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By:  Meza H.B. No. 2541

A BILL TO BE ENTITLED

AN ACT

relating to the inspection, diagnosis, maintenance, and repair of powered medical equipment.

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

SECTION 1.  This Act may be cited as the Texas Powered Medical Equipment Right to Repair Act.

SECTION 2.  Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 113 to read as follows:

CHAPTER 113. INSPECTION, DIAGNOSIS, MAINTENANCE, AND REPAIR OF POWERED MEDICAL EQUIPMENT

Sec. 113.001.  DEFINITIONS. In this chapter:

(1)  "Authorized repair provider" means an individual or business entity that is not an affiliate of but has an arrangement with an original equipment manufacturer:

(A)  under which the original equipment manufacturer grants to the individual or business entity a license to use a trade name, service mark, or other proprietary identifier for the purpose of offering inspection, diagnosis, maintenance, or repair services for powered medical equipment under the name of the original equipment manufacturer; or

(B)  to offer inspection, diagnosis, maintenance, or repair services for powered medical equipment on behalf of the original equipment manufacturer.

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

(3)  "Embedded software" means any programmable instructions provided on firmware that is delivered with powered medical equipment or with a replacement part for that equipment for the purpose of equipment operation, including all relevant patches and fixes made by the original equipment manufacturer of the powered medical equipment or replacement part for that purpose.

(4)  "Fair and reasonable terms" means:

(A)  with respect to making available a replacement part, tool, documentation, or training course and materials, making the part, tool, documentation, or course and materials available at a cost and on terms equivalent to the most favorable cost and terms offered to an original equipment manufacturer's authorized repair provider that:

(i)  account for:

(a)  any discount, rebate, convenient means of delivery, means of enabling fully restored and updated functionality, rights of use, or other incentive or preference the original equipment manufacturer offers to an authorized repair provider; or

(b)  any additional cost, burden, or impediment the original equipment manufacturer imposes on an independent repair provider;

(ii)  are not conditioned on imposing a substantial obligation or restriction that is not reasonably necessary for enabling the owner or independent repair provider to engage in the inspection, diagnosis, maintenance, or repair of powered medical equipment made by or on behalf of the original equipment manufacturer; and

(iii)  are not conditioned on an arrangement described by Subdivision (1);

(B)  with respect to making available documentation, including any relevant updates, making the documentation available at no cost, except that an original equipment manufacturer may charge the reasonable actual cost of preparing and sending a copy of the documentation when the documentation is requested in physical printed form; and

(C)  with respect to providing software tools, making the tools available:

(i)  at no cost;

(ii)  without requiring authorization or Internet access;

(iii)  without imposing impediments to access or use in the course of effecting the diagnosis, maintenance, or repair of powered medical equipment; and

(iv)  in a manner that does not impair the efficient and cost-effective diagnosis, maintenance, or repair of powered medical equipment to enable full functionality of the equipment.

(5)  "Firmware" means a software program or set of instructions programmed on powered medical equipment or on a replacement part for the equipment that allows the equipment or replacement part to communicate with itself or other computer hardware.

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

(A)  who does not, on the individual or entity's own behalf or through an affiliate, have an arrangement with an original equipment manufacturer as described by Subdivision (1) and who is engaged in inspection, diagnosis, maintenance, or repair of powered medical equipment; or

(B)  that is an original equipment manufacturer, or who is an individual or business entity who has or is affiliated with an individual or entity who has an arrangement with that original equipment manufacturer as described by Subdivision (1), only with respect to inspection, diagnosis, maintenance, or repair of powered medical equipment not manufactured by or sold under the name of that original equipment manufacturer.

(7)  "Original equipment manufacturer" means a business entity that sells, leases, or otherwise supplies to an individual or business new powered medical equipment manufactured by or on behalf of the business entity.

(8)  "Owner" means an individual or business entity who owns or leases powered medical equipment purchased or used in this state.

(9)  "Powered medical equipment" means a powered instrument, apparatus, implement, machine, contrivance, implant, or other article, including a component or accessory, that is used in the treatment, monitoring, or diagnosis of a patient.

