

HOUSE No. 3383

The Commonwealth of Massachusetts

PRESENTED BY:

Claire D. Cronin and Thomas P. Kennedy

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: | DATE ADDED: |
|---------------------------------|--------------------------------------|-------------------|
| <i>Claire D. Cronin</i> | <i>11th Plymouth</i> | <i>1/15/2015</i> |
| <i>Thomas P. Kennedy</i> | <i>Second Plymouth and Bristol</i> | <i>1/15/2015</i> |
| <i>James M. Cantwell</i> | <i>4th Plymouth</i> | <i>5/8/2015</i> |
| <i>Gailanne M. Cariddi</i> | <i>1st Berkshire</i> | <i>5/11/2015</i> |
| <i>Danielle W. Gregoire</i> | <i>4th Middlesex</i> | <i>12/26/2019</i> |
| <i>Brian M. Ashe</i> | <i>2nd Hampden</i> | <i>5/11/2015</i> |
| <i>Louis L. Kafka</i> | <i>8th Norfolk</i> | <i>12/26/2019</i> |
| <i>Jose F. Tosado</i> | <i>9th Hampden</i> | <i>12/26/2019</i> |
| <i>Joseph W. McGonagle, Jr.</i> | <i>28th Middlesex</i> | <i>12/26/2019</i> |
| <i>Paul Tucker</i> | <i>7th Essex</i> | <i>5/14/2015</i> |
| <i>Kay Khan</i> | <i>11th Middlesex</i> | <i>12/26/2019</i> |
| <i>Brian A. Joyce</i> | <i>Norfolk, Bristol and Plymouth</i> | <i>12/26/2019</i> |
| <i>Timothy J. Toomey, Jr.</i> | <i>26th Middlesex</i> | <i>5/15/2015</i> |
| <i>Thomas J. Calter</i> | <i>12th Plymouth</i> | <i>5/15/2015</i> |

HOUSE No. 3383

By Representative Cronin of Easton and Senator Kennedy, a joint petition (accompanied by bill, House, No. 3383) of Claire D. Cronin, Thomas P. Kennedy and others for legislation to establish fair and reasonable terms for providing diagnostic, service or repair information to independent vehicle repair providers. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

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 section, 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.

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

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

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

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

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

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

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

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

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

38 "Owner", a person or business who lawfully acquires a digital electronic product
39 purchased or used in the commonwealth.

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

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

45 "Trade secret", anything tangible or intangible or electronically stored or kept which
46 constitutes, represents, evidences, or records intellectual property including secret or
47 confidentially held designs, processes, procedures, formulas, inventions or improvements, or
48 secrets of confidentially held scientific, technical, merchandising, production, financial, business
49 or management information, or anything within the definition in 18 U.S.C. 1839(3).

50 Section 2. Manufacturers of digital electronic products sold on or after December 31,
51 2016 in the commonwealth shall:

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

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

60 Section 3. Manufacturers that sell any diagnostic, service, or repair information to any
61 independent repair provider or any other third-party provider in a format that is standardized with
62 other manufacturers, and on terms and conditions more favorable than the manner and the terms
63 and conditions pursuant to which an authorized repair provider obtains the same diagnostic,
64 service, or repair information, shall be prohibited from requiring any authorized repair provider
65 to continue purchasing diagnostic, service, or repair information in a proprietary format, unless
66 such proprietary format includes diagnostic, service, repair, or dealership operations information
67 or functionality that is

68 not available in such standardized format.

69 Section 4. Manufacturers of digital electronic products sold or used in the commonwealth
70 shall make

71 available for purchase by owners and independent repair facilities all diagnostic repair

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

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

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

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

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

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

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

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

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

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

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