

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0678.01 Jennifer Berman x3286

HOUSE BILL 21-1199

HOUSE SPONSORSHIP

Titone,

SENATE SPONSORSHIP

(None),

House Committees
Business Affairs & Labor

Senate Committees

A BILL FOR AN ACT

101 CONCERNING A REQUIREMENT THAT A MANUFACTURER OF DIGITAL
102 ELECTRONIC EQUIPMENT FACILITATE THE REPAIR OF THE
103 EQUIPMENT BY PROVIDING PERSONS OTHER THAN AUTHORIZED
104 REPAIR PROVIDERS AFFILIATED WITH THE MANUFACTURER
105 WITH THE RESOURCES NEEDED TO REPAIR THE EQUIPMENT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Usually, an owner of digital electronic equipment (equipment), such as cell phones and tablets, must seek diagnostic, maintenance, or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 **6-1-1302. Definitions.** AS USED IN THIS PART 13, UNLESS THE
2 CONTEXT OTHERWISE REQUIRES:

3 (1) (a) "AUTHORIZED REPAIR PROVIDER" MEANS A PERSON THAT
4 IS UNAFFILIATED WITH AN ORIGINAL EQUIPMENT MANUFACTURER OTHER
5 THAN THROUGH AN ARRANGEMENT WITH THE MANUFACTURER, WHETHER
6 FOR A DEFINITE OR AN INDEFINITE PERIOD, IN WHICH THE MANUFACTURER,
7 FOR THE PURPOSE OF OFFERING TO PROVIDE SERVICES FOR DIGITAL
8 ELECTRONIC EQUIPMENT TO AN OWNER OF THE EQUIPMENT, GRANTS THE
9 PERSON:

10 (I) A LICENSE TO USE A TRADE NAME, SERVICE MARK, OR OTHER
11 PROPRIETARY IDENTIFIER; OR

12 (II) AUTHORIZATION UNDER ANY OTHER ARRANGEMENT TO ACT
13 ON BEHALF OF THE MANUFACTURER.

14 (b) "AUTHORIZED REPAIR PROVIDER" INCLUDES AN ORIGINAL
15 EQUIPMENT MANUFACTURER THAT OFFERS TO PROVIDE SERVICES TO AN
16 OWNER FOR THE MANUFACTURER'S DIGITAL ELECTRONIC EQUIPMENT IF
17 THE MANUFACTURER DOES NOT HAVE, WITH RESPECT TO THE EQUIPMENT,
18 AN ARRANGEMENT WITH AN UNAFFILIATED PERSON, AS DESCRIBED IN
19 SUBSECTION (1)(a) OF THIS SECTION.

20 (2) "DIGITAL ELECTRONIC EQUIPMENT" MEANS A PRODUCT THAT,
21 FOR ITS FUNCTIONALITY, DEPENDS IN WHOLE OR IN PART ON DIGITAL
22 ELECTRONICS EMBEDDED IN, OR ATTACHED TO, THE PRODUCT.

23 (3) "DOCUMENTATION" MEANS A MANUAL; DIAGRAM, INCLUDING
24 A SCHEMATIC DIAGRAM; REPORTING OUTPUT; SERVICE CODE DESCRIPTION;
25 OR SIMILAR TYPE OF INFORMATION, WHETHER IN AN ELECTRONIC OR
26 TANGIBLE FORMAT, THAT AN ORIGINAL EQUIPMENT MANUFACTURER
27 PROVIDES TO AN AUTHORIZED REPAIR PROVIDER FOR PURPOSES OF

1 ASSISTING THE AUTHORIZED REPAIR PROVIDER WITH SERVICES PERFORMED
2 ON DIGITAL ELECTRONIC EQUIPMENT.

3 (4) "EMBEDDED SOFTWARE":

4 (a) MEANS PROGRAMMABLE INSTRUCTIONS PROVIDED ON
5 FIRMWARE DELIVERED WITH DIGITAL ELECTRONIC EQUIPMENT, OR WITH A
6 PART FOR DIGITAL ELECTRONIC EQUIPMENT, FOR THE PURPOSE OF
7 RESTORING OR IMPROVING EQUIPMENT OPERATION; AND

8 (b) INCLUDES ALL RELEVANT PATCHES AND FIXES THAT THE
9 MANUFACTURER MAKES TO DIGITAL ELECTRONIC EQUIPMENT, OR TO ANY
10 PART OF DIGITAL ELECTRONIC EQUIPMENT, FOR THE PURPOSE OF
11 RESTORING OR IMPROVING EQUIPMENT OPERATION.

