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By:  Meza H.B. No. 1606

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 122 to read as follows:

CHAPTER 122. DIAGNOSIS, MAINTENANCE, AND REPAIR OF DIGITAL ELECTRONIC EQUIPMENT

Sec. 122.001.  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.

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

(4)  "Embedded software" means any programmable instructions provided on firmware that is delivered with digital electronic 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 digital electronic equipment or replacement part for that purpose.

(5)  "Fair and reasonable terms" means:

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

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

(ii)  without any condition, substantial obligation, or restriction that is not reasonably necessary to allow the owner or independent repair provider to engage in the diagnosis, maintenance, or repair of the manufacturer's digital electronic equipment; and

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

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

(C)  with respect to making available documentation, including any relevant updates to the documentation, 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.

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

(7)  "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 diagnosis, maintenance, or repair of digital electronic equipment; or

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

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

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

(A)  a motorcycle; or

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

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

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

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

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

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

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

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

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

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

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

(B)  calibrates functionality; or

(C)  performs any other function required to restore the equipment to fully functional condition.

(16)  "Trade secret" has the meaning assigned by 18 U.S.C. Section 1839, as that section existed on January 1, 2023.

Sec. 122.002.  INAPPLICABILITY OF CHAPTER. This chapter does not apply to:

(1)  a manufacturer of motor vehicle equipment;

(2)  a motor vehicle manufacturer;

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

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

Sec. 122.003.  REQUIREMENTS FOR ORIGINAL EQUIPMENT MANUFACTURERS. (a) For digital electronic equipment, including parts for that equipment, sold or used in this state, the original equipment manufacturer of the equipment or part shall make available on fair and reasonable terms to any independent repair provider or to an owner of digital electronic equipment manufactured by or on behalf of, sold by, or supplied by the original equipment manufacturer:

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

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

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

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

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

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

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

(d)  This section does not require an original 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 diagnosis, maintenance, or repair of the manufacturer's own digital electronic 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.

Sec. 122.004.  CONSTRUCTION OF CHAPTER. (a) Nothing in this chapter may 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, and tools on fair and reasonable terms as provided by this chapter.

(b)  Nothing in this chapter may be construed to alter the terms of an arrangement described by Section 122.001(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 122.001(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. 122.005.  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 2.  To the extent of a conflict between Chapter 122, 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 3.  This Act takes effect September 1, 2023.