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

IN THE SENATE OF THE UNITED STATES

Mr. Tester introduced the following bill; which was read twice and referred
to the Committee on ______________________

A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Agricultural Right to
Repair Act”.

SEC. 2. DEFINITIONS.

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

(A) IN GENERAL.—

(i) COSTS.—Costs that are equivalent to the lowest actual cost for which the OEM offers the part, tool, software, or documentation to an authorized repair provider, including any discount, rebate, or other financial incentive offered to an authorized repair provider.

(ii) TERMS.—Terms that—

(I) are equivalent to the most favorable terms under which an OEM offers the part, tool, software, or documentation to an authorized repair provider, including the methods and timeliness of delivery of the part, tool, software, or documentation;

(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 part, tool, software, or documentation to diagnose, maintain, or repair an electronics-enabled implement of agri-
culture made by the OEM, including a
condition that the owner or inde-
pendent repair provider become an
authorized repair provider or a re-
quirement that a part or tool be reg-
istered, paired with, or approved by
the OEM or an authorized repair pro-
vider before such part or tool is oper-
ational; and

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

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

(C) FOR SOFTWARE TOOLS.—With respect
to a software tool, that the software tool is
made available by the OEM at no charge and
without requiring authorization or internet access for use or operation of the software tool, or imposing impediments to access or use (such as not making the software tool available for download, and, upon request, delivery via physical storage media), in the course of using the tool to diagnose, maintain, or repair and enable full functionality of an electronics-enabled implement of agriculture, or in a manner that impairs the efficient and cost-effective performance of any such diagnosis, maintenance, or repair.

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

(9) **INDEPENDENT REPAIR PROVIDER.**—The term “independent repair provider” means, with respect to an electronics-enabled implement of agriculture, a person who—
(A) is not an authorized repair provider of
    the electronics-enabled implement of agri-
    culture; and

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

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

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

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

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

(14) Tool.—The term “tool” means any software program (including any software update), hardware implement, or other apparatus used for repair-related diagnostic testing, maintenance, or repair of an electronics-enabled implement of agriculture, including software or any other mechanism that provisions the implement, programs the implement, pairs a new part, calibrates functionality, or performs any other function required to bring the implement back to fully functional condition.

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

SEC. 3. REQUIREMENTS FOR OEMS.

(a) Fair and Reasonable Terms.—An original equipment manufacturer shall make available, on fair and reasonable terms, to any owner or independent repair provider any documentation, part, software, or tool required to diagnose, maintain, or repair digital electronic equipment for any electronics-enabled implement of agriculture.

(b) Disabling Security Functions.—An OEM shall make available to any owner or independent repair provider, on fair and reasonable terms, any documenta-
tion, part, software, or tool required to disable or enable
an electronic security lock or other security-related func-
tion of an electronics-enabled implement of agriculture.

(c) INTERACTION WITH COPYRIGHT LAWS.—

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

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

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

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

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

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

(d) ENSURING COMMON AVAILABILITY.—

(1) IN GENERAL.—Notwithstanding any provision of title 17 or 35, United States Code, at such time as an OEM stops offering any documentation, part, software, or tool to any authorized repair provider, any copyright or patent held by the OEM with respect to such documentation, part, software, or tool shall be placed in the public domain.

(2) REPLACEMENT.—An OEM shall ensure that any part required by the OEM’s electronics-enabled implement of agriculture can be replaced without causing damage to the equipment using—

(A) a commonly available tool; or

(B) a tool that is not commonly available that is made available to owners or independent repair providers by the OEM on fair and reasonable terms.
SEC. 4. ENFORCEMENT.

(a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—

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

(b) POWERS OF THE COMMISSION.—

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

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

(3) AUTHORITY PRESERVED.—Nothing in this Act shall be construed to limit the authority of the Commission under any other provision of law.
SEC. 5. RULEMAKING.

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

SEC. 6. LIMITATIONS.

Nothing in this Act shall be construed—

(1) to require an OEM to divulge trade secrets to an owner or an independent service provider, except as necessary to provide access to any necessary repair material or process on fair and reasonable terms;

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

(3) to require an authorized repair provider to make any documentation, part, or tool relating to an electronics-enabled implement of agriculture available on fair and reasonable terms unless the authorized repair provider is the OEM of such implement;

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

(5) to allow—
(A) any modification that permanently de-
activates a safety notification system when an
electronics-enabled implement of agriculture is
being repaired;

(B) access to any function of a tool that
enables the owner or independent repair pro-
vider to change the settings of an electronics-
enabled implement of agriculture so as to bring
the equipment permanently out of compliance
with any applicable safety or emissions laws;

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

(D) any other illegal modification activi-
ties.