

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

REDRAFT
12.11.19

Double underlining
denotes changes from
prior draft

DRAFT

LLS NO. 20-0143.01 Jennifer Berman x3286

HOUSE BILL

HOUSE SPONSORSHIP

Titone and Singer,

SENATE SPONSORSHIP

Bridges,

BILL TOPIC: "Consumer Digital Repair Bill Of Rights"
DEADLINES: Finalize by: JAN 9, 2020 File by: JAN 14, 2020

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

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

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 with an authorized repair provider that would remove or limit the manufacturer's obligation to provide these resources to independent repair providers and owners is void and unenforceable.

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

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

4 **6-1-105. Unfair or deceptive trade practices.** (1) A person
5 engages in a deceptive trade practice when, in the course of the person's
6 business, vocation, or occupation, the person:

7 (nnn) VIOLATES PART 13 OF THIS ARTICLE 1.

8 **SECTION 2.** In Colorado Revised Statutes, **add** part 13 to article
9 1 of title 6 as follows:

10 PART 13

11 CONSUMER RIGHT TO REPAIR

12 DIGITAL EQUIPMENT

13 **6-1-1301. Short title.** THE SHORT TITLE OF THIS PART 13 IS THE
14 "CONSUMER DIGITAL REPAIR BILL OF RIGHTS ACT".

15 **6-1-1302. Definitions.** AS USED IN THIS PART 13, UNLESS THE
16 CONTEXT OTHERWISE REQUIRES:

1 (1) (a) "AUTHORIZED REPAIR PROVIDER" MEANS A PERSON THAT
2 IS UNAFFILIATED WITH AN ORIGINAL EQUIPMENT MANUFACTURER AND
3 THAT HAS AN ARRANGEMENT WITH THE MANUFACTURER, WHETHER FOR
4 A DEFINITE OR AN INDEFINITE PERIOD, IN WHICH THE MANUFACTURER, FOR
5 THE PURPOSE OF OFFERING TO PROVIDE SERVICES TO AN OWNER, GRANTS
6 THE PERSON:

7 (I) A LICENSE TO USE A TRADE NAME, SERVICE MARK, OR OTHER
8 PROPRIETARY IDENTIFIER UNDER THE NAME OF THE MANUFACTURER; OR

9 (II) AUTHORITY UNDER ANY OTHER ARRANGEMENT TO ACT ON
10 BEHALF OF THE MANUFACTURER.

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

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

20 _____
21 (3) "DOCUMENTATION" MEANS A MANUAL; DIAGRAM, INCLUDING
22 A SCHEMATIC DIAGRAM; REPORTING OUTPUT; SERVICE CODE DESCRIPTION;
23 OR SIMILAR TYPE OF INFORMATION THAT AN ORIGINAL EQUIPMENT
24 MANUFACTURER PROVIDES TO AN AUTHORIZED REPAIR PROVIDER FOR
25 PURPOSES OF ASSISTING THE AUTHORIZED REPAIR PROVIDER WITH
26 SERVICES PERFORMED ON EQUIPMENT.

27 (4) "EMBEDDED SOFTWARE" MEANS PROGRAMMABLE

1 INSTRUCTIONS THAT ASSIST WITH EQUIPMENT OPERATION, INCLUDING
2 PROGRAMMABLE INSTRUCTIONS THAT AN OWNER RECEIVES:

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

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

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

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

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

24 (6) (a) "INDEPENDENT REPAIR PROVIDER" MEANS A PERSON IN THIS
25 STATE THAT IS:

26 (I) NOT A MANUFACTURER'S AUTHORIZED REPAIR PROVIDER NOR
27 AFFILIATED WITH A MANUFACTURER'S AUTHORIZED REPAIR PROVIDER;

1 AND

2 (II) ENGAGED IN OFFERING OR PROVIDING SERVICES.

3 (b) "INDEPENDENT REPAIR PROVIDER" INCLUDES AN AUTHORIZED
4 REPAIR PROVIDER IF THE AUTHORIZED REPAIR PROVIDER IS OFFERING OR
5 PROVIDING SERVICES FOR AN ORIGINAL EQUIPMENT MANUFACTURER
6 OTHER THAN THE MANUFACTURER WITH WHICH THE AUTHORIZED REPAIR
7 PROVIDER IS AFFILIATED.

8

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

13

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

17

18 (9) "PART" MEANS A NEW OR USED REPLACEMENT PART THAT AN
19 ORIGINAL EQUIPMENT MANUFACTURER OFFERS FOR SALE OR OTHERWISE
20 MAKES AVAILABLE TO OWNERS OF THE MANUFACTURER'S EQUIPMENT FOR
21 THE PURPOSE OF PROVIDING SERVICES.

22

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

25

26 (11) "TRADE SECRET" HAS THE MEANING SET FORTH IN SECTION
27 7-74-102 (4).

