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H.656

Introduced by Representatives Burrows of West Windsor, Stone of
Burlington, and Rachelson of Burlington

Referred to Committee on

Date:

Subject: Commerce and trade; consumer protection; right to repair wheelchair

Statement of purpose of bill as introduced: This bill proposes to allow owners
of powered wheelchairs to repair their wheelchairs on their own or using an
independent repair provider.

An act relating to establishing a right to repair powered wheelchairs

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 9 V.S.A. chapter 153 is added to read:

CHAPTER 153. RIGHT TO REPAIR WHEELCHAIR ACT

§ 6201. TITLE

This chapter shall be known as the Right to Repair Wheelchair Act

§ 6202. DEFINITIONS

As used in this chapter:

(1)(A) “Authorized repair provider” means a person who has an
arrangement for a definite or indefinite period in which an original equipment
manufacturer (OEM) grants to a separate person a license to use a trade name,

1 service mark, or related characteristic for the purposes of offering repair
2 services under the name of the OEM or a person retained by the OEM to
3 provide refurbishing or repair services for the OEM's products.

4 (B) An OEM who offers the services of diagnosis, maintenance, or
5 repair of its own digital electronic equipment, and who does not have an
6 arrangement described in subdivision (A) of this subdivision (1) with an
7 independent repair provider, shall be considered an authorized repair provider
8 with respect to the equipment.

9 (2) "Embedded software" means any programmable instructions
10 provided on firmware delivered with the equipment for the purposes of
11 equipment operation, including all relevant patches and fixes made by the
12 OEM for this purpose.

13 (3) "Equipment" means a powered wheelchair or parts of a powered
14 wheelchair.

15 (4) "Fair and reasonable terms" means making available parts, tools, or
16 documentation as follows:

17 (A) with respect to documentation required for repair, that
18 documentation is provided by the OEM at no charge, except that, when the
19 documentation is requested in physical printed form, a charge may be included
20 for the reasonable actual costs of preparing and sending the copy;

1 (B) with respect to tools, that tools are made available by the OEM at
2 no charge and without requiring authorization or internet access for use or
3 operation of the tool, or imposing impediments to access or use of the tool to
4 diagnose, repair, and enable full functionality of digital electronic equipment,
5 except that when a tool is requested in physical form, a charge may be included
6 for the reasonable, actual costs of preparing and sending the tool; and

7 (C) with respect to parts, that parts are made available by the OEM,
8 either directly or indirectly through an authorized repair provider to
9 independent repair providers and owners at reasonable costs and terms that are
10 equivalent to the most favorable costs and terms under which an OEM offers
11 the part to an authorized repair provider and that:

12 (i) account for any discount, rebate, convenient and timely means
13 of delivery, means of enabling fully restored and updated functionality, rights
14 of use, or other incentive or preference the OEM offers to an authorized repair
15 provider, or any additional cost, burden, or impediment the OEM imposes on
16 an owner of independent repair provider;

17 (ii) is not conditioned on or imposing a substantial obligation or
18 restriction that is not reasonably necessary for enabling the owner or
19 independent repair provider to engage in the diagnosis, maintenance, or repair
20 of digital electronic equipment made by or on behalf of the OEM; and

1 (iii) is not conditioned on an arrangement described in subdivision
2 (1) of this section.

3 (5) “Firmware” means a software program or set of instructions
4 programmed on a hardware device to allow the device to communicate with
5 other computer hardware.

6 (6) “Independent repair provider” means a person operating in this State
7 who is not affiliated with an OEM or an OEM’s authorized repair provider,
8 who does not have an arrangement with an OEM as described in subdivision
9 (1) of this section, and who is engaged in the diagnosis, service, maintenance,
10 or repair of equipment.

11 (7) “Original equipment manufacturer” or “OEM” means a person who,
12 in the ordinary course of business, is engaged in the business of selling or
13 leasing new equipment and who is engaged in the diagnosis, service,
14 maintenance, or repair of equipment.

15 (8) “Owner” means a person who owns or leases equipment.

16 (9) “Part” means a replacement part, either new or used, made available
17 by an OEM to an authorized repair provider for purposes of effecting repair.

18 (10) “Powered wheelchair” means a motorized wheeled device designed
19 for use by a person with a physical disability.

20 (11) “Trade secret” means anything tangible or intangible or
21 electronically stored or kept that constitutes, represents, evidences, or records

1 intellectual property, including secret or confidentially held designs, processes,
2 procedures, formulas, inventions, or improvements; secret or confidentially
3 held scientific, technical, merchandising, production, financial, business, or
4 management information; or any other trade secret as set forth in 18 U.S.C.
5 § 1839.

