

**AN ACT PROTECTING DIGITAL EQUIPMENT OWNERS AND SMALL
BUSINESSES IN REPAIRING DIGITAL ELECTRONIC EQUIPMENT**

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 (Insert applicable statute) the following chapter:- CHAPTER (Insert Applicable statute)

Section (1) As used in this chapter, the following words shall, unless the context clearly indicates a different meaning, have the following meanings:

“Original Equipment Manufacturer (“OEM”)”, any person or business who, in the ordinary course of its business, is engaged in the business of selling or leasing new digital electronic parts of machines to consumers or other end users pursuant to a (Insert Applicable Statutes) and is engaged in the diagnosis, service, maintenance or repair of digital electronic equipment to said parts or machines.

“Embedded Software”, any programmable instructions provided on firmware with the machine or part delivered with the machine or part for the purposes of machine 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”, “microcode.”

“Authorized Repair Provider”, an oral or written arrangement for a definite or indefinite period in which a manufacturer or distributor grants to a separate business organization or individual, as defined in (Insert statute ____) license to use a trade name, service mark or related characteristic for the purposes of offering repair services under the name of the manufacturer. .

“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, the following:

(i) The net cost to the authorized repair organizations for similar information obtained from manufacturers, less any discounts, rebates, or other incentive programs.

(ii) The cost to the manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading or altering the product. Amortized capital costs for the preparation and distribution of the information may be included.

(iii) The price charged by other manufacturers for similar information.

(iv) The price charged by manufacturers for similar information prior to the launch of manufacturer web sites.

- (v) The ability of aftermarket technicians or shops to afford the information.
- (vi) The means by which the information is distributed.
- (vii) The extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use.
- (viii) Inflation.

“Data Security Feature”, any feature of an electronic device designed for the sole purpose of preventing the use of an electronic device in which it is installed from starting without the correct activation or authorization code.

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

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

“Independent Repair Provider”, a person or business operating in the (insert State) that is not affiliated with a manufacturer or manufacturer’s authorized dealer of digital electronic equipment, which is engaged in the diagnosis, service, maintenance or repair of digital electronic equipment; provided, however, that, for the purposes of this chapter, a manufacturer shall be considered an independent repair provider for purposes of those instances when said dealer engages in the diagnosis, service, maintenance or repair of digital electronic equipment that are not affiliated with the manufacturer.

"Digital Electronic Equipment", a part or machine, originally manufactured for distribution and sale in the United States, excepting:

Insert exclusions

“Owner”, a person or business who owns or leases a digital electronic product purchased or used in the State of (insert State).

“Remote Diagnostics, any remote data transfer function between a digital electronic machine and the provider of repair services including for purposes of remote diagnostics, settings controls, or location identification.

"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 secret or confidentially held scientific, technical, merchandising, production, financial, business

or management information, or anything within the definition of 18 U.S.C. § 1839(3) Section (2)(a)

Section (2): Except as provided in subsection (2)(e), for Manufacturers of digital electronic parts and machines, sold or used in the State of (insert state) shall make available for purchase by owners or independent repair facilities of products manufactured by such manufacturer and by the same diagnostic and repair information, including repair technical updates, updates and corrections to firmware, and related documentation in the same manner such manufacturer makes available to its authorized repair channel. Each manufacturer shall provide access to such manufacturer's diagnostic and repair information system for purchase by owners and independent repair facilities upon fair and reasonable terms.

(2)(b) Any manufacturer that sells any diagnostic, service, or repair information to any independent repair provider or 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 the dealer obtains the same diagnostic, service or repair information, shall be prohibited from requiring any dealer 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.

(2)(c)(i) Each manufacturer of digital electronic products sold or used in the State of shall make available for purchase by owners and independent repair facilities all diagnostic repair tools incorporating the same diagnostic, repair and remote communications capabilities that such manufacturer makes available to its own repair or engineering staff or any authorized repair channels. Each manufacturer shall offer such tools for sale to owners and to independent repair facilities upon fair and reasonable terms.

(2)(c)(iii) Each manufacturer that provides diagnostic repair information to aftermarket tool, diagnostics, or third party service information publications and systems shall have fully satisfied its obligations under this section and thereafter not be responsible for the content and functionality of aftermarket diagnostic tools or service information systems.

(2)(e) Manufacturers of digital electronic equipment or parts sold or used in the State of (Insert State) for the purpose 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. If excluded under this paragraph, the information necessary to reset an immobilizer system or security-related electronic module shall be obtained by owners and independent repair facilities through the appropriate secure data release systems.

Section (3) Nothing in this chapter shall be construed to require a manufacturer to divulge a trade secret.

Section (4) Notwithstanding any general or special law or any rule or regulation to the contrary, no provision in this chapter shall be read, interpreted or construed to abrogate, interfere with, contradict or alter the terms of any provision of (Insert Applicable Statute) or the terms of any authorized repair provider executed and in force between an authorized repair provider and a manufacturer including, but not limited to, the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of a manufacturer pursuant to such authorized repair agreement; provided, however, that any provision in such a authorized repair provider that purports to waive, avoid, restrict or limit a manufacturer's compliance with this chapter shall be void and unenforceable.

Section (5) Nothing in this chapter shall be construed to require manufacturers or authorized repair providers to provide an owner or independent repair provider access to non-diagnostic and repair information provided by a manufacturer to an authorized repair provider pursuant to the terms of an authorizing agreement.

Section (6)(a) In addition to any other remedies that may be available under law, 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 (Insert Applicable Statute).

Section (6)(b) 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 must notify the manufacturer in writing through the (Insert Appropriate Entity) and give the manufacturer thirty (30) days from the time the manufacturer receives the complaint to cure the failure. If the manufacturer cures said complaint within the cure period, damages shall be limited to actual damages in any subsequent (insert Applicable statute) litigation.

Section (6)(c) If the manufacturer fails to respond to the notice provided pursuant to (6)(b), 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 the superior court, or if applicable in the federal district court for the district of (Insert State). Such complaint shall include, but not be limited to the following:

- (i) written information confirming that the complainant has attempted to acquire and use, through the then available standard support function provided by the OEM 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 such manufacturer;
- (ii) written information confirming that the complainant has obtained and utilized the relevant manufacturer's diagnostic tool necessary for such repair; and
- (iii) evidence of manufacturer notification as set out in (6)(b).

Section (6)(d) Except in the instance of a dispute arising between an original equipment manufacturer and its authorized repair provider related to either party's compliance with an existing authorized repair agreement, which is required to be resolved pursuant to (Insert Applicable Statute) , an authorized repair provider shall have all the rights and remedies provided in this chapter, including, but not limited to, in the instance when exercising rights and remedies as allowed as an independent repair facility under (insert applicable statute).

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