

By: Capriglione, Curry

H.B. No. 2963

A BILL TO BE ENTITLED

AN ACT

relating to diagnosis, maintenance, and repair of certain 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 121 to read as follows:

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

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 121.001. DEFINITIONS. In this chapter:

(1) "Authorized repair provider" means 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 to the individual or business entity:

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

(2) "Autocycle" has the meaning assigned by Section 501.008, Transportation Code.

1           (3) "Consumer" means an individual who enters into a  
2 transaction primarily for personal, family, or household purposes.

3           (4) "Diagnosis" means the process of identifying the  
4 issue or issues that cause digital electronic equipment to not be in  
5 full working order.

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

9           (6) "Documentation" means any manual, diagram,  
10 reporting output, service code description, or other guidance or  
11 information provided or made available by the original equipment  
12 manufacturer to an authorized repair provider for the purpose of  
13 diagnosing, maintaining, or repairing digital electronic equipment  
14 manufactured or sold by the original equipment manufacturer.

15           (7) "Fair and reasonable terms" means:

16                   (A) with respect to an original equipment  
17 manufacturer making available a tool, making the tool available:

18                           (i) without conditioning that availability  
19 on the recipient being an authorized repair provider;

20                           (ii) at no cost to use or operate the tool  
21 or at a cost that is equivalent to the lowest actual cost at which  
22 the original equipment manufacturer offers the tool to an  
23 authorized repair provider, taking into account any discounts,  
24 rebates, or other financial incentives offered by the original  
25 equipment manufacturer to the authorized repair provider; and

26                           (iii) if the tool is requested in physical  
27 form, for a charge equal to the actual cost of procuring, preparing,

1 and sending the tool;

2 (B) with respect to an original equipment  
3 manufacturer making available a replacement part, making the part  
4 available either directly or through an authorized distributor or  
5 repair provider, subject to Section 121.052(7)(B):

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

8 (ii) at costs and terms that are equivalent  
9 to the costs and terms under which the part is offered to an  
10 authorized repair provider;

11 (C) with respect to an original equipment  
12 manufacturer making available documentation, including any  
13 relevant updates to the documentation, making the documentation  
14 available:

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

17 (ii) at no cost, except that an original  
18 equipment manufacturer may charge the reasonable actual cost of  
19 preparing and sending a copy of the documentation when the  
20 documentation is requested in physical printed form; and

21 (D) with respect to documentation, replacement  
22 parts, or tools, terms that are fair to all parties, including the  
23 original equipment manufacturer and authorized repair providers.

24 (8) "Heavy equipment" means utility and construction  
25 equipment, including forestry equipment, industrial equipment,  
26 road-building equipment, mining equipment, bulldozers, motor  
27 graders, backhoes, skid steers, track loaders, and excavators.

1           (9) "Independent repair provider" means an individual  
2 or business entity operating in this state that:

3                   (A) with respect to an original equipment  
4 manufacturer:

5                           (i) is not an authorized repair provider;  
6 and

7                           (ii) is not affiliated with an individual  
8 or business entity that is an authorized repair provider; and

9                   (B) is engaged in the diagnosis, maintenance, or  
10 repair of digital electronic equipment.

11           (10) "Maintenance" means any act necessary to keep  
12 currently working digital electronic equipment in full working  
13 order.

14           (11) "Medical device" means a device, as defined by 21  
15 U.S.C. Section 321(h)(1), intended for use in the diagnosis of  
16 disease or other conditions, or in the cure, mitigation, treatment,  
17 or prevention of disease, in humans or other animals.

18           (12) "Modification" or "modify" means any alteration  
19 to digital electronic equipment that is not maintenance and not a  
20 repair.

21           (13) "Motorcycle" has the meaning assigned by Section  
22 [541.201](#), Transportation Code.

23           (14) "Motor vehicle" means a vehicle that is designed  
24 for transporting individuals or property on a street or highway and  
25 is certified by the manufacturer under all applicable motor vehicle  
26 federal safety and emissions standards and requirements for  
27 distribution and sale in the United States.

