

1 the name of the original equipment manufacturer, or other
2 arrangement with the original equipment manufacturer to offer
3 the services on behalf of the original equipment manufacturer.
4 "Authorized repair provider", with respect to equipment,
5 includes an original equipment manufacturer who offers the
6 services of diagnosis, maintenance, or repair of its own covered
7 device, and who does not have an arrangement described in this
8 definition with an unaffiliated individual or business.

9 "Covered device" means any wheelchair. "Covered device"
10 includes charging equipment and other related equipment for the
11 use of the covered device.

12 "Documentation" means any manual, diagram, reporting
13 output, service code description, schematic diagram, or similar
14 kinds of information provided to an authorized repair provider
15 for purposes of its effecting the services of diagnosis,
16 maintenance, or repair of a covered device.

17 "Embedded software" means any programmable instructions
18 provided on firmware delivered with a covered device, or with a
19 part for the equipment, for purposes of equipment operation,
20 including all relevant patches and fixes made by the
21 manufacturer of the equipment or part for these purposes.



1 "Fair and reasonable terms" for obtaining a part, tool, or
2 documentation means at costs and terms, including convenience of
3 delivery and rights of use, equivalent to what is offered by the
4 original equipment manufacturer to an authorized repair
5 provider, using the net costs that would be incurred by an
6 authorized repair provider in obtaining an equivalent part,
7 tool, or documentation from the original equipment manufacturer,
8 accounting for any discounts, rebates, or other incentive
9 programs in arriving at the actual net costs. For
10 documentation, including any relevant updates, "fair and
11 reasonable terms" means at no charge, except that, when the
12 documentation is requested in physical printed form, a charge
13 may be included for the reasonable actual costs of preparing and
14 sending the copy.

15 "Firmware" means a software program or set of instructions
16 programmed on a covered device, or on a part for the equipment,
17 to allow the equipment or part to communicate with other
18 computer hardware.

19 "Independent repair provider" means an individual or
20 business operating in the State, who:



1 (1) Does not have an arrangement with an original
2 equipment manufacturer;
3 (2) Is not affiliated with any individual or business who
4 has an arrangement; and
5 (3) Is engaged in the services of diagnosis, maintenance,
6 or repair of a covered device,
7 except that an original equipment manufacturer or, with respect
8 to that original equipment manufacturer, an individual or
9 business who has an arrangement with that original equipment
10 manufacturer, or who is affiliated with an individual or
11 business who has an arrangement with that original equipment
12 manufacturer, shall be considered an independent repair provider
13 for purposes of those instances in which it engages in the
14 services of diagnosis, maintenance, or repair of a covered
15 device that is not manufactured by or sold under the name of
16 that original equipment manufacturer.

17 "Manufacturer of motor vehicle equipment" means a business
18 engaged in the business of manufacturing or supplying components
19 that are used in the manufacture, maintenance, or repair of a
20 motor vehicle.



1 "Motor vehicle" means a vehicle that is designed for
2 transporting persons or property on a street or highway and is
3 certified by the motor vehicle manufacturer under all applicable
4 federal safety and emissions standards and requirements for
5 distribution and sale in the United States.

6 "Motor vehicle dealer" means an individual or business who,
7 in the ordinary course of business, is engaged in the business
8 of selling or leasing new motor vehicles to an individual or
9 business pursuant to a franchise agreement, has obtained a
10 license under section 437-2, and is engaged in the services of
11 diagnosis, maintenance, or repair of motor vehicles or motor
12 vehicle engines pursuant to that franchise agreement.

13 "Motor vehicle manufacturer" means a business engaged in
14 the business of manufacturing or assembling new motor vehicles.

15 "Original equipment manufacturer" means a business engaged
16 in the business of selling or leasing a new covered device
17 manufactured by or on behalf of itself, to any individual or
18 business.

19 "Owner" means an individual or business who owns or leases
20 covered devices purchased or used in the State.



1 "Part" means any replacement part, either new or used, made
2 available by an original equipment manufacturer for purposes of
3 effecting the services of maintenance or repair of a covered
4 device manufactured or sold by the original equipment
5 manufacturer.