(10)  "Replacement part" means a new or used replacement part made available by the original equipment manufacturer for the purpose of diagnosis, maintenance, or repair of powered medical equipment manufactured by or sold or otherwise supplied by, or on behalf of, the original equipment manufacturer.

(11)  "Tool" means a software program, hardware implement, or other apparatus used in the inspection, diagnosis, maintenance, or repair of powered medical equipment. The term includes software or another mechanism that provides, programs, or pairs a new replacement part, calibrates functionality, or performs any other function required to bring the equipment to a fully functional condition.

(12)  "Trade secret" means information, including a formula, pattern, compilation, program device, method, technique, or process that:

(A)  derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable using proper means by, another person who can obtain economic value from its disclosure or use; and

(B)  is the subject of an effort that is reasonable under the circumstances to maintain its secrecy.

Sec. 113.002.  REQUIREMENTS FOR ORIGINAL EQUIPMENT MANUFACTURERS. (a) For powered medical equipment sold or used in this state, the original equipment manufacturer of the equipment shall make available on fair and reasonable terms to any independent repair provider or to an owner of powered medical equipment manufactured by or on behalf of, or sold or otherwise supplied by, the original equipment manufacturer:

(1)  documentation, replacement parts, and tools, including any updates to information or embedded software, and training courses and materials for that equipment for purposes of the inspection, diagnosis, maintenance, or repair of the equipment; and

(2)  for equipment containing an electronic security lock or other security-related function, any special documentation, replacement part, or tool needed to:

(A)  disable the lock or function; and

(B)  reset the lock or function when disabled in the course of inspection, diagnosis, maintenance, or repair of the equipment.

(b)  An original equipment manufacturer that makes an express warranty with respect to powered medical equipment with a wholesale price of $100 or more shall provide any documentation, replacement part, and tool to enable the repair of the equipment during the warranty period, at an equitable price and convenience of delivery and of enabling functionality, with regard to:

(1)  the actual cost to the original equipment manufacturer to prepare and distribute the documentation, part, or tool, exclusive of any research and development costs incurred;

(2)  the ability of owners and independent repair providers to afford the documentation, part, or tool; and

(3)  the means by which the documentation, part, or tool is distributed.

(c)  An original equipment manufacturer may make available the documentation, replacement part, or tool under Subsection (a)(2) through an appropriate secure release system.

(d)  Subsection (a)(1) does not require a powered medical equipment manufacturer to make available a replacement part if the part is no longer available to the original equipment manufacturer.

(e)  An original equipment manufacturer who offers the services of inspection, diagnosis, maintenance, or repair of the manufacturer's own powered medical equipment, and who does not have an authorized repair arrangement with an individual or business entity that is not an affiliate, is considered to be an authorized repair provider with respect to that equipment.

(f)  The training courses and materials described by Subsection (a)(1) must include information on the operation of powered medical equipment.

Sec. 113.003.  CONSTRUCTION OF CHAPTER. (a) Nothing in this chapter shall be construed to require an original equipment manufacturer to divulge a trade secret to an owner or an independent service provider except as necessary to provide documentation, replacement parts, tools, and training courses and materials on fair and reasonable terms as provided by this chapter.

(b)  Nothing in this chapter shall be construed to alter the terms of an arrangement described by Section 113.001(1) between an authorized repair provider and original equipment manufacturer, including the performance or provision of warranty or recall repair work by the authorized repair provider on behalf of the original equipment manufacturer under an arrangement described by Section 113.001(1), except that any provision in an agreement between an authorized repair provider and original equipment manufacturer that purports to waive, avoid, restrict, or limit the original equipment manufacturer's obligation to comply with this chapter is void and unenforceable.

Sec. 113.004.  DECEPTIVE TRADE PRACTICE. A violation of this chapter is a deceptive trade practice in addition to the practices described by Subchapter E, Chapter 17, and is actionable under that subchapter.

SECTION 3.  To the extent of a conflict between Chapter 113, Business & Commerce Code, as added by this Act, and a provision of an agreement between an authorized repair provider and original equipment manufacturer entered into before the effective date of this Act, the provision of the agreement prevails.

SECTION 4.  This Act takes effect September 1, 2021.