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**Before the
Joint Committee on Judiciary
Connecticut General Assembly**

In Support of H.B. No. 6619, An Act Concerning Unfair Business Practices

March 25, 2011

Senator Coleman, Representative Fox, and honorable members of the Judiciary Committee, my name is Annmarie Levins, and I am associate general counsel at Microsoft Corporation. Thank you for the opportunity to testify in support of H.B. No. 6619, An Act Concerning Unfair Business Practices. This bill fills an important void in current law by making it an unfair business practice to sell goods in this state if they were manufactured by a business using stolen information technology (IT).

IT theft hurts law-abiding American manufacturers who are forced to compete with companies that benefit from our most innovative technologies with none of the cost. The financial effects on the U.S. industry and economy are devastating. In the past decade, Connecticut has lost more than 64,000 manufacturing jobs to emerging markets like China, India, and Mexico where software piracy rates are as high as 80 percent. The U.S. software industry loses over \$51 billion each year from the theft of its products. Studies show that if we were to reduce global software theft by as little as 10 percent, we would generate an additional 500,000 new high-tech jobs globally. In China alone, which has an 80 percent piracy rate, the theft of Microsoft software costs our company between 5,000 and 10,000 new U.S. jobs. These jobs could in turn create an additional 25,000 to 50,000 jobs in other parts of the national economy – including in Connecticut, which is home to 95,000 IT workers.

H.B. No. 6619 promotes fair competition and preserves jobs by encouraging manufacturers to stop using stolen information technology (IT) as a cost-cutting measure, and by doing so in a reasonable and practical way.

I. H.B. No. 6619 Ensures Fairness in Competition.

Today, manufacturers that pay for the IT they use often are forced to compete against those that do not. Existing laws relating to unfair business practices do not adequately address the harms that occur when manufacturers use stolen IT to gain an unfair advantage in the marketplace. This bill would help level the playing field by giving law-abiding manufacturers recourse against competitors who unfairly rely on stolen IT to gain a competitive edge.

II. **H.B. No 6619 Encourages Job Growth.**

The steps proposed in this bill are critical to jobs in Connecticut. Over 100,000 Connecticut workers are employed in manufacturing sectors that are significantly affected by the use of stolen IT, including areas as diverse as automotives, machinery, electronics, and consumer goods. Imports from countries with high rates of IT theft are costing this state jobs, economic growth, and tax revenue.

A recent study shows that almost 40 percent of Connecticut businesses plan to make new investments in information technology in order to improve their productivity and efficiency in today's challenging economic environment. For small manufacturers, investments in IT may represent a significant percentage of overall business costs. These law-abiding companies are unquestionably harmed when forced to compete with manufacturers that benefit from the same state-of-the-art technology with none of the cost. When a manufacturer steals 90 or even 100 percent of the software it uses – which is not uncommon in some emerging markets – it is the equivalent of employing dozens of additional workers without paying a dime in wages. How can responsible, law-abiding manufacturers remain competitive in these circumstances?

III. **H.B. No. 6619 Would Benefit Manufacturers that Pay for the IT They Use.**

H.B. No. 6619 creates a cause of action against manufacturers using stolen IT worth more than \$20,000. But it also gives such manufacturers ample opportunity to avoid litigation by legalizing their IT use. Before a complaint may be filed, the IT owner must notify the manufacturer of the alleged illegal IT use. At that point, the manufacturer has 90 days to respond or legalize its IT – with an additional 90 days where necessary, for a total of 6 months.

If the manufacturer refuses to solve the problem after being put on notice, H.B. No. 6619 permits competing manufacturers or the state attorney general to bring a lawsuit. The bill also authorizes much more limited steps against third parties that resell and profit from goods made using stolen IT, and even then these steps are available only after there is a court judgment against a direct manufacturer who fails to comply with the judgment's terms and only after full notice is provided to the third party.

