

By: Meza

H.B. No. 4063

A BILL TO BE ENTITLED

AN ACT

relating to the diagnosis, maintenance, and repair of electronics-enabled heavy 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 ELECTRONICS-ENABLED HEAVY 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 electronics-enabled heavy equipment under the name of the original equipment manufacturer; or

(B) to offer diagnosis, maintenance, or repair for electronics-enabled heavy equipment on behalf of the original equipment manufacturer.

(2) "Documentation" means any manual, diagram, reporting output, service code description, schematic, or other guidance or information used in the diagnosis, maintenance, or

1 repair of electronics-enabled heavy equipment.

2 (3) "Electronics-enabled heavy equipment" means heavy  
3 equipment that, to function, depends wholly or partly on digital  
4 electronics embedded in or attached to the equipment.

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

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

12 (A) making a part or tool available under costs  
13 and terms equivalent to the most favorable cost and terms offered  
14 to an original equipment manufacturer's authorized repair provider  
15 for obtaining an equivalent part or tool, accounting for any  
16 discounts, rebates, or other incentive program offered to the  
17 authorized repair provider; and

18 (B) making documentation available at no cost,  
19 except that an original equipment manufacturer may charge the  
20 reasonable actual cost of preparing and sending a copy of the  
21 documentation when the documentation is requested in physical  
22 printed form.

23 (6) "Firmware" means a software program or set of  
24 instructions programmed on electronics-enabled heavy equipment or  
25 on a replacement part for the equipment that allows the equipment or  
26 replacement part to communicate with itself or other computer  
27 hardware.

1           (7) "Heavy equipment" has the meaning assigned by  
2 Section 23.1241, Tax Code.

3           (8) "Independent repair provider" means an individual  
4 or business entity operating in this state who does not, on the  
5 individual's or entity's own behalf or through an affiliate, have an  
6 arrangement with an original equipment manufacturer as described by  
7 Subdivision (1) and who is engaged in diagnosis, maintenance, or  
8 repair of electronics-enabled heavy equipment.

9           (9) "Original equipment manufacturer" means a  
10 business entity that sells, leases, or supplies new  
11 electronics-enabled heavy equipment.

12           (10) "Owner" means an individual or business entity  
13 who owns or leases electronics-enabled heavy equipment purchased or  
14 used in this state.

15           (11) "Replacement part" means a new or used  
16 replacement part made available by the original equipment  
17 manufacturer for the purpose of maintenance or repair of  
18 electronics-enabled heavy equipment manufactured, sold, or  
19 supplied by the original equipment manufacturer.

20           (12) "Tool" means any software program, including  
21 embedded software, hardware implement, or other apparatus used for  
22 diagnosis, maintenance, or repair of electronics-enabled heavy  
23 equipment, including software or another mechanism that:

- 24                   (A) provisions, programs, or pairs a new part;  
25                   (B) calibrates functionality; or  
26                   (C) performs any other function required to  
27 restore the equipment to fully functional condition.

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

3           Sec. 113.002. REQUIREMENTS FOR ORIGINAL EQUIPMENT  
4 MANUFACTURERS. (a) For electronics-enabled heavy equipment,  
5 including parts for that equipment, sold or used in this state, the  
6 original equipment manufacturer of the equipment or part shall make  
7 available on fair and reasonable terms to any independent repair  
8 provider or to an owner of electronics-enabled heavy equipment  
9 manufactured by or on behalf of, sold by, or supplied by the  
10 original equipment manufacturer:

11           (1) documentation, replacement parts, and tools; and  
12           (2) for equipment containing an electronic security  
13 lock or other security-related function, any special  
14 documentation, replacement part, or tool needed to disable and  
15 reset the lock or function when disabled in the course of diagnosis,  
16 maintenance, or repair of the equipment.

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

20           Sec. 113.003. CONSTRUCTION OF CHAPTER. Nothing in this  
21 chapter may be construed to:

22           (1) require an original equipment manufacturer to  
23 divulge a trade secret to an owner or an independent service  
24 provider except as necessary to provide documentation, replacement  
25 parts, and tools on fair and reasonable terms as provided by this  
26 chapter;

27           (2) alter the terms of an arrangement described by

1 Section 113.001(1) between an authorized repair provider and  
2 original equipment manufacturer, except that any provision in an  
3 agreement between an authorized repair provider and original  
4 equipment manufacturer that purports to waive, avoid, restrict, or  
5 limit the original equipment manufacturer's obligation to comply  
6 with this chapter is void and unenforceable;

7 (3) require an authorized repair provider to make  
8 documentation, parts, or tools available on fair and reasonable  
9 terms; or

10 (4) allow:

11 (A) modifications to electronics-enabled heavy  
12 equipment that deactivate safety notification systems; or

13 (B) noncompliance with applicable law, including  
14 federal emissions laws, copyright laws, and occupational safety  
15 laws prohibiting certain modifications to heavy equipment.

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

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

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