

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 22-0041.01 Jennifer Berman x3286

HOUSE BILL 22-1031

HOUSE SPONSORSHIP

Titone and Ortiz, Boesenecker, Kipp, Woodrow, Bacon, Bennett, Bird, Caraveo, Cutter, Esgar, Exum, Froelich, Garnett, Gonzales-Gutierrez, Gray, Herod, Hooton, Jodeh, Kennedy, Lindsay, McCluskie, Michaelson Jenet, Ricks, Roberts, Sirota, Snyder, Valdez A., Valdez D., Weissman

SENATE SPONSORSHIP

Zenzinger and Cooke,

House Committees

Public & Behavioral Health & Human Services

Senate Committees

Business, Labor, & Technology

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT THAT A POWERED WHEELCHAIR**
102 **MANUFACTURER FACILITATE THE REPAIR OF ITS POWERED**
103 **WHEELCHAIRS BY PROVIDING CERTAIN OTHER PERSONS WITH**
104 **THE RESOURCES NEEDED TO REPAIR THE MANUFACTURER'S**
105 **POWERED WHEELCHAIRS.**

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 a powered wheelchair must seek diagnostic, maintenance, or repair services of the wheelchair from the manufacturer.

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.*

SENATE
Amended 2nd Reading
April 21, 2022

HOUSE
3rd Reading Unamended
March 29, 2022

HOUSE
Amended 2nd Reading
March 25, 2022

1 ARRANGEMENT WITH THE MANUFACTURER, WHETHER FOR A DEFINITE OR
2 AN INDEFINITE PERIOD, IN WHICH THE MANUFACTURER, FOR THE PURPOSE
3 OF OFFERING TO PROVIDE SERVICES TO AN EQUIPMENT OWNER REGARDING
4 THE OWNER'S EQUIPMENT OR A PART, GRANTS THE PERSON:

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

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

9 (b) "AUTHORIZED REPAIR PROVIDER" INCLUDES A MANUFACTURER
10 THAT OFFERS TO PROVIDE SERVICES TO AN OWNER OF THE
11 MANUFACTURER'S EQUIPMENT REGARDING THE OWNER'S EQUIPMENT OR
12 A PART IF THE MANUFACTURER DOES NOT HAVE AN ARRANGEMENT WITH
13 AN UNAFFILIATED PERSON, AS DESCRIBED IN SUBSECTION (1)(a) OF THIS
14 SECTION.

15 (2) "DOCUMENTATION" MEANS A MANUAL; DIAGRAM, INCLUDING
16 A SCHEMATIC DIAGRAM; REPORTING OUTPUT; SERVICE CODE DESCRIPTION;
17 OR SIMILAR TYPE OF INFORMATION, WHETHER IN AN ELECTRONIC OR
18 TANGIBLE FORMAT, THAT A MANUFACTURER PROVIDES TO AN AUTHORIZED
19 REPAIR PROVIDER FOR PURPOSES OF ASSISTING THE AUTHORIZED REPAIR
20 PROVIDER WITH SERVICES PERFORMED ON THE MANUFACTURER'S
21 EQUIPMENT OR A PART.

22 (3) "EMBEDDED SOFTWARE":

23 (a) MEANS PROGRAMMABLE INSTRUCTIONS PROVIDED ON
24 FIRMWARE DELIVERED WITH AN ELECTRONIC COMPONENT OF EQUIPMENT
25 OR WITH ANY PART FOR THE PURPOSE OF RESTORING OR IMPROVING
26 OPERATION OF THE EQUIPMENT OR PART; AND

27 (b) INCLUDES ALL RELEVANT PATCHES AND FIXES THAT THE

1 MANUFACTURER MAKES TO EQUIPMENT OR TO ANY PART FOR THE PURPOSE
2 OF RESTORING OR IMPROVING THE EQUIPMENT OR PART.

3 (4) "EQUIPMENT" MEANS A POWERED WHEELCHAIR.

4 (5) (a) (I) "FAIR AND REASONABLE TERMS AND COSTS", WITH
5 RESPECT TO OBTAINING DOCUMENTATION, PARTS, EMBEDDED SOFTWARE,
6 FIRMWARE, OR TOOLS FROM A MANUFACTURER TO PROVIDE SERVICES,
7 MEANS TERMS THAT ARE EQUIVALENT TO THE MOST FAVORABLE TERMS
8 THAT THE MANUFACTURER OFFERS TO AN AUTHORIZED REPAIR PROVIDER
9 AND COSTS THAT ARE NO GREATER THAN THE MANUFACTURER'S
10 SUGGESTED RETAIL PRICE.