IV. **H.B. No. 6619 Is Reasonable and Practical**

To safeguard against the risk of unfair supply chain disruptions and other unintended consequences, the bill provides numerous safe harbors and protections for retailers and other downstream companies that sell products made by manufacturers using stolen IT. These protections are designed to exclude the vast majority of companies that sell such products and to ensure that any company can quickly and efficiently take steps to avoid disruptions to its supply chain or to its business more broadly.

For example, the bill expressly exempts third parties with less than \$50 million in annual revenues. Even for large companies, the bill only applies to IT theft by a manufacturer with whom the third party has a direct contractual relationship respecting the actual manufacture of the products at issue – meaning that the bill does not apply at all to the vast majority of Connecticut retailers and other businesses that do not engage others to manufacture on their behalf.

Most reputable companies already have codes of conduct that require their contract manufacturers to respect applicable laws on issues like child labor, safe working conditions, safe product components, fair pay, and environmental standards. H.B. No. 6619 would build on these practices by allowing a company to qualify for a safe harbor if it incorporates into its supply chain code of conduct a provision that prohibits the use of stolen IT by its direct manufacturers and makes this provision subject to the same compliance processes that are in place for the rest of the code of conduct.

Alternatively, even if a company does not address the problem in advance through ensuring compliance with its code of conduct, it can qualify for a safe harbor by having a code of conduct and then, after a specific problem arises with one of its direct manufacturers, sending a written communication directing the manufacturer to stop using stolen IT and provide proof of lawful purchase. The company is under no obligation to audit the manufacturer or take other steps to verify that the manufacturer has legalized its IT.

To discourage unmeritorious lawsuits, the bill limits the amount of damages and availability of injunctive relief, authorizes the award of legal costs to a prevailing defendant, and bars multiple suits against companies for the same IT theft.

The safe harbors, disincentives for frivolous litigation, and other protections were the result of a broad consultative process that has been sensitive to the interests of Connecticut businesses and retailers. This process has led to amendments, including amendments being offered today, that have addressed the concerns of a range of companies, including Cisco, Amazon, Verizon, Comcast, Disney, Viacom, Yahoo!, Time Warner, eBay, Intel, T-Mobile, the members of PhRMA, and others.

V. Conclusion: Support H.B. No. 6619 to Preserve Jobs and Support Connecticut Businesses that Play by the Rules.

This legislation creates a new legal mechanism to address a global problem that is robbing Connecticut of much-needed job growth. It has gone through an extremely thorough revision process, all aimed at striking an appropriate balance between the steps needed to stop IT theft and the steps needed to protect third parties while encouraging them to take reasonable steps to put their supply chains in order.

Microsoft respectfully urges you to adopt H.B. No. 6619.



General Assembly
January Session, 2011

Raised Bill No. 6619

LCO No. 4842

04842 _____ JUD

Referred to Committee on Judiciary
Introduced by:
(JUD)

AN ACT CONCERNING UNFAIR BUSINESS PRACTICES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (Effective October 1, 2011) For the purposes of this section and sections 2 to ~~10~~ 11, inclusive, of this act:

(1) "Article or product" means any tangible article or product, but does not include: (a) food and beverages and any services sold, offered for sale or made available in this state, including free services and online services; (b) restaurant services and any product subject to regulation by the United States Food and Drug Administration and that is primarily used for medical or medicinal purposes; (c) food and beverages; or (d) restaurant services.

(2) "Copyrightable end product" means a work within the subject matter of copyright as specified by in Section 102 of the United States Copyright Act Title 17, United States Code, and which for the purposes of this act includes mask works protection as specified in Section 902 of Title 17, United States Code.

(3) "Essential component" means a component of an article or product provided or to be provided to a third party pursuant to a contract, including a purchase order, without which such article or product will not perform as intended and for which there is no substitute component available that offers a comparable range and quality of functionalities and is available in comparable quantities and at a comparable price.

