

# SENATE . . . . . No. 2860

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Senate, July 29, 2020 -- Text of the Senate amendment (Senator Feeney) to the Senate Bill enabling partnerships for growth (Senate, No. 2842).

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## The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court  
(2019-2020)

1 by adding at the end thereof the following new sections:-

2 SECTION XX.

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

5 Chapter 93L

6 DIGITAL ELECTRONIC PRODUCT REPAIR

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

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

13 "Digital electronic product", a part or machine containing a microprocessor originally  
14 manufactured for distribution and sale in the United States.

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

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

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

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

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

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

31 "Independent repair provider", a person or business operating in the commonwealth that  
32 is not affiliated with a manufacturer or a manufacturer's authorized dealer of a digital electronic  
33 product, which is engaged in the diagnosis, service, maintenance, or repair of a digital electronic  
34 product. A manufacturer's authorized dealer shall be considered an independent repair provider

35 for the purposes of those instances when the dealer engages in the diagnosis, service,  
36 maintenance, or repair of a digital electronic product that is not affiliated with the manufacturer.

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

40 "Motor vehicle", means any vehicle that is designed for transporting persons or property  
41 on a street or highway and that is certified by the manufacturer under all applicable federal safety  
42 and emissions standards and requirements for distribution and sale in the United States, but  
43 excluding (i) a motorcycle; or (ii) a recreational vehicle or an auto home equipped for habitation.

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

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

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

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

56           Section 2. Manufacturers of digital electronic products sold on or after December 31,  
57 2012 in the commonwealth shall:

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

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

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

74           Section 4. Manufacturers of digital electronic products sold or used in the commonwealth  
75 shall make available for purchase by owners and independent repair facilities all diagnostic  
76 repair tools, incorporating the same diagnostic repair and remote diagnostic capabilities that such

77 manufacturer makes available to its own repair or engineering staff or any authorized repair  
78 providers, upon fair and reasonable terms.

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

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

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

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

93 Section 9. (a) An independent repair provider or owner who believes that a manufacturer  
94 has failed to provide information, including documentation, updates to firmware, safety and  
95 security corrections, diagnostics, documentation, or a tool required by this chapter shall notify  
96 the manufacturer in writing and give the manufacturer 30 days from the time the manufacturer  
97 receives the complaint to cure the failure. If the manufacturer cures such a complaint within the  
98 cure period, damages shall be limited to actual damages in any subsequent litigation.

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

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

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

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

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

113 Section 12. Nothing in this chapter shall apply to a device approved by the United States  
114 Food and Drug Administration.