

By: Meza

H.B. No. 3198

A BILL TO BE ENTITLED

AN ACT

relating to the diagnosis, maintenance, and repair of 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 113 to read as follows:

CHAPTER 113. DIAGNOSIS, MAINTENANCE, AND REPAIR OF DIGITAL ELECTRONIC 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 diagnosis, maintenance, or repair services for digital electronic equipment under the name of the original equipment manufacturer; or

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

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

1 (3) "Documentation" means any manual, diagram,
2 reporting output, service code description, schematic, or other
3 guidance or information provided to an authorized repair provider
4 used in the diagnosis, maintenance, or repair of digital electronic
5 equipment.

6 (4) "Embedded software" means any programmable
7 instructions provided on firmware that is delivered with digital
8 electronic equipment or with a replacement part for that equipment
9 for the purpose of equipment operation, including all relevant
10 patches and fixes made by the original equipment manufacturer of
11 the digital electronic equipment or replacement part for that
12 purpose.

13 (5) "Fair and reasonable terms" means:

14 (A) with respect to making available a
15 replacement part or a tool that is not software, making the part or
16 tool available:

17 (i) under costs and terms equivalent to the
18 most favorable net cost and terms offered to an original equipment
19 manufacturer's authorized repair provider for obtaining an
20 equivalent part or tool, accounting for any discounts, rebates,
21 means of enabling fully restored and updated functionality, rights
22 of use, convenience of delivery, or other incentive program offered
23 to the authorized repair provider, or any additional cost, burden,
24 or impediment the manufacturer imposes on an independent repair
25 provider;

26 (ii) without any condition, substantial
27 obligation, or restriction that is not reasonably necessary to

1 allow the owner or independent repair provider to engage in the
2 diagnosis, maintenance, or repair of the manufacturer's digital
3 electronic equipment; and

4 (iii) without conditioning that
5 availability on the recipient being an authorized repair provider;
6 and

7 (B) with respect to making available a tool that
8 is software, making the tool available at no charge, without
9 requiring authorization or Internet access, and without imposing
10 any other impediment to access or use of the tool in a manner that
11 impairs the efficient and cost-effective diagnosis, maintenance,
12 or repair of the equipment; or

13 (C) with respect to making available
14 documentation, including any relevant updates to the
15 documentation, making the documentation available at no cost,
16 except that an original equipment manufacturer may charge the
17 reasonable actual cost of preparing and sending a copy of the
18 documentation when the documentation is requested in physical
19 printed form.

20 (6) "Firmware" means a software program or set of
21 instructions programmed on digital electronic equipment or on a
22 replacement part for the equipment that allows the equipment or
23 replacement part to communicate with itself or other computer
24 hardware.

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

27 (A) who does not, on the individual or entity's

1 own behalf or through an affiliate, have an arrangement with an
2 original equipment manufacturer as described by Subdivision (1) and
3 who is engaged in diagnosis, maintenance, or repair of digital
4 electronic equipment; or

5 (B) that is an original equipment manufacturer,
6 or who is an individual or business entity who has an arrangement
7 with that original equipment manufacturer as described by
8 Subdivision (1), only with respect to diagnosis, maintenance, or
9 repair of digital electronic equipment not manufactured by or sold
10 under the name of that original equipment manufacturer.

11 (8) "Manufacturer of motor vehicle equipment" means a
12 business entity engaged in the business of manufacturing or
13 supplying components that are used in the manufacture, maintenance,
14 or repair of a motor vehicle.

15 (9) "Motor vehicle" means a vehicle that is designed
16 for transporting individuals or property on a street or highway and
17 is certified by the vehicle's manufacturer under all applicable
18 federal safety and emissions standards and requirements for
19 distribution and sale in the United States. The term does not
20 include:

21 (A) a motorcycle; or

22 (B) a recreational vehicle or manufactured home
23 equipped for habitation.

24 (10) "Motor vehicle dealer" means an individual or
25 business entity who in the ordinary course of business:

26 (A) sells or leases new motor vehicles under a
27 franchise agreement;

1 (B) holds a license issued under Chapter 2301,
2 Occupations Code, and a general distinguishing number issued under
3 Chapter 503, Transportation Code; and

4 (C) is engaged in the diagnosis, maintenance, or
5 repair of motor vehicles or motor vehicle engines under the
6 franchise agreement.

7 (11) "Motor vehicle manufacturer" means a business
8 entity that manufactures or assembles new motor vehicles.

9 (12) "Original equipment manufacturer" means a
10 business entity that sells, leases, or supplies new digital
11 electronic equipment manufactured by or on behalf of the business
12 entity.

