

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2963
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The State of Texas should consider implementing right-to-repair laws for two public policy reasons. First, it is significantly cheaper for consumers to fix their devices themselves or via an independent repairer. Second, by repairing broken devices and thus possessing the devices for more extended periods, consumers will reduce electronic waste.

Self-repair of broken devices is significantly less expensive than repair at an authorized repair shop. For example, as the Wall Street Journal recently noted, fixing a broken part of a television can cost as little as \$12. However, getting the television fixed by an authorized repairer would cost, at a minimum, \$215--almost as much as a new television.¹ Also, consumers encounter time and geographic constraints associated with authorized repair shops. Authorized repair shops do not exist in rural areas, so consumers there are forced to drive considerable distances to get their devices fixed.² Authorized repair shops may also have long wait times, meaning consumers cannot mend their devices for days or weeks. Right-to-repair laws allow consumers to promptly mend their devices at nearby independent shops for reasonable prices.

When consumers cannot get their devices fixed, they often throw them out and buy new ones.³ Old or broken electronic devices are known as electronic waste. The amount of electronic waste is increasing rapidly, and "is now the nation's fastest growing category of solid waste."⁴ In 2009, Americans threw out 141 million phones, or about 350,000 phones per day.⁵ Once the devices are thrown out, harmful materials, such as lead and cadmium, can end up in soil, water, and food supplies.⁶ Allowing consumers to fix their own devices will reduce the number of broken devices thrown out because they will use the fixed devices for longer periods, decreasing the number of disposed devices and reducing environmental damage.

This Bill Would:

- Apply to digital electronic equipment sold to a consumer in Texas that has a wholesale price of at least \$50;
- Require original equipment manufacturers (OEMs) of digital electronic equipment (and parts sold or used in Texas) to provide necessary documentation, replacement parts, and tools—on fair and reasonable terms—within one year of the product's first sale in Texas. This access must be granted to independent repair providers and equipment owners;
- Require the repair materials to be made available directly by an OEM, authorized repair provider, a third-party provider, or an authorized repair provider to any independent repair provider or owner, provided that the authorized repair provider is contractually and practically permitted by the OEM to sell the repair materials to an independent repair provider or owner; and
- Provide the attorney general with the exclusive authority to enforce this chapter.

1 Geoffrey A. Fowler, We Need the Right to Repair Our Gadgets, Wall St. Journal

2 Nicholas Deleon, Right-to-Repair Laws could Make It Easier to Get a Phone or Laptop Fixed, Consumer Reports

3 The Efficiency and Management of the International Trade in Electronic Waste: Is There a Better Plan Than a Ban?, 21 N.Y.U. Env'tl. L.J. 142, 143 (2014)

4 Economics of Electronic Waste Disposal Regulations, 36 Hofstra L. Rev. 149, 149 (2007).

5 Nathan Proctor, Recharge Repair, U.S. Pub. Inst. Res. Grp. (Feb. 8, 2018).

6 <http://www.who.int/ceh/risks/ewaste/en/>

(Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 2963 amends current law relating to diagnosis, maintenance, and repair of certain digital electronic equipment.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 5, Business & Commerce Code, by adding Chapter 121, as follows:

CHAPTER 121. DIAGNOSIS, MAINTENANCE, AND REPAIR OF CERTAIN DIGITAL ELECTRONIC EQUIPMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 121.001. DEFINITIONS. Defines "authorized repair provider," "autocycle," "consumer," "diagnosis," "digital electronic equipment," "equipment," "documentation," "fair and reasonable terms," "heavy equipment," "independent repair provider," "maintenance," "medical device," "modification," "modify," "moped," "motorboat," "motorcycle," "motor vehicle," "motor vehicle manufacturer," "off-highway vehicle," "open-enrollment charter school," "original equipment manufacturer," "outboard motor," "owner," "personal watercraft," "powersports vehicle," "repair," "replacement part," "school district," "tool," "trade secret," and "video game console."

Sec. 121.002. APPLICABILITY OF CHAPTER. (a) Provides that, except as provided by Subsection (b), this chapter applies only to digital electronic equipment sold to a consumer in this state and that has a wholesale price of at least \$50.

(b) Provides that this chapter does not apply to:

- (1) information technology equipment that is intended for use in critical infrastructure as defined by 42 U.S.C. Section 5195c(e);
- (2) 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;
- (3) a powersports vehicle or outboard motor;
- (4) certain medical devices or products;
- (5) 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;
- (6) aerospace, airplane, or train equipment;
- (7) heavy equipment;
- (8) 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 of the equipment described by this subdivision;

(9) 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;

(10) 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;

(11) 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;

(12) a video game console; or

(13) 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.

