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, firmware, 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.

The bill does not apply to motor vehicle manufacturers or dealers acting in that capacity, powersports vehicle manufacturers or dealers acting in that capacity, or medical devices; except that the bill does apply to class 2 powered wheelchairs.

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 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 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 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, whether in an electronic or tangible format, 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":

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

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

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

(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 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.

(c) With respect to tools that are software programs, "FAIR AND REASONABLE TERMS AND COSTS" means that the original equipment 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 digital electronic equipment; and

(III) In a manner that does not impair the efficient and cost-effective performance of the digital electronic equipment.

(6) "FIRMWARE" means a software program or set of instructions programmed on digital electronic equipment, or on a part of digital electronic equipment, 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 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.

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

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

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

(11) "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.

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

(13) "TOOLS" MEANS ANY SOFTWARE PROGRAM, HARDWARE IMPLEMENT, OR OTHER APPARATUS USED FOR DIAGNOSIS, MAINTENANCE, OR REPAIR OF DIGITAL ELECTRONIC EQUIPMENT, INCLUDING SOFTWARE OR OTHER MECHANISM THAT PROVIDES, PROGRAMS, OR PAIRS A NEW PART; CALIBRATES FUNCTIONALITY; OR PERFORMS ANY OTHER FUNCTION REQUIRED TO RETURN THE DIGITAL ELECTRONIC EQUIPMENT TO FULLY FUNCTIONAL CONDITION.
(14) "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, 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 digital electronic equipment, including updates to documentation, 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, with fair and reasonable terms and costs, make available to independent repair providers and owners of the manufacturer's equipment 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 of the manufacturer's equipment through appropriate secure release systems.

(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:**

(1) A part that is no longer available to the original equipment manufacturer; and

(II) conduct that would require the original equipment 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 is itself a trade secret.

(b) (I) An original equipment 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) An original equipment manufacturer may withhold information regarding a component, design, or functionality of, or process of developing, a part, embedded software, firmware, or 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.

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;

(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);

(c) Renders an original equipment manufacturer or authorized repair provider liable for any faulty, negligent, or otherwise improper repair that an independent repair provider or owner conducts on the manufacturer's digital electronic equipment; except that nothing in this subsection (1)(c) exempts an original equipment manufacturer from a products liability claim that is otherwise authorized in law;

(d) Applies to:

   (I) A motor vehicle manufacturer or dealer, as those terms are defined in section 42-1-102(49) and (22), respectively, that is acting in that capacity; a manufacturer of motor vehicle equipment that is acting in that capacity; or any product or service of a motor vehicle manufacturer or dealer or manufacturer of motor vehicle equipment;

   (II) A powersports vehicle manufacturer or powersports vehicle dealer, as those terms are defined in section 44-20-402(14) and (12), respectively, that is acting in that capacity; a manufacturer of powersports vehicle equipment that is acting in that capacity; or any product or service of a powersports vehicle manufacturer or powersports vehicle dealer or
MANUFACTURER OF POWERSPORTS VEHICLE EQUIPMENT; OR

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

(e) Requires an original equipment manufacturer to
provide access to tool functions that enable the owner or
independent repair provider to change the settings on motorized
agricultural or construction equipment so as to bring the
equipment out of compliance with any applicable safety or
emissions standards.

(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 13, 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 13 is void and unenforceable.

SECTION 3. Act subject to petition - effective date -
applicability. (1) This act takes effect at 12:01 a.m. on the day following
the expiration of the ninety-day period after final adjournment of the
general assembly; 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 such period, 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 on the date of the official declaration of the vote thereon by the
governor.
(2) This act applies to conduct occurring on or after the applicable effective date of this act.