A BILL FOR AN ACT

CONCERNING A REQUIREMENT THAT A MANUFACTURER OF DIGITAL ELECTRONIC EQUIPMENT FACILITATE THE REPAIR OF THE EQUIPMENT BY PROVIDING PERSONS OTHER THAN AUTHORIZED REPAIR PROVIDERS AFFILIATED WITH THE MANUFACTURER 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
repair services of the equipment from the original equipment manufacturer (manufacturer) or an authorized repair provider affiliated with the manufacturer.

The bill requires a manufacturer to provide parts, embedded software, tools, or documentation, such as diagnostic, maintenance, or repair manuals, diagrams, or similar information, to independent repair providers and owners of the manufacturer's equipment to allow an independent repair provider or owner to conduct diagnostic, maintenance, or repair services. A manufacturer's failure to comply with the requirement is an unfair or deceptive trade practice. Manufacturers need not divulge any trade secrets to independent repair providers and owners.

Any contractual provision or other arrangement that a manufacturer enters into that would remove or limit the manufacturer's obligation to provide these resources to independent repair providers and owners is void and unenforceable.

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

SECTION 1. In Colorado Revised Statutes, 6-1-105, add (1)(nnn) 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:

(nnn) VIOLATES PART 13 OF THIS ARTICLE 1.

SECTION 2. In Colorado Revised Statutes, add part 13 to article 1 of title 6 as follows:

PART 13

CONSUMER RIGHT TO REPAIR

DIGITAL EQUIPMENT

6-1-1301. Short title. The short title of this Part 13 is the "CONSUMER DIGITAL REPAIR BILL OF RIGHTS ACT".

6-1-1302. Definitions. As used in this Part 13, unless the context otherwise requires:

(1) (a) "AUTHORIZED REPAIR PROVIDER" MEANS A PERSON THAT
IS UNAFFILIATED WITH AN ORIGINAL EQUIPMENT MANUFACTURER AND
THAT HAS 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 FOR DIGITAL ELECTRONIC
EQUIPMENT TO AN OWNER OF THE EQUIPMENT, 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 AN ORIGINAL
EQUIPMENT MANUFACTURER THAT OFFERS TO PROVIDE SERVICES TO AN
OWNER FOR THE MANUFACTURER'S DIGITAL ELECTRONIC EQUIPMENT IF
THE MANUFACTURER DOES NOT HAVE, WITH RESPECT TO THE EQUIPMENT,
AN ARRANGEMENT WITH AN UNAFFILIATED PERSON, AS DESCRIBED IN
SUBSECTION (1)(a) OF THIS SECTION.

(2) "$DIGITAL ELECTRONIC EQUIPMENT" MEANS A PRODUCT SOLD
IN THIS STATE THAT, FOR ITS FUNCTIONALITY, DEPENDS IN WHOLE OR IN
PART ON DIGITAL ELECTRONICS EMBEDDED IN, OR ATTACHED TO, THE
PRODUCT.

(3) "$DOCUMENTATION" MEANS A MANUAL; DIAGRAM, INCLUDING
A SCHEMATIC DIAGRAM; REPORTING OUTPUT; SERVICE CODE DESCRIPTION;
OR SIMILAR TYPE OF INFORMATION THAT AN ORIGINAL EQUIPMENT
MANUFACTURER PROVIDES TO AN AUTHORIZED REPAIR PROVIDER FOR
PURPOSES OF ASSISTING THE AUTHORIZED REPAIR PROVIDER WITH
SERVICES PERFORMED ON DIGITAL ELECTRONIC EQUIPMENT.

(4) "$EMBEDDED SOFTWARE" MEANS PROGRAMMABLE
INSTRUCTIONS THAT ASSIST WITH DIGITAL ELECTRONIC EQUIPMENT
OPERATION, INCLUDING PROGRAMMABLE INSTRUCTIONS THAT AN OWNER RECEIVES:

(a) IN CONNECTION WITH THE EQUIPMENT OR A PART FOR THE EQUIPMENT; OR

(b) AS A PATCH OR FIX FOR THE EQUIPMENT.

(5) (a) (I) "FAIR AND REASONABLE TERMS AND COSTS", WITH RESPECT TO OBTAINING DOCUMENTATION, PARTS, EMBEDDED SOFTWARE, OR TOOLS FROM AN ORIGINAL EQUIPMENT MANUFACTURER TO PROVIDE SERVICES, MEANS TERMS AND COSTS, INCLUDING CONVENIENCE OF DELIVERY AND OF ENABLING FUNCTIONALITY AND INCLUDING RIGHTS OF USE, THAT ARE EQUIVALENT TO THE MOST FAVORABLE TERMS AND COSTS THAT THE MANUFACTURER OFFERS TO AN AUTHORIZED REPAIR PROVIDER.

