

By: Capriglione, Curry

H.B. No. 2963

Substitute the following for H.B. No. 2963:

By: Button

C.S.H.B. No. 2963

A BILL TO BE ENTITLED

AN ACT

relating to diagnosis, maintenance, and repair of certain digital electronic equipment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 121 to read as follows:

CHAPTER 121. DIAGNOSIS, MAINTENANCE, AND REPAIR OF CERTAIN DIGITAL ELECTRONIC EQUIPMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 121.001. DEFINITIONS. In this chapter:

(1) "Authorized repair provider" means an individual or business entity 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 entity:

(A) a license to use a trade name, service mark, or other proprietary identifier for the purpose of offering diagnosis, maintenance, or repair services for digital electronic equipment under the name of the original equipment manufacturer; or

(B) other authority to offer diagnosis, maintenance, or repair services for digital electronic equipment on behalf of the original equipment manufacturer.

(2) "Autocycle" has the meaning assigned by Section 501.008, Transportation Code.

1           (3) "Consumer" means:

2                   (A) an individual who enters into a transaction  
3 primarily for personal, family, or household purposes; or

4                   (B) a primary or secondary school or  
5 postsecondary educational institution, including a school  
6 district, open-enrollment charter school, and institution of  
7 higher education, that enters into a transaction primarily for  
8 educational purposes.

9           (4) "Diagnosis" means the process of identifying the  
10 issue or issues that cause digital electronic equipment to not be in  
11 full working order.

12           (5) "Digital electronic equipment" or "equipment"  
13 means any product that depends, wholly or partly, on digital  
14 electronics embedded in or attached to the product to function.

15           (6) "Documentation" means any manual, diagram,  
16 reporting output, service code description, or other guidance or  
17 information provided or made available by the original equipment  
18 manufacturer to an authorized repair provider for the purpose of  
19 diagnosing, maintaining, or repairing digital electronic equipment  
20 manufactured or sold by the original equipment manufacturer.

21           (7) "Fair and reasonable terms" means:

22                   (A) with respect to an original equipment  
23 manufacturer making available a tool, making the tool available:

24                           (i) without conditioning that availability  
25 on the recipient being an authorized repair provider;

26                           (ii) at no cost to use or operate the tool  
27 or at a cost that is equivalent to the lowest actual cost at which

1 the original equipment manufacturer offers the tool to an  
2 authorized repair provider, taking into account any discounts,  
3 rebates, or other financial incentives offered by the original  
4 equipment manufacturer to the authorized repair provider; and

5 (iii) if the tool is requested in physical  
6 form, for a charge equal to the actual cost of procuring, preparing,  
7 and sending the tool;

8 (B) with respect to an original equipment  
9 manufacturer making available a replacement part, making the part  
10 available either directly or through an authorized distributor or  
11 repair provider, subject to Section 121.052(7)(B):

12 (i) without conditioning that availability  
13 on the recipient being an authorized repair provider; and

14 (ii) at costs and terms that are equivalent  
15 to the costs and terms under which the part is offered to an  
16 authorized repair provider;

17 (C) with respect to an original equipment  
18 manufacturer making available documentation, including any  
19 relevant updates to the documentation, making the documentation  
20 available:

21 (i) without conditioning that availability  
22 on the recipient being an authorized repair provider; and

23 (ii) at no cost, except that an original  
24 equipment manufacturer may charge the reasonable actual cost of  
25 preparing and sending a copy of the documentation when the  
26 documentation is requested in physical printed form; and

27 (D) with respect to documentation, replacement

parts, or tools, terms that are fair to all parties, including the original equipment manufacturer and authorized repair providers.

(8) "Heavy equipment" means utility and construction equipment, including forestry equipment, industrial equipment, road-building equipment, mining equipment, bulldozers, motor graders, backhoes, skid steers, track loaders, and excavators.

(9) "Independent repair provider" means an individual or business entity operating in this state that:

(A) with respect to an original equipment manufacturer:

(i) is not an authorized repair provider;  
and

(ii) is not affiliated with an individual or business entity that is an authorized repair provider; and

(B) is engaged in the diagnosis, maintenance, or repair of digital electronic equipment.

(10) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(11) "Maintenance" means any act necessary to keep currently working digital electronic equipment in full working order.

(12) "Medical device" means a device, as defined by 21 U.S.C. Section 321(h)(1), intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in humans or other animals.

(13) "Modification" or "modify" means any alteration to digital electronic equipment that is not maintenance and not a

1 repair.

2 (14) "Motorcycle" has the meaning assigned by Section  
3 541.201, Transportation Code.

4 (15) "Motor vehicle" means a vehicle that is designed  
5 for transporting individuals or property on a street or highway and  
6 is certified by the manufacturer under all applicable motor vehicle  
7 federal safety and emissions standards and requirements for  
8 distribution and sale in the United States.