28 **6-1-1303. Original equipment manufacturer obligations**
29 **regarding services - unfair or deceptive trade practice - exemptions.**

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

1 (a) FOR THE PURPOSE OF PROVIDING SERVICES FOR DIGITAL
2 ELECTRONIC EQUIPMENT SOLD OR USED IN THIS STATE, AN ORIGINAL
3 EQUIPMENT MANUFACTURER SHALL, ON FAIR AND REASONABLE TERMS
4 AND COSTS, MAKE AVAILABLE TO ANY INDEPENDENT REPAIR PROVIDER OR
5 OWNER OF THE MANUFACTURER'S EQUIPMENT ANY DOCUMENTATION,
6 PARTS, EMBEDDED SOFTWARE, OR TOOLS, INCLUDING UPDATES TO
7 INFORMATION OR EMBEDDED SOFTWARE.

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

20 (2) A VIOLATION OF SUBSECTION (1) OF THIS SECTION IS AN UNFAIR
21 OR DECEPTIVE TRADE PRACTICE IN ACCORDANCE WITH SECTION 6-1-105
22 (1)(nnn) AND IS SUBJECT TO INVESTIGATION AND ENFORCEMENT BY THE
23 ATTORNEY GENERAL OR A DISTRICT ATTORNEY IN ACCORDANCE WITH THIS
24 ARTICLE 1.

25 (3) (a) SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO:
26 (1) ANY PART THAT IS NO LONGER AVAILABLE TO THE ORIGINAL
27 EQUIPMENT MANUFACTURER; AND

1 (II) ANY CONDUCT THAT WOULD REQUIRE THE ORIGINAL
2 EQUIPMENT MANUFACTURER TO DIVULGE A TRADE SECRET; EXCEPT THAT
3 A MANUFACTURER SHALL NOT REFUSE TO MAKE AVAILABLE TO
4 INDEPENDENT REPAIR PROVIDERS AND OWNERS ANY DOCUMENTATION,
5 PART, EMBEDDED SOFTWARE, OR TOOL NECESSARY TO PROVIDE SERVICES
6 ON GROUNDS THAT THE DOCUMENTATION, PART, EMBEDDED SOFTWARE,
7 OR TOOL IS ITSELF A TRADE SECRET.

8 (b) (I) WITH RESPECT TO ANY DOCUMENTATION, A
9 MANUFACTURER MAY REDACT THE DOCUMENTATION TO REMOVE TRADE
10 SECRETS FROM THE DOCUMENTATION BEFORE PROVIDING ACCESS TO THE
11 DOCUMENTATION IF THE REDACTED DOCUMENTATION REMAINS USABLE
12 FOR THE PURPOSE OF PROVIDING SERVICES.

13 (II) WITH RESPECT TO ANY PART, EMBEDDED SOFTWARE, OR TOOL,
14 A MANUFACTURER MAY WITHHOLD INFORMATION REGARDING A
15 COMPONENT, DESIGN, OR FUNCTIONALITY OF, OR PROCESS OF DEVELOPING,
16 THE PART, EMBEDDED SOFTWARE, OR TOOL IF THE INFORMATION IS A
17 TRADE SECRET.

18 **6-1-1304. Limitations.** (1) NOTHING IN THIS PART 13:

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

24 (b) REQUIRES AN ORIGINAL EQUIPMENT MANUFACTURER TO
25 PROVIDE AN INDEPENDENT REPAIR PROVIDER OR OWNER ACCESS TO
26 INFORMATION, OTHER THAN DOCUMENTATION, THAT THE MANUFACTURER
27 PROVIDES TO AN AUTHORIZED REPAIR PROVIDER PURSUANT TO A

1 CONTRACT OR OTHER ARRANGEMENT WITH THE INDEPENDENT REPAIR
2 PROVIDER.

3 **6-1-1305. Manufacturer cannot void or limit obligations by**
4 **contract.** WITH RESPECT TO ANY CONTRACT OR OTHER ARRANGEMENT, OR
5 RENEWAL OF A CONTRACT OR EXISTING ARRANGEMENT, THAT AN
6 ORIGINAL EQUIPMENT MANUFACTURER ENTERS INTO WITH AN
7 INDEPENDENT REPAIR PROVIDER AFTER THE EFFECTIVE DATE OF THIS PART
8 13, ANY PROVISION, AGREEMENT, OR LANGUAGE IN THE CONTRACT OR
9 ARRANGEMENT THAT WAIVES, AVOIDS, RESTRICTS, OR LIMITS THE
10 MANUFACTURER'S OBLIGATIONS UNDER THIS PART 13 IS VOID AND
11 UNENFORCEABLE.

12 **SECTION 3. Act subject to petition - effective date.** This act
13 takes effect January 1, 2021; except that, if a referendum petition is filed
14 pursuant to section 1 (3) of article V of the state constitution against this
15 act or an item, section, or part of this act within the ninety-day period
16 after final adjournment of the general assembly, then the act, item,
17 section, or part will not take effect unless approved by the people at the
18 general election to be held in November 2020 and, in such case, will take
19 effect January 1, 2021, or on the date of the official declaration of the
20 vote thereon by the governor, whichever is later. <{Would you prefer a
21 safety clause?}>