(34) "Manufacture" means directly to manufacture, produce or assemble an article or product subject to section 2 of this act, in whole or substantial part, but does not include contracting with or otherwise engaging another person, or that person engaging another person, to develop, manufacture, produce or assemble an article or product subject to section 2 of this act.

(45) "Material competitive injury" means at least a three per cent retail price difference between the article or product made in violation of section 2 of this act designed to harm competition and a directly competing article or product that was manufactured without the use of stolen or misappropriated information technology, such price difference occurring over a four-month period of time.

(56) "Retail price" of stolen or misappropriated information technology is the retail price of the information technology charged at the time of, and in the jurisdiction where, the alleged theft or misappropriation occurred, multiplied by the number of stolen or misappropriated items used in the business operations of the person alleged to have violated section 2 of this act.

(67) "Stolen or misappropriated information technology" means hardware or software that the person referred to in section 2 of this act acquired, appropriated or used without the authorization of the owner of the information technology or the owner's authorized licensee in violation of applicable law, but does not include situations in which the hardware or software alleged to have been stolen or misappropriated was not available for retail purchase on a standalone basis at or before the time it was acquired, appropriated or used by such person.

Sec. 2. (NEW) (*Effective October 1, 2011*) Any person who manufactures any article or product while using stolen or misappropriated information technology in its business operations after notice and opportunity to cure as provided in section 5 of this act and, with respect to remedies sought under subsection (e) of section 6 of this act or section 7 of this act, causes a material competitive injury as a result of such use of stolen or misappropriated information technology, shall be deemed to engage in an unfair act where such article or product is sold or offered for sale in this state, either separately or as a component of another article or product, and in competition with an article or product sold or offered for sale in this state that was manufactured without violating this section. Any person who engages in such unfair act, and any articles or products manufactured by such person in violation of this section, shall be subject to the liabilities and remedial provisions of sections 1 to ~~10~~ 11, inclusive, of this act in an action by the Attorney General or any person described in subsection (d) of section 6 of this act, except as provided in sections ~~3, 4, 5 and 8~~ through 9 of this act. For the purposes of ~~this section~~ act, information technology shall be considered to be used in a person's business operations if the person uses such technology in the manufacture, distribution, marketing or sales of the articles or products subject to this section.

Sec. 3. (NEW) (Effective October 1, 2011) No action may be brought under sections 1 to ~~10~~
11, inclusive, of this act, and no liability shall result, where:

(1) The end article or end product sold or offered for sale in this state and alleged to violate section 2 of this act is: (A) A copyrightable end product; (B) merchandise manufactured by or on behalf of, or pursuant to a license from, a copyright owner, and which displays or embodies a name, character, artwork or other indicia of or from a work that falls within subparagraph (A) of this subdivision, or merchandise manufactured by or on behalf of, or pursuant to a license from, a copyright or trademark owner and which displays or embodies a name, character, artwork or other indicia of or from a theme park, theme park attraction or other facility associated with a theme park; or (C) packaging, carrier media or promotional or advertising materials for any end article, end product or merchandise that falls within subparagraph (A) or (B) of this subdivision;

(2) The allegation that the information technology is stolen or misappropriated is based on a claim that (A) the ~~use of such information technology~~ or its use infringes a patent or misappropriates a trade secret under applicable law, or (B) could be brought under any provision of Title 35 of the United States Code;

(3) The allegation that the information technology is stolen or misappropriated is based on a claim that the defendant's use of the information technology violates the terms of a license that allows users to modify and redistribute any source code associated with the technology free of charge; or

(4) The allegation is based on a claim that the person violated section 2 of this act by aiding, abetting, facilitating or assisting someone else to acquire, appropriate, ~~or use,~~ sell or offer to sell, or by providing someone else with access to, information technology without authorization of the owner of such information technology or the owner's authorized licensee in violation of applicable law.