9 (16) "Motor vehicle manufacturer" means a business  
10 engaged in the manufacturing or assembling of motor vehicles.

11 (17) "Original equipment manufacturer" means a person  
12 that, in the normal course of business, is engaged in the business  
13 of selling, leasing, or otherwise supplying new digital electronic  
14 equipment manufactured by or on behalf of the person.

15 (18) "Open-enrollment charter school" means a school  
16 that has been granted a charter under Subchapter D, Chapter 12,  
17 Education Code.

18 (19) "Owner" means an individual or business entity  
19 that owns digital electronic equipment.

20 (20) "Repair" means any act necessary to restore  
21 digital electronic equipment or equipment to full working order.  
22 The term does not include post-sale modifications that alter the  
23 originally intended functioning of the digital electronic  
24 equipment.

25 (21) "Replacement part" means a new or used  
26 replacement part made available by the original equipment  
27 manufacturer for the purpose of maintenance or repair of digital

electronic equipment manufactured, sold, or supplied by the original equipment manufacturer. The term does not include printed circuit board assemblies that allow device cloning in violation of 18 U.S.C. Section 1029 or other applicable law.

(22) "School district" means any public school district in this state.

(23) "Tool" means any software program, hardware implement, or other apparatus used for the diagnosis, maintenance, or repair of digital electronic equipment, including software or another mechanism that:

(A) provides, programs, or pairs a part;

(B) calibrates functionality; or

(C) performs any other function required to restore the equipment to full working order.

(24) "Trade secret" means anything tangible or intangible or electronically stored or kept that constitutes, represents, evidences, or records intellectual property, including secret or confidentially held designs, processes, procedures, formulas, inventions, or improvements, or secret or confidentially held scientific, technical, merchandising, production, financial, business, or management information, or that falls within the meaning of a trade secret given in 18 U.S.C. Section 1839.

(25) "Video game console" means a computing device, including the device's components and peripherals, that is primarily used by a consumer to play video games, including a console machine, a handheld console device, or another device or system. The term does not include a general or all-purpose

computer, including a desktop computer, laptop, tablet, or mobile phone.

Sec. 121.002. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter applies only to digital electronic equipment:

(1) sold to a consumer in this state; and

(2) that has a wholesale price of at least \$50.

(b) This chapter does not apply to:

(1) information technology equipment that is intended for use in critical infrastructure as defined by 42 U.S.C. Section 5195c(e);

(2) a motor vehicle manufacturer who complies with a memorandum of understanding or any other industry-recognized agreement relating to the diagnosis, maintenance, or repair of digital electronic equipment;

(3) an auticycle or motorcycle;

(4) a medical device or product:

(A) found in a medical setting, including diagnostic, monitoring, or control equipment; or

(B) offered for purchase or prescribed by a health care provider;

(5) a manufacturer of farm equipment who complies with a memorandum of understanding or any other industry-recognized agreement relating to the diagnosis, maintenance, or repair of digital electronic equipment;

(6) aerospace, airplane, or train equipment;

(7) heavy equipment;

1           (8) commercial and industrial electrical equipment,  
2 including power distribution equipment, such as telecommunications  
3 network infrastructure, commercial visual display equipment,  
4 medium/low voltage switchgear and transformers, power control  
5 equipment, such as medium/low voltage motor control and drives,  
6 power quality equipment, such as uninterruptible power supplies,  
7 remote power panels, power distribution units and static/transfer  
8 switches, and any tools, technology, attachments, accessories,  
9 components, and repair parts for any of the equipment described by  
10 this subdivision;

11           (9) a home appliance that has digital electronic  
12 equipment embedded within it, including refrigerators, ovens,  
13 microwaves, air conditioning units, and heating units, excluding  
14 other countertop or stand-alone small appliances;

15           (10) safety communications equipment, the intended  
16 use of which is for emergency response or prevention purposes by an  
17 emergency service organization, such as a police, fire, or medical  
18 and emergency rescue services agency;

19           (11) fire alarm systems, intrusion detection  
20 equipment that is provided with a security monitoring service, life  
21 safety systems, and physical access control equipment, including  
22 electronic keypads and similar building access control  
23 electronics;

24           (12) a video game console; or

25           (13) an original equipment manufacturer that provides  
26 an equivalent or better, readily available replacement part at no  
27 charge to and only at the discretion of the consumer.



1       Sec. 121.003. WAIVER OF CHAPTER VOID AND UNENFORCEABLE. A  
2 provision in a contract, including an agreement between an  
3 authorized repair provider and original equipment manufacturer,  
4 that purports to waive, avoid, restrict, or limit the original  
5 equipment manufacturer's obligation to comply with this chapter is  
6 void and unenforceable.