6 § 6203. REQUIREMENTS

7 (a) For equipment used in this State, the OEM of the equipment shall make
8 available either directly by the OEM or through an authorized repair provider
9 to independent repair providers and owners of powered wheelchairs on fair and
10 reasonable terms:

11 (1) any documentation, parts, and tools required for the diagnosis,
12 maintenance, or repair of the powered wheelchairs, inclusive of any updates to
13 information;

14 (2) the purchase of equipment or service parts, inclusive of any updates
15 to the embedded software of the equipment or service parts; and

16 (3) the purchase of all diagnostic repair tools incorporating the same
17 diagnostic, repair, and remote communications capabilities that the OEM
18 makes available to its own repair or engineering staff or any authorized repair
19 provider without requiring authorization or internet access for use or operation
20 of the tool or imposing impediments to access or use of the tools to diagnose,
21 maintain, or repair and enable full functionality of digital electronic equipment.

1 (b) For equipment that contains an electronic security lock or other
2 security-related function, the OEM shall make available to the owner or
3 independent repair provider, on fair and reasonable terms, any special
4 documentation, tools, or parts needed to access and reset the lock or function
5 when disabled in the course of diagnosis, maintenance, or repair of the
6 equipment. The documentation, tools, and parts may be made available
7 through an appropriate secure release system.

8 (c) An OEM that sells diagnostic, service, or repair documentation to an
9 independent repair provider or to an owner in a format that is standardized with
10 other OEMs, and on terms and conditions more favorable than the manner and
11 the terms and conditions pursuant to which an authorized repair provider
12 obtains the same diagnostic, service, or repair documentation, shall not require
13 an authorized repair provider to continue purchasing diagnostic, service, or
14 repair documentation in a proprietary format, unless the proprietary format
15 includes diagnostic, service, or repair documentation or functionality that is not
16 available in the standardized format.

17 (d) Parts, tools, and documentation shall be made available by the OEM to
18 an authorized repair provider and shall further be made available by an
19 authorized repair provider to any independent repair provider or owner,
20 provided that the authorized repair provider is contractually and practically
21 permitted by the OEM to sell the parts, tools, and documentation to any

1 independent repair provider or owner and provided further that the OEM shall
2 not:

3 (1) retaliate against or hinder the ability of any authorized repair
4 provider to sell the parts, tools, or documentation through any means,
5 including advertising restrictions or product allocation limitations unrelated to
6 legitimate product shortages; or

7 (2) condition or impose a substantial obligation or restriction that is not
8 reasonably necessary for enabling the owner or independent repair provider to
9 engage in the diagnosis, maintenance, or repair of digital electronic equipment
10 made by or on behalf of the OEM.

11 (e) An OEM satisfies its obligations under this chapter if it provides
12 diagnostic repair documentation to aftermarket diagnostic tool manufacturers,
13 diagnostics providers, or service information publications and systems and is
14 not responsible for the content and function of aftermarket diagnostic tools,
15 diagnostics, or service information systems.

16 § 6204. EXCLUSIONS

17 (a) Nothing in this act shall require an OEM to divulge any trade secret to
18 any owner or independent service provider, except that an OEM shall not
19 refuse to make available to an independent repair provider or owner any
20 documentation, part, embedded software, firmware, or tool necessary to

1 provide services on grounds that the documentation, part, embedded software,
2 firmware, or tool itself is a trade secret.

3 (b) Nothing in this act shall alter the terms of any arrangement in force
4 between an authorized repair provider and an OEM, including the performance
5 or provision of warranty or recall repair work by an authorized repair provider
6 on behalf of an OEM and pursuant to the arrangement, except that any
7 provision in the terms that purports to waive, avoid, restrict, or limit the
8 OEM's obligations to comply with this chapter shall be void and
9 unenforceable.

10 (c) No OEM or authorized repair provider shall be liable for any damage or
11 injury caused to any powered wheelchair by an independent repair provider or
12 owner that occurs during the course of repair, diagnosis, or maintenance.

13 (d) This chapter does not require the OEM to sell equipment or service
14 parts if the parts are no longer available to the OEM or the authorized repair
15 provider of the OEM.

16 § 6205. ENFORCEMENT

17 (a) A person who violates this chapter commits an unfair and deceptive act
18 in trade and commerce in violation of section 2453 of this title.

19 (b) The Attorney General has the same authority to make rules, conduct
20 civil investigations, and enter into assurances of discontinuance as is provided
21 under chapter 63, subchapter 1 of this title.

1 Sec. 2. APPLICABILITY

2 This act applies with respect to powered wheelchairs used in the State on or
3 after the effective date of this act.

4 Sec. 3. EFFECTIVE DATE

5 This act shall take effect on July 1, 2024.