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SB-1384 Powered wheelchairs: repair. (2023-2024)

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Senate Bill No. 1384

CHAPTER 797

An act to add Chapter 8.5 (commencing with Section 21300) to Division 8 of the Business and Professions Code, relating to powered wheelchairs.

[Approved by Governor September 27, 2024. Filed with Secretary of State September 27, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1384, Dodd. Powered wheelchairs: repair.

Existing law, the Sherman Food, Drug, and Cosmetic Law, regulates the packaging, labeling, and advertising of drugs and devices, and is administered by the State Department of Public Health. Among other things, existing law prohibits a person from conducting a home medical device retail facility business in this state unless the person has obtained a license from the department and sets forth standards for operating that facility.

Existing law authorizes the department to waive any licensing requirements for a home medical device retail facility when, in the opinion of the department, a high standard of patient safety, consistent with good patient care, can be provided by the licensure of a home medical device retail facility that does not meet all of the requirements for licensure.

This bill would, except as specified, require an original equipment manufacturer of a powered wheelchair, as those terms are defined, to provide documentation, parts, embedded software, firmware, and tools used to inspect, diagnose, maintain, and repair the wheelchair to an owner or an independent repair provider for the purposes of providing service on the equipment or specified parts in the state, on fair and reasonable terms and costs, as defined. The bill would also require an original equipment manufacturer, for a powered wheelchair that contains an electronic security lock or other security-related function, to provide documentation, parts, embedded software, firmware, or tools needed to reset the lock or function when disabled in the course of providing services, as specified. The bill would require an independent repair provider to provide a written notice to a customer before providing repair services, as specified.

This bill would, with certain exceptions, exempt trade secret information from these requirements. The bill would subject an original equipment manufacturer who knowingly violates, or who should have reasonably known that they violated, these provisions to specified civil penalties. The bill would, in the case of a first violation, give an original equipment manufacturer who did not knowingly violate these provisions a 3-day right to cure the violation before a civil penalty is imposed. The bill would authorize a person injured by a violation of these provisions and the Attorney General or a district attorney to bring a civil action for this purpose, as specified. If the action is brought by the Attorney General or district attorney, the bill would require the penalty to be paid to specified entities or individuals, as provided.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 8.5 (commencing with Section 21300) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 8.5. Consumer Wheelchair Right to Repair

21300. For the purposes of this chapter, the following definitions apply:

(a) "Authorized repair provider" means an individual or business who is unaffiliated with an original equipment manufacturer and who has an arrangement with the original equipment manufacturer, for a definite or indefinite period, under which the original equipment manufacturer grants to the individual or business a license to use a trade name, service mark, or other proprietary identifier for the purposes of offering the services of inspection, diagnosis, maintenance, or repair of powered wheelchairs under the name of the original equipment manufacturer, or other arrangement with the original equipment manufacturer to offer those services on behalf of the original equipment manufacturer. An original equipment manufacturer who offers the services of inspection, diagnosis, maintenance, or repair of its own powered wheelchairs, and who does not have an arrangement described in this subdivision with an unaffiliated individual or business, shall be considered an authorized repair provider with respect to that equipment.

(b) "Documentation" means any manual, diagram, reporting output, service code description, schematic, or other guidance or information used in effecting the services of inspection, diagnosis, maintenance, or repair of powered wheelchairs.

(c) "Embedded software" means any programmable instructions provided on firmware delivered with an electronic component of equipment, or with a part for that equipment, for purposes of equipment operation, including all relevant patches and fixes made by the manufacturer of the equipment or part for these purposes.

(d) "Equipment" means a powered wheelchair.

(e) (1) "Fair and reasonable terms and costs," 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.

(2) For documentation, including any relevant updates, "fair and reasonable terms" also means at no charge, except that, when the documentation is requested in physical printed form, a charge may be included for the reasonable actual costs of preparing and sending the copy.

(3) For software tools, "fair and reasonable terms" also means all of the following:

(A) Provided at no charge and without requiring authorization or internet access.

(B) Without imposing impediments to access or use, in the course of effecting the diagnosis, maintenance, or repair and without impairing the efficient and cost-effective performance of the diagnosis, maintenance, or repair.

(C) Enables full functionality.

(4) If an original equipment manufacturer does not utilize an authorized repair provider, "fair and reasonable terms" means an equitable price in consideration of the actual cost to the original equipment manufacturer to prepare and distribute the part, tool, service access method, or documentation, exclusive of any research and development costs incurred.

(f) "Firmware" means a software program or set of instructions programmed on equipment, or on a part for that equipment, to allow the equipment or part to communicate within itself or with other computer hardware.

(g) "Independent repair provider" means an individual or business, other than the manufacturer, that is engaged in the services of inspection, diagnosis, maintenance, or repair of equipment for purposes of returning it to the safety and performance specifications established by the manufacturer and to meet its original intended use.

(h) "Original equipment manufacturer" means a business engaged in the business of selling, leasing, or otherwise supplying new equipment or parts manufactured by, or on behalf of, itself, to any individual or business.

(i) "Part" means any replacement part, either new or used, made available by an original equipment manufacturer for purposes of effecting the services of inspection, diagnosis, maintenance, or repair of powered wheelchairs manufactured by, or on behalf of, sold, or otherwise supplied by the original equipment manufacturer.

(j) "Powered wheelchair" means a motorized wheeled device designed for use by a person with a physical disability.

(k) "Tools" means any software program, hardware implement, or other apparatus used in inspection, diagnosis, maintenance, or repair of powered wheelchairs, including software or other mechanisms that provision, program, or pair a new part, calibrate functionality, or perform any other function required to bring the product back to fully functional condition.

(l) "Trade secret" has the same meaning as in subdivision (d) of Section 3426.1 of the Civil Code.