13 (13) "Owner" means an individual or business entity
14 who owns or leases digital electronic equipment purchased or used
15 in this state.

16 (14) "Replacement part" means a new or used
17 replacement part made available by the original equipment
18 manufacturer for the purpose of maintenance or repair of digital
19 electronic equipment manufactured, sold, or supplied by the
20 original equipment manufacturer.

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

25 (A) provisions, programs, or pairs a new part;

26 (B) calibrates functionality; or

27 (C) performs any other function required to

1 restore the equipment to fully functional condition.

2 (16) "Trade secret" has the meaning assigned by 18
3 U.S.C. Section 1839, as that section existed on January 1, 2021.

4 Sec. 113.002. INAPPLICABILITY OF CHAPTER. This chapter
5 does not apply to:

6 (1) a manufacturer of motor vehicle equipment;

7 (2) a motor vehicle manufacturer;

8 (3) a motor vehicle dealer acting in that capacity; or

9 (4) a product or service of an entity described by
10 Subdivisions (1) through (3).

11 Sec. 113.003. REQUIREMENTS FOR ORIGINAL EQUIPMENT
12 MANUFACTURERS. (a) For digital electronic equipment, including
13 parts for that equipment, sold or used in this state, the original
14 equipment manufacturer of the equipment or part shall make
15 available on fair and reasonable terms to any independent repair
16 provider or to an owner of digital electronic equipment
17 manufactured by or on behalf of, sold by, or supplied by the
18 original equipment manufacturer:

19 (1) documentation, replacement parts, and tools,
20 including any updates to information or embedded software, for that
21 equipment or replacement part; and

22 (2) for equipment containing an electronic security
23 lock or other security-related function, any special
24 documentation, replacement part, or tool needed to disable and
25 reset the lock or function when disabled in the course of diagnosis,
26 maintenance, or repair of the equipment.

27 (b) An original equipment manufacturer may make available

1 the documentation, replacement part, or tool under Subsection
2 (a)(2) through an appropriate secure release system.

3 (c) Notwithstanding Subsection (a), if an original
4 equipment manufacturer provides an express warranty with respect to
5 digital electronic equipment and the wholesale price of that
6 equipment is at least \$100, the manufacturer shall provide any
7 replacement part, tool, or documentation to enable repair of that
8 equipment during the manufacturer's warranty period at an equitable
9 price, including convenience of delivery and enabling
10 functionality, that takes into consideration:

11 (1) the actual cost to the manufacturer to prepare and
12 distribute the part, tool, or documentation, without considering
13 research and development costs;

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

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

18 (d) This section does not require an original equipment
19 manufacturer to make available a replacement part if the part is no
20 longer available to the original equipment manufacturer.

21 (e) An original equipment manufacturer who offers the
22 services of diagnosis, maintenance, or repair of the manufacturer's
23 own digital electronic equipment, and who does not have an
24 authorized repair arrangement with an individual or business entity
25 that is not an affiliate, is considered to be an authorized repair
26 provider with respect to that equipment.

27 Sec. 113.004. CONSTRUCTION OF CHAPTER. (a) Nothing in this

1 chapter may be construed to require an original equipment
2 manufacturer to divulge a trade secret to an owner or an independent
3 service provider except as necessary to provide documentation,
4 replacement parts, and tools on fair and reasonable terms as
5 provided by this chapter.

6 (b) Nothing in this chapter may be construed to alter the
7 terms of an arrangement described by Section 113.001(1) between an
8 authorized repair provider and original equipment manufacturer,
9 including the performance or provision of warranty or recall repair
10 work by the authorized repair provider on behalf of the original
11 equipment manufacturer under an arrangement described by Section
12 113.001(1), except that any provision in an agreement between an
13 authorized repair provider and original equipment manufacturer
14 that purports to waive, avoid, restrict, or limit the original
15 equipment manufacturer's obligation to comply with this chapter is
16 void and unenforceable.

17 Sec. 113.005. DECEPTIVE TRADE PRACTICE. A violation of
18 this chapter is a deceptive trade practice in addition to the
19 practices described by Subchapter E, Chapter 17, and is actionable
20 under that subchapter.

21 SECTION 2. To the extent of a conflict between Chapter 113,
22 Business & Commerce Code, as added by this Act, and a provision of
23 an agreement between an authorized repair provider and original
24 equipment manufacturer entered into before the effective date of
25 this Act, the provision of the agreement prevails.

26 SECTION 3. This Act takes effect September 1, 2021.