12 (5) (a) (I) "FAIR AND REASONABLE TERMS AND COSTS", WITH
13 RESPECT TO OBTAINING DOCUMENTATION, PARTS, EMBEDDED SOFTWARE,
14 FIRMWARE, OR TOOLS FROM AN ORIGINAL EQUIPMENT MANUFACTURER TO
15 PROVIDE SERVICES, MEANS TERMS AND COSTS THAT ARE EQUIVALENT TO
16 THE MOST FAVORABLE TERMS AND COSTS THAT THE MANUFACTURER
17 OFFERS TO AN AUTHORIZED REPAIR PROVIDER.

18 (II) COSTS CONSIDERED UNDER SUBSECTION (5)(a)(I) OF THIS
19 SECTION MUST BE CALCULATED USING NET COSTS INCURRED, ACCOUNTING
20 FOR ANY DISCOUNTS, REBATES, OR INCENTIVES OFFERED.

21 (b) WITH RESPECT TO DOCUMENTATION, "FAIR AND REASONABLE
22 TERMS AND COSTS" MEANS THAT THE ORIGINAL EQUIPMENT
23 MANUFACTURER PROVIDES THE DOCUMENTATION, INCLUDING ANY
24 RELEVANT UPDATES TO THE DOCUMENTATION, AT NO CHARGE; EXCEPT
25 THAT THE MANUFACTURER MAY CHARGE A FEE FOR A PRINTED COPY OF
26 THE DOCUMENTATION IF THE AMOUNT OF THE FEE COVERS ONLY THE
27 MANUFACTURER'S ACTUAL COST TO PREPARE AND SEND THE PRINTED COPY

1 OF THE DOCUMENTATION.

2 (c) WITH RESPECT TO TOOLS THAT ARE SOFTWARE PROGRAMS,
3 "FAIR AND REASONABLE TERMS AND COSTS" MEANS THAT THE ORIGINAL
4 EQUIPMENT MANUFACTURER PROVIDES THE TOOLS THAT ARE SOFTWARE
5 PROGRAMS:

6 (I) AT NO CHARGE AND WITHOUT REQUIRING AUTHORIZATION OR
7 INTERNET ACCESS OR OTHERWISE IMPOSING IMPEDIMENTS TO ACCESS OR
8 USE;

9 (II) IN THE COURSE OF EFFECTUATING THE DIAGNOSIS,
10 MAINTENANCE, OR REPAIR AND ENABLING THE FULL FUNCTIONALITY OF
11 THE DIGITAL ELECTRONIC EQUIPMENT; AND

12 (III) IN A MANNER THAT DOES NOT IMPAIR THE EFFICIENT AND
13 COST-EFFECTIVE PERFORMANCE OF THE DIGITAL ELECTRONIC EQUIPMENT.

14 (6) "FIRMWARE" MEANS A SOFTWARE PROGRAM OR SET OF
15 INSTRUCTIONS PROGRAMMED ON DIGITAL ELECTRONIC EQUIPMENT, OR ON
16 A PART OF DIGITAL ELECTRONIC EQUIPMENT, TO ALLOW THE EQUIPMENT
17 OR PART TO COMMUNICATE WITH ITSELF OR WITH OTHER COMPUTER
18 HARDWARE.

19 (7) (a) "INDEPENDENT REPAIR PROVIDER", EXCEPT AS OTHERWISE
20 PROVIDED IN SUBSECTION (7)(b) OF THIS SECTION, MEANS A PERSON IN
21 THIS STATE THAT IS:

22 (I) NOT AN ORIGINAL EQUIPMENT MANUFACTURER'S AUTHORIZED
23 REPAIR PROVIDER NOR AFFILIATED WITH AN ORIGINAL EQUIPMENT
24 MANUFACTURER'S AUTHORIZED REPAIR PROVIDER; AND

25 (II) ENGAGED IN OFFERING OR PROVIDING SERVICES.