Sec. 4. (NEW) (Effective October 1, 2011) No injunction may issue against a person other than the person ~~alleged adjudicated to have violated~~ section 2 of this act, and no attachment order may issue against articles or products other than articles or products in which the person alleged to violate section 2 of this act holds title. A person other than the person alleged to violate section 2 of this act includes any person other than the actual manufacturer who contracts with or otherwise engages another person to develop, manufacture, produce, market, distribute, advertise or assemble an article or product alleged to violate section 2 of this act.

Sec. 5. (NEW) (Effective October 1, 2011) (a) No action may be brought under sections 1 to ~~10, inclusive,~~ section 2 of this act unless the person subject to section 2 of this act received written notice of the alleged use of the stolen or misappropriated information

technology from the owner or exclusive licensee of the information technology or the owner's agent and the person: (1) Failed to establish that its use of the information technology in question did not violate section 2 of this act; or (2) failed, within ninety days after receiving such notice, to cease use of the owner's stolen or misappropriated information technology, provided, if the person commences and thereafter proceeds diligently to replace such information technology with information technology whose use would not violate section 2 of this act, such period shall be extended for an additional period of ninety days, not to exceed one hundred eighty days total. The information technology owner or its agent may extend any period described in this subsection.

(b) To satisfy the requirements of ~~subsection (a)~~ of this section, a written notice must, under penalty of perjury: (1) Identify the stolen or misappropriated information technology; (2) identify the lawful owner or exclusive licensee of the information technology; (3) identify the applicable law the person is alleged to be violating and state that the notifier has a reasonable belief that the person has acquired, appropriated or used the information technology in question without authorization of the lawful owner of the information technology or the owner's authorized licensee in violation of such applicable law; (4) if to the extent known by the notifier, state the manner in which such information technology is being used by the person defendant; (5) state the articles or products to which such information technology relates; and (6) specify the basis and the particular evidence upon which the notifier bases such allegation.

(c) The written notification shall state, under penalty of perjury, that, after a reasonable and good-faith investigation, the information in the notice is accurate based on the notifier's ~~good faith~~ reasonable knowledge, information and belief.

Sec. 6. (NEW) (Effective October 1, 2011) (a) No earlier than ninety days after the provision of notice in accordance with section 5 of this act, the Attorney General, or a person described in subsection (d) of this section, may bring an action against any person that is subject to section 2 of this act:

(1) To enjoin violation of section 2 of this act, including by enjoining any such person from selling or offering to sell in this state articles or products that are subject to section 2 of this act, except as provided in subsection (e) of this section; provided that no such injunction shall encompass articles or products to be provided to a third party that establishes that such third party has satisfied one or more of the affirmative defenses set forth in subsection (a) of section 8 of this act with respect to the manufacturer alleged to have violated section 2 of this act; or

(2) Only after a determination by the court that the person has violated section 2 of this act, to recover the greater of:

(A) Actual direct damages, which may be imposed only against the person who violated section 2 of this act; or

(B) Statutory damages of no more than ~~three times~~ the retail price of the stolen or misappropriated information technology, which may be imposed only against the person who violated section 2 of this act.

(C) In the event the person alleged to have violated section 2 of this act has been subject to a final judgment or has entered into a final settlement, or any products manufactured by such person and alleged to violate section 2 of this act have been the subject of an injunction or attachment order, in any federal or state court in this state or any other state, arising out of the same theft or misappropriation of information technology, the court shall dismiss the action with prejudice. If such person is a defendant in an ongoing action, or any products manufactured by such person and alleged to violate section 2 of this act are the subject of an ongoing injunction or attachment order, in any federal or state court in this state or any other state, arising out of the same theft or misappropriation of information technology, the court shall stay the action against such person pending resolution of the other action. In the event the other action results in a final judgment or final settlement, the court shall dismiss the action with prejudice against the person. Dismissals under this section shall be res judicata to actions filed against the person alleged to have violated section 2 of this act arising out of the same theft or misappropriation of information technology.

