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| BILL ANALYSIS |

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| C.S.H.B. 2963 |
| By: Capriglione |
| Trade, Workforce & Economic Development |
| Committee Report (Substituted) |

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| **BACKGROUND AND PURPOSE** The bill author has informed the committee that Texans expect to have full authority over the personal electronic devices they purchase, including the ability to repair that device as they choose. The bill author has also informed the committee that manufacturers often impose repair restrictions, such as withholding repair manuals, parts, tools, or even using software locks, to limit independent repairs, which can lead to higher costs for consumers, force premature device replacements, reduce competition, and contribute to environmental waste. C.S.H.B. 2963 seeks to empower Texans to have more control over their personal electronic devices by requiring device manufacturers to make documentation, replacement parts, and tools, or their equivalents, that are required for the diagnosis, maintenance, or repair of the digital electronic equipment available on fair and reasonable terms to independent repair providers and device owners. |
| **CRIMINAL JUSTICE IMPACT**It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision. |
| **RULEMAKING AUTHORITY** It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution. |
| **ANALYSIS** C.S.H.B. 2963 amends the Business & Commerce Code to provide for the diagnosis, maintenance, and repair of certain digital electronic equipment.**Original Equipment Manufacturer Requirements**C.S.H.B. 2963 requires the original equipment manufacturer of digital electronic equipment, including parts for that equipment sold or used in Texas, to make documentation, replacement parts, and tools, or their equivalents, that are required for the diagnosis, maintenance, or repair of the digital electronic equipment available on fair and reasonable terms, not later than one year after the date of the first sale of the equipment in Texas, to the following recipients:* any independent repair provider; or
* an owner of digital electronic equipment manufactured by or on behalf of, sold by, or supplied by the original equipment manufacturer.

The bill authorizes the documentation, replacement parts, and tools to be made available as follows:* directly by an original equipment manufacturer or through an authorized repair provider or a third-party provider; or
* by an authorized repair provider to any independent repair provider or owner, provided that the authorized repair provider is contractually and practically permitted by the original equipment manufacturer to sell the documentation, parts, or tools, to an independent repair provider or owner.

The bill establishes that this authorization may not be construed to require a third-party provider, including an authorized repair provider, to make available documentation, replacement parts, or tools independent of an original equipment manufacturer.C.S.H.B. 2963 establishes that nothing in its provisions does the following:* requires the original equipment manufacturer to provide or make available to an authorized repair provider or owner documentation, a replacement part, or a tool under specified circumstances relating to the unavailability or diagnostic use of the documentation, part, or tool;
* requires an original equipment manufacturer to divulge any trade secret to any independent repair provider or owner, except as necessary for the diagnosis, maintenance, or repair of digital electronic equipment in accordance with the bill's provisions;
* requires an original equipment manufacturer or provider to provide an independent repair provider or owner any information other than the provided documentation;
* requires an original equipment manufacturer or authorized repair provider to make available any documentation, part, or tool for the purposes of modifying digital electronic equipment;
* requires any original equipment manufacturer or authorized repair provider to make any documentation, part, or tool available in a manner that is inconsistent with or in violation of any state or federal law;
* requires an original equipment manufacturer to make any documentation, part, or tool available to an independent repair provider or owner that would disable, reset, or override certain electronic security or anti-theft measures or functions;
* prevents an original equipment manufacturer from requiring remote authorization or an Internet connection before an independent repair provider or owner may use a part or tool or from providing certain preassembled parts to such a repair provider or owner; or
* requires an original equipment manufacturer to provide or make available, as applicable:
	+ documentation, a part, or a tool for a product where reconditioning or repair of the product is prohibited by a law or regulation;
	+ source code;
	+ a special document, a part, or a tool that would disable or override an anti-theft security measure in a specified manner;
	+ 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 these provisions; or
	+ documentation or a tool used exclusively by the manufacturer for certain diagnostic, maintenance, or repair functions.

