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HOUSE BILL 23-1011

BY REPRESENTATIVE(S) Titone and Weinberg, Boesenecker, deGruy Kennedy, Dickson, Gonzales-Gutierrez, Hamrick, Jodeh, Lindsay, Mabrey, Marshall, Michaelson Jenet, Ortiz, Sirota, Story, Weissman, Willford, Amabile, Brown, English, McCormick, Ricks, Woodrow, McCluskie;
also SENATOR(S) Hinrichsen and Marchman, Bridges, Cutter, Danielson, Jaquez Lewis, Moreno, Rodriguez, Fenberg.

CONCERNING A REQUIREMENT THAT AN AGRICULTURAL EQUIPMENT MANUFACTURER FACILITATE THE REPAIR OF ITS EQUIPMENT BY PROVIDING CERTAIN OTHER PERSONS WITH THE RESOURCES NEEDED TO REPAIR THE MANUFACTURER'S AGRICULTURAL EQUIPMENT.

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

SECTION 1. In Colorado Revised Statutes, **amend** 6-1-1501 as follows:

6-1-1501. Short title. The short title of this part 15 is the "Consumer ~~Wheelchair~~ Repair Bill of Rights Act".

SECTION 2. In Colorado Revised Statutes, 6-1-1502, **amend** (1),

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(2), (4), (5)(a)(II), and (6); and **add** (1.3), (1.5), (3.2), (4.3), (5)(d), and (5)(e) as follows:

6-1-1502. Definitions. As used in this part 15, unless the context otherwise requires:

~~(1) (a) "Authorized repair provider" means a person that is unaffiliated with a 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 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 any other arrangement to act on behalf of the manufacturer.~~

~~(b) "Authorized repair provider" 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 subsection (1)(a) of this section "AGRICULTURAL EQUIPMENT" MEANS EQUIPMENT THAT IS PRIMARILY DESIGNED FOR USE IN A FARM OR RANCH OPERATION.~~

(b) "AGRICULTURAL EQUIPMENT" INCLUDES:

(I) A TRACTOR, TRAILER, COMBINE, SPRAYER, TILLAGE IMPLEMENT, BALER, AND OTHER EQUIPMENT USED TO PLANT, CULTIVATE, OR HARVEST AGRICULTURAL PRODUCTS OR TO RANCH; AND

(II) ATTACHMENTS TO AND REPAIR PARTS FOR EQUIPMENT DESCRIBED IN SUBSECTION (1)(b)(I) OF THIS SECTION.

(c) "AGRICULTURAL EQUIPMENT" DOES NOT INCLUDE:

(I) A SELF-PROPELLED VEHICLE DESIGNED PRIMARILY FOR THE TRANSPORTATION OF INDIVIDUALS OR PROPERTY ON A STREET OR HIGHWAY;

(II) A POWERSPORTS VEHICLE AS DEFINED IN SECTION 44-20-402 (11);

(III) ANY AIRCRAFT USED IN AN AGRICULTURAL AIRCRAFT OPERATION, AS DEFINED IN 14 CFR 137.3; OR

(IV) ANY EQUIPMENT DESIGNED AND USED PRIMARILY FOR IRRIGATION PURPOSES.

(1.3) (a) "AUTHORIZED REPAIR PROVIDER" MEANS A PERSON THAT IS UNAFFILIATED WITH A 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 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 ANY OTHER ARRANGEMENT TO ACT ON BEHALF OF THE MANUFACTURER.

(b) "AUTHORIZED REPAIR PROVIDER" 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 SUBSECTION (1.3)(a) OF THIS SECTION.

(1.5) "DATA" MEANS, WITH THE CONSENT OF AN OWNER, TRANSMITTED OR COMPILED INFORMATION ARISING FROM THE OPERATION OF AN OWNER'S AGRICULTURAL EQUIPMENT OR ITS PARTS.

(2) "Documentation" means a manual; diagram, including a schematic diagram; reporting output; service code description; SECURITY CODE OR PASSWORD; or similar type of GUIDANCE OR information, whether in an electronic or tangible format, that a manufacturer provides to an authorized repair provider ~~for purposes of assisting~~ TO ASSIST the authorized repair provider with services performed on the manufacturer's equipment or a part.

