

By: Capriglione

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

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

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

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

13 (6) "Fair and reasonable terms" means:

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

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

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

24 (iii) if the tool is requested in physical
25 form, for a charge equal to the actual cost of procuring, preparing,
26 and sending the tool;

27 (B) with respect to an original equipment

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

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

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

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

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

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

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

22 (7) "Independent repair provider" means an individual
23 or business entity operating in this state that:

24 (A) with respect to an original equipment
25 manufacturer:

26 (i) is not an authorized repair provider;

27 and

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

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

5 (8) "Maintenance" means any act necessary to keep
6 currently working digital electronic equipment in full working
7 order.

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

12 (10) "Modification" or "modify" means any alteration
13 to digital electronic equipment that is not maintenance and not a
14 repair.

15 (11) "Motor vehicle" means a vehicle that is designed
16 for transporting individuals or property on a street or highway and
17 is certified by the manufacturer under all applicable motor vehicle
18 federal safety and emissions standards and requirements for
19 distribution and sale in the United States.

20 (12) "Motor vehicle manufacturer" means a business
21 engaged in the manufacturing or assembling of motor vehicles.

22 (13) "Original equipment manufacturer" means a
23 business entity that, in the normal course of business, is engaged
24 in the business of selling, leasing, or otherwise supplying new
25 digital electronic equipment manufactured by or on behalf of the
26 business entity.

27 (14) "Owner" means an individual or business entity

1 that owns digital electronic equipment.

2 (15) "Repair" means any act necessary to restore
3 digital electronic equipment or equipment to full working order.
4 The term does not include post-sale modifications that alter the
5 originally intended functioning of the digital electronic
6 equipment.

7 (16) "Replacement part" means a new or used
8 replacement part made available by the original equipment
9 manufacturer for the purpose of maintenance or repair of digital
10 electronic equipment manufactured, sold, or supplied by the
11 original equipment manufacturer. The term does not include printed
12 circuit board assemblies that may allow device cloning in violation
13 of 18 U.S.C. Section 1029 or other applicable law.

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

18 (A) provides, programs, or pairs a part;

19 (B) calibrates functionality; or

20 (C) performs any other function required to
21 restore the equipment to full working order.

22 (18) "Trade secret" means anything tangible or
23 intangible or electronically stored or kept that constitutes,
24 represents, evidences, or records intellectual property, including
25 secret or confidentially held designs, processes, procedures,
26 formulas, inventions, or improvements, or secret or confidentially
27 held scientific, technical, merchandising, production, financial,

1 business, or management information, or that falls within the
2 meaning of a trade secret given in 18 U.S.C. Section 1839.

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

- 6 (1) sold at retail to a consumer in this state;
- 7 (2) that has a wholesale price of at least \$50; and
- 8 (3) that is in need of a repair not covered under the
9 original equipment manufacturer's warranty.

10 (b) This chapter does not apply to:

11 (1) information technology equipment that is intended
12 for use in critical infrastructure as defined by 42 U.S.C. Section
13 5195c(e);

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

18 (3) a medical device or product:

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

21 (B) offered for purchase or prescribed by a
22 health care provider;

23 (4) a manufacturer of farm equipment who complies with
24 a memorandum of understanding or any other industry-recognized
25 agreement relating to the diagnosis, maintenance, or repair of
26 digital electronic equipment;

27 (5) aerospace, airplane, or train equipment;

1 (6) commercial and industrial electrical equipment,
2 including power distribution equipment, such as telecommunications
3 network infrastructure, commercial visual display equipment,
4 medium/low voltage switchgear and transformers, power control
5 equipment, such as medium/low voltage motor control and drives,
6 power quality equipment, such as uninterruptible power supplies,
7 remote power panels, power distribution units and static/transfer
8 switches, and any tools, technology, attachments, accessories,
9 components, and repair parts for any of the equipment described by
10 this subdivision;

11 (7) a home appliance that has digital electronic
12 equipment embedded within it, including refrigerators, ovens,
13 microwaves, air conditioning units, heating units, motorized
14 shades, lighting control systems, and security devices or alarm
15 systems, including any related software and components;

16 (8) safety communications equipment, the intended use
17 of which is for emergency response or prevention purposes by an
18 emergency service organization, such as a police, fire, or medical
19 and emergency rescue services agency; or

20 (9) digital electronic equipment sold in a transaction
21 involving only business or governmental entities.

22 Sec. 121.003. WAIVER OF CHAPTER VOID AND UNENFORCEABLE. A
23 provision in a contract, including an agreement between an
24 authorized repair provider and original equipment manufacturer,
25 that purports to waive, avoid, restrict, or limit the original
26 equipment manufacturer's obligation to comply with this chapter is
27 void and unenforceable.

1 SUBCHAPTER B. ORIGINAL EQUIPMENT MANUFACTURER REQUIREMENTS

2 Sec. 121.051. ORIGINAL EQUIPMENT MANUFACTURER
3 REQUIREMENTS. (a) For digital electronic equipment, including
4 parts for that equipment sold or used in this state, the original
5 equipment manufacturer of the equipment or part shall, not later
6 than one year after the date of the first sale of the digital
7 electronic equipment in this state, make available on fair and
8 reasonable terms to any independent repair provider or to an owner
9 of digital electronic equipment manufactured by or on behalf of,
10 sold by, or supplied by the original equipment manufacturer
11 documentation, replacement parts, and tools, or their equivalents,
12 that are required for the diagnosis, maintenance, or repair of the
13 digital electronic equipment.

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

16 (1) directly by an original equipment manufacturer or
17 through an authorized repair provider or an authorized third-party
18 provider; or

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

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

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

3 (1) requires an original equipment manufacturer to
4 provide or make available documentation, a replacement part, or a
5 tool to a repair provider or owner, if:

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

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

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

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

26 (3) requires an original equipment manufacturer or an
27 authorized repair provider to provide an independent repair

1 provider or owner any information other than documentation that is
2 provided by the original equipment manufacturer to an authorized
3 repair provider;

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

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

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

18 (7) prevents an original equipment manufacturer from:

19 (A) requiring remote authorization or an
20 Internet connection before an independent repair provider or owner
21 may use a part or tool; or

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

27 (8) requires an original equipment manufacturer to:

1 (A) provide documentation, a part, or a tool for
2 a product where reconditioning or repair of the product is
3 prohibited by a law or regulation;

4 (B) provide or make available source code;

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

9 (D) provide documentation, a part, or a tool for
10 repair of digital electronic equipment critical to the safety of
11 life or health of individuals, or for repairs that could threaten
12 the safety of life or health of individuals, including repairs to
13 digital electronic equipment with internal switch-mode power
14 supplies; or

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

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

1 (1) a reimbursement in the amount of the purchase
2 price the purchaser paid for the digital electronic equipment; or

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

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.