C.S.H.B. 2963 authorizes the original equipment manufacturer, instead of making documentation, replacement parts, or tools available under the bill's provisions, to provide to an owner who is the original purchaser one of the following:* a reimbursement in the amount of the purchase price the purchaser paid for the digital electronic equipment; or
* an equivalent or better, readily available replacement for the digital electronic equipment at a price that has a value that is equal to or less than the total cost of the sum of the replacement parts and provided at the consumer's discretion.

C.S.H.B. 2963 exempts an original equipment manufacturer or authorized repair provider from liability for any damage or injury to any digital electronic equipment, individual, or property that occurs as a result of the repair, diagnosis, maintenance, or modification performed by an independent repair provider or owner, or any other use of documentation, replacement parts, or tools made available by an original equipment manufacturer, including the following:* indirect, incidental, special, or consequential damages;
* loss of data, privacy, or profits; or
* inability to use or reduced functionality of the digital electronic equipment.

The bill exempts an original equipment manufacturer from liability under the bill's provisions for any act that is reasonably necessary to protect user privacy, security, or digital safety and from liability for improper use of personal data or any data privacy or security breach in connection with the repair, diagnosis, maintenance, or modification performed by an independent repair provider or owner.**Enforcement**C.S.H.B. 2963 establishes that a violation of the bill's provisions following the 30-day cure period is a deceptive trade practice in addition to the practices described by the state Deceptive Trade Practices-Consumer Protection Act and is actionable under that law. The bill authorizes the attorney general to do the following: * bring an action in the state's name following the 30-day cure period to restrain or enjoin a person from violating the bill's provisions; and
* recover reasonable attorney's fees and other reasonable expenses incurred in investigating and bringing such an action.

C.S.H.B. 2963 grants the attorney general exclusive authority to enforce the bill's provisions. The bill requires the attorney general, before bringing an action under the bill's provisions, to notify a person in writing at least 30 days before the date the attorney general brings the action. The notice must identify the specific provisions of the bill that the attorney general alleges have been or are being violated. The bill prohibits the attorney general from bringing an action against a person if:* within the 30-day period, the person cures the violation; and
* the person provides the attorney general a written statement that the person cured the alleged violation and that it is the person's intent that no further violations will occur.

Written notice by the attorney general must be delivered by certified mail, return receipt requested, or by first-class mail with proof of delivery. C.S.H.B. 2963 establishes that its provisions may not be construed to create, provide a basis for, or be subject to a private right of action for a violation of the bill's provisions or any other law.**Applicability and Waiver**C.S.H.B. 2963 applies only to digital electronic equipment with a wholesale price of at least $50 that is sold to a consumer in Texas. The bill's provisions do not apply to the following:* information technology equipment that is intended for use in critical infrastructure as defined by the federal Critical Infrastructures Protection Act of 2001;
* 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;
* an autocycle or motorcycle;
* a medical device or product found in a medical setting, including diagnostic, monitoring, or control equipment, or offered for purchase or prescribed by a health care provider;
* 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;
* aerospace, airplane, or train equipment;
* heavy equipment;
* commercial and industrial electrical equipment, including power distribution equipment, such as telecommunications network infrastructure, commercial visual display equipment, medium/low voltage switchgear and transformers, power control equipment, such as medium/low voltage motor control and drives, power quality equipment, such as uninterruptible power supplies, remote power panels, power distribution units and static/transfer switches, and any tools, technology, attachments, accessories, components, and repair parts for any such equipment;
* a home appliance that has digital electronic equipment embedded within it, including refrigerators, ovens, microwaves, air conditioning units, and heating units, excluding other countertop or stand-alone small appliances;
* safety communications equipment, the intended use of which is for emergency response or prevention purposes by an emergency service organization, such as a police, fire, or medical and emergency rescue services agency;
* fire alarm systems, intrusion detection equipment that is provided with a security monitoring service, life safety systems, and physical access control equipment, including electronic keypads and similar building access control electronics;
* a video game console; or
* an original equipment manufacturer that provides an equivalent or better, readily available replacement part at no charge to and only at the discretion of the consumer.