(b) (1) After determination by the court that a person has violated section 2 of this act and entry of a judgment against the person for violating section 2 of this act, the Attorney General, or a person described in subsection (d) of this section, may add to the action a claim for actual direct damages against a third party who sells or offers to sell in this state articles or products made by that person in violation of section 2 of this act, subject to the provisions of section 8 of this act; provided, damages may be imposed against a third party only if:

(A) The third party's agent for service of process properly was served with ~~was~~ provided a copy of a written notice sent to the person alleged to have violated section 2 of this act that satisfies the requirements of section 5 of this act at least ninety days prior to the entry of the judgment;

(B) The person who violated section 2 of this act did not make an appearance or does not have sufficient attachable assets to satisfy a judgment against ~~it~~ the person;

(C) Such person either manufactured the final article or product or produced a component equal to thirty per cent or more of the value of the final article or product;
and

(D) Such person has a direct contractual relationship with the third party respecting the manufacture of such final article or product or component; and.

(E) The third party has not been subject to a final judgment or entered into a final settlement in any federal or state court in this state or any other state arising out of the same theft or misappropriation of information technology; provided, however, that in the event the third party is a party to an ongoing suit for damages, or has entered an appearance as an interested third party in proceedings in rem, in any federal or state court in this state or any other state arising out of the same theft or misappropriation of information technology, the court shall stay the action against the third party pending resolution of the other action. In the event the other action results in a final judgment, the court shall dismiss the action with prejudice against the third party and dismiss any in rem action as to any articles or products manufactured for such third party or that have been or are to be supplied to such third party. Dismissals under this section shall be res judicata to actions filed against the person alleged to have violated section 2 of this act arising out of the same theft or misappropriation of information technology.

(2) An award of damages against such third party pursuant to subdivision (1) of this subsection shall be the lesser of the retail price of the stolen or misappropriated information technology at issue or two hundred fifty thousand dollars, less any amounts recovered from the person adjudicated to have violated section 2 of this act, and subdivision (1) of subsection (c) of this section shall not apply to such award or recovery against such third party.

(c) In an action under this section act, a court may:

(1) Against the person ~~found~~ adjudicated to have violated section 2 of this act, increase the damages up to three times the damages authorized by subdivision (2) of subsection (a) of this section where the court finds that the person's use of the stolen or misappropriated information technology was wilful;

(2) With respect to an award under ~~subdivision (2) of subsection (a)~~ of this section only, award costs and reasonable attorney's fees to (A) a prevailing plaintiff in actions brought by an injured person under section 2 of this act; or (B) a prevailing defendant in actions brought by an allegedly injured person; and

(3) With respect to an action under subsection (b) of this section brought by a private plaintiff only, award costs and reasonable attorney's fees to a third party for all litigation expenses (including, without limitation, discovery expenses) incurred by that party if it prevails on the requirement set forth in subparagraph (C) of subdivision (1) of subsection (b) of this section or who qualifies for an affirmative defense under section 8 of this act; provided, in a case in which the third party received a copy of the notification described in subparagraph (A) of subdivision (1) of subsection (b) of this

section at least ninety days before the filing of the action under subsection (b) of this section, that with respect to a third party's reliance on the affirmative defenses set forth in subdivisions (3) and (4) of subsection (a) of section 8 of this act, the court may award costs and reasonable attorney's fees only if all of the conduct on which the affirmative defense is based was undertaken by the third party before the plaintiff initiated the action pursuant to subsection (b) of this section, and the third party notified the plaintiff of such conduct, prior to the end of such ninety-day period.

(d) A person shall be deemed to have been injured by the sale or offer for sale of an directly competing article or product subject to section 2 of this act if the person establishes by a preponderance of the evidence that:

(1) The person manufactures articles or products that are sold or offered for sale in this state in direct competition with articles or products that are subject to section 2 of this act;

(2) The person's articles or products were not manufactured using stolen or misappropriated information technology in violation of section 2 of this act of the owner of the information technology; and

(3) The person suffered economic harm, which may be shown by evidence that the retail price of the stolen or misappropriated information technology was twenty thousand dollars or more; and;

(4) If the person is proceeding in rem or seeks injunctive relief, that the person suffered material competitive injury as a result of the violation of section 2 of this act.

