SENATE DOCKET, NO. 938 FILED ON: 1/19/2017

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:	
Michael D. Brady	*Second Plymouth and Bristol*	
Thomas J. Calter	*12th Plymouth*	*2/1/2017*
James E. Timilty	*Bristol and Norfolk*	*2/1/2017*
Walter F. Timilty	*Norfolk, Bristol and Plymouth*	*2/1/2017*
Joan B. Lovely	*Second Essex*	*2/3/2017*
Josh S. Cutler	*6th Plymouth*	*2/3/2017*
William N. Brownsberger	*Second Suffolk and Middlesex*	*2/3/2017*
Gailanne M. Cariddi	*1st Berkshire*	*2/28/2017*
Carmine L. Gentile	*13th Middlesex*	*3/9/2017*
Thomas M. Stanley	*9th Middlesex*	*3/9/2017*
Kathleen O'Connor Ives	*First Essex*	*4/19/2017*
Peter V. Kocot	*1st Hampshire*	*5/9/2017*
Steven Ultrino	*33rd Middlesex*	*6/1/2017*

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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:

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

Chapter 93L

DIGITAL ELECTRONIC PRODUCT REPAIR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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