

SENATE BILL 1252

By Akbari

AN ACT to amend Tennessee Code Annotated, Title 47,
Chapter 18, relative to consumer protection.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following as a new part:

47-18-3201. Short title.

This part is known and may be cited as the "Consumer Wheelchair Repair Bill of Rights Act."

47-18-3202. Part definitions.

As used in this part:

(1) "Authorized repair provider":

(A) Means a person who is unaffiliated with a manufacturer other than through an agreement 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 another arrangement to act on behalf of the manufacturer; and

(B) 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 subdivision (1)(A);

(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" means programmable instructions provided on firmware delivered with an electronic component of equipment or with a part for the purpose of restoring or improving operation of the equipment or part;

(4) "Equipment" means a powered wheelchair;

(5) "Fair and reasonable terms and costs":

(A)

(i) 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; and

(ii) For purposes of subdivision (5)(A)(i), costs must be calculated using net costs incurred and accounting for any discounts, rebates, or incentives offered;

(B) With respect to documentation, means that the manufacturer provides the documentation, including 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; and

(C) With respect to tools that are software programs, 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) "Independent repair provider":

(A) Means a person in this 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; and

(B) 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 agreement described in subdivision (1); 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 this 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 another mechanism that provides, programs, or pairs a new part, calibrates functionality, or performs another function required to return the equipment or part to fully functional condition; and

(14) "Trade secret" has the same meaning as defined in § 47-25-1702.

47-18-3203. Powered wheelchair manufacturer obligations regarding services – exemptions.

(a)

(1) 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.

(2) 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.

(b) Subsection (a) does not apply to:

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

(2) 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.

(c)

(1) A manufacturer may redact documentation to remove trade secrets from the documentation before providing access to the documentation, as long as the usability of the redacted documentation for the purpose of providing services is not diminished.

(2) A manufacturer may withhold information regarding a component, design, functionality, 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.

(d) 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:

(1) Damage to powered wheelchairs that occur during such repairs;

(2) Indirect, incidental, special, or consequential damages; or

(3) An inability to use, or a reduced functionality of, a powered wheelchair resulting from the faulty or otherwise improper repair.

47-18-3204. Limitations – application.

(a) Except as provided in subsection (b), this part does not:

(1) Alter the terms of a contract or other enforceable agreement between an original equipment manufacturer and an authorized repair provider, including the performance or provision of warranty or recall repair work and an exclusivity or noncompete clause;

(2) Require 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

enforceable agreement with the authorized repair provider, except as necessary to comply with § 47-18-3203(a); or

(3) Exempt a manufacturer from a products liability claim that is otherwise authorized in law.

(b) For a contract or other enforceable agreement that an original equipment manufacturer enters into, amends, or renews on or after January 1, 2024, any term, provision, or other language in the contract or agreement that waives, avoids, restricts, or limits the manufacturer's obligations under this part is void as against the public policy of this state and is unenforceable.

47-18-3205. Violations – Investigative and enforcement authority – Costs.

(a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter. A violation of this part constitutes an unfair or deceptive act or practice affecting trade or commerce and is subject to the penalties and remedies as provided in the Tennessee Consumer Protection Act of 1977.

(b) The attorney general and reporter has all of the investigative and enforcement authority that the attorney general and reporter has under the Tennessee Consumer Protection Act of 1977 relating to alleged violations of this part. The attorney general and reporter may institute proceedings involving alleged violations of this part in Davidson County circuit or chancery court or any other venue otherwise permitted by law.

(c) A court shall not tax costs of any kind or nature against the attorney general and reporter or the state in actions commenced under this part.

SECTION 2. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. This act takes effect January 1, 2024, the public welfare requiring it.