

SENATE No. 166

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 Digital Right to Repair Act.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|---------------------------------|--|------------------|
| <i>Michael D. Brady</i> | <i>Second Plymouth and Bristol</i> | |
| <i>Paul R. Feeney</i> | <i>Bristol and Norfolk</i> | <i>2/2/2021</i> |
| <i>Joanne M. Comerford</i> | <i>Hampshire, Franklin and Worcester</i> | <i>2/2/2021</i> |
| <i>Steven Ultrino</i> | <i>33rd Middlesex</i> | <i>2/2/2021</i> |
| <i>Mike Connolly</i> | <i>26th Middlesex</i> | <i>2/2/2021</i> |
| <i>Jack Patrick Lewis</i> | <i>7th Middlesex</i> | <i>2/2/2021</i> |
| <i>Angelo J. Puppolo, Jr.</i> | <i>12th Hampden</i> | <i>2/4/2021</i> |
| <i>Carmine Lawrence Gentile</i> | <i>13th Middlesex</i> | <i>2/4/2021</i> |
| <i>Thomas M. Stanley</i> | <i>9th Middlesex</i> | <i>2/5/2021</i> |
| <i>Adam J. Scanlon</i> | <i>14th Bristol</i> | <i>2/8/2021</i> |
| <i>Kay Khan</i> | <i>11th Middlesex</i> | <i>2/9/2021</i> |
| <i>Bradley H. Jones, Jr.</i> | <i>20th Middlesex</i> | <i>2/18/2021</i> |
| <i>John H. Rogers</i> | <i>12th Norfolk</i> | <i>2/26/2021</i> |
| <i>Angelo L. D'Emilia</i> | <i>8th Plymouth</i> | <i>2/26/2021</i> |
| <i>Walter F. Timilty</i> | <i>Norfolk, Bristol and Plymouth</i> | <i>3/5/2021</i> |
| <i>Patrick M. O'Connor</i> | <i>Plymouth and Norfolk</i> | <i>3/10/2021</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> | <i>3/31/2021</i> |
| <i>Christopher Hendricks</i> | <i>11th Bristol</i> | <i>4/5/2021</i> |

| | | |
|--------------------------|---|-------------------|
| <i>Steven G. Xiarhos</i> | <i>5th Barnstable</i> | <i>4/6/2021</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> | <i>4/7/2021</i> |
| <i>Adam G. Hinds</i> | <i>Berkshire, Hampshire, Franklin and Hampden</i> | <i>4/26/2021</i> |
| <i>Julian Cyr</i> | <i>Cape and Islands</i> | <i>5/10/2021</i> |
| <i>Joan B. Lovely</i> | <i>Second Essex</i> | <i>9/17/2021</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>10/28/2021</i> |
| <i>Lydia Edwards</i> | <i>First Suffolk and Middlesex</i> | <i>1/30/2022</i> |

SENATE No. 166

By Mr. Brady, a petition (accompanied by bill, Senate, No. 166) of Michael D. Brady, Paul R. Feeney, Joanne M. Comerford, Steven Ultrino and other members of the General Court for legislation relative to digital right to repair. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 107 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to Digital Right to Repair Act.

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.

13 "Documentation", manuals, schematic diagrams, reporting output, or service code
14 descriptions 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 "Motor vehicle", means any vehicle that is designed for transporting persons or property
39 on a street or highway and that is certified by the manufacturer under all applicable federal safety
40 and emissions standards and requirements for distribution and sale in the United States, but
41 excluding (i) a motorcycle; or (ii) a recreational vehicle or an auto home equipped for habitation.

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

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

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

49 "Trade secret", anything tangible or intangible or electronically stored or kept which
50 constitutes, represents, evidences, or records intellectual property including secret or

51 confidentially held designs, processes, procedures, formulas, inventions or improvements, or
52 secrets of confidentially held scientific, technical, merchandising, production, financial, business
53 or management information, or anything within the definition in 18 U.S.C. 1839(3).

54 Section 2. Manufacturers of digital electronic products sold on or after December 31,
55 2012 in the commonwealth shall:

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

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

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

72 Section 4. Manufacturers of digital electronic products sold or used in the commonwealth
73 shall make available for purchase by owners and independent repair facilities all diagnostic
74 repair tools, incorporating the same diagnostic repair and remote diagnostic capabilities that such
75 manufacturer makes available to its own repair or engineering staff or any authorized repair
76 providers, upon fair and reasonable terms.

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

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

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

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

91 Section 9. (a) An independent repair provider or owner who believes that a manufacturer
92 has failed to provide information, including documentation, updates to firmware, safety and
93 security corrections, diagnostics, documentation, or a tool required by this chapter shall notify

94 the manufacturer in writing and give the manufacturer 30 days from the time the manufacturer
95 receives the complaint to cure the failure. If the manufacturer cures such a complaint within the
96 cure period, damages shall be limited to actual damages in any subsequent litigation.

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

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

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

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

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

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