C.S.H.B. 2963 makes void and unenforceable a provision in a contract, including 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 the bill's provisions.**Definitions**C.S.H.B. 2963 defines the following terms:* "authorized repair provider" as 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 the following 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
	+ other authority to offer diagnosis, maintenance, or repair services for digital electronic equipment on behalf of the original equipment manufacturer;
* "autocycle" by reference to provisions of the Certificate of Title Act relating to autocycle titles;
* "consumer" as the following:
	+ an individual who enters into a transaction primarily for personal, family, or household purposes; or
	+ a primary or secondary school or postsecondary educational institution, including a school district, open-enrollment charter school, and public institution of higher education, that enters into a transaction primarily for educational purposes;
* "diagnosis" as the process of identifying the issue or issues that cause digital electronic equipment to not be in full working order;
* "digital electronic equipment" or "equipment" as any product that depends, wholly or partly, on digital electronics embedded in or attached to the product to function;
* "documentation" as any manual, diagram, reporting output, service code description, or other guidance or information provided or made available by the original equipment manufacturer to an authorized repair provider for the purpose of diagnosing, maintaining, or repairing digital electronic equipment manufactured or sold by the original equipment manufacturer;
* "fair and reasonable terms" as the following:
	+ with respect to an original equipment manufacturer making available a tool, making the tool available as follows:
		- without conditioning that availability on the recipient being an authorized repair provider;
		- at no cost to use or operate the tool or at a cost that is equivalent to the lowest actual cost at which the original equipment manufacturer offers the tool to an authorized repair provider, taking into account any discounts, rebates, or other financial incentives offered by the original equipment manufacturer to the authorized repair provider; and
		- if the tool is requested in physical form, for a charge equal to the actual cost of procuring, preparing, and sending the tool;
	+ with respect to an original equipment manufacturer making available a replacement part and the manufacturer's provision of preassembled parts under certain circumstances, making the part available either directly or through an authorized distributor or repair provider, as follows:
		- without conditioning that availability on the recipient being an authorized repair provider; and
		- at costs and terms that are equivalent to the costs and terms under which the part is offered to an authorized repair provider;
	+ with respect to an original equipment manufacturer making available documentation, including any relevant updates to the documentation, making the documentation available as follows:
		- without conditioning that availability on the recipient being an authorized repair provider; and
		- 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
	+ with respect to documentation, replacement parts, or tools, terms that are fair to all parties, including the original equipment manufacturer and authorized repair providers;
* "heavy equipment" as utility and construction equipment, including forestry equipment, industrial equipment, road-building equipment, mining equipment, bulldozers, motor graders, backhoes, skid steers, track loaders, and excavators;
* "independent repair provider" as an individual or business entity operating in Texas that, as follows:
	+ with respect to an original equipment manufacturer, is not an authorized repair provider and is not affiliated with an individual or business entity that is an authorized repair provider; and
	+ is engaged in the diagnosis, maintenance, or repair of digital electronic equipment;
* "institution of higher education" by reference to the Higher Education Coordinating Act of 1965;
* "maintenance" as any act necessary to keep currently working digital electronic equipment in full working order;
* "medical device" as a device, as defined under the Federal Food, Drug, and Cosmetic Act, 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;
* "modification" or "modify" as any alteration to digital electronic equipment that is not maintenance and not a repair;
* "motorcycle" by reference to Transportation Code provisions governing the rules of the road;
* "motor vehicle" as a vehicle that is designed for transporting individuals or property on a street or highway and is certified by the manufacturer under all applicable motor vehicle federal safety and emissions standards and requirements for distribution and sale in the United States;
* "motor vehicle manufacturer" as a business engaged in the manufacturing or assembling of motor vehicles;
* "original equipment manufacturer" as a person that, in the normal course of business, is engaged in the business of selling, leasing, or otherwise supplying new digital electronic equipment manufactured by or on behalf of the person;
* "open-enrollment charter school" as a school that has been granted a charter under applicable Education Code provisions;
* "owner" as an individual or business entity that owns digital electronic equipment;
* "repair" as any act necessary to restore digital electronic equipment or equipment to full working order, excluding post-sale modifications that alter the originally intended functioning of the digital electronic equipment;
* "replacement part" as 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, excluding printed circuit board assemblies that allow device cloning in violation of federal law provisions relating to fraud and related activity in connection with access devices or other applicable law;
* "school district" as any public school district in Texas;
* "tool" as 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 does the following:
	+ provides, programs, or pairs a part;
	+ calibrates functionality; or
	+ performs any other function required to restore the equipment to full working order;
* "trade secret" as 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 federal law provisions relating to the theft of trade secrets; and
* "video game console" as 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, not including a general or all-purpose computer, including a desktop computer, laptop, tablet, or mobile phone.