(e) (1) If the court determines that a person found to have violated section 2 of this act lacks sufficient attachable assets in this state to satisfy a judgment rendered against it, the court may enjoin the sale or offering for sale in this state of any articles or products subject to section 2 of this act, except as provided in section 4 of this act.

(2) To the extent that an article or product subject to section 2 of this act is an essential component of a third party's article or product, the court shall deny injunctive relief as to such essential component, provided that the third party has undertaken good-faith efforts within the third party's rights under its applicable contract with such manufacturer to direct the manufacturer of the essential component to cease the theft or misappropriation of information technology in violation of section 2 of this act, which may be satisfied, without limitation, by the third party issuing a written directive to the manufacturer demanding that it cease such theft or misappropriation and demanding that the manufacturer provide the third party with copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue.

(f) The court shall determine whether a cure period longer than the period reflected in section 5 of this act would be reasonable given the nature of the use of the information technology that is the subject of the action and the time reasonably necessary either to bring such use into compliance with applicable law or to replace the information technology with information technology that would not violate section 2 of this act. If the court deems that a longer cure period would be reasonable, then the action shall be stayed until the end of that longer cure period. If by the end of that longer cure period, the defendant has established that its use of the information technology in question did not violate section 2 of this act, or the defendant ceased use of the stolen or misappropriated information technology, then the action shall be dismissed.

Sec. 7. (NEW) (Effective October 1, 2011) (a) In a case in which the court is unable to obtain personal jurisdiction over a person subject to section 2 of this act, the court may proceed in rem against any articles or products ~~alleged to be subject to section 2 of this act, including any articles or products~~ sold or offered for sale in this state in which the person alleged to have violated section 2 of this act holds title. Except as provided in section 4 of this act and subsections (b) through (d) of this section, all such articles or products shall be subject to attachment at or after the time of filing a complaint, regardless of the availability or amount of any monetary judgment.

(b) At least ninety days prior to the enforcement of an attachment order against articles or products pursuant to subsection (a) of this section, the court shall notify any person in possession of such articles or products of the pending attachment order. Prior to the expiration of such ninety-day period, any person for whom the articles or products were manufactured, or to whom such articles or products have been or are to be supplied, pursuant to an existing contract or purchase order, may:

(1) establish that the person has satisfied one or more of the affirmative defenses set forth in subsection (a) of section 8 of this act with respect to the manufacturer alleged to have violated section 2 of this act, in which case the attachment order shall be dissolved only with respect to those articles or products that were manufactured for such person, or have been or are to be supplied to such person, pursuant to an existing contract or purchase order; or

(2) post a bond with the court equal to the retail price of the allegedly stolen or misappropriated information technology or twenty-five thousand dollars, whichever is less, in which case the court shall stay enforcement of the attachment order against such articles or products and shall proceed on the basis of its jurisdiction over the bond. The person posting the bond shall recover the full amount of such bond, plus interest, after the issuance of a final judgment.

(c) In the event the person posting the bond pursuant to subdivision (2) of subsection (b) of this section is entitled to claim an affirmative defense in section 8 of this act, and

that person establishes with the court that it is entitled to any such affirmative defense, the court shall award costs and reasonable attorney's fees to the person posting the bond and against the plaintiff in the event the plaintiff proceeds with an action pursuant to subsection (b) of section 6 of this act against the person posting the bond.

(d) In the event that the court does not provide notification as described in subsection (b) of this section, the court, upon motion of any third party, shall stay the enforcement of the attachment order for ninety days as to articles or products manufactured for such third party, or that have been or are to be supplied to such third party, pursuant to an existing contract or purchase order, during which ninety-day period the third party may avail itself of the options set forth in subdivision (1) and (2) of subsection (b) of this section.

