

SENATE No. 96

The Commonwealth of Massachusetts

PRESENTED BY:

Michael D. Brady

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the digital right to repair.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>	<i>2/1/2017</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>	<i>2/1/2017</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>2/1/2017</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>2/3/2017</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>2/3/2017</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>2/3/2017</i>

SENATE No. 96

By Mr. Brady, a petition (accompanied by bill, Senate, No. 96) of Michael D. Brady, Thomas J. Calter, James E. Timilty, Walter F. Timilty and other members of the General Court for legislation relative to the digital right to repair. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to the digital right to repair.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after chapter 93K the following
2 chapter:-

3 Chapter 93L

4 DIGITAL ELECTRONIC PRODUCT REPAIR

5 Section 1. As used in this chapter, the following terms shall, unless the context clearly
6 requires otherwise, have the following meanings:-

7 "Authorized repair provider", an oral or written arrangement for a definite or indefinite
8 period in which a manufacturer or distributor transfers to a separate business organization or
9 individual license to use a trade name, service mark, or relative characteristic for the purposes of
10 offering repair services under the name of the manufacturer.

11 "Digital electronic product", a part or machine containing a microprocessor originally
12 manufactured for distribution and sale in the United States; provided, however, that digital
13 electronic product shall not include a class III medical device as established by 21 U.S.C. § 360c.

14 "Documentation", manuals, schematic diagrams, reporting output, or service code
15 descriptions provided to the authorized repair provider for the purposes of effecting repair.

16 "Embedded software", programmable instructions provided on firmware delivered with
17 the digital electronic product for the purposes of product operation, including all relevant patches
18 and fixes made by the manufacturer for this purpose, including, but not limited to, synonyms
19 "basic internal operating system," "internal operating system," "machine code," "assembly code,"
20 "root code" and "microcode."

21 "Fair and reasonable terms", in determining whether a price is on fair and reasonable
22 terms consideration may be given to relevant factors, including, but not limited to:

23 (1) the net cost to the authorized repair provider for similar parts obtained from
24 manufacturers, less any discounts, rebates, or other incentive programs;

25 (2) the cost to the manufacturer for preparing and distributing the parts or product
26 excluding any research and development costs incurred in designing and implementing,
27 upgrading or altering the product, but including amortized capital costs for the preparation and
28 distribution of the parts; and

29 (3) the price charged by other manufacturers for similar parts or products.

30 "Independent repair provider", a person or business operating in the commonwealth that
31 is not affiliated with a manufacturer or a manufacturer's authorized dealer of a digital electronic

32 product, which is engaged in the diagnosis, service, maintenance, or repair of a digital electronic
33 product. A manufacturer's authorized dealer shall be considered an independent repair provider
34 for the purposes of those instances when the dealer engages in the diagnosis, service,
35 maintenance, or repair of a digital electronic product that is not affiliated with the manufacturer.

36 "Manufacturer", a person or business who, in the ordinary course of its business, is
37 engaged in the business of selling or leasing new digital electronic products to consumers or
38 other end users, and is engaged in the diagnosis, service, maintenance, or repair of that product.

39 "Motor vehicle", means any vehicle that is designed for transporting persons or property
40 on a street or highway and that is certified by the manufacturer under all applicable federal safety
41 and emissions standards and requirements for distribution and sale in the United States, but
42 excluding (i) a motorcycle; or (ii) a recreational vehicle or an auto home equipped for
43 habitation. "Owner", a person or business who lawfully acquires a digital electronic product
44 purchased or used in the commonwealth.

45 "Remote diagnostics", a remote data transfer function between a digital electronic
46 product and a provider of repair services including for purposes of remote diagnostics, settings
47 controls, or location identification.

48 "Service parts", replacement parts, either new or used, made available by the
49 manufacturer to the authorized repair provider for the purposes of effecting repair.

50 "Trade secret", anything tangible or intangible or electronically stored or kept which
51 constitutes, represents, evidences, or records intellectual property including secret or
52 confidentially held designs, processes, procedures, formulas, inventions or improvements, or

53 secrets of confidentially held scientific, technical, merchandising, production, financial, business
54 or management information, or anything within the definition in 18 U.S.C. 1839(3).