**Procedural Provisions**C.S.H.B. 2963 applies only to digital electronic equipment that was originally made available for sale in Texas by an original equipment manufacturer on or after the bill's effective date. The bill establishes that, to the extent of a conflict between the bill's provisions and a provision of an agreement between an authorized repair provider and original equipment manufacturer entered into before the bill's effective date, the provision of the agreement prevails. |
| **EFFECTIVE DATE** September 1, 2026. |
| **COMPARISON OF INTRODUCED AND SUBSTITUTE**While C.S.H.B. 2963 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.The substitute revises the introduced version's authorization for the documentation, replacement parts, and tools described by the bill's provisions relating to original equipment manufacturer requirements to be made available directly by an original equipment manufacturer or through an authorized repair provider or an authorized third-party provider by removing the specification that the third-party provider be an authorized third-party provider.Whereas the substitute establishes that nothing in the bill's provisions requires an original equipment manufacturer to 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 bill's enforcement, as applicable, physical evidence of the alleged threat, the introduced established that nothing in the bill's provisions requires such a manufacturer to provide documentation, a part, or a tool for repair of digital electronic equipment critical to the safety of life or health of individuals, or for repairs that could threaten the safety of life or health of individuals, including repairs to digital electronic equipment with internal switch-mode power supplies.The substitute revises the introduced version's provision authorizing the original equipment manufacturer, instead of making documentation, replacement parts, or tools available under the bill's provisions, to provide an owner who is the original purchaser an equivalent or better, readily available replacement for the digital electronic equipment at a price that has a value that is equal to or less than the total cost of the sum of the replacement parts by specifying that the price be provided at the consumer's discretion.The substitute and the introduced both provide for the applicability of the bill's provisions but differ in the following ways:* whereas the introduced made the bill's provisions applicable only to digital electronic equipment with a wholesale price of at least $50 that is sold at retail to a consumer in Texas and that is in need of a repair not covered under the original equipment manufacturer's warranty, the substitute makes those provisions applicable only to digital electronic equipment with a wholesale price of at least $50 sold to a consumer in Texas;
* the substitute makes the bill's provisions inapplicable to the following, which the introduced did not do:
	+ an autocycle or motorcycle;
	+ heavy equipment;
	+ fire alarm systems, intrusion detection equipment that is provided with a security monitoring service, life safety systems, and physical access control equipment, including electronic keypads and similar building access control electronics;
	+ a video game console; and
	+ an original equipment manufacturer that provides an equivalent or better, readily available replacement part at no charge to and only at the discretion of the consumer;
* the introduced made the bill's provisions inapplicable to digital electronic equipment sold in a transaction involving only business or governmental entities, which the substitute does not do; and
* the substitute revises the home appliances with embedded digital electronic equipment to which the bill's provisions are inapplicable by removing motorized shades, lighting control systems, security devices or alarm systems, and any related software and components, which appeared in the introduced, and specifying instead that other countertop or stand-alone small appliances are excluded.

The substitute includes definitions for the following terms, which were absent in the introduced:* "autocycle," "heavy equipment," "institution of higher education," "motorcycle," "open-enrollment charter school," "school district," and "video game console."

The substitute also revises the following terms as defined by the introduced:* includes in the definition of "consumer" a primary or secondary school or postsecondary educational institution, including a school district, open-enrollment charter school, and public institution of higher education, that enters into a transaction primarily for educational purposes; and
* replaces "business entity" with "person" in the definition of "original equipment manufacturer."
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