19 ware program (including any software update),
20 hardware implement, or other apparatus used for re-
21 pair-related diagnostic testing, maintenance, or re-
22 pair of farm equipment, including software or any
23 other mechanism that provisions the implement, pro-
24 grams the implement, pairs a new part, calibrates
25 functionality, or performs any other function re-

1 quired to bring the implement back to fully func-
2 tional condition.

3 (15) TRADE SECRET.—The term “trade secret”
4 has the meaning given such term in section 1839 of
5 title 18, United States Code.

6 **SEC. 3. REQUIREMENTS FOR OEMS.**

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

9 (1) to any owner or independent repair pro-
10 vider, any documentation, part, software, firmware,
11 or tool intended for use in order to diagnose, main-
12 tain, or repair farm equipment; and

13 (2) to the owner or with the authorization of
14 the owner to an independent repair provider, any
15 farm equipment data generated by the farm equip-
16 ment of the owner.

17 (b) DISABLING SECURITY FUNCTIONS.—An OEM
18 shall make available to any owner or independent repair
19 provider, on fair and reasonable terms, any documenta-
20 tion, part, software, or tool required to disable or enable
21 an electronic security lock or other security-related func-
22 tion of farm equipment.

23 (c) INTERACTION WITH COPYRIGHT LAWS.—

24 (1) IN GENERAL.—Notwithstanding section
25 1201(a) of title 17, United States Code, a person

1 may circumvent a technological measure that effec-
2 tively controls access to a work protected under such
3 title in connection with an activity protected under
4 this Act if the purpose of such circumvention is to—

5 (A) diagnose, maintain, upgrade, repro-
6 gram, or repair farm equipment;

7 (B) enable interoperability with any com-
8 puter program or device used in farm equip-
9 ment;

10 (C) conduct security research relating to
11 farm equipment; or

12 (D) enable non-infringing modification of
13 any computer program or device used in farm
14 equipment.

15 (2) ACCESS TO TOOLS.—Notwithstanding sec-
16 tion 1201(a) of title 17, United States Code, a per-
17 son may manufacture, import, offer to the public,
18 provide, or otherwise traffic in any technology, prod-
19 uct, service, device, component, or part thereof that
20 is primarily designed or produced for the purpose of
21 or use in circumventing a technological measure that
22 effectively controls access to a work protected under
23 such title for the purposes described in paragraph
24 (1).

25 (d) ENSURING COMMON AVAILABILITY.—

1 (1) IN GENERAL.—Notwithstanding any provi-
2 sion of title 17 or 35, United States Code, at such
3 time as an OEM stops offering any documentation,
4 part, software, or tool to any authorized repair pro-
5 vider, any copyright or patent held by the OEM with
6 respect to such documentation, part, software, or
7 tool shall be placed in the public domain.

8 (2) REPLACEMENT.—An OEM shall ensure
9 that any part required by the OEM’s farm equip-
10 ment can be replaced without causing damage to the
11 equipment using—

12 (A) a commonly available tool; or

13 (B) a tool that is not commonly available
14 that is made available to owners or independent
15 repair providers by the OEM on fair and rea-
16 sonable terms.

17 **SEC. 4. ENFORCEMENT.**

18 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—
19 A violation of section 3 or a regulation promulgated under
20 this Act shall be treated as a violation of a rule defining
21 an unfair or deceptive act or practice under section
22 18(a)(1)(B) of the Federal Trade Commission Act (15
23 U.S.C. 57a(a)(1)(B)).

24 (b) POWERS OF THE COMMISSION.—

1 (1) IN GENERAL.—The Commission shall en-
2 force this Act and any regulations promulgated
3 under this Act in the same manner, by the same
4 means, and with the same jurisdiction, powers, and
5 duties as though all applicable terms and provisions
6 of the Federal Trade Commission Act (15 U.S.C. 41
7 et seq.) were incorporated into and made a part of
8 this Act.

9 (2) PRIVILEGES AND IMMUNITIES.—Any person
10 who violates section 3 or a regulation promulgated
11 under this Act shall be subject to the penalties and
12 entitled to the privileges and immunities provided in
13 the Federal Trade Commission Act (15 U.S.C. 41 et
14 seq.).

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

18 **SEC. 5. RULEMAKING.**

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

22 (b) CLEAN AIR ACT.—The Commission shall promul-
23 gate rules that are consistent with the Clean Air Act (42
24 U.S.C. 7401 et seq.) and any related regulation, including

1 section 1068.101(b)(1) of title 40, Code of Federal Regu-
2 lations, and section 1068.101(b)(6) of such title.

3 **SEC. 6. LIMITATIONS.**

4 Nothing in this Act may be construed—

5 (1) to require an OEM to divulge trade secrets
6 to an owner or an independent service provider, ex-
7 cept as necessary to provide access to any necessary
8 repair material or process on fair and reasonable
9 terms;

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

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

20 (4) to require an OEM to provide any part or
21 equipment solely used in the development of their
22 products; or

23 (5) to allow—

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

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

10 (C) the evasion of emissions laws or copy-
11 right laws; or

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

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