

CHAPTER 327

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 22-1031

BY REPRESENTATIVE(S) Titone and Ortiz, Boesenecker, Kipp, Woodrow, Bacon, Bennett, Bird, Caraveo, Cutter, Esgar, Exum, Gonzales-Gutierrez, Gray, Herod, Hooton, Jodeh, Kennedy, Lindsay, McCluskie, Michaelson Jenet, Ricks, Roberts, Sirota, Snyder, Valdez A., Valdez D., Weissman, Garnett, Froelich, Amabile, Lontine, McCormick, McLachlan, Mullica;
also SENATOR(S) Zenzinger and Cooke, Bridges, Buckner, Danielson, Donovan, Fields, Gonzales, Hansen, Hinrichsen, Jaquez Lewis, Kolker, Lee, Moreno, Pettersen, Rankin, Rodriguez, Story, Winter.

AN ACT

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

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 6-1-105, **add** (1)(qqq) as follows:

6-1-105. Unfair or deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:

(qqq) VIOLATES PART 15 OF THIS ARTICLE 1.

SECTION 2. In Colorado Revised Statutes, **add** part 15 to article 1 of title 6 as follows:

**PART 15
CONSUMER RIGHT TO REPAIR**

6-1-1501. Short title. THE SHORT TITLE OF THIS PART 15 IS THE "CONSUMER WHEELCHAIR REPAIR BILL OF RIGHTS ACT".

6-1-1502. Definitions. AS USED IN THIS PART 15, UNLESS THE CONTEXT OTHERWISE REQUIRES:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(1)(a) "AUTHORIZED REPAIR PROVIDER" MEANS A PERSON THAT IS UNAFFILIATED WITH A MANUFACTURER OTHER THAN THROUGH AN ARRANGEMENT WITH THE MANUFACTURER, WHETHER FOR A DEFINITE OR AN INDEFINITE PERIOD, IN WHICH THE MANUFACTURER, FOR THE PURPOSE OF OFFERING TO PROVIDE SERVICES TO AN EQUIPMENT OWNER REGARDING THE OWNER'S EQUIPMENT OR A PART, GRANTS THE PERSON:

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

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

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

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

(3) "EMBEDDED SOFTWARE":

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

(b) INCLUDES ALL RELEVANT PATCHES AND FIXES THAT THE MANUFACTURER MAKES TO EQUIPMENT OR TO ANY PART FOR THE PURPOSE OF RESTORING OR IMPROVING THE EQUIPMENT OR PART.

(4) "EQUIPMENT" MEANS A POWERED WHEELCHAIR.

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

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

(b) WITH RESPECT TO DOCUMENTATION, "FAIR AND REASONABLE TERMS AND COSTS" MEANS THAT THE MANUFACTURER PROVIDES THE DOCUMENTATION,

INCLUDING ANY RELEVANT UPDATES TO THE DOCUMENTATION, AT NO CHARGE; EXCEPT THAT THE MANUFACTURER MAY CHARGE A FEE FOR A PRINTED COPY OF THE DOCUMENTATION IF THE AMOUNT OF THE FEE COVERS ONLY THE MANUFACTURER'S ACTUAL COST TO PREPARE AND SEND THE PRINTED COPY OF THE DOCUMENTATION.

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

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

(II) IN THE COURSE OF EFFECTUATING THE DIAGNOSIS, MAINTENANCE, OR REPAIR AND ENABLING THE FULL FUNCTIONALITY OF THE EQUIPMENT OR PART; AND

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

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

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

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

(II) ENGAGED IN OFFERING OR PROVIDING SERVICES.

(b) "INDEPENDENT REPAIR PROVIDER" INCLUDES:

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

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

(8) "ORIGINAL EQUIPMENT MANUFACTURER" OR "MANUFACTURER" MEANS A PERSON DOING BUSINESS IN THE STATE AND ENGAGED IN THE BUSINESS OF SELLING, LEASING, OR OTHERWISE SUPPLYING NEW EQUIPMENT OR PARTS MANUFACTURED BY OR ON BEHALF OF ITSELF TO ANY INDIVIDUAL, BUSINESS, OR OTHER ENTITY.

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

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

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

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

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

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

6-1-1503. Powered wheelchair manufacturer obligations regarding services - exemptions. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION:

(a) FOR THE PURPOSE OF PROVIDING SERVICES FOR EQUIPMENT IN THE STATE, AN ORIGINAL EQUIPMENT MANUFACTURER SHALL, WITH FAIR AND REASONABLE TERMS AND COSTS, MAKE AVAILABLE TO AN INDEPENDENT REPAIR PROVIDER OR OWNER OF THE MANUFACTURER'S EQUIPMENT ANY DOCUMENTATION, PARTS, EMBEDDED SOFTWARE, FIRMWARE, OR TOOLS THAT ARE INTENDED FOR USE WITH THE EQUIPMENT OR ANY PART, INCLUDING UPDATES TO DOCUMENTATION, PARTS, EMBEDDED SOFTWARE, FIRMWARE, OR TOOLS.

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

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

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

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

(b) (I) A MANUFACTURER MAY REDACT DOCUMENTATION TO REMOVE TRADE SECRETS FROM THE DOCUMENTATION BEFORE PROVIDING ACCESS TO THE DOCUMENTATION IF THE USABILITY OF THE REDACTED DOCUMENTATION FOR THE

PURPOSE OF PROVIDING SERVICES IS NOT DIMINISHED.

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

(3) AN ORIGINAL EQUIPMENT MANUFACTURER IS NOT LIABLE FOR FAULTY OR OTHERWISE IMPROPER REPAIRS PROVIDED BY INDEPENDENT REPAIR PROVIDERS OR OWNERS, INCLUDING FAULTY OR OTHERWISE IMPROPER REPAIRS THAT CAUSE:

(a) DAMAGE TO POWERED WHEELCHAIRS THAT OCCUR DURING SUCH REPAIRS;

(b) ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES; OR

(c) AN INABILITY TO USE, OR A REDUCED FUNCTIONALITY OF, A POWERED WHEELCHAIR RESULTING FROM THE FAULTY OR OTHERWISE IMPROPER REPAIR.

6-1-1504. Limitations. (1) SUBJECT TO SUBSECTION (2) OF THIS SECTION, NOTHING IN THIS PART 15:

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

(b) REQUIRES A MANUFACTURER TO PROVIDE AN INDEPENDENT REPAIR PROVIDER OR OWNER ACCESS TO INFORMATION, OTHER THAN DOCUMENTATION, THAT THE MANUFACTURER PROVIDES TO AN AUTHORIZED REPAIR PROVIDER PURSUANT TO A CONTRACT OR OTHER ARRANGEMENT WITH THE AUTHORIZED REPAIR PROVIDER EXCEPT AS NECESSARY TO COMPLY WITH SECTION 6-1-1503 (1); OR

(c) EXEMPTS A MANUFACTURER FROM A PRODUCTS LIABILITY CLAIM THAT IS OTHERWISE AUTHORIZED IN LAW.

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

SECTION 3. Act subject to petition - effective date. This act takes effect January 1, 2023; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case,

will take effect January 1, 2023, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

Approved: June 2, 2022