1           (15) "Motor vehicle manufacturer" means a business  
2 engaged in the manufacturing or assembling of motor vehicles.

3           (16) "Original equipment manufacturer" means a person  
4 that, in the normal course of business, is engaged in the business  
5 of selling, leasing, or otherwise supplying new digital electronic  
6 equipment manufactured by or on behalf of the person.

7           (17) "Open-enrollment charter school" means a school  
8 that has been granted a charter under Subchapter D, Chapter 12,  
9 Education Code.

10           (18) "Owner" means an individual or business entity  
11 that owns digital electronic equipment.

12           (19) "Repair" means any act necessary to restore  
13 digital electronic equipment or equipment to full working order.  
14 The term does not include post-sale modifications that alter the  
15 originally intended functioning of the digital electronic  
16 equipment.

17           (20) "Replacement part" means a new or used  
18 replacement part made available by the original equipment  
19 manufacturer for the purpose of maintenance or repair of digital  
20 electronic equipment manufactured, sold, or supplied by the  
21 original equipment manufacturer. The term does not include printed  
22 circuit board assemblies that allow device cloning in violation of  
23 18 U.S.C. Section 1029 or other applicable law.

24           (21) "School district" means any public school  
25 district in this state.

26           (22) "Tool" means any software program, hardware  
27 implement, or other apparatus used for the diagnosis, maintenance,

or repair of digital electronic equipment, including software or another mechanism that:

- (A) provides, programs, or pairs a part;
- (B) calibrates functionality; or
- (C) performs any other function required to restore the equipment to full working order.

(23) "Trade secret" means 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 18 U.S.C. Section 1839.

(24) "Video game console" means 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. The term does not include a general or all-purpose computer, including a desktop computer, laptop, tablet, or mobile phone.

Sec. 121.002. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter applies only to digital electronic equipment:

- (1) sold to a consumer in this state; and
- (2) that has a wholesale price of at least \$50.

(b) This chapter does not apply to:

1           (1) information technology equipment that is intended  
2 for use in critical infrastructure as defined by 42 U.S.C. Section  
3 5195c(e);

4           (2) a motor vehicle manufacturer who complies with a  
5 memorandum of understanding or any other industry-recognized  
6 agreement relating to the diagnosis, maintenance, or repair of  
7 digital electronic equipment;

8           (3) an autocyce or motorcycle;

9           (4) a medical device or product:

10           (A) found in a medical setting, including  
11 diagnostic, monitoring, or control equipment; or

12           (B) offered for purchase or prescribed by a  
13 health care provider;

14           (5) a manufacturer of farm equipment who complies with  
15 a memorandum of understanding or any other industry-recognized  
16 agreement relating to the diagnosis, maintenance, or repair of  
17 digital electronic equipment;

18           (6) aerospace, airplane, or train equipment;

19           (7) heavy equipment;

20           (8) commercial and industrial electrical equipment,  
21 including power distribution equipment, such as telecommunications  
22 network infrastructure, commercial visual display equipment,  
23 medium/low voltage switchgear and transformers, power control  
24 equipment, such as medium/low voltage motor control and drives,  
25 power quality equipment, such as uninterruptible power supplies,  
26 remote power panels, power distribution units and static/transfer  
27 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. 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



1 REQUIREMENTS. (a) For digital electronic equipment, including  
2 parts for that equipment sold or used in this state, the original  
3 equipment manufacturer of the equipment or part shall, not later  
4 than one year after the date of the first sale of the digital  
5 electronic equipment in this state, make available on fair and  
6 reasonable terms to any independent repair provider or to an owner  
7 of digital electronic equipment manufactured by or on behalf of,  
8 sold by, or supplied by the original equipment manufacturer  
9 documentation, replacement parts, and tools, or their equivalents,  
10 that are required for the diagnosis, maintenance, or repair of the  
11 digital electronic equipment.