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

14 (b) WITH RESPECT TO DOCUMENTATION, "FAIR AND REASONABLE
15 TERMS AND COSTS" MEANS THAT THE MANUFACTURER PROVIDES THE
16 DOCUMENTATION, INCLUDING ANY RELEVANT UPDATES TO THE
17 DOCUMENTATION, AT NO CHARGE; EXCEPT THAT THE MANUFACTURER
18 MAY CHARGE A FEE FOR A PRINTED COPY OF THE DOCUMENTATION IF THE
19 AMOUNT OF THE FEE COVERS ONLY THE MANUFACTURER'S ACTUAL COST
20 TO PREPARE AND SEND THE PRINTED COPY OF THE DOCUMENTATION.

21 (c) WITH RESPECT TO TOOLS THAT ARE SOFTWARE PROGRAMS,
22 "FAIR AND REASONABLE TERMS AND COSTS" MEANS THAT THE
23 MANUFACTURER PROVIDES THE TOOLS THAT ARE SOFTWARE PROGRAMS:

24 (I) AT NO CHARGE AND WITHOUT REQUIRING AUTHORIZATION OR
25 INTERNET ACCESS OR OTHERWISE IMPOSING IMPEDIMENTS TO ACCESS OR
26 USE;

27 (II) IN THE COURSE OF EFFECTUATING THE DIAGNOSIS,

1 MAINTENANCE, OR REPAIR AND ENABLING THE FULL FUNCTIONALITY OF
2 THE EQUIPMENT OR PART; AND

3 (III) IN A MANNER THAT DOES NOT IMPAIR THE EFFICIENT AND
4 COST-EFFECTIVE PERFORMANCE OF THE EQUIPMENT OR PART.

5 (6) "FIRMWARE" MEANS A SOFTWARE PROGRAM OR SET OF
6 INSTRUCTIONS PROGRAMMED ON EQUIPMENT OR A PART TO ALLOW THE
7 EQUIPMENT OR PART TO COMMUNICATE WITH ITSELF OR WITH OTHER
8 COMPUTER HARDWARE.

9 (7) (a) "INDEPENDENT REPAIR PROVIDER", EXCEPT AS OTHERWISE
10 PROVIDED IN SUBSECTION (7)(b) OF THIS SECTION, MEANS A PERSON IN THE
11 STATE THAT IS:

12 (I) NEITHER A MANUFACTURER'S AUTHORIZED REPAIR PROVIDER
13 NOR AFFILIATED WITH A MANUFACTURER'S AUTHORIZED REPAIR PROVIDER;
14 AND

15 (II) ENGAGED IN OFFERING OR PROVIDING SERVICES.

16 (b) "INDEPENDENT REPAIR PROVIDER" INCLUDES:

17 (I) AN AUTHORIZED REPAIR PROVIDER IF THE AUTHORIZED REPAIR
18 PROVIDER IS OFFERING OR PROVIDING SERVICES FOR A MANUFACTURER
19 OTHER THAN A MANUFACTURER WITH WHICH THE AUTHORIZED REPAIR
20 PROVIDER HAS AN ARRANGEMENT DESCRIBED IN SUBSECTION (1) OF THIS
21 SECTION; AND

22 (II) A MANUFACTURER WITH RESPECT TO OFFERING OR PROVIDING
23 SERVICES FOR ANOTHER MANUFACTURER'S EQUIPMENT OR PART.

24 (8) "ORIGINAL EQUIPMENT MANUFACTURER" OR "MANUFACTURER"
25 MEANS A PERSON DOING BUSINESS IN THE STATE AND ENGAGED IN THE
26 BUSINESS OF SELLING, LEASING, OR OTHERWISE SUPPLYING NEW
27 EQUIPMENT OR PARTS MANUFACTURED BY OR ON BEHALF OF ITSELF TO

1 ANY INDIVIDUAL, BUSINESS, OR OTHER ENTITY.

2 (9) "OWNER" MEANS A PERSON THAT OWNS EQUIPMENT OR AN
3 AGENT OF THE OWNER.

