



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB3602

Introduced 2/17/2023, by Rep. Michelle Mussman

#### SYNOPSIS AS INTRODUCED:

New Act  
815 ILCS 505/2BBBB new

Creates the Powered Wheelchair Right to Repair Act. Provides that, for powered wheelchairs and parts for powered wheelchairs sold or used in the State, an original equipment manufacturer shall make available to an independent repair provider, solely for the purpose of repairing powered wheelchairs, on fair and reasonable terms, any documentation, parts, service access methods, and tools, including, but not limited to, any updates to information, firmware, or embedded software that is needed for purposes of repair of powered wheelchairs and training courses and materials on the operation, inspection, diagnosis, maintenance, and repair of powered wheelchairs. Provides that a violation of any of the provisions of the Act is an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act. Provides for penalties. Provides that nothing in the Act shall require an original equipment manufacturer to divulge a trade secret to an independent repair provider. Amends the Consumer Fraud and Deceptive Business Practices Act making a conforming change. Effective January 1, 2024.

LRB103 28528 SPS 54909 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Powered Wheelchair Right to Repair Act.

6 Section 5. Definitions. As used in this Act:

7 "Authorized repair provider" means an individual or  
8 business who has an arrangement with the original equipment  
9 manufacturer under which the original equipment manufacturer  
10 grants to the individual or business a license to use a trade  
11 name, service mark, or other proprietary identifier for the  
12 purposes of offering the services of diagnosis, maintenance,  
13 or repair of a powered wheelchair under the name of the  
14 original equipment manufacturer, or other arrangement with the  
15 original equipment manufacturer to offer such services on  
16 behalf of the original equipment manufacturer. An original  
17 equipment manufacturer who offers the services of diagnosis,  
18 maintenance, or repair of its own powered wheelchair, and who  
19 does not have an arrangement with an unaffiliated individual  
20 or business, shall be considered an authorized repair provider  
21 with respect to powered wheelchairs.

22 "Documentation" means any manual, diagram, reporting  
23 output, service code description, schematic diagram, security

1 codes, passwords, or other guidance or information used in  
2 effecting the services of diagnosis, maintenance, or repair of  
3 a powered wheelchair.

4 "Fair and reasonable terms" means making available parts,  
5 tools, or documentation as follows:

6 (1) that documentation is made available by the  
7 original equipment manufacturer at no charge, except that,  
8 when the documentation is requested in physical printed  
9 form, a charge may be included for the reasonable, actual  
10 costs of preparing and sending the copy;

11 (2) that tools are made available by the original  
12 equipment manufacturer at no charge and without requiring  
13 authorization or internet access for use or operation of  
14 the tool, or imposing impediments to access or use of the  
15 tools to diagnose, maintain, or repair and enable full  
16 functionality of digital electronic equipment, or in a  
17 manner that impairs the efficient and cost-effective  
18 performance of any such diagnosis, maintenance, or repair,  
19 except that, when the tool is requested in physical form,  
20 a charge may be included for the reasonable, actual costs  
21 of preparing and sending the tool; and

22 (3) that parts are made available by the original  
23 equipment manufacturer, either directly or through an  
24 authorized repair provider, to independents repair  
25 providers and owners at costs and terms that are  
26 equivalent to the most favorable costs and terms under

1           which an original equipment manufacturer offers the parts  
2           to an authorized repair provider and that:

3                   (A) accounts for any discount, rebate, convenient  
4                   and timely means of delivery, means of enabling fully  
5                   restored and updated functionality, rights of use, or  
6                   other incentive and preference the original  
7                   manufacturer offers to an authorized repair provider,  
8                   or any additional cost, burden, or impediment the  
9                   original equipment manufacturer imposes on an owner or  
10                  independent repair provider;

11                  (B) is not conditioned on or imposing a  
12                  substantial obligation or restriction that is not  
13                  reasonably necessary for enabling the owner or  
14                  independent repair provider to engage in the  
15                  diagnosis, maintenance, or repair of equipment made by  
16                  or on behalf of the original equipment manufacturer;  
17                  and

18                  (C) is not conditioned on an arrangement with the  
19                  original equipment manufacturer.

20            "Independent repair provider" means an individual or  
21            business operating in this State that is unaffiliated with an  
22            original equipment manufacturer that is engaged in the  
23            services of diagnosis, maintenance, or repair of powered  
24            wheelchairs.