55 Section 2. Manufacturers of digital electronic products sold on or after December 31,
56 2010 in the commonwealth shall:

57 (1) make available to independent repair facilities or owners of products manufactured by
58 the manufacturer the same diagnostic and repair information, including repair technical updates,
59 diagnostic software, service access passwords, updates and corrections to firmware, and related
60 documentation, free of charge and in the same manner the manufacturer makes available to its
61 authorized repair providers; and

62 (2) make available for purchase by the product owner, or the authorized agent of the
63 owner, such service parts, inclusive of any updates to the firmware of the parts, for purchase
64 upon fair and reasonable terms.

65 Section 3. Manufacturers that sell any diagnostic, service, or repair information to any
66 independent repair provider or any other third-party provider in a format that is standardized with
67 other manufacturers, and on terms and conditions more favorable than the manner and the terms
68 and conditions pursuant to which an authorized repair provider obtains the same diagnostic,
69 service, or repair information, shall be prohibited from requiring any authorized repair provider
70 to continue purchasing diagnostic, service, or repair information in a proprietary format, unless
71 such proprietary format includes diagnostic, service, repair, or dealership operations information
72 or functionality that is not available in such standardized format.

73 Section 4. Manufacturers of digital electronic products sold or used in the commonwealth
74 shall make available for purchase by owners and independent repair facilities all diagnostic

75 repair tools, incorporating the same diagnostic repair and remote diagnostic capabilities that such
76 manufacturer makes available to its own repair or engineering staff or any authorized repair
77 providers, upon fair and reasonable terms.

78 Section 5. Manufacturers that provide repair information to aftermarket tool, diagnostics,
79 or third-party service information publications and systems shall have fully satisfied its
80 obligations under this chapter and thereafter shall not be responsible for the content and
81 functionality of aftermarket diagnostic tools or service information systems.

82 Section 6. Manufacturers of digital electronic products sold or used in the commonwealth
83 for the purposes of providing security-related functions may not exclude diagnostic, service, and
84 repair information necessary to reset a security-related electronic function from information
85 provided to owners and independent repair facilities.

86 Section 7. Nothing in this chapter shall be construed to require a manufacturer to divulge
87 a trade secret.

88 Section 8. Nothing in this chapter requires manufacturers or authorized repair providers
89 to provide an owner or independent repair provider access to non-diagnostic and non-repair
90 information provided by a manufacturer to an authorized repair provider pursuant to the terms of
91 an authorizing agreement.

92 Section 9. (a) An independent repair provider or owner who believes that a manufacturer
93 has failed to provide information, including documentation, updates to firmware, safety and
94 security corrections, diagnostics, documentation, or a tool required by this chapter shall notify
95 the manufacturer in writing and give the manufacturer 30 days from the time the manufacturer

96 receives the complaint to cure the failure. If the manufacturer cures such a complaint within the
97 cure period, damages shall be limited to actual damages in any subsequent litigation.

98 (b) If the manufacturer fails to respond to the notice provided pursuant to subsection (a),
99 or if an independent repair facility or owner is not satisfied with the manufacturer's cure, the
100 independent repair facility or owner may file a complaint in district court. The complaint shall
101 include the following:

102 (1) written information confirming that the complainant has attempted to acquire and use,
103 through the then available standard support function provided by the manufacturer all relevant
104 diagnostics, tools, service parts, documentation, and updates to embedded software, including
105 communication with customer assistance via the manufacturer's then standard process, if made
106 available by the manufacturer; and

107 (2) evidence of manufacturer notification as required by subsection (a).

108 Section 10. In addition to any other remedies that may be available, a violation of this
109 chapter shall be deemed to be an unfair method of competition and an unfair or deceptive act or
110 practice in the conduct of trade or commerce in violation of section 2 of chapter 93A.

111 Section 11. Nothing in this chapter shall apply to a motor vehicle.