4 (10) "PART" MEANS A NEW OR USED REPLACEMENT PART FOR
5 EQUIPMENT THAT A MANUFACTURER OFFERS FOR SALE OR OTHERWISE
6 MAKES AVAILABLE FOR THE PURPOSE OF PROVIDING SERVICES.

7 (11) "POWERED WHEELCHAIR" MEANS A MOTORIZED WHEELED
8 DEVICE DESIGNED FOR USE BY A PERSON WITH A PHYSICAL DISABILITY.

9 (12) "SERVICES" MEANS DIAGNOSTIC, MAINTENANCE, OR REPAIR
10 SERVICES PERFORMED ON EQUIPMENT OR A PART.

11 (13) "TOOLS" MEANS ANY SOFTWARE PROGRAM, HARDWARE
12 IMPLEMENT, OR OTHER APPARATUS USED FOR DIAGNOSIS, MAINTENANCE,
13 OR REPAIR OF EQUIPMENT OR PARTS, INCLUDING SOFTWARE OR OTHER
14 MECHANISM THAT PROVIDES, PROGRAMS, OR PAIRS A NEW PART;
15 CALIBRATES FUNCTIONALITY; OR PERFORMS ANY OTHER FUNCTION
16 REQUIRED TO RETURN THE EQUIPMENT OR PART TO FULLY FUNCTIONAL
17 CONDITION.

18 (14) "TRADE SECRET" HAS THE MEANING SET FORTH IN SECTION
19 7-74-102 (4).

20 **6-1-1403. Powered wheelchair manufacturer obligations**
21 **regarding services - exemptions.** (1) EXCEPT AS PROVIDED IN
22 SUBSECTION (2) OF THIS SECTION:

23 (a) FOR THE PURPOSE OF PROVIDING SERVICES FOR EQUIPMENT IN
24 THE STATE, AN ORIGINAL EQUIPMENT MANUFACTURER SHALL, WITH FAIR
25 AND REASONABLE TERMS AND COSTS, MAKE AVAILABLE TO AN
26 INDEPENDENT REPAIR PROVIDER OR OWNER OF THE MANUFACTURER'S
27 EQUIPMENT ANY DOCUMENTATION, PARTS, EMBEDDED SOFTWARE,

1 FIRMWARE, OR TOOLS THAT ARE INTENDED FOR USE WITH THE EQUIPMENT
2 OR ANY PART, INCLUDING UPDATES TO DOCUMENTATION, PARTS,
3 EMBEDDED SOFTWARE, FIRMWARE, OR TOOLS.

4 (b) WITH RESPECT TO EQUIPMENT THAT CONTAINS AN ELECTRONIC
5 SECURITY LOCK OR OTHER SECURITY-RELATED FUNCTION, A
6 MANUFACTURER SHALL, WITH FAIR AND REASONABLE TERMS AND COSTS,
7 MAKE AVAILABLE TO INDEPENDENT REPAIR PROVIDERS AND OWNERS ANY
8 DOCUMENTATION, PARTS, EMBEDDED SOFTWARE, FIRMWARE, OR TOOLS
9 NEEDED TO RESET THE LOCK OR FUNCTION WHEN DISABLED IN THE COURSE
10 OF PROVIDING SERVICES. THE MANUFACTURER MAY MAKE THE
11 DOCUMENTATION, PARTS, EMBEDDED SOFTWARE, FIRMWARE, OR TOOLS
12 AVAILABLE TO INDEPENDENT REPAIR PROVIDERS AND OWNERS THROUGH
13 APPROPRIATE SECURE RELEASE SYSTEMS.

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

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

17 (II) CONDUCT THAT WOULD REQUIRE THE MANUFACTURER TO
18 DIVULGE A TRADE SECRET; EXCEPT THAT A MANUFACTURER SHALL NOT
19 REFUSE TO MAKE AVAILABLE TO AN INDEPENDENT REPAIR PROVIDER OR
20 OWNER ANY DOCUMENTATION, PART, EMBEDDED SOFTWARE, FIRMWARE,
21 OR TOOL NECESSARY TO PROVIDE SERVICES ON GROUNDS THAT THE
22 DOCUMENTATION, PART, EMBEDDED SOFTWARE, FIRMWARE, OR TOOL
23 ITSELF IS A TRADE SECRET.