26 (b) "INDEPENDENT REPAIR PROVIDER" INCLUDES:

27 (I) AN AUTHORIZED REPAIR PROVIDER IF THE AUTHORIZED REPAIR

1 PROVIDER IS OFFERING OR PROVIDING SERVICES FOR AN ORIGINAL
2 EQUIPMENT MANUFACTURER OTHER THAN A MANUFACTURER WITH WHICH
3 THE AUTHORIZED REPAIR PROVIDER HAS AN ARRANGEMENT DESCRIBED IN
4 SUBSECTION (1) OF THIS SECTION; AND

5 (II) AN ORIGINAL EQUIPMENT MANUFACTURER WITH RESPECT TO
6 OFFERING OR PROVIDING SERVICES FOR ANOTHER ORIGINAL EQUIPMENT
7 MANUFACTURER'S DIGITAL ELECTRONIC EQUIPMENT.

8 (8) "MEDICAL DEVICE" HAS THE SAME MEANING AS "DEVICE" AS
9 SET FORTH IN SECTION 25-5-402 (8).

10 (9) "ORIGINAL EQUIPMENT MANUFACTURER" MEANS A PERSON
11 ENGAGED IN SELLING OR LEASING NEW DIGITAL ELECTRONIC EQUIPMENT
12 MANUFACTURED BY OR ON BEHALF OF THE MANUFACTURER.

13 (10) "OWNER" MEANS A PERSON THAT OWNS DIGITAL ELECTRONIC
14 EQUIPMENT PURCHASED OR USED IN THIS STATE OR AN AGENT OF THE
15 OWNER.

16 (11) "PART" MEANS A NEW OR USED REPLACEMENT PART THAT AN
17 ORIGINAL EQUIPMENT MANUFACTURER OFFERS FOR SALE OR OTHERWISE
18 MAKES AVAILABLE FOR THE PURPOSE OF PROVIDING SERVICES.

19 (12) "SERVICES" MEANS DIAGNOSTIC, MAINTENANCE, OR REPAIR
20 SERVICES PERFORMED ON DIGITAL ELECTRONIC EQUIPMENT.

21 (13) "TOOLS" MEANS ANY SOFTWARE PROGRAM, HARDWARE
22 IMPLEMENT, OR OTHER APPARATUS USED FOR DIAGNOSIS, MAINTENANCE,
23 OR REPAIR OF DIGITAL ELECTRONIC EQUIPMENT, INCLUDING SOFTWARE OR
24 OTHER MECHANISM THAT PROVIDES, PROGRAMS, OR PAIRS A NEW PART;
25 CALIBRATES FUNCTIONALITY; OR PERFORMS ANY OTHER FUNCTION
26 REQUIRED TO RETURN THE DIGITAL ELECTRONIC EQUIPMENT TO FULLY
27 FUNCTIONAL CONDITION.

1 (14) "TRADE SECRET" HAS THE MEANING SET FORTH IN SECTION
2 7-74-102 (4).

3 **6-1-1303. Original equipment manufacturer obligations**
4 **regarding services - unfair or deceptive trade practice - exemptions.**

5 (1) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION:

6 (a) FOR THE PURPOSE OF PROVIDING SERVICES FOR DIGITAL
7 ELECTRONIC EQUIPMENT SOLD OR USED IN THIS STATE, AN ORIGINAL
8 EQUIPMENT MANUFACTURER SHALL, WITH FAIR AND REASONABLE TERMS
9 AND COSTS, MAKE AVAILABLE TO AN INDEPENDENT REPAIR PROVIDER OR
10 OWNER OF THE MANUFACTURER'S EQUIPMENT ANY DOCUMENTATION,
11 PARTS, EMBEDDED SOFTWARE, FIRMWARE, OR TOOLS THAT ARE INTENDED
12 FOR USE WITH THE DIGITAL ELECTRONIC EQUIPMENT, INCLUDING UPDATES
13 TO DOCUMENTATION, INFORMATION, OR EMBEDDED SOFTWARE.