12 (b) The documentation, replacement parts, and tools  
13 described by Subsection (a) may be made available:

14 (1) directly by an original equipment manufacturer or  
15 through an authorized repair provider or a third-party provider; or

16 (2) by an authorized repair provider to any  
17 independent repair provider or owner, provided that the authorized  
18 repair provider is contractually and practically permitted by the  
19 original equipment manufacturer to sell the documentation, parts,  
20 or tools to an independent repair provider or owner.

21 (c) Subsection (b) may not be construed to require a  
22 third-party provider, including an authorized repair provider, to  
23 make available documentation, replacement parts, or tools  
24 independent of an original equipment manufacturer.

25 Sec. 121.052. CONSTRUCTION OF SUBCHAPTER. Notwithstanding  
26 any other provision of this subchapter, nothing in this subchapter:

27 (1) requires an original equipment manufacturer to

1 provide or make available documentation, a replacement part, or a  
2 tool to a repair provider or owner, if:

3 (A) the documentation, part, or tool is not, or  
4 is no longer, provided by the original equipment manufacturer or  
5 made available to authorized repair providers of the original  
6 equipment manufacturer, including where the original equipment  
7 manufacturer performs related repairs solely in-house or through a  
8 corporate affiliate;

9 (B) the documentation, part, or tool is no longer  
10 available to the original equipment manufacturer; or

11 (C) the documentation or tool is used by the  
12 original manufacturer only to perform, at no cost, diagnostic  
13 services virtually through telephone, Internet, chat, e-mail, or  
14 other similar means that do not involve the manufacturer physically  
15 handling the consumer's equipment, unless the manufacturer also  
16 makes the documentation or tool available to an individual or  
17 business that is unaffiliated with the manufacturer;

18 (2) requires an original equipment manufacturer to  
19 divulge any trade secret to any independent repair provider or  
20 owner, except as necessary for the diagnosis, maintenance, or  
21 repair of digital electronic equipment in accordance with this  
22 chapter;

23 (3) requires an original equipment manufacturer or an  
24 authorized repair provider to provide an independent repair  
25 provider or owner any information other than documentation that is  
26 provided by the original equipment manufacturer to an authorized  
27 repair provider;

1           (4) requires an original equipment manufacturer or  
2 authorized repair provider to make available any documentation,  
3 part, or tool for the purposes of modifying digital electronic  
4 equipment;

5           (5) requires any original equipment manufacturer or  
6 authorized repair provider to make available any documentation,  
7 part, or tool in a manner that is inconsistent with or in violation  
8 of any state or federal law;

9           (6) requires an original equipment manufacturer to  
10 make available any documentation, part, or tool to an independent  
11 repair provider or owner that would disable, reset, or override  
12 electronic security locks or other security-related measures or  
13 functions, or disable or override anti-theft security measures set  
14 by the owner of the digital electronic equipment;

15           (7) prevents an original equipment manufacturer from:  
16               (A) requiring remote authorization or an  
17 Internet connection before an independent repair provider or owner  
18 may use a part or tool; or

19               (B) providing parts, such as integrated  
20 batteries, to an independent repair provider or owner preassembled  
21 with other parts rather than as individual components, provided  
22 that those preassembled parts or their equivalents are also  
23 available to an authorized repair provider or owner; or

24           (8) requires an original equipment manufacturer to:  
25               (A) provide documentation, a part, or a tool for  
26 a product where reconditioning or repair of the product is  
27 prohibited by a law or regulation;

1                   (B) provide or make available source code;

2                   (C) make available a special document, a part, or  
3 a tool that would disable or override an anti-theft security  
4 measure set by the owner of the digital electronic equipment  
5 without the owner's authorization;

6                   (D) provide documentation, a part, or a tool for  
7 repair of digital electronic equipment that is critical to the  
8 safety of life or health of individuals, or for repairs that could  
9 threaten the safety of life or health of individuals, provided that  
10 the original equipment manufacturer provides to the consumer or  
11 another entity responsible for the enforcement of this chapter, as  
12 applicable, physical evidence of the threat alleged under this  
13 paragraph; or

14                   (E) provide documentation or a tool used  
15 exclusively by the original equipment manufacturer for diagnosis,  
16 maintenance, or repairs completed by machines that operate on  
17 several digital electronic equipment products simultaneously or  
18 otherwise for purposes of large scale efficiency, provided the  
19 original equipment manufacturer makes available to an independent  
20 repair provider or owner sufficient alternative documentation or a  
21 tool to effect the diagnosis, maintenance, or repair of the digital  
22 electronic equipment.

