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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

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 HOUSE OF REPRESENTATIVES

Ms. PEREZ introduced the following bill; which was 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:

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, pivot, implement, or attachment, in-
7 cluding attachments and repair parts thereof used in
8 the 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) FAIR AND REASONABLE TERMS.—The term
17 “fair and reasonable terms” means a part, tool, soft-
18 ware, or documentation that is made available either
19 directly from an OEM or through an authorized re-
20 pair provider and, with respect to a part, tool, soft-
21 ware, or documentation, the following:

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

23 (i) COSTS.—Costs that are fair to
24 both parties, considering the agreed-upon

1 conditions, promised quality, and timeli-
2 ness of delivery.

3 (ii) TERMS.—Terms that—

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

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

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

2 (i) COSTS FOR EQUIPMENT OWN-
3 ERS.—No charge for the tool, except for a
4 case in which a tool is requested in phys-
5 ical form, a charge may be included for the
6 reasonable actual costs of preparing and
7 sending the tool.

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

15 (iii) TERMS.—Terms that—

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

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

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

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

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

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

1 reasonable actual costs of preparing and
2 sending the copy.

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

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

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

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

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

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

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

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

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

17 (13) REPAIR.—The term “repair” has the
18 meaning given such term in section 117(d) of title
19 17, United States Code.

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

24 (15) TOOL.—The term “tool” means any soft-
25 ware program (including any software update),

1 hardware implement, or other apparatus used for re-
2 pair-related diagnostic testing, maintenance, or re-
3 pair of farm equipment, including software or any
4 other mechanism that provisions the farm equip-
5 ment, programs the farm equipment, pairs a new
6 part, calibrates functionality, or performs any other
7 function required to bring the equipment back to
8 fully functional condition.

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

12 **SEC. 3. REQUIREMENTS FOR OEMS.**

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

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

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

24 (b) DISABLING SECURITY FUNCTIONS.—An OEM
25 shall make available to any owner or independent repair

1 provider, on fair and reasonable terms, any documenta-
2 tion, part, software, or tool required to disable or enable
3 a technological protection measure or other security-re-
4 lated function of farm equipment.

5 (c) INTERACTION WITH COPYRIGHT LAWS.—

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

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

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

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

1 (D) to enable non-infringing modifications
2 of any computer program contained in and that
3 controls the functioning of farm equipment or
4 any device used to diagnose, maintain, upgrade,
5 reprogram, or repair farm equipment.

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

15 (A) a technological measure that effectively
16 controls access to a work protected under such
17 title; or

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

22 (d) ENSURING COMMON AVAILABILITY.—

23 (1) IN GENERAL.—An OEM that stops offering
24 any documentation, part, software, or tool to any
25 authorized repair provider, independent repair pro-

1 vider, or equipment owner shall be subject to civil
2 penalties under section 4(c).

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

7 (A) a commonly available tool; or

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

12 **SEC. 4. ENFORCEMENT.**

13 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—
14 A violation of section 3 or a regulation promulgated under
15 this Act shall be treated as a violation of a rule defining
16 an unfair or deceptive act or practice under section
17 18(a)(1)(B) of the Federal Trade Commission Act (15
18 U.S.C. 57a(a)(1)(B)).

19 (b) POWERS OF THE COMMISSION.—

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

1 et seq.) were incorporated into and made a part of
2 this Act.

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

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

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

17 (1) for the first violation, in an amount of
18 \$1,000 for each day such OEM was in violation;

19 (2) for the second violation, in an amount of
20 \$2,000 for each day such OEM was in violation; and

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

1 **SEC. 5. RULEMAKING.**

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

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

10 **SEC. 6. LIMITATIONS.**

11 Nothing in this Act may be construed—

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

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

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

1 (4) to require an OEM to provide any part or
2 equipment solely used in the development of their
3 products; or

4 (5) to allow—

5 (A) any modification that permanently de-
6 activates a safety notification system when farm
7 equipment is being repaired;

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

14 (C) any violation of emissions laws or
15 copyright laws; or

16 (D) any other illegal modification activi-
17 ties.