7       SUBCHAPTER B. ORIGINAL EQUIPMENT MANUFACTURER REQUIREMENTS

8       Sec. 121.051. ORIGINAL EQUIPMENT MANUFACTURER  
9 REQUIREMENTS. (a) For digital electronic equipment, including  
10 parts for that equipment sold or used in this state, the original  
11 equipment manufacturer of the equipment or part shall, not later  
12 than one year after the date of the first sale of the digital  
13 electronic equipment in this state, make available on fair and  
14 reasonable terms to any independent repair provider or to an owner  
15 of digital electronic equipment manufactured by or on behalf of,  
16 sold by, or supplied by the original equipment manufacturer  
17 documentation, replacement parts, and tools, or their equivalents,  
18 that are required for the diagnosis, maintenance, or repair of the  
19 digital electronic equipment.

20       (b) The documentation, replacement parts, and tools  
21 described by Subsection (a) may be made available:

22               (1) directly by an original equipment manufacturer or  
23 through an authorized repair provider or a third-party provider; or

24               (2) by an authorized repair provider to any  
25 independent repair provider or owner, provided that the authorized  
26 repair provider is contractually and practically permitted by the  
27 original equipment manufacturer to sell the documentation, parts,

1 or tools to an independent repair provider or owner.

2 (c) Subsection (b) may not be construed to require a  
3 third-party provider, including an authorized repair provider, to  
4 make available documentation, replacement parts, or tools  
5 independent of an original equipment manufacturer.

6 Sec. 121.052. CONSTRUCTION OF SUBCHAPTER. Notwithstanding  
7 any other provision of this subchapter, nothing in this subchapter:

8 (1) requires an original equipment manufacturer to  
9 provide or make available documentation, a replacement part, or a  
10 tool to a repair provider or owner, if:

11 (A) the documentation, part, or tool is not, or  
12 is no longer, provided by the original equipment manufacturer or  
13 made available to authorized repair providers of the original  
14 equipment manufacturer, including where the original equipment  
15 manufacturer performs related repairs solely in-house or through a  
16 corporate affiliate;

17 (B) the documentation, part, or tool is no longer  
18 available to the original equipment manufacturer; or

19 (C) the documentation or tool is used by the  
20 original manufacturer only to perform, at no cost, diagnostic  
21 services virtually through telephone, Internet, chat, e-mail, or  
22 other similar means that do not involve the manufacturer physically  
23 handling the consumer's equipment, unless the manufacturer also  
24 makes the documentation or tool available to an individual or  
25 business that is unaffiliated with the manufacturer;

26 (2) requires an original equipment manufacturer to  
27 divulge any trade secret to any independent repair provider or

1 owner, except as necessary for the diagnosis, maintenance, or  
2 repair of digital electronic equipment in accordance with this  
3 chapter;

4 (3) requires an original equipment manufacturer or an  
5 authorized repair provider to provide an independent repair  
6 provider or owner any information other than documentation that is  
7 provided by the original equipment manufacturer to an authorized  
8 repair provider;

9 (4) requires an original equipment manufacturer or  
10 authorized repair provider to make available any documentation,  
11 part, or tool for the purposes of modifying digital electronic  
12 equipment;

13 (5) requires any original equipment manufacturer or  
14 authorized repair provider to make available any documentation,  
15 part, or tool in a manner that is inconsistent with or in violation  
16 of any state or federal law;

17 (6) requires an original equipment manufacturer to  
18 make available any documentation, part, or tool to an independent  
19 repair provider or owner that would disable, reset, or override  
20 electronic security locks or other security-related measures or  
21 functions, or disable or override anti-theft security measures set  
22 by the owner of the digital electronic equipment;

23 (7) prevents an original equipment manufacturer from:

24 (A) requiring remote authorization or an  
25 Internet connection before an independent repair provider or owner  
26 may use a part or tool; or

27 (B) providing parts, such as integrated

batteries, to an independent repair provider or owner preassembled with other parts rather than as individual components, provided that those preassembled parts or their equivalents are also available to an authorized repair provider or owner; or

(8) requires an original equipment manufacturer to:

(A) provide documentation, a part, or a tool for a product where reconditioning or repair of the product is prohibited by a law or regulation;

(B) provide or make available source code;

(C) make available a special document, a part, or a tool that would disable or override an anti-theft security measure set by the owner of the digital electronic equipment without the owner's authorization;

(D) provide documentation, a part, or a tool for repair of digital electronic equipment that is critical to the safety of life or health of individuals, or for repairs that could threaten the safety of life or health of individuals, provided that the original equipment manufacturer provides to the consumer or another entity responsible for the enforcement of this chapter, as applicable, physical evidence of the threat alleged under this paragraph; or

(E) provide documentation or a tool used exclusively by the original equipment manufacturer for diagnosis, maintenance, or repairs completed by machines that operate on several digital electronic equipment products simultaneously or otherwise for purposes of large scale efficiency, provided the original equipment manufacturer makes available to an independent

1 repair provider or owner sufficient alternative documentation or a  
2 tool to effect the diagnosis, maintenance, or repair of the digital  
3 electronic equipment.