Sec. 8. (NEW) (Effective October 1, 2011) (a) A court may not award damages against any third party pursuant to subsection (b) of section 6 of this act where that party, after having been afforded reasonable notice of at least ninety days by proper service upon such party's agent for service of process and opportunity to plead any of the affirmative defenses set forth below, establishes by a preponderance of the evidence ~~that any of the~~ following:

(1) Such person is the end consumer or end user of an article or product subject to section 2 of this act, or acquired the article or product after its sale to an end consumer or end user;

(2) Such person is a business with annual revenues not in excess of fifty million dollars;

(3) The person acquired the articles or products:

(A) In good faith reliance on and had either (i) a code of conduct or similar other written document that governs the person's commercial relationships with the manufacturer alleged adjudicated to have violated section 2 of this act and which includes commitments, such as general commitments to comply with applicable laws, that prohibit use of the stolen or misappropriated information technology by such manufacturer, or (ii) written assurances from the manufacturer of such articles or products that such articles or products, to the manufacturer's reasonable knowledge, were manufactured without the use of stolen or misappropriated information technology in the manufacturer's business operations; provided, with respect to both clauses (i) and (ii) of this subparagraph, that within one hundred eighty days of receiving written notice of the judgment against the manufacturer for violation of section 2 of this act and a copy of a written notice that satisfies the requirements of section 5 of this act, the person undertakes commercially reasonable efforts to do any of the following:

(I) Exchange written or electronic correspondence confirming that such manufacturer is not using such stolen or misappropriated information technology in violation of section 2 of this act, which may be satisfied, without limitation, by obtaining written assurances from the manufacturer accompanied by copies of invoices, purchase orders, licenses or other verification of lawful use of the information technology at issue;

(II) direct the manufacturer to cease the theft or misappropriation, which may be satisfied, without limitation, by the third party issuing a written directive to the manufacturer demanding that it cease such theft or misappropriation and demanding that the manufacturer provide the third party with copies of invoices, purchase orders, licenses or other verification of lawful use of the information technology at issue; and for purposes of clarification, the third party need take no additional action to fully avail itself of this affirmative defense; or

(III) in a case in which the manufacturer has failed to cease the theft or misappropriation within such one-hundred-eighty-day period, and the third party has not fulfilled either option (I) or (II) of this subparagraph, prevent cease the future acquisition of such articles or products from such manufacturer during the period that such manufacturer continues to engage in such theft or misappropriation subject to section 2 of this act where doing so would not constitute a breach of an agreement between the person and such manufacturer for the manufacture of the articles or products in question that was entered into on or before one hundred eighty days after the effective date of this section; or

(B) Pursuant to an agreement between the person and a manufacturer for the manufacture of the articles or products in question that was entered into before one hundred eighty days after the effective date of this section; provided, within one hundred eighty days of receiving written notice of the judgment against the manufacturer for violation of section 2 of this act and a copy of a written notice that satisfies the requirements of section 5 of this act, the person undertakes commercially reasonable efforts to do any of the following:

(i) Obtain from such manufacturer written assurances that such manufacturer is not using such stolen or misappropriated information technology in violation of section 2 of this act, which may be satisfied, without limitation, by obtaining written assurances from the manufacturer accompanied by copies of invoices, purchase orders, licenses or other verification of lawful use of the information technology at issue;

(ii) direct the manufacturer to cease such theft or misappropriation, which may be satisfied, without limitation, by the third party issuing a written directive to the manufacturer demanding that it cease such theft or misappropriation and demanding that the manufacturer provide the third party with copies of invoices, purchase orders, licenses or other verification of lawful use of the information technology at issue; and

for purposes of clarification, the third party need take no additional action to fully avail itself of this affirmative defense; or

(iii) in a case in which the manufacturer has failed to cease such theft or misappropriation within such one-hundred-eighty-day period, and the third party has not fulfilled either option (i) or (ii) of this subparagraph, cease the future acquisition of such articles or products from such manufacturer during the period that such manufacturer continues to engage in such theft or misappropriation subject to section 2 of this act where doing so would not constitute a breach of such agreement;

