

SENATE No. 142

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.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|------------------------------|--|------------------|
| <i>Michael D. Brady</i> | <i>Second Plymouth and Norfolk</i> | |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> | <i>1/30/2023</i> |
| <i>Anne M. Gobi</i> | <i>Worcester and Hampshire</i> | <i>2/9/2023</i> |
| <i>Jack Patrick Lewis</i> | <i>7th Middlesex</i> | <i>2/10/2023</i> |
| <i>Joanne M. Comerford</i> | <i>Hampshire, Franklin and Worcester</i> | <i>2/14/2023</i> |
| <i>Nick Collins</i> | <i>First Suffolk</i> | <i>2/15/2023</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> | <i>3/2/2023</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>3/13/2023</i> |
| <i>Paul R. Feeney</i> | <i>Bristol and Norfolk</i> | <i>3/17/2023</i> |
| <i>Bradley H. Jones, Jr.</i> | <i>20th Middlesex</i> | <i>3/22/2023</i> |
| <i>Patrick M. O'Connor</i> | <i>First Plymouth and Norfolk</i> | <i>4/4/2023</i> |
| <i>Susan L. Moran</i> | <i>Plymouth and Barnstable</i> | <i>4/6/2023</i> |
| <i>Joan B. Lovely</i> | <i>Second Essex</i> | <i>4/12/2023</i> |
| <i>Alan Silvia</i> | <i>7th Bristol</i> | <i>6/15/2023</i> |

SENATE No. 142

By Mr. Brady, a petition (accompanied by bill, Senate, No. 142) of Michael D. Brady, Sal N. DiDomenico, Anne M. Gobi, Jack Patrick Lewis 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. 166 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to 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 Portable Wireless Device Repair Act

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

6 "Authorized repair provider" means, with respect to an manufacturer, an individual or
7 business who is unaffiliated with the manufacturer and who has an arrangement with
8 manufacturer under which the manufacturer grants to the individual or business a license to use a
9 trade name, service mark, or other proprietary identifier for the purposes of offering the services

10 of diagnosis, maintenance, or repair of portable wireless devices under the name of the
11 manufacturer, or other arrangement with the manufacturer to offer such services on behalf of
12 manufacturer. A manufacturer who offers the services of diagnosis, maintenance, or repair of
13 portable wireless devices manufactured by it or on its behalf, or sold or otherwise supplied by it,
14 and who does not do so exclusively through one or more arrangements as described in this
15 subsection with an unaffiliated individual or business, shall be considered an authorized repair
16 provider with respect to such equipment.

17 “Portable Wireless Device” means a product which includes a battery, microphone,
18 speaker and display designed to send and receive transmissions through a cellular radiotelephone
19 service.

20 "Documentation", means any manual, diagram, reporting output, service code
21 description, schematic, security codes or passwords, or other information used in effecting the
22 services of diagnosis, maintenance, or repair of portable wireless devices.

23 “Fair and reasonable terms”, for obtaining a part or tool or documentation means costs
24 and terms that are equivalent to the most favorable costs and terms under which manufacturer
25 offers the part, tool, or documentation to an authorized repair provider accounting for any
26 discount, rebate, convenient and timely means of delivery, means of enabling fully restored and
27 updated functionality, rights of use, or other incentive or preference the manufacturer offers to an
28 authorized repair provider, or any additional cost, burden, or impediment the manufacturer
29 imposes on an owner or independent repair provider. For documentation, including any relevant
30 updates, “fair and reasonable terms” also means at no charge, except that, when the

31 documentation is requested in physical printed form, a charge may be included for the reasonable
32 actual costs of preparing and sending the copy.

33 "Independent repair provider" means, with respect to a manufacturer, an individual or
34 business operating in the Commonwealth, who does not have an arrangement as an authorized
35 repair provider with the manufacturer, and who is not affiliated with any individual or business
36 who has such an arrangement with the manufacturer, when that individual or business is engaged
37 in the services of diagnosis, maintenance, or repair of portable wireless devices. A manufacturer
38 or, with respect to that manufacturer, an individual or business who has such an arrangement
39 with that manufacturer, or who is affiliated with an individual or business who has such an
40 arrangement with that manufacturer, shall be considered an independent repair provider when
41 engaging in the services of diagnosis, maintenance, or repair of portable wireless devices that is
42 not manufactured by or on behalf of, or sold or otherwise supplied by, that manufacturer.

43 "Manufacturer", means a business engaged in the business of selling, leasing, or
44 otherwise supplying new portable wireless devices, or parts of equipment, manufactured by or on
45 behalf of itself, to any individual or business.

46 "Owner", an individual or business who lawfully acquires a portable wireless device
47 purchased or used in the Commonwealth.

48 "Part" means any replacement part, either new or used, made available by or to a
49 manufacturer for purposes of effecting the services of maintenance or repair of portable wireless
50 devices manufactured by or on behalf of, sold or otherwise supplied by the manufacturer.

51 "Tool" means any software program, hardware implement, or other apparatus used for
52 diagnosis, maintenance, or repair of portable wireless devices, including software or other

53 mechanisms that provision, program, or pair a part, calibrate functionality, or perform any other
54 function required to bring the product back to fully functional condition.

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

60 Section 2. Manufacturers of portable wireless devices, or parts for such equipment,
61 manufactured by it or on its behalf, or sold or otherwise supplied by it in the Commonwealth,
62 shall make available to owners of such devices and to independent repair providers, on fair and
63 reasonable terms, documentation, parts, and tools, inclusive of any updates, for purposes of
64 diagnosis, maintenance, or repair of such devices. Nothing in this subsection requires a
65 manufacturer to make available a part that is no longer available to the manufacturer.

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. Nothing in this chapter shall be construed to require a manufacturer to divulge
75 a trade secret, except as necessary to provide documentation, parts, and tools on fair and
76 reasonable terms.

77 Section 5. Nothing in this chapter requires manufacturers or authorized repair providers
78 to provide an owner or independent repair provider access to non-diagnostic and non-repair
79 information provided by a manufacturer to an authorized repair provider pursuant to the
80 terms of an authorizing agreement.

81 Section 6.

82 (a) An independent repair provider or owner who believes that a manufacturer
83 has failed to provide documentation, parts, and tools for purposes of diagnosis,
84 maintenance, or repair of portable wireless devices as required by this chapter shall notify the
85 manufacturer in writing and give the manufacturer 30 days from the time the manufacturer
86 receives the complaint to cure the failure. If the manufacturer cures such a complaint within the
87 cure period, damages shall be limited to actual damages in any subsequent litigation.

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

92 (1) written information confirming that the complainant has attempted to acquire and use,
93 through the then available standard support function provided by the manufacturer, relevant

94 documentation, parts, and tools, including communication with customer assistance via the
95 manufacturer's then standard process, if made available by the manufacturer; and

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

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

100 Section 11. This Act applies with respect to equipment sold or in use on or after the
101 effective date of this Act.

102 Section 12. This Act takes effect Jan. 1, 2024.

103 Section 13. Nothing in this chapter shall apply to a device approved by the United States
104 Food and Drug Administration.