21301. (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, documentation, parts, embedded software, firmware, or tools that are intended for use with the equipment or any part listed in subdivision (c), including updates to documentation, parts, embedded software, firmware, or tools.

(b) Regarding subdivision (c), with respect to equipment that contains an electronic security lock or other security-related function, an original equipment manufacturer shall, with fair and reasonable terms and costs, make available to independent repair providers and owners 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.

(c) For powered wheelchairs subject to Section 14132.8 of the Welfare and Institutions Code, this section shall not apply to any part that would require programmability, calibration, or clinical involvement to ensure appropriate patient seating and positioning. Items included in this section for powered wheelchairs subject to Section 14132.8 of the Welfare and Institutions Code shall include:

- (1) Batteries.
- (2) Battery chargers.
- (3) Nonprogrammable joysticks.
- (4) Joystick housings or brackets.
- (5) Wheel assembly.
- (6) Nonpositioning accessories.
- (7) Antitip devices.
- (8) Armrests, excluding positioning components designed for adjustment by a therapist or assistive technology professional.
- (9) Caster spheres.
- (10) Cosmetic shrouding.
- (11) Floor mats.
- (12) Floor plates.
- (13) Nonpowered leg lowerers.

21302. (a) (1) An original equipment manufacturer who knowingly violates any provision of this chapter, or who reasonably should have known that they violated any provision of this chapter, shall be liable for a civil penalty of up to two thousand five hundred dollars (\$2,500) per powered wheelchair, not exceeding two hundred fifty thousand dollars (\$250,000), for a first violation.

(2) In the case of a first violation, an original equipment manufacturer who does not knowingly violate this chapter may be provided a three-day right to cure the violation before a civil penalty is imposed.

(3) An original equipment manufacturer who commits a second or subsequent violation of this chapter shall be liable for a civil penalty of up to ten thousand dollars (\$10,000) per powered wheelchair, not exceeding two hundred fifty thousand dollars (\$250,000) for each series of related violations.

(4) An original equipment manufacturer who fails to provide a part because it is out of stock and they are unable to obtain the part shall not be subject to the fines described in this subdivision if the original equipment manufacturer does both of the following:

- (A) They inform the customer or independent repair provider that the part is out of stock, and, consequently, they are unable to obtain the part.

(B) They make the part available to the consumer or independent repair provider within three business days of when that part becomes available.

(b) An original equipment manufacturer who violates a court order or injunction issued pursuant to this chapter shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) per violation.

(c) (1) Any person injured by violation of this chapter may bring a civil action for damages or other appropriate relief.

(2) The Attorney General or district attorney may bring a civil action in the name of the state for violation of this chapter.

(3) An action brought pursuant to this chapter shall be commenced within three years from the date of the alleged violation.

(d) If the action is brought by the Attorney General, the penalty collected shall be paid to the Office of the Attorney General to offset the reasonable expenses incurred in conducting that action, and any remainder thereafter shall be paid to the State Treasurer. If brought by a district attorney, the entire amount of penalty collected shall be paid to the treasurer of the county in which the judgment was entered.

21303. An independent repair provider that is not an authorized repair provider shall provide a written notice to any customer before providing repairs that contains the following information:

(a) The independent repair provider is not an authorized repair provider for the product.

(b) The consumer may wish to review the terms and conditions of any warranty for the equipment, as repairs not performed by a designated authorized repair provider could potentially affect the warranty.

(c) Warranties for consumer products are governed by the federal Magnuson-Moss Warranty Act (Chapter 50 (commencing with Section 2301) of Title 15 of the United States Code), which gives consumers rights and protections that apply over any conflicting provisions in the warranty.

(d) Under Magnuson-Moss, a warranty cannot generally require that maintenance repairs be performed only by an authorized repair provider, unless the Federal Trade Commission waives this prohibition, or the repair is provided free of charge, pursuant to that warranty.

(e) Under Magnuson-Moss, if damage to equipment is shown to be caused by faulty nonbrand equipment or by faulty repair by a nonauthorized repair provider, that damage may not be covered by the warranty, but the warranty may otherwise remain in effect.

(f) Under Section 14019.4 of the Welfare and Institutions Code, an independent repair provider that is a Medi-Cal enrolled provider is prohibited from seeking reimbursement or attempting to obtain payment for the cost of covered services from a Medi-Cal applicant or recipient, unless the beneficiary owes a share of the cost, as described in subdivision (g) of that section.

21304. (a) This chapter does not require an original equipment manufacturer to divulge a trade secret, except as necessary to provide documentation, parts, tools, service access methods, and training courses and materials on fair and reasonable terms.

(1) An original equipment manufacturer may redact documentation to remove trade secrets from the documentation before providing access to the documentation if the usability of the redacted documentation for the purpose of providing services is not diminished.

(2) An original equipment manufacturer may withhold information regarding a component of, design of, functionality of, or process of developing a part, embedded software, firmware, or a 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.

(b) This chapter does not require an original equipment manufacturer to make available a part if the part is no longer available to the original equipment manufacturer.

(c) 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 any of the following:

(1) Damage to a powered wheelchair that occurs during the repairs.

(2) Any indirect, incidental, or consequential damages.

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

(d) This chapter shall not be construed to alter the terms of any arrangement described in subdivision (a) of Section 21300 in force between an authorized repair provider and an original equipment manufacturer, including, but not limited to, the

performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to an arrangement described in subdivision (a) of Section 21300, except that any provision that purports to waive, avoid, restrict, or limit the original equipment manufacturer's obligations to comply with this chapter shall be void and unenforceable.

(e) This chapter shall not be construed to exempt an original equipment manufacturer from a products liability claim that is otherwise authorized by law.

21305. This chapter applies with respect to equipment sold or in use on or after January 1, 2025.