24 (b) (I) A MANUFACTURER MAY REDACT DOCUMENTATION TO
25 REMOVE TRADE SECRETS FROM THE DOCUMENTATION BEFORE PROVIDING
26 ACCESS TO THE DOCUMENTATION IF THE USABILITY OF THE REDACTED
27 DOCUMENTATION FOR THE PURPOSE OF PROVIDING SERVICES IS NOT

1 DIMINISHED.

2 (II) A MANUFACTURER MAY WITHHOLD INFORMATION REGARDING
3 A COMPONENT OF, DESIGN OF, FUNCTIONALITY OF, OR PROCESS OF
4 DEVELOPING A PART, EMBEDDED SOFTWARE, FIRMWARE, OR A TOOL IF THE
5 INFORMATION IS A TRADE SECRET AND THE USABILITY OF THE PART,
6 EMBEDDED SOFTWARE, FIRMWARE, OR TOOL FOR THE PURPOSE OF
7 PROVIDING SERVICES IS NOT DIMINISHED.

8 **6-1-1404. Limitations.** (1) SUBJECT TO SUBSECTION (2) OF THIS
9 SECTION, NOTHING IN THIS PART 14:

10 (a) ALTERS THE TERMS OF ANY CONTRACT OR OTHER
11 ARRANGEMENT IN FORCE BETWEEN AN ORIGINAL EQUIPMENT
12 MANUFACTURER AND AN AUTHORIZED REPAIR PROVIDER, INCLUDING THE
13 PERFORMANCE OR PROVISION OF WARRANTY OR RECALL REPAIR WORK
14 AND ANY EXCLUSIVITY OR NONCOMPETE CLAUSE IN A CONTRACT;

15 (b) REQUIRES A MANUFACTURER TO PROVIDE AN INDEPENDENT
16 REPAIR PROVIDER OR OWNER ACCESS TO INFORMATION, OTHER THAN
17 DOCUMENTATION, THAT THE MANUFACTURER PROVIDES TO AN
18 AUTHORIZED REPAIR PROVIDER PURSUANT TO A CONTRACT OR OTHER
19 ARRANGEMENT WITH THE AUTHORIZED REPAIR PROVIDER EXCEPT AS
20 NECESSARY TO COMPLY WITH SECTION 6-1-1403 (1); OR

21 (c) RENDERS A MANUFACTURER OR AUTHORIZED REPAIR PROVIDER
22 LIABLE FOR ANY FAULTY, NEGLIGENT, OR OTHERWISE IMPROPER REPAIR
23 THAT AN INDEPENDENT REPAIR PROVIDER OR OWNER CONDUCTS ON THE
24 MANUFACTURER'S EQUIPMENT OR PART; EXCEPT THAT NOTHING IN THIS
25 SUBSECTION (1)(c) EXEMPTS A MANUFACTURER FROM A PRODUCTS
26 LIABILITY CLAIM THAT IS OTHERWISE AUTHORIZED IN LAW.

27 (2) WITH RESPECT TO A CONTRACT OR OTHER ARRANGEMENT, OR

1 RENEWAL OF A CONTRACT OR EXISTING ARRANGEMENT, THAT AN
2 ORIGINAL EQUIPMENT MANUFACTURER ENTERS INTO AFTER THE EFFECTIVE
3 DATE OF THIS PART 14, ANY CONTRACT TERM, PROVISION, AGREEMENT, OR
4 LANGUAGE IN THE CONTRACT OR ARRANGEMENT THAT WAIVES, AVOIDS,
5 RESTRICTS, OR LIMITS THE MANUFACTURER'S OBLIGATIONS UNDER THIS
6 PART 14 IS VOID AND UNENFORCEABLE.

7 **SECTION 3. Act subject to petition - effective date.** This act
8 takes effect January 1, 2023; except that, if a referendum petition is filed
9 pursuant to section 1 (3) of article V of the state constitution against this
10 act or an item, section, or part of this act within the ninety-day period
11 after final adjournment of the general assembly, then the act, item,
12 section, or part will not take effect unless approved by the people at the
13 general election to be held in November 2022 and, in such case, will take
14 effect January 1, 2023, or on the date of the official declaration of the
15 vote thereon by the governor, whichever is later.