(4) The person has made commercially reasonable efforts to implement practices and procedures to require its direct manufacturers, in manufacturing articles or products for such person, not to use stolen or misappropriated information technology in violation of section 2 of this act. A person may satisfy this subdivision by:

(A) Adopting and undertaking commercially reasonable efforts to implement a code of conduct or similar written requirements, which are applicable to the person's direct manufacturers, that prohibit use of stolen or misappropriated information technology by such manufacturer, subject to a right of audit, and such person either (i) has a practice of auditing its direct manufacturers on a periodic basis in accordance with generally accepted industry standards, or (ii) requires in its agreements with its direct manufacturers that they submit to audits by a third party, which may include a third party association of businesses representing the owner of the stolen or ~~misappropriated information technology~~ intellectual property, and further provides that a failure to remedy any deficiencies found in such audit that constitute a violation of the applicable law of the jurisdiction where the deficiency occurred shall constitute a breach of the contract, subject to cure within a reasonable period of time; or

(B) Adopting and undertaking commercially reasonable efforts to implement a code of conduct or similar written requirements, which are applicable to the person's direct manufacturers, that prohibit use of stolen or misappropriated information technology by such manufacturer, and the person undertakes practices and procedures to address compliance with the prohibition against the use of the stolen or misappropriated information technology in accordance with the applicable code of conduct or written requirements; or

(5) The person does not have a contractual relationship with the person alleged to have violated section 2 of this act respecting the manufacture of the articles or products alleged to have been manufactured in violation of section 2 of this act.

(b) A third party shall have the opportunity to be heard regarding whether an article or product is an essential component provided or to be provided to such third party, and

shall have the right to file a motion to dismiss any action brought against it under subsection (b) of section 6 of this act.

(c) The court shall not enforce any award for damages against such third party until after the court has ruled on that party's claim of eligibility for any of the affirmative defenses set out in subsection (a) of this section, and prior to such ruling may allow discovery, in an action under subsection (b) of section 6 of this act, only on the particular defenses raised by the third party.

(d) The court shall allow discovery against a third party on an issue only after all discovery on that issue between the parties has been completed and only if the evidence produced as a result of such discovery does not resolve an issue of material dispute between the parties.

(e) Any confidential or otherwise sensitive information submitted by a party pursuant to subsection (a) of this section may ~~shall~~ be subject to a protective order for good cause shown.

Sec. 9. (NEW) (*Effective October 1, 2011*) A court may not enforce an award of damages against a third party pursuant to subsection (b) of section 6 of this act for a period of eighteen months ~~after~~ from the effective date of this section.

Sec. 10. (NEW) (*Effective October 1, 2011*) A violation of section 2 of this act may not be considered an ~~unfair trade practice~~ violation of the Connecticut Unfair Trade Practices Act, and chapter 735a of the general statutes does not apply to a violation of section 2 of this act. The remedies provided by sections 1 to 9, inclusive, of this act are the exclusive remedies for the parties.

Sec. 11. (NEW) (*Effective October 1, 2011*) If any section, subsection, clause, sentence, paragraph, or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	New section
Sec. 2	<i>October 1, 2011</i>	New section
Sec. 3	<i>October 1, 2011</i>	New section
Sec. 4	<i>October 1, 2011</i>	New section

Sec. 5	<u>October 1, 2011</u>	New section
Sec. 6	<u>October 1, 2011</u>	New section
Sec. 7	<u>October 1, 2011</u>	New section
Sec. 8	<u>October 1, 2011</u>	New section
Sec. 9	<u>October 1, 2011</u>	New section
Sec. 10	<u>October 1, 2011</u>	New section
Sec. 11	<u>October 1, 2011</u>	New section

Statement of Purpose:

To authorize an action against businesses that use stolen or misappropriated information technology to manufacture products that are sold or offered for sale in this state in competition with products manufactured without using stolen or misappropriated information technology.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]