14 (b) WITH RESPECT TO EQUIPMENT THAT CONTAINS AN ELECTRONIC
15 SECURITY LOCK OR OTHER SECURITY-RELATED FUNCTION, AN ORIGINAL
16 EQUIPMENT MANUFACTURER SHALL, WITH FAIR AND REASONABLE TERMS
17 AND COSTS, MAKE AVAILABLE TO INDEPENDENT REPAIR PROVIDERS AND
18 OWNERS OF THE MANUFACTURER'S EQUIPMENT ANY DOCUMENTATION,
19 PARTS, EMBEDDED SOFTWARE, FIRMWARE, OR TOOLS NEEDED TO RESET
20 THE LOCK OR FUNCTION WHEN DISABLED IN THE COURSE OF PROVIDING
21 SERVICES. THE MANUFACTURER MAY MAKE THE DOCUMENTATION, PARTS,
22 EMBEDDED SOFTWARE, FIRMWARE, OR TOOLS AVAILABLE TO INDEPENDENT
23 REPAIR PROVIDERS AND OWNERS OF THE MANUFACTURER'S EQUIPMENT
24 THROUGH APPROPRIATE SECURE RELEASE SYSTEMS.

25 (2) A VIOLATION OF SUBSECTION (1) OF THIS SECTION IS AN UNFAIR
26 OR DECEPTIVE TRADE PRACTICE IN ACCORDANCE WITH SECTION 6-1-105
27 (1)(nnn).

1 (3) (a) SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO:

2 (I) A PART THAT IS NO LONGER AVAILABLE TO THE ORIGINAL
3 EQUIPMENT MANUFACTURER; AND

4 (II) CONDUCT THAT WOULD REQUIRE THE ORIGINAL EQUIPMENT
5 MANUFACTURER TO DIVULGE A TRADE SECRET; EXCEPT THAT A
6 MANUFACTURER SHALL NOT REFUSE TO MAKE AVAILABLE TO AN
7 INDEPENDENT REPAIR PROVIDER OR OWNER ANY DOCUMENTATION, PART,
8 EMBEDDED SOFTWARE, FIRMWARE, OR TOOL NECESSARY TO PROVIDE
9 SERVICES ON GROUNDS THAT THE DOCUMENTATION, PART, EMBEDDED
10 SOFTWARE, FIRMWARE, OR TOOL IS ITSELF A TRADE SECRET.

11 (b) (I) AN ORIGINAL EQUIPMENT MANUFACTURER MAY REDACT
12 DOCUMENTATION TO REMOVE TRADE SECRETS FROM THE DOCUMENTATION
13 BEFORE PROVIDING ACCESS TO THE DOCUMENTATION IF THE USABILITY OF
14 THE REDACTED DOCUMENTATION FOR THE PURPOSE OF PROVIDING
15 SERVICES IS NOT DIMINISHED.

16 (II) AN ORIGINAL EQUIPMENT MANUFACTURER MAY WITHHOLD
17 INFORMATION REGARDING A COMPONENT, DESIGN, OR FUNCTIONALITY OF,
18 OR PROCESS OF DEVELOPING, A PART, EMBEDDED SOFTWARE, FIRMWARE,
19 OR TOOL IF THE INFORMATION IS A TRADE SECRET AND THE USABILITY OF
20 THE PART, EMBEDDED SOFTWARE, FIRMWARE, OR TOOL FOR THE PURPOSE
21 OF PROVIDING SERVICES IS NOT DIMINISHED.

22 **6-1-1304. Limitations.** (1) SUBJECT TO SUBSECTION (2) OF THIS
23 SECTION, NOTHING IN THIS PART 13:

24 (a) ALTERS THE TERMS OF ANY CONTRACT OR OTHER
25 ARRANGEMENT IN FORCE BETWEEN AN ORIGINAL EQUIPMENT
26 MANUFACTURER AND AN AUTHORIZED REPAIR PROVIDER, INCLUDING THE
27 PERFORMANCE OR PROVISION OF WARRANTY OR RECALL REPAIR WORK

1 AND ANY EXCLUSIVITY OR NONCOMPETE CLAUSE IN A CONTRACT;

2 (b) REQUIRES AN ORIGINAL EQUIPMENT MANUFACTURER TO
3 PROVIDE AN INDEPENDENT REPAIR PROVIDER OR OWNER ACCESS TO
4 INFORMATION, OTHER THAN DOCUMENTATION, THAT THE MANUFACTURER
5 PROVIDES TO AN AUTHORIZED REPAIR PROVIDER PURSUANT TO A
6 CONTRACT OR OTHER ARRANGEMENT WITH THE INDEPENDENT REPAIR
7 PROVIDER EXCEPT AS NECESSARY TO COMPLY WITH SECTION 6-1-1303 (1);