(II) ANY 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 ORIGINAL EQUIPMENT 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.

(6) (a) "INDEPENDENT REPAIR PROVIDER", EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6)(b) OF THIS SECTION, MEANS A PERSON IN THIS STATE THAT IS:

(I) NOT AN ORIGINAL EQUIPMENT MANUFACTURER’S AUTHORIZED
REPAIR PROVIDER NOR AFFILIATED WITH AN ORIGINAL EQUIPMENT 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 AN ORIGINAL EQUIPMENT MANUFACTURER OTHER THAN A MANUFACTURER WITH WHICH THE AUTHORIZED REPAIR PROVIDER HAS AN ARRANGEMENT DESCRIBED IN SUBSECTION (1) OF THIS SECTION; AND

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

(7) "ORIGINAL EQUIPMENT MANUFACTURER" MEANS A BUSINESS ENGAGED IN SELLING OR LEASING NEW DIGITAL ELECTRONIC EQUIPMENT MANUFACTURED BY OR ON BEHALF OF THE MANUFACTURER.

(8) "OWNER" MEANS A PERSON THAT OWNS OR LEASES DIGITAL ELECTRONIC EQUIPMENT PURCHASED OR USED IN THIS STATE OR AN AGENT OF THE OWNER.

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

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

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

6-1-1303. Original equipment manufacturer obligations regarding services - unfair or deceptive trade practice - exemptions.
(1) Except as provided in subsection (3) of this section:

(a) For the purpose of providing services for digital electronic equipment sold or used in this state, an original equipment manufacturer shall, on fair and reasonable terms and costs, make available to any independent repair provider or owner of the manufacturer's equipment any documentation, parts, embedded software, or tools, including updates to information or embedded software.

(b) With respect to equipment that contains an electronic security lock or other security-related function, an original equipment manufacturer shall, on fair and reasonable terms and costs, make available to independent repair providers and owners of the manufacturer's equipment any documentation, parts, embedded software, 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, or tools available to independent repair providers and owners of the manufacturer's equipment through appropriate secure release systems, appropriate agreements, or both.

(2) A violation of subsection (1) of this section is an unfair or deceptive trade practice in accordance with Section 6-1-105 (1)(nnn).

(3) (a) Subsection (1) of this section does not apply to:

(I) Any part that is no longer available to the original equipment manufacturer; and

(II) Any conduct that would require the original
EQUIPMENT MANUFACTURER TO DIVULGE A TRADE SECRET; EXCEPT THAT
A MANUFACTURER SHALL NOT REFUSE TO MAKE AVAILABLE TO
INDEPENDENT REPAIR PROVIDERS AND OWNERS ANY DOCUMENTATION,
PART, EMBEDDED SOFTWARE, OR TOOL NECESSARY TO PROVIDE SERVICES
ON GROUNDS THAT THE DOCUMENTATION, PART, EMBEDDED SOFTWARE,
OR TOOL IS ITSELF A TRADE SECRET.

(b) (I) WITH RESPECT TO ANY DOCUMENTATION, AN ORIGINAL
EQUIPMENT MANUFACTURER MAY REDACT THE 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) WITH RESPECT TO ANY PART, EMBEDDED SOFTWARE, OR TOOL,
AN ORIGINAL EQUIPMENT MANUFACTURER MAY WITHHOLD INFORMATION
REGARDING A COMPONENT, DESIGN, OR FUNCTIONALITY OF, OR PROCESS
OF DEVELOPING, THE PART, EMBEDDED SOFTWARE, OR TOOL IF THE
INFORMATION IS A TRADE SECRET AND THE USABILITY OF THE REDACTED
DOCUMENTATION FOR THE PURPOSE OF PROVIDING SERVICES IS NOT
DIMINISHED.

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

(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; OR

(b) REQUIRES AN ORIGINAL EQUIPMENT 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 INDEPENDENT REPAIR
PROVIDER EXCEPT AS NECESSARY TO COMPLY WITH SECTION 6-1-1303 (1).

(2) WITH RESPECT TO ANY CONTRACT OR OTHER ARRANGEMENT
BETWEEN AN ORIGINAL EQUIPMENT MANUFACTURER AND AN
INDEPENDENT REPAIR PROVIDER, ANY PROVISION, AGREEMENT, OR
LANGUAGE IN THE CONTRACT OR ARRANGEMENT THAT WAIVES, AVOIDS,
RESTRICTS, OR LIMITS THE MANUFACTURER'S OBLIGATIONS UNDER THIS
PART 13 IS VOID AND UNENFORCEABLE.

SECTION 3. Act subject to petition - effective date. This act
takes effect January 1, 2021; 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 2020 and, in such case, will take
effect January 1, 2021, or on the date of the official declaration of the
vote thereon by the governor, whichever is later.