



# 129th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2020

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Legislative Document

No. 1977

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S.P. 679

In Senate, January 8, 2020

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

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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;**

