

131st MAINE LEGISLATURE

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Legislative Document

No. 1487

S.P. 608

In Senate, April 5, 2023

An Act to Ensure That Residents of the State Have the Right to Repair Their Own Electronic Devices

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

DAREK M. GRANT Secretary of the Senate

Presented by Senator TIPPING of Penobscot.
Cosponsored by Representative MATHIESON of Kittery and
Senator: BRAKEY of Androscoggin, Representatives: BOYER of Poland, CLUCHEY of
Bowdoinham, JAUCH of Topsham, LOOKNER of Portland, ROEDER of Bangor.

| 1 2 | Be it enacted by the People of the State of Maine as follows: Sec. 1. 10 MRSA c. 234 is enacted to read: |
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| 3 | <u>CHAPTER 234</u> |
| 4 | RIGHT TO REPAIR ELECTRONIC EQUIPMENT |
| 5 | §1500-O. Right to repair |
| 6 7 | 1. Definitions. For the purposes of this chapter, unless the context otherwise indicates, the following terms have the following meanings. |
| 8 | A. "Authorized repair provider" means: |
| 9 10 11 | (1) An original equipment manufacturer that offers the services of diagnosis, maintenance or repair of its own digital electronic equipment and that does not have an arrangement described in subparagraph (2) with an unaffiliated person; or |
| 12 13 14 15 16 17 | (2) A person that is unaffiliated with an original equipment manufacturer and that has an arrangement with the original equipment manufacturer under which the original equipment manufacturer grants to the person a license to use a trade name, service mark or related characteristics for the purposes of offering the services of diagnosis, maintenance or repair of digital electronic equipment under the name of or on behalf of the original equipment manufacturer. |
| 18 19 20 | B. "Digital electronic equipment" or "equipment" means a product that depends for its functioning, in whole or in part, on digital electronics embedded in or attached to the product, but does not include a motor vehicle. |
| 21 22 23 24 | C. "Documentation" means any manual, diagram, report, service code description, schematic diagram or similar information provided to an authorized repair provider for purposes of offering the services of diagnosis, maintenance or repair of digital electronic equipment. |
| 25 26 27 28 | D. "Embedded software" means any programmable instructions provided on firmware delivered with digital electronic equipment, or with a part for such equipment, for purposes of equipment operation, including all relevant patches and fixes made by the manufacturer of such equipment or part for these purposes. |
| 29 30 | E. "Fair and reasonable terms" means the following terms for obtaining documentation or a tool or part: |
| 31 32 33 | (1) With respect to documentation, including any relevant updates, that there is no charge, except when the documentation is requested in physical printed form, in which case it means the reasonable actual costs of preparing and sending the copy; |
| 34 35 36 37 38 | (2) With respect to a tool, that there is no charge, no required authorization or Internet access for the use or operation of the tool and no other impediment to access or use of the tool for its full functionality, except when the tool is requested in physical form, in which case it means the reasonable actual costs of preparing and sending the tool; and |

1 (3) With respect to a part, that the cost and terms are equivalent to the most 2 favorable costs, conditions, obligations and other terms offered by the original 3 equipment manufacturer to an authorized repair provider, accounting for all 4 discounts, rebates or costs. 5 F. "Firmware" means a software program or set of instructions programmed on digital electronic equipment, or on a part for such equipment, to allow the equipment or part 6 to communicate with other computer hardware. 7 8 G. "Independent repair provider" means a person in this State: 9 (1) That is not an authorized repair provider or affiliated with an authorized repair 10 provider and is engaged in the services of diagnosis, maintenance or repair of 11 digital electronic equipment; or 12 (2) That is an authorized repair provider or affiliated with an authorized repair 13 provider with respect to any services of diagnosis, maintenance or repair of digital 14 electronic equipment that is not manufactured by or sold under the name of the 15 original equipment manufacturer for which the person, or the person's affiliate, is 16 an authorized repair provider. 17 H. "Motor vehicle" has the same meaning as in section 1171, subsection 11 and 18 includes any component part of the motor vehicle. 19 I. "Original equipment manufacturer" means a business engaged in the business of selling or leasing to any person new digital electronic equipment manufactured by or 20 on behalf of itself. 21 22 J. "Owner" means a person that owns or leases digital electronic equipment purchased 23 or used in this State. 24 K. "Part" means any replacement part, either new or used, made available by an original 25 equipment manufacturer for purposes of maintenance or repair of digital electronic 26 equipment manufactured or sold by the original equipment manufacturer. 27 L. "Tool" means any software program, hardware or other mechanism or apparatus necessary to repair digital electronic equipment and restore it to fully functional 28 29 condition. 30 M. "Trade secret" means anything tangible or intangible or electronically stored or kept 31 that constitutes, represents, evidences or records intellectual property, including secret 32 or confidentially held designs, processes, procedures, formulas, inventions or 33 improvements or secret or confidentially held scientific, technical, merchandising, 34 production, financial, business or management information, or anything within the definition of "trade secret" under 18 United States Code, Section 1839(3), as in effect 35 36 on January 1, 2019. 37 2. Requirements. An original equipment manufacturer shall, with respect to any digital electronic equipment sold or used in this State, make available on fair and reasonable 38 39 terms to the owner of the equipment or to any independent repair provider:

A. Parts, tools and documentation necessary to repair the digital electronic equipment,

including any updates to information or embedded software; and

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B. If the digital electronic equipment contains an electronic security lock or other security-related function, any parts, tools and documentation needed to reset the lock or function when disabled in the course of diagnosis, maintenance or repair of the equipment.

Parts, tools and documentation made available under this subsection may be made available through appropriate secure release systems. Nothing in this subsection requires an original equipment manufacturer to make available a part if the part is no longer available to the original equipment manufacturer.

- 3. Limitations. This section may not be construed or interpreted to:
- A. Require an original equipment manufacturer to divulge a trade secret to an owner or an independent service provider;
- B. Alter the terms of an arrangement between an authorized repair provider and an original equipment manufacturer, including, but not limited to, the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer pursuant to the arrangement, except that any provision that purports to waive, avoid, restrict or limit the original equipment manufacturer's obligations to comply with this section is void and unenforceable; or
- C. Require an original equipment manufacturer or an authorized repair provider to provide to an owner or independent repair provider access to information, other than documentation, that is provided by the original equipment manufacturer to an authorized repair provider pursuant to the terms of an arrangement between the authorized repair provider and an original equipment manufacturer.
- **4. Liability.** Neither an original equipment manufacturer nor an authorized repair provider is liable for any damage or injury to an owner or independent repair provider resulting from the use of digital electronic equipment provided by the original equipment manufacturer or authorized repair provider pursuant to this section.
- **5. Enforcement.** A violation of this chapter constitutes an unfair or deceptive act or practice in violation of Title 5, chapter 10.

29 SUMMARY

This bill establishes a requirement that a manufacturer of digital electronic equipment sold or used in this State make available on fair and reasonable terms to the owner of the equipment or to any independent repair provider parts, tools and documentation necessary to repair that digital electronic equipment, including any updates to information or embedded software. If the equipment contains an electronic security lock or other security-related function, the manufacturer must also provide any parts, tools and documentation needed to reset the lock or function when disabled in the course of diagnosis, maintenance or repair of the equipment. The bill does not apply to digital electronic equipment in motor vehicles.