6 "Trade secret" has the same meaning as defined in
7 section 482B-2.

8 § -2 **Requirements.** (a) For a covered device, and parts
9 for the covered device, sold or used in the State, an original
10 equipment manufacturer shall make available for purposes of
11 diagnosis, maintenance, or repair to any independent repair
12 provider or owner of a covered device manufactured by or on
13 behalf of or sold by the original equipment manufacturer, on
14 fair and reasonable terms, any documentation, parts, and tools,
15 including any updates to information or embedded software.

16 Nothing in this section requires an original equipment
17 manufacturer to make available a part if the part is no longer
18 available to the original equipment manufacturer.

19 (b) For equipment that contains an electronic security
20 lock or other security-related function, the original equipment
21 manufacturer shall make available to the owner or independent



1 repair provider, on fair and reasonable terms, any special
2 documentation, tools, and parts needed to reset the lock or
3 function if the function is disabled in the course of diagnosis,
4 maintenance, or repair of the equipment. The documentation,
5 tools, and parts may be made available through appropriately
6 secure release systems.

7 § **-3 Enforcement by attorney general.** Violation of any
8 provision of this chapter shall be deemed an unfair practice
9 under section 480-2. All remedies, penalties, and authority
10 granted to the attorney general by chapter 480 shall be
11 available to the attorney general in the enforcement of this
12 chapter.

13 § **-4 Limitations.** (a) Nothing in this chapter shall be
14 construed to require an original equipment manufacturer to
15 divulge a trade secret to an owner or independent service
16 provider except as necessary to provide documentation, parts,
17 and tools on fair and reasonable terms.

18 (b) No provision of this chapter shall be construed to
19 alter the terms of any arrangement in force between an
20 authorized repair provider and an original equipment
21 manufacturer, including the performance or provision of warranty



1 or recall repair work by an authorized repair provider on behalf
2 of an original equipment manufacturer pursuant to the
3 arrangement, except that any provision in the terms that
4 purports to waive, avoid, restrict, or limit the original
5 equipment manufacturer's obligations to comply with this chapter
6 shall be void and unenforceable.

7 (c) Nothing in this chapter shall be construed to require
8 an original equipment manufacturer or authorized repair provider
9 to provide an owner or independent repair provider access to
10 information, other than documentation, that is provided by the
11 original equipment manufacturer to an authorized repair provider
12 pursuant to the terms of the arrangement between the authorized
13 repair provider and the original equipment manufacturer.

14 § -5 **Exclusions.** This chapter shall not apply to a:

15 (1) Motor vehicle manufacturer, manufacturer of motor
16 vehicle equipment, or motor vehicle dealer acting in
17 that capacity or to any product or service of the
18 motor vehicle manufacturer, manufacturer of motor
19 vehicle equipment, or motor vehicle dealer;

20 (2) Manufacturer, distributor, importer, or dealer of any
21 off-road equipment, including all-terrain sports and



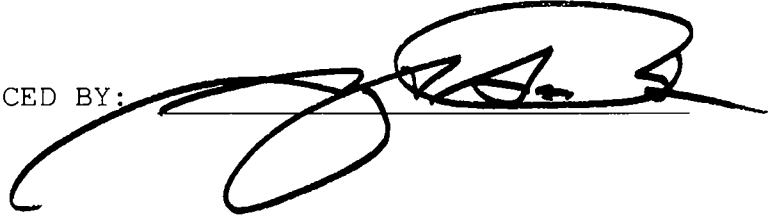
1 recreational vehicles, racing vehicles, motorcycles,
2 and heavy construction equipment; or
3 (3) Manufacturer, distributor, importer, or dealer of any
4 medical equipment valued at \$100,000 or more that is
5 used in the treatment, monitoring, or diagnosis of a
6 patient.

7 § -6 **Applicability.** This chapter shall apply with
8 respect to covered devices sold or in use on or after the
9 effective date of this chapter."

10 SECTION 3. This Act shall take effect upon its approval.

11

INTRODUCED BY: _____

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S.B. NO. 2847

Report Title:

Right To Repair; Consumer Protection; Wheelchair

Description:

Establishes a right to repair for wheelchairs.

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