23           Sec. 121.053. ALTERNATIVE RELIEF FOR ORIGINAL PURCHASERS.  
24 Instead of making documentation, replacement parts, or tools  
25 available under this subchapter, the original equipment  
26 manufacturer may provide an owner who is the original purchaser:

27                   (1) a reimbursement in the amount of the purchase

1 price the purchaser paid for the digital electronic equipment; or  
2 (2) an equivalent or better, readily available  
3 replacement for the digital electronic equipment at a price that  
4 has a value that is equal to or less than the total cost of the sum  
5 of the replacement parts and provided at the discretion of the  
6 consumer.

7 Sec. 121.054. LIMITATION OF LIABILITY. (a) An original  
8 equipment manufacturer or authorized repair provider is not liable  
9 for any damage or injury to any digital electronic equipment,  
10 individual, or property that occurs as a result of the repair,  
11 diagnosis, maintenance, or modification performed by an  
12 independent repair provider or owner, or any other use of  
13 documentation, replacement parts, or tools made available by an  
14 original equipment manufacturer, including:

15 (1) indirect, incidental, special, or consequential  
16 damages;

17 (2) loss of data, privacy, or profits; or

18 (3) inability to use or reduced functionality of the  
19 digital electronic equipment.

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

23 (c) An original equipment manufacturer is not liable for  
24 improper use of personal data or any data privacy or security breach  
25 in connection with the repair, diagnosis, maintenance, or  
26 modification performed by an independent repair provider or owner.

SUBCHAPTER C. ENFORCEMENT

Sec. 121.101. NOTICE OF VIOLATION; OPPORTUNITY TO CURE.

(a) The attorney general has exclusive authority to enforce this chapter.

(b) Before bringing an action under Section 121.102 or 121.103, the attorney general shall 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 this chapter that the attorney general alleges have been or are being violated.

(c) The attorney general may not bring an action against a person if:

(1) within the 30-day period described by Subsection (b), the person cures the violation; and

(2) the person provides the attorney general a written statement that:

(A) the person cured the alleged violation; and

(B) it is the person's intent that no further violations of this chapter will occur.

(d) Written notice by the attorney general shall be delivered by:

(1) certified mail, return receipt requested; or

(2) first-class mail with proof of delivery.

Sec. 121.102. DECEPTIVE TRADE PRACTICE. 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, Chapter 17, and is actionable under that

1 subchapter.

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

6 (b) The attorney general may recover reasonable attorney's  
7 fees and other reasonable expenses incurred in investigating and  
8 bringing an action under this section.

9 Sec. 121.104. NO PRIVATE RIGHT OF ACTION. This chapter may  
10 not be construed to create, provide a basis for, or be subject to a  
11 private right of action for a violation of this chapter or any other  
12 law.

13 SECTION 2. Chapter 121, Business & Commerce Code, as added  
14 by this Act, applies only to digital electronic equipment that was  
15 originally made available for sale in this state by an original  
16 equipment manufacturer on or after the effective date of this Act.

17 SECTION 3. Notwithstanding Section 121.003, Business &  
18 Commerce Code, as added by this Act, to the extent of a conflict  
19 between Chapter 121, Business & Commerce Code, as added by this Act,  
20 and a provision of an agreement between an authorized repair  
21 provider and original equipment manufacturer entered into before  
22 the effective date of this Act, the provision of the agreement  
23 prevails.

24 SECTION 4. This Act takes effect September 1, 2026.