(3.2) (a) "EMBEDDED SOFTWARE FOR AGRICULTURAL EQUIPMENT" MEANS ANY PROGRAMMABLE INSTRUCTIONS PROVIDED ON FIRMWARE DELIVERED WITH OR LOADED TO THE AGRICULTURAL EQUIPMENT, WITH RESPECT TO AGRICULTURAL EQUIPMENT OPERATION.

(b) "EMBEDDED SOFTWARE FOR AGRICULTURAL EQUIPMENT" INCLUDES ALL RELEVANT PATCHES AND FIXES THAT THE MANUFACTURER MAKES, INCLUDING, BUT NOT LIMITED TO, ITEMS DESCRIBED AS "BASIC INTERNAL OPERATING SYSTEM", "INTERNAL OPERATING SYSTEM", "MACHINE CODE", "ASSEMBLY CODE", "ROOT CODE", AND "MICROCODE".

(4) "Equipment" means:

(a) A powered wheelchair; OR

(b) AGRICULTURAL EQUIPMENT.

(4.3) "EQUIPMENT DEALER" MEANS ANY PERSON, PARTNERSHIP, CORPORATION, ASSOCIATION, OR OTHER FORM OF BUSINESS ENTERPRISE THAT IS PRIMARILY ENGAGED IN THE RETAIL SALE OF AGRICULTURAL EQUIPMENT.

(5) (a) (II) EXCEPT AS PROVIDED IN SUBSECTION (5)(d) OF THIS SECTION, costs considered under subsection (5)(a)(I) of this section ~~must be~~ ARE calculated using net costs incurred, accounting for any discounts, rebates, or incentives offered.

(d) "FAIR AND REASONABLE TERMS AND COSTS", WITH RESPECT TO PARTS FOR AGRICULTURAL EQUIPMENT, MEANS THAT, NOTWITHSTANDING SUBSECTION (5)(a)(I) OF THIS SECTION, PARTS SHALL BE SOLD TO AN OWNER OR AN INDEPENDENT REPAIR PROVIDER UNDER EQUITABLE TERMS FOR ACCESS TO OR RECEIPT OF ANY PART PERTAINING TO AGRICULTURAL EQUIPMENT AND IN A MANNER THAT:

(I) IS FAIR TO BOTH PARTIES IN LIGHT OF ANY AGREED-UPON CONDITIONS, THE PROMISED QUALITY, AND THE TIMELINESS OF THE DELIVERY; OR

(II) DOES NOT DISCOURAGE OR DISINCENTIVIZE REPAIRS TO BE MADE BY AN OWNER OR AN INDEPENDENT REPAIR PROVIDER.

(e) TERMS CONSIDERED UNDER THIS SUBSECTION (5) ARE FAIR IF THE TERMS DO NOT IMPOSE ON AN OWNER OR INDEPENDENT REPAIR PROVIDER ANY:

(I) SUBSTANTIAL OBLIGATION TO USE, OR ANY RESTRICTION ON THE USE OF, A PART, EMBEDDED SOFTWARE, EMBEDDED SOFTWARE FOR AGRICULTURAL EQUIPMENT, FIRMWARE, OR TOOL, INCLUDING A CONDITION THAT THE OWNER OR INDEPENDENT REPAIR PROVIDER BECOME AN AUTHORIZED REPAIR PROVIDER OF THE MANUFACTURER; OR

(II) REQUIREMENT THAT A PART, EMBEDDED SOFTWARE, EMBEDDED SOFTWARE FOR AGRICULTURAL EQUIPMENT, FIRMWARE, OR TOOL BE REGISTERED OR PAIRED WITH OR APPROVED BY THE MANUFACTURER OR AN AUTHORIZED REPAIR PROVIDER BEFORE THE PART, EMBEDDED SOFTWARE, EMBEDDED SOFTWARE FOR AGRICULTURAL EQUIPMENT, FIRMWARE, OR TOOL IS OPERATIONAL.