4 Sec. 121.053. ALTERNATIVE RELIEF FOR ORIGINAL PURCHASERS.  
5 Instead of making documentation, replacement parts, or tools  
6 available under this subchapter, the original equipment  
7 manufacturer may provide an owner who is the original purchaser:

8 (1) a reimbursement in the amount of the purchase  
9 price the purchaser paid for the digital electronic equipment; or

10 (2) an equivalent or better, readily available  
11 replacement for the digital electronic equipment at a price that  
12 has a value that is equal to or less than the total cost of the sum  
13 of the replacement parts and provided at the discretion of the  
14 consumer.

15 Sec. 121.054. LIMITATION OF LIABILITY. (a) An original  
16 equipment manufacturer or authorized repair provider is not liable  
17 for any damage or injury to any digital electronic equipment,  
18 individual, or property that occurs as a result of the repair,  
19 diagnosis, maintenance, or modification performed by an  
20 independent repair provider or owner, or any other use of  
21 documentation, replacement parts, or tools made available by an  
22 original equipment manufacturer, including:

23 (1) indirect, incidental, special, or consequential  
24 damages;

25 (2) loss of data, privacy, or profits; or

26 (3) inability to use or reduced functionality of the  
27 digital electronic equipment.

1       (b) An original equipment manufacturer is not liable under  
2 this chapter for any act that is reasonably necessary to protect  
3 user privacy, security, or digital safety.

4       (c) An original equipment manufacturer is not liable for  
5 improper use of personal data or any data privacy or security breach  
6 in connection with the repair, diagnosis, maintenance, or  
7 modification performed by an independent repair provider or owner.

8                   SUBCHAPTER C. ENFORCEMENT

9       Sec. 121.101. NOTICE OF VIOLATION; OPPORTUNITY TO CURE.

10      (a) The attorney general has exclusive authority to enforce this  
11 chapter.

12      (b) Before bringing an action under Section 121.102 or  
13 121.103, the attorney general shall notify a person in writing at  
14 least 30 days before the date the attorney general brings the  
15 action. The notice must identify the specific provisions of this  
16 chapter that the attorney general alleges have been or are being  
17 violated.

18      (c) The attorney general may not bring an action against a  
19 person if:

20              (1) within the 30-day period described by Subsection  
21 (b), the person cures the violation; and

22              (2) the person provides the attorney general a written  
23 statement that:

24                      (A) the person cured the alleged violation; and  
25                      (B) it is the person's intent that no further  
26 violations of this chapter will occur.

27      (d) Written notice by the attorney general shall be

1 delivered by:

2 (1) certified mail, return receipt requested; or

3 (2) first-class mail with proof of delivery.

4 Sec. 121.102. DECEPTIVE TRADE PRACTICE. A violation of  
5 this chapter following the cure period described by Section 121.101  
6 is a deceptive trade practice in addition to the practices  
7 described by Subchapter E, Chapter 17, and is actionable under that  
8 subchapter.

9 Sec. 121.103. INJUNCTION. (a) The attorney general may  
10 bring an action in the name of the state following the cure period  
11 described by Section 121.101 to restrain or enjoin a person from  
12 violating this chapter.

13 (b) The attorney general may recover reasonable attorney's  
14 fees and other reasonable expenses incurred in investigating and  
15 bringing an action under this section.

16 Sec. 121.104. NO PRIVATE RIGHT OF ACTION. This chapter may  
17 not be construed to create, provide a basis for, or be subject to a  
18 private right of action for a violation of this chapter or any other  
19 law.

20 SECTION 2. Chapter 121, Business & Commerce Code, as added  
21 by this Act, applies only to digital electronic equipment that was  
22 originally made available for sale in this state by an original  
23 equipment manufacturer on or after the effective date of this Act.

24 SECTION 3. Notwithstanding Section 121.003, Business &  
25 Commerce Code, as added by this Act, to the extent of a conflict  
26 between Chapter 121, Business & Commerce Code, as added by this Act,  
27 and a provision of an agreement between an authorized repair

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1 provider and original equipment manufacturer entered into before  
2 the effective date of this Act, the provision of the agreement  
3 prevails.

4       SECTION 4. This Act takes effect September 1, 2026.