25            "Original equipment manufacturer" means a business engaged  
26            in the business of selling, leasing, or otherwise supplying

1 new powered wheelchairs manufactured by, or on behalf of,  
2 itself, to any individual or business.

3 "Owner" means an individual or business who owns or leases  
4 a powered wheelchair purchased or used in this State.

5 "Part" means any replacement part, either new or used,  
6 made available by an original equipment manufacturer for  
7 purposes of effecting the services of maintenance or repair of  
8 a powered wheelchair manufactured by or on behalf of, sold, or  
9 otherwise supplied by the original equipment manufacturer.

10 "Powered wheelchair" means a motorized wheeled device  
11 designed for use by a person with a physical disability.

12 "Tools" means any software program, hardware implement, or  
13 other apparatus used for diagnosis, maintenance, or repair of  
14 a powered wheelchair, including software or other mechanisms  
15 that provision, program, or pair a new part, calibrate  
16 functionality, or perform any other function required to bring  
17 the product back to fully functional condition, including any  
18 updates.

19 "Trade secret" has the meaning given to that term in  
20 subsection (d) of Section 2 of the Illinois Trade Secrets Act.

21 Section 10. Requirements.

22 (a) For powered wheelchairs and parts for powered  
23 wheelchairs that are sold or used in this State, an original  
24 equipment manufacturer shall make available to any independent  
25 repair provider and owner of a powered wheelchair manufactured

1 by on behalf of, or sold by such original equipment  
2 manufacturer, on fair and reasonable terms, any documentation,  
3 parts, and tools, required for the diagnosis, maintenance, or  
4 repair of such a powered wheelchair and parts for the powered  
5 wheelchair, inclusive of any updates to information. The  
6 documentation parts and tools shall be made available either  
7 directly by the original equipment manufacturer or via an  
8 authorized repair provider.

9 (b) For equipment that contains an electronic security  
10 lock or other security-related function, the original  
11 equipment manufacturer shall make available to any owner and  
12 independent repair provider, on fair and reasonable terms, any  
13 special documentation, tools, and parts needed to access and  
14 reset the lock or function when disabled in the course of  
15 diagnosis, maintenance, or repair of the powered wheelchair.  
16 The documentation, tools, and parts may be made available  
17 through appropriate secure release systems.

18 Section 15. Enforcement by Attorney General. A violation  
19 of any of the provisions of this Act is an unlawful practice  
20 under the Consumer Fraud and Deceptive Business Practices Act.  
21 All remedies, penalties, and authority granted to the Attorney  
22 General by that Act shall be available to him or her for the  
23 enforcement of this Act.

24 Section 20. Limitations.

1           (a) Nothing in this Act shall require an original  
2 equipment manufacturer to divulge any trade secret to any  
3 owner or independent service provider.

4           (b) Nothing in this Act shall to alter the terms of any  
5 arrangement in force between an authorized repair provider and  
6 an original equipment manufacturer, including, but not limited  
7 to, the performance or provision of warranty or recall repair  
8 work by an authorized repair provider on behalf of an original  
9 equipment manufacturer and pursuant to such arrangement,  
10 except that any provision in the terms that purports to waive,  
11 avoid, restrict or limit the original equipment manufacturer's  
12 obligations to comply with this Act shall be void and  
13 unenforceable.

14           (c) No original equipment manufacturer or authorized  
15 repair provider shall be liable for any damage or injury  
16 caused to any powered wheelchair by an independent repair  
17 provider or owner which occurs during the course of repair,  
18 diagnosis, or maintenance.

19           Section 25. Applicability. This Act applies with respect  
20 to powered wheelchairs sold or in use on or after the effective  
21 date of this Act.

22           Section 90. The Consumer Fraud and Deceptive Business  
23 Practices Act is amended by adding Section 2BBBB as follows:

1 (815 ILCS 505/2BBBB new)

2 Sec. 2BBBB. Violations of the Powered Wheelchair Right to  
3 Repair Act. A person who violates the Powered Wheelchair  
4 Right to Repair Act commits an unlawful practice within the  
5 meaning of this Act.

6 Section 99. Effective date. This Act takes effect January  
7 1, 2024.