(6) "Firmware" means a software program or set of instructions programmed on equipment or a part to allow the equipment or part to FUNCTION OR communicate with itself or with other computer hardware.

SECTION 3. In Colorado Revised Statutes, 6-1-1503, **amend** (1), (2)(a)(II), (2)(b)(II), (3) introductory portion, (3)(a), and (3)(c); and **add** (4) as follows:

6-1-1503. Equipment manufacturer obligations regarding services - exemptions. (1) Except as provided in subsection (2) of this section:

(a) 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, EMBEDDED SOFTWARE FOR AGRICULTURAL EQUIPMENT, firmware, ~~or~~ tools, OR, WITH OWNER AUTHORIZATION, DATA that are intended for use with the equipment or any part, including updates to documentation, parts, embedded software, EMBEDDED SOFTWARE FOR AGRICULTURAL EQUIPMENT, firmware, ~~or~~ tools, OR, WITH OWNER AUTHORIZATION, DATA.

(b) 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, EMBEDDED SOFTWARE FOR AGRICULTURAL EQUIPMENT, firmware, ~~or~~ tools, OR, WITH OWNER AUTHORIZATION, DATA needed to reset the lock or function when disabled in the course of providing services. The manufacturer may make the documentation, parts, embedded software, EMBEDDED SOFTWARE FOR AGRICULTURAL EQUIPMENT, firmware, ~~or~~ tools, OR, WITH OWNER AUTHORIZATION, DATA available to independent repair providers and owners through appropriate secure release systems.

(2) (a) Subsection (1) of this section does not apply to:

(II) 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, EMBEDDED SOFTWARE FOR AGRICULTURAL EQUIPMENT, firmware, ~~or~~ tool, OR, WITH OWNER AUTHORIZATION, DATA necessary to provide services on grounds that the documentation, part, embedded software, EMBEDDED SOFTWARE FOR AGRICULTURAL EQUIPMENT, firmware, ~~or~~ tool, OR, WITH OWNER AUTHORIZATION, DATA itself is a trade secret.

(b) (II) A manufacturer may withhold information regarding a component of, design of, functionality of, or process of developing a part, embedded software, EMBEDDED SOFTWARE FOR AGRICULTURAL EQUIPMENT, firmware, or a tool if the information is a trade secret and the usability of the part, embedded software, EMBEDDED SOFTWARE FOR AGRICULTURAL EQUIPMENT, firmware, or tool for the purpose of providing services is not diminished.

(3) NEITHER an original equipment manufacturer NOR AN EQUIPMENT DEALER is ~~not~~ liable for faulty or otherwise improper repairs provided by independent repair providers or owners, including faulty or otherwise improper repairs that cause:

(a) Damage to powered wheelchairs OR AGRICULTURAL EQUIPMENT that ~~occur~~ OCCURS during such repairs;

(c) An inability to use, or a reduced functionality of, a powered wheelchair OR PIECE OF AGRICULTURAL EQUIPMENT resulting from the faulty

or otherwise improper repair.

(4) A MANUFACTURER THAT PROVIDES DATA TO AN INDEPENDENT REPAIR PROVIDER IN COMPLIANCE WITH THIS PART 15 IS NEITHER RESPONSIBLE NOR LIABLE TO THE OWNER, THE INDEPENDENT REPAIR PROVIDER, OR ANOTHER PARTY FOR ANY ACTION THAT THE INDEPENDENT REPAIR PROVIDER OR ANOTHER PARTY TAKES WHILE USING OR RELYING ON THE DATA.

