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S. 3549

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 SENATE OF THE UNITED STATES

FEBRUARY 1, 2022

Mr. TESTER (for himself and Mr. LUJÁN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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

(A) means, with respect to an electronics-enabled implement of agriculture of an original equipment manufacturer, a person that has an arrangement with an OEM under which the OEM grants such person a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering diagnosis, maintenance, or repair services for the electronics-enabled implement of agriculture on behalf of such person or the OEM; and

(B) includes, with respect to digital electronic equipment, an OEM who offers diagnosis, maintenance, or repair services for the digital electronic equipment that the OEM manufactures or offers for sale.

(2) COMMONLY AVAILABLE.—The term “commonly available” means any item that is commercially available for purchase from more than a single seller and is not solely made available by an OEM for use on such OEM’s products.

(3) DIGITAL ELECTRONIC EQUIPMENT; EQUIPMENT.—The term “digital electronic equipment” or “equipment” means any product that depends for its

functioning, in whole or in part, on digital electronics embedded in or attached to the product.

(4) DOCUMENTATION.—The term “documentation” means any manual, diagram, reporting output, service code description, schematic, library of diagnosed issues, software bill of material, or other guidance or information used in effecting the services of diagnosis, maintenance, or repair of an electronics-enabled implement of agriculture.

(5) ELECTRONICS-ENABLED IMPLEMENT OF AGRICULTURE.—The term “electronics-enabled implement of agriculture” means equipment that—

(A) is designed for agricultural purposes;

(B) is exclusively used by the owner of the equipment in the conduct of the agricultural operations of the owner; and

(C) depends for its functioning, in whole or in part, on digital electronic equipment.

(6) EMBEDDED SOFTWARE.—The term “embedded software” means a programmable instruction provided on firmware delivered with an electronics-enabled implement of agriculture.

(7) FAIR AND REASONABLE TERMS.—The term “fair and reasonable terms” means, with respect to

1 a part, tool, software, or documentation offered by
2 an OEM:

3 (A) IN GENERAL.—

4 (i) COSTS.—Costs that are equivalent
5 to the lowest actual cost for which the
6 OEM offers the part, tool, software, or
7 documentation to an authorized repair pro-
8 vider, including any discount, rebate, or
9 other financial incentive offered to an au-
10 thorized repair provider.

11 (ii) TERMS.—Terms that—

12 (I) are equivalent to the most fa-
13 vorable terms under which an OEM
14 offers the part, tool, software, or doc-
15 umentation to an authorized repair
16 provider, including the methods and
17 timeliness of delivery of the part, tool,
18 software, or documentation;

19 (II) do not impose on an owner
20 or an independent repair provider any
21 substantial obligation to use or any
22 restriction on the use of the part, tool,
23 software, or documentation to diag-
24 nose, maintain, or repair an elec-
25 tronics-enabled implement of agri-

1 culture made by the OEM, including a
2 condition that the owner or inde-
3 pendent repair provider become an
4 authorized repair provider or a re-
5 quirement that a part or tool be reg-
6 istered, paired with, or approved by
7 the OEM or an authorized repair pro-
8 vider before such part or tool is oper-
9 ational; and

10 (III) prohibit an OEM or an au-
11 thorized repair provider from impos-
12 ing any additional cost or burden that
13 is not reasonably necessary or is de-
14 signed to be an impediment on the
15 owner or independent repair provider.

16 (B) FOR DOCUMENTATION.—With respect
17 to documentation, that the documentation is
18 made available by the OEM at no charge, ex-
19 cept that, when the documentation is requested
20 in physical printed form, a charge may be in-
21 cluded for the reasonable actual costs of pre-
22 paring and sending the copy.

23 (C) FOR SOFTWARE TOOLS.—With respect
24 to a software tool, that the software tool is
25 made available by the OEM at no charge and

1 without requiring authorization or internet ac-
2 cess for use or operation of the software tool,
3 or imposing impediments to access or use (such
4 as not making the software tool available for
5 download, and, upon request, delivery via phys-
6 ical storage media), in the course of using the
7 tool to diagnose, maintain, or repair and enable
8 full functionality of an electronics-enabled im-
9 plement of agriculture, or in a manner that im-
10 pairs the efficient and cost-effective perform-
11 ance of any such diagnosis, maintenance, or re-
12 pair.

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

21 (9) INDEPENDENT REPAIR PROVIDER.—The
22 term “independent repair provider” means, with re-
23 spect to an electronics-enabled implement of agri-
24 culture, a person who—

1 (A) is not an authorized repair provider of
2 the electronics-enabled implement of agri-
3 culture; and

4 (B) provides diagnosis, maintenance, or re-
5 pair services for the electronics-enabled imple-
6 ment of agriculture.

7 (10) ORIGINAL EQUIPMENT MANUFACTURER;
8 OEM.—The term “original equipment manufacturer”
9 or “OEM” means any person that manufactures an
10 electronics-enabled implement of agriculture and
11 sells, leases, or otherwise supplies such implement to
12 any other person.

13 (11) OWNER.—The term “owner” means any
14 person that owns or leases an electronics-enabled im-
15 plement of agriculture other than the OEM of such
16 electronics-enabled implement of agriculture.