Sec. 121.003. WAIVER OF CHAPTER VOID AND UNENFORCEABLE. Provides that 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 this chapter is void and unenforceable.

SUBCHAPTER B. ORIGINAL EQUIPMENT MANUFACTURER REQUIREMENTS

Sec. 121.051. ORIGINAL EQUIPMENT MANUFACTURER REQUIREMENTS. (a) Requires the original equipment manufacturer of the equipment or part, for digital electronic equipment, including parts for that equipment sold or used in this state, not later than one year after the date of the first sale of the digital electronic equipment in this state, to 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 documentation, replacement parts, and tools, or their equivalents, that are required for the diagnosis, maintenance, or repair of the digital electronic equipment.

(b) Authorizes the documentation, replacement parts, and tools described by Subsection (a) to be made available directly by an original equipment manufacturer or through an authorized repair provider or 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.

(c) Prohibits Subsection (b) from being 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.

Sec. 121.052. CONSTRUCTION OF SUBCHAPTER. Provides that, notwithstanding any other provision of this subchapter, nothing in this subchapter:

- (1) requires an original equipment manufacturer to provide or make available documentation, a replacement part, or a tool to a repair provider or owner, in certain circumstances;
- (2) 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 this chapter;
- (3) requires an original equipment manufacturer or an authorized repair provider to provide an independent repair provider or owner any information other than documentation that is provided by the original equipment manufacturer to an authorized repair provider;
- (4) 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;
- (5) requires any original equipment manufacturer or authorized repair provider to make available any documentation, part, or tool in a manner that is inconsistent with or in violation of any state or federal law;
- (6) requires an original equipment manufacturer to make available any documentation, part, or tool to an independent repair provider or owner that would disable, reset, or override electronic security locks or other security-related measures or functions, or disable or override anti-theft security measures set by the owner of the digital electronic equipment;
- (7) prevents an original equipment manufacturer from requiring remote authorization or an Internet connection before an independent repair provider or owner is authorized to use a part or tool or providing parts, such as integrated batteries, to an independent repair provider or owner preassembled with other parts rather than as individual components, provided that those preassembled parts or their equivalents are also available to an authorized repair provider or owner; or
- (8) requires an original equipment manufacturer to take certain actions.

Sec. 121.053. ALTERNATIVE RELIEF FOR ORIGINAL PURCHASERS. Authorizes the original equipment manufacturer, instead of making documentation, replacement parts, or tools available under this subchapter, to provide an owner who is the original purchaser 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 discretion of the consumer.

Sec. 121.054. LIMITATION OF LIABILITY. (a) Provides that an original equipment manufacturer or authorized repair provider is not liable 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 indirect, incidental, special, or consequential damages; loss of data, privacy, or profits; or inability to use or reduced functionality of the digital electronic equipment.

- (b) Provides that an original equipment manufacturer is not liable under this chapter for any act that is reasonably necessary to protect user privacy, security, or digital safety.

(c) Provides that an original equipment manufacturer is not liable 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.

SUBCHAPTER C. ENFORCEMENT

Sec. 121.101. NOTICE OF VIOLATION; OPPORTUNITY TO CURE. (a) Provides that the attorney general has exclusive authority to enforce this chapter.

(b) Requires the attorney general, before bringing an action under Section 121.102 or 121.103, to notify a person in writing at least 30 days before the date the attorney general brings the action. Requires that the notice identify the specific provisions of this chapter that the attorney general alleges have been or are being violated.

(c) Prohibits the attorney general from bringing an action against a person in certain circumstances.

(d) Requires that written notice by the attorney general be delivered by certified mail, return receipt requested or first-class mail with proof of delivery.

Sec. 121.102. DECEPTIVE TRADE PRACTICE. Provides that a violation of this chapter following the cure period described by Section 121.101 is a deceptive trade practice in addition to the practices described by Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17 (Competition and Trade Practices), and is actionable under that subchapter.

Sec. 121.103. INJUNCTION. (a) Authorizes the attorney general to bring an action in the name of the state following the cure period described by Section 121.101 to restrain or enjoin a person from violating this chapter.

(b) Authorizes the attorney general to recover reasonable attorney's fees and other reasonable expenses incurred in investigating and bringing an action under this section.

Sec. 121.104. NO PRIVATE RIGHT OF ACTION. Prohibits this chapter from being construed to create, provide a basis for, or be subject to a private right of action for a violation of this chapter or any other law.

SECTION 2. Makes application of Chapter 121, Business & Commerce Code, as added by this Act, prospective.

SECTION 3. Provides that, notwithstanding Section 121.003, Business & Commerce Code, as added by this Act, to the extent of a conflict between Chapter 121, 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. Effective date: September 1, 2026.