8 (c) RENDERS AN ORIGINAL EQUIPMENT MANUFACTURER OR
9 AUTHORIZED REPAIR PROVIDER LIABLE FOR ANY FAULTY, NEGLIGENT, OR
10 OTHERWISE IMPROPER REPAIR THAT AN INDEPENDENT REPAIR PROVIDER
11 OR OWNER CONDUCTS ON THE MANUFACTURER'S DIGITAL ELECTRONIC
12 EQUIPMENT; EXCEPT THAT NOTHING IN THIS SUBSECTION (1)(c) EXEMPTS
13 AN ORIGINAL EQUIPMENT MANUFACTURER FROM A PRODUCTS LIABILITY
14 CLAIM THAT IS OTHERWISE AUTHORIZED IN LAW;

15 (d) APPLIES TO:

16 (I) A MOTOR VEHICLE MANUFACTURER OR DEALER, AS THOSE
17 TERMS ARE DEFINED IN SECTION 42-1-102 (49) AND (22), RESPECTIVELY,
18 THAT IS ACTING IN THAT CAPACITY; A MANUFACTURER OF MOTOR VEHICLE
19 EQUIPMENT THAT IS ACTING IN THAT CAPACITY; OR ANY PRODUCT OR
20 SERVICE OF A MOTOR VEHICLE MANUFACTURER OR DEALER OR
21 MANUFACTURER OF MOTOR VEHICLE EQUIPMENT;

22 (II) A POWERSPORTS VEHICLE MANUFACTURER OR POWERSPORTS
23 VEHICLE DEALER, AS THOSE TERMS ARE DEFINED IN SECTION 44-20-402
24 (14) AND (12), RESPECTIVELY, THAT IS ACTING IN THAT CAPACITY; A
25 MANUFACTURER OF POWERSPORTS VEHICLE EQUIPMENT THAT IS ACTING
26 IN THAT CAPACITY; OR ANY PRODUCT OR SERVICE OF A POWERSPORTS
27 VEHICLE MANUFACTURER OR POWERSPORTS VEHICLE DEALER OR

1 MANUFACTURER OF POWERSPORTS VEHICLE EQUIPMENT; OR

2 (III) A MEDICAL DEVICE; EXCEPT THAT THIS PART 13 APPLIES TO
3 CLASS 2 POWERED WHEELCHAIRS; OR

4 (e) REQUIRES AN ORIGINAL EQUIPMENT MANUFACTURER TO
5 PROVIDE ACCESS TO TOOL FUNCTIONS THAT ENABLE THE OWNER OR
6 INDEPENDENT REPAIR PROVIDER TO CHANGE THE SETTINGS ON MOTORIZED
7 AGRICULTURAL OR CONSTRUCTION EQUIPMENT SO AS TO BRING THE
8 EQUIPMENT OUT OF COMPLIANCE WITH ANY APPLICABLE SAFETY OR
9 EMISSIONS STANDARDS.

10 (2) WITH RESPECT TO A CONTRACT OR OTHER ARRANGEMENT, OR
11 RENEWAL OF A CONTRACT OR EXISTING ARRANGEMENT, THAT AN
12 ORIGINAL EQUIPMENT MANUFACTURER ENTERS INTO AFTER THE EFFECTIVE
13 DATE OF THIS PART 13, ANY CONTRACT TERM, PROVISION, AGREEMENT, OR
14 LANGUAGE IN THE CONTRACT OR ARRANGEMENT THAT WAIVES, AVOIDS,
15 RESTRICTS, OR LIMITS THE MANUFACTURER'S OBLIGATIONS UNDER THIS
16 PART 13 IS VOID AND UNENFORCEABLE.

17 **SECTION 3. Act subject to petition - effective date -**
18 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
19 the expiration of the ninety-day period after final adjournment of the
20 general assembly; except that, if a referendum petition is filed pursuant
21 to section 1 (3) of article V of the state constitution against this act or an
22 item, section, or part of this act within such period, then the act, item,
23 section, or part will not take effect unless approved by the people at the
24 general election to be held in November 2022 and, in such case, will take
25 effect on the date of the official declaration of the vote thereon by the
26 governor.

- 1 (2) This act applies to conduct occurring on or after the applicable
- 2 effective date of this act.