17 (12) PART.—The term “part” means any com-
18 ponent or subcomponent of an electronics-enabled
19 implement of agriculture that is sold, supplied, or
20 otherwise made available by an OEM for purposes of
21 maintaining, repairing, or diagnosing such elec-
22 tronics-enabled implement of agriculture.

23 (13) SOFTWARE BILL OF MATERIAL.—The term
24 “software bill of material” means a formal record

1 containing the details and supply chain relationships
2 of various components used in building software.

3 (14) TOOL.—The term “tool” means any soft-
4 ware program (including any software update),
5 hardware implement, or other apparatus used for re-
6 pair-related diagnostic testing, maintenance, or re-
7 pair of an electronics-enabled implement of agri-
8 culture, including software or any other mechanism
9 that provisions the implement, programs the imple-
10 ment, pairs a new part, calibrates functionality, or
11 performs any other function required to bring the
12 implement back to fully functional condition.

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

16 **SEC. 3. REQUIREMENTS FOR OEMS.**

17 (a) FAIR AND REASONABLE TERMS.—An original
18 equipment manufacturer shall make available, on fair and
19 reasonable terms, to any owner or independent repair pro-
20 vider any documentation, part, software, or tool required
21 to diagnose, maintain, or repair digital electronic equip-
22 ment for any electronics-enabled implement of agriculture.

23 (b) DISABLING SECURITY FUNCTIONS.—An OEM
24 shall make available to any owner or independent repair
25 provider, on fair and reasonable terms, any documenta-

1 tion, part, software, or tool required to disable or enable
 2 an electronic security lock or other security-related func-
 3 tion of an electronics-enabled implement of agriculture.

4 (c) INTERACTION WITH COPYRIGHT LAWS.—

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

11 (A) diagnose, maintain, upgrade, repro-
 12 gram, or repair an electronics-enabled imple-
 13 ment of agriculture;

14 (B) enable interoperability with any com-
 15 puter program or device used in an electronics-
 16 enabled implement of agriculture;

17 (C) conduct security research relating to
 18 an electronics-enabled implement of agriculture;
 19 or

20 (D) enable non-infringing modification of
 21 any computer program or device used in an
 22 electronics-enabled implement of agriculture.

23 (2) ACCESS TO TOOLS.—Notwithstanding sec-
 24 tion 1201(a) of title 17, United States Code, a per-
 25 son may manufacture, import, offer to the public,

1 provide, or otherwise traffic in any technology, prod-
2 uct, service, device, component, or part thereof that
3 is primarily designed or produced for the purpose of
4 or use in circumventing a technological measure that
5 effectively controls access to a work protected under
6 such title for the purposes described in paragraph
7 (1).

8 (d) ENSURING COMMON AVAILABILITY.—

9 (1) IN GENERAL.—Notwithstanding any provi-
10 sion of title 17 or 35, United States Code, at such
11 time as an OEM stops offering any documentation,
12 part, software, or tool to any authorized repair pro-
13 vider, any copyright or patent held by the OEM with
14 respect to such documentation, part, software, or
15 tool shall be placed in the public domain.

16 (2) REPLACEMENT.—An OEM shall ensure
17 that any part required by the OEM’s electronics-en-
18 abled implement of agriculture can be replaced with-
19 out causing damage to the equipment using—

20 (A) a commonly available tool; or

21 (B) a tool that is not commonly available
22 that is made available to owners or independent
23 repair providers by the OEM on fair and rea-
24 sonable terms.

1 **SEC. 4. ENFORCEMENT.**

2 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—

3 A violation of section 3 or a regulation promulgated under
4 this Act shall be treated as a violation of a rule defining
5 an unfair or deceptive act or practice under section
6 18(a)(1)(B) of the Federal Trade Commission Act (15
7 U.S.C. 57a(a)(1)(B)).

8 (b) POWERS OF THE COMMISSION.—

9 (1) IN GENERAL.—The Commission shall en-
10 force this Act and any regulations promulgated
11 under this Act in the same manner, by the same
12 means, and with the same jurisdiction, powers, and
13 duties as though all applicable terms and provisions
14 of the Federal Trade Commission Act (15 U.S.C. 41
15 et seq.) were incorporated into and made a part of
16 this Act.

17 (2) PRIVILEGES AND IMMUNITIES.—Any person
18 who violates section 3 or a regulation promulgated
19 under this Act shall be subject to the penalties and
20 entitled to the privileges and immunities provided in
21 the Federal Trade Commission Act (15 U.S.C. 41 et
22 seq.).

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

1 **SEC. 5. RULEMAKING.**

2 The Commission shall promulgate in accordance with
3 section 553 of title 5, United States Code, such rules as
4 may be necessary to carry out this Act.

5 **SEC. 6. LIMITATIONS.**

6 Nothing in this Act shall be construed—

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

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

17 (3) to require an authorized repair provider to
18 make any documentation, part, or tool relating to an
19 electronics-enabled implement of agriculture avail-
20 able on fair and reasonable terms unless the author-
21 ized repair provider is the OEM of such implement;

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

25 (5) to allow—

1 (A) any modification that permanently de-
2 activates a safety notification system when an
3 electronics-enabled implement of agriculture is
4 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 an electronics-
8 enabled implement of agriculture so as to bring
9 the equipment permanently out of compliance
10 with any applicable safety or emissions laws;

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

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

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