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Legislative Document

No. 1977

S.P. 679

In Senate, January 8, 2020

An Act To Ensure a Consumer's Right To Repair Certain Electronic Products

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Innovation, Development, Economic Advancement and Business suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator CARPENTER of Aroostook.
Cosponsored by Representative HUBBELL of Bar Harbor and
Senators: BELLOWS of Kennebec, President JACKSON of Aroostook, Representative:
ZEIGLER of Montville.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 10 MRSA c. 233** is enacted to read:

3 **CHAPTER 233**

4 **RIGHT TO REPAIR ELECTRONIC EQUIPMENT**

5 **§1500-O. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 **1. Authorized repair provider.** "Authorized repair provider" means a business that
9 has an arrangement with an original equipment manufacturer that grants the business
10 license to use a trade name, service mark or related characteristic for the purposes of
11 offering repair services under the name of the original equipment manufacturer.

12 **2. Department.** "Department" means the Department of Economic and Community
13 Development.

14 **3. Digital electronic equipment.** "Digital electronic equipment" means any product
15 that depends for its functioning, in whole or in part, on digital electronics embedded in or
16 attached to the product but does not include a motor vehicle, as defined in Title 29-A,
17 section 101, subsection 42, or any part of a motor vehicle.

18 **4. Embedded software.** "Embedded software" means any programmable
19 instructions provided on firmware included with digital electronic equipment for the
20 purpose of equipment operation, including all patches and fixes to that software that are
21 offered or included by the original equipment manufacturer for this purpose.

22 **5. Fair and reasonable terms.** "Fair and reasonable terms" means a price for digital
23 electronic equipment, information or tools that is fair and reasonable based on the
24 following factors:

25 A. The net cost to the authorized repair provider for similar digital electronic
26 equipment, information or tools obtained from an original equipment manufacturer,
27 less any discounts, rebates or other incentive programs;

28 B. The cost to the original equipment manufacturer of preparing and distributing the
29 digital electronic equipment, information or tools, excluding any research and
30 development costs incurred in designing and implementing, upgrading or altering the
31 product, but including amortized capital costs for the preparation and distribution of
32 the digital electronic equipment, information or tools;

33 C. The price charged by other original equipment manufacturers for similar digital
34 electronic equipment, information or tools;

35 D. The price charged by other original equipment manufacturers for similar digital
36 electronic equipment, information or tools prior to the launch of original equipment
37 manufacturer websites;

1 E. The ability of aftermarket technicians or shops to afford the digital electronic
2 equipment, information or tools;

3 F. The means by which the digital electronic equipment, information or tools are
4 distributed;

5 G. The extent to which the digital electronic equipment, information or tools are
6 used, including the number of users and frequency, duration and volume of use; and

7 H. Inflation.

8 **6. Independent repair provider.** "Independent repair provider" means a business
9 operating in this State that is not affiliated with the original equipment manufacturer of
10 digital electronic equipment or that original equipment manufacturer's authorized repair
11 provider and is engaged in the diagnosis, service, maintenance or repair of that digital
12 electronic equipment.

13 **7. Original equipment manufacturer.** "Original equipment manufacturer" means a
14 business that, in the ordinary course of its business, is engaged in selling or leasing new
15 digital electronic equipment or parts of equipment to an individual or business in this
16 State and is engaged in the diagnosis, service, maintenance or repair of that equipment.

17 **8. Owner.** "Owner" means an individual or business that owns or leases a digital
18 electronic product purchased or used in this State.

19 **9. Service parts.** "Service parts" means any replacement parts for digital electronic
20 equipment, either new or used, made available by the original equipment manufacturer to
21 an authorized repair provider for repairing the digital electronic equipment.

22 **10. Trade secret.** "Trade secret" means anything tangible or intangible or
23 electronically stored or kept that constitutes, represents, evidences or records intellectual
24 property, including secret or confidentially held designs, processes, procedures, formulas,
25 inventions or improvements or secret or confidentially held scientific, technical,
26 merchandising, production, financial, business or management information, or anything
27 within the definition of "trade secret" under 18 United States Code, Section 1839(3), as in
28 effect on January 1, 2019.

29 **§1500-P. Right to repair**

30 **1. Requirement for original equipment manufacturers to make diagnostic and**
31 **repair information and parts available.** An original equipment manufacturer of digital
32 electronic equipment sold or used in this State shall:

33 A. Make available diagnostic and repair information, including technical updates for
34 repairs and updates and corrections to embedded software, to an independent repair
35 provider or an owner at no charge or in the same manner as the original equipment
36 manufacturer makes such information available to its authorized repair provider; and

37 B. Make service parts, including updates to the embedded software of the service
38 parts, available for purchase upon fair and reasonable terms by an owner, the owner's
39 authorized agent or an independent repair provider working on the digital electronic
40 equipment.

1 **2. Requirement for original equipment manufacturers to make diagnostic and**
2 **repair tools available for purchase.** An original equipment manufacturer of equipment
3 sold or used in this State shall make available for purchase by owners and independent
4 repair providers all diagnostic repair tools incorporating the same diagnostic, repair and
5 remote communications capabilities that the original equipment manufacturer makes
6 available to its own repair or engineering staff or any authorized repair provider. An
7 original equipment manufacturer shall offer the tools for sale to owners and to
8 independent repair providers upon fair and reasonable terms. An original equipment
9 manufacturer that provides diagnostic repair information to aftermarket tool, diagnostics
10 or 3rd-party service information publications and systems is not responsible for the
11 content and functionality of aftermarket tool, diagnostics or 3rd-party service information
12 publications not provided by the original equipment manufacturer.

13 **3. Sale of equipment used for security-related functions.** Original equipment
14 manufacturer equipment or parts sold or used in this State for the purpose of providing
15 security-related functions must include diagnostic, service and repair information
16 necessary to reset a security-related electronic function with information provided to
17 owners and independent repair facilities, or the original equipment manufacturer shall
18 make that information obtainable by owners and independent repair facilities through the
19 appropriate secure data release systems.

20 **4. Nonapplicability to trade secrets.** This section may not be construed to require
21 an original equipment manufacturer to divulge a trade secret.

22 **5. Effect on original equipment manufacturer agreements.** This section may not
23 be interpreted to abrogate, interfere with, contradict or alter the terms of an agreement
24 executed and in force between an authorized repair provider and an original equipment
25 manufacturer, including, but not limited to, the performance or provision of warranty or
26 recall repair work by an authorized repair provider on behalf of an original equipment
27 manufacturer pursuant to an authorized repair agreement, except that any provision in the
28 agreement that purports to waive, avoid, restrict or limit an original equipment
29 manufacturer's compliance with this section is void and unenforceable.

30 **6. Nonapplicability to nondiagnostic and repair information.** This section may
31 not be construed to require an original equipment manufacturer or authorized repair
32 provider to provide an owner or an independent repair provider access to nondiagnostic
33 and repair information provided by an original equipment manufacturer to an authorized
34 repair provider pursuant to the terms of an authorizing agreement.

35 **7. Notification to owners.** An independent repair provider that purchases or
36 acquires embedded software or service parts shall, prior to performing any services on
37 digital electronic equipment, notify the owner of the equipment in writing that:

38 **A. The independent repair provider is not an authorized repair provider for the digital**
39 **electronic equipment;**

40 **B. The owner should review the terms and conditions of the warranty for the digital**
41 **electronic equipment and that repairs not performed by an authorized repair provider**
42 **could affect the terms and conditions of the warranty;**