SECTION 4. In Colorado Revised Statutes, 6-1-1504, **amend** (2); and **add** (1)(a.5) as follows:

6-1-1504. Limitations. (1) Subject to subsection (2) of this section, nothing in this part 15:

(a.5) AUTHORIZES AN INDEPENDENT REPAIR PROVIDER OR OWNER TO:

(I) MAKE ANY MODIFICATION TO AGRICULTURAL EQUIPMENT THAT DEACTIVATES A SAFETY NOTIFICATION SYSTEM, EXCEPT AS NECESSARY TO PROVIDE SERVICES;

(II) ACCESS ANY FUNCTION OF A TOOL THAT ENABLES THE INDEPENDENT REPAIR PROVIDER OR OWNER TO CHANGE THE SETTINGS FOR A PIECE OF AGRICULTURAL EQUIPMENT IN A MANNER THAT BRINGS THE EQUIPMENT OUT OF COMPLIANCE WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL SAFETY OR EMISSIONS LAW, EXCEPT AS NECESSARY TO PROVIDE SERVICES;

(III) EVADE EMISSIONS, COPYRIGHT, TRADEMARK, OR PATENT LAWS;
OR

(IV) ENGAGE IN ANY OTHER ILLEGAL EQUIPMENT MODIFICATION ACTIVITIES;

(2) (a) With respect to a contract or other arrangement, or renewal of a contract or existing arrangement, that an original equipment manufacturer enters into after January 1, 2023, 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 15 is void and unenforceable.

(b) IF AN AGRICULTURAL EQUIPMENT MANUFACTURER ENTERS INTO, OR IS COVERED UNDER, A NATIONWIDE MEMORANDUM OF UNDERSTANDING REGARDING A RIGHT TO REPAIR AGRICULTURAL EQUIPMENT, THE MEMORANDUM OF UNDERSTANDING GOVERNS AN OWNER'S RIGHT TO PROVIDE SERVICES, OR TO ENGAGE THE SERVICES OF AN INDEPENDENT REPAIR PROVIDER, FOR THAT MANUFACTURER'S BRAND OF AGRICULTURAL EQUIPMENT; EXCEPT THAT, IF COMPLIANCE WITH THE MEMORANDUM OF UNDERSTANDING WOULD DENY THE OWNER ANY RIGHTS AFFORDED TO THE OWNER IN THIS PART 15, INCLUDING ANY RIGHTS TO DOCUMENTATION, DATA, TOOLS, OR EMBEDDED SOFTWARE FOR AGRICULTURAL EQUIPMENT NECESSARY FOR THE DIAGNOSIS, MAINTENANCE, OR REPAIR OF THE OWNER'S AGRICULTURAL EQUIPMENT, THE OWNER IS ENTITLED TO THE DOCUMENTATION, DATA, TOOLS, OR EMBEDDED SOFTWARE FOR AGRICULTURAL EQUIPMENT IN ACCORDANCE WITH THIS PART 15. AN AGRICULTURAL EQUIPMENT MANUFACTURER THAT ENTERS INTO A MEMORANDUM OF UNDERSTANDING IS STILL OBLIGATED TO MEET THE REQUIREMENTS ESTABLISHED IN THIS PART 15.

SECTION 5. In Colorado Revised Statutes, **add** 6-1-1505 as follows:

6-1-1505. Federal legislation on right to repair agricultural equipment - repeal - notice to revisor. THIS ARTICLE 15, AS AMENDED BY HOUSE BILL 23-1011, ENACTED IN 2023, WILL BE REPEALED IF THE UNITED STATES CONGRESS ENACTS FEDERAL LEGISLATION ESTABLISHING A RIGHT TO REPAIR AGRICULTURAL EQUIPMENT. THE ATTORNEY GENERAL SHALL NOTIFY THE REVISOR OF STATUTES IN WRITING OF THE DATE ON WHICH THE CONDITION SPECIFIED IN THIS SECTION HAS OCCURRED BY E-MAILING THE NOTICE TO REVISOROFSTATUTES.GA@COLEG.GOV. THIS ARTICLE 15, AS AMENDED BY HOUSE BILL 23-1011, ENACTED IN 2023, IS REPEALED, EFFECTIVE UPON THE DATE IDENTIFIED IN THE NOTICE THAT THE FEDERAL LEGISLATION WAS ENACTED OR, IF THE NOTICE DOES NOT SPECIFY THAT DATE, UPON THE DATE OF THE NOTICE TO THE REVISOR OF STATUTES.

SECTION 6. Act subject to petition - effective date. This act takes effect January 1, 2024; 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 the ninety-day period after final adjournment of the general assembly, 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 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Steve Fenberg
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO