

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

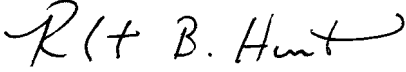
No. 1576

H.P. 1021

House of Representatives, April 11, 2023

An Act to Update the Laws Governing Electronic Device Information as Evidence

Reference to the Committee on Judiciary suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative O'NEIL of Saco.
Cosponsored by Senator HICKMAN of Kennebec and
Representatives: ANDREWS of Paris, BOYER of Poland, LEE of Auburn, MALON of
Biddeford, Speaker TALBOT ROSS of Portland, Senators: BAILEY of York, DAUGHTRY of
Cumberland, GUERIN of Penobscot.

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

2 **Sec. 1. 16 MRSA c. 3, sub-c. 10, headnote** is amended to read:

3 **SUBCHAPTER 10**

4 **~~PORTABLE ELECTRONIC DEVICE CONTENT INFORMATION~~**

5 **Sec. 2. 16 MRSA §641, sub-§2**, as enacted by PL 2013, c. 402, §1, is repealed.

6 **Sec. 3. 16 MRSA §641, sub-§2-A** is enacted to read:

7 **2-A. Electronic communication.** "Electronic communication" means the transfer of
8 information, including but not limited to signs, signals, writings, images, sounds, data or
9 intelligence, in whole or in part by a wire or a radio or an electromagnetic, photoelectric or
10 photo-optical system.

11 **Sec. 4. 16 MRSA §641, sub-§2-B** is enacted to read:

12 **2-B. Electronic communication information.** "Electronic communication
13 information" means the information transferred through electronic communication or
14 through the use of an electronic communication service, including but not limited to the
15 format of information, the information contained under a sender or recipients folder, the
16 location of a sender or recipient at any time during the electronic communication, the time
17 or date the electronic communication was transferred or any information relating to an
18 individual or an electronic device participating in the electronic communication, such as an
19 Internet protocol address.

20 **Sec. 5. 16 MRSA §641, sub-§3-A** is enacted to read:

21 **3-A. Electronic device.** "Electronic device" means a device that stores, generates or
22 transmits information in electronic form.

23 **Sec. 6. 16 MRSA §641, sub-§3-B** is enacted to read:

24 **3-B. Electronic device information.** "Electronic device information" means any
25 information stored on, generated or transmitted through the operation of an electronic
26 device, including the current and prior locations of the device.

27 **Sec. 7. 16 MRSA §641, sub-§5**, as enacted by PL 2013, c. 402, §1, is amended to
28 read:

29 **5. Owner.** "Owner" means the person or entity having the legal title, claim or right to
30 a portable an electronic device.

31 **Sec. 8. 16 MRSA §641, sub-§6**, as amended by PL 2019, c. 489, §5, is repealed.

32 **Sec. 9. 16 MRSA §641, sub-§7-B** is enacted to read:

33 **7-B. Subscriber information.** "Subscriber information" means the name, street
34 address, telephone number, email address or similar contact information provided by a
35 subscriber to a provider to establish or maintain an account or ability to communicate; an
36 account number or identifier; the length of service; and the types of services used by a user
37 of or subscriber to an electronic communication service or remote computing service.

1 **Sec. 10. 16 MRSA §641, sub-§8**, as enacted by PL 2013, c. 402, §1, is amended to
2 read:

3 **8. User.** "User" means a person or entity that uses a ~~portable~~ an electronic device.

4 **Sec. 11. 16 MRSA §642**, as amended by PL 2017, c. 144, §4, is further amended
5 by amending the section headnote to read:

6 **§642. Authority to obtain and disclose ~~content~~ electronic device information held by**
7 **a provider of electronic communication service or electronic communication**
8 **information**

9 **Sec. 12. 16 MRSA §642, sub-§1**, as amended by PL 2017, c. 144, §4, is repealed
10 and the following enacted in its place:

11 **1. Authority to obtain.** A government entity may, only in accordance with a valid
12 search warrant issued by a duly authorized justice, judge or justice of the peace using
13 procedures established pursuant to Title 15, section 55 or 56 or as otherwise provided in
14 this subchapter:

15 A. Obtain electronic device information or electronic communication information
16 directly from a provider of electronic communication service or a provider of remote
17 computing service;

18 B. Compel the production of or access to electronic device information or electronic
19 communication information from any person other than the owner of the electronic
20 device; or

21 C. Access electronic device information or electronic communication information by
22 means of physical interaction or electronic communication with the electronic device.

23 **Sec. 13. 16 MRSA §642, sub-§2**, as amended by PL 2013, c. 519, §5, is further
24 amended to read:

25 **2. Authority to disclose.** A provider of electronic communication service or remote
26 computing service may disclose ~~portable~~ electronic device ~~content~~ information or
27 electronic communication information to a government entity only pursuant to a warrant
28 issued by a duly authorized justice, judge or justice of the peace or as otherwise provided
29 in this subchapter.

30 **Sec. 14. 16 MRSA §642, sub-§3** is enacted to read:

31 **3. Construction.** This section may not be construed to prohibit the intended recipient
32 of electronic communication information or electronic device information from voluntarily
33 disclosing that information to a government entity.

34 **Sec. 15. 16 MRSA §643, first ¶**, as amended by PL 2019, c. 489, §7, is further
35 amended to read:

36 Notice must be given to the owner or user of a ~~portable~~ an electronic device whose
37 ~~content~~ electronic communication information or electronic device information was
38 obtained by a government entity. The notice requirements of this section do not apply if
39 the government entity is unable to identify the owner or user of a ~~portable~~ an electronic
40 device.

1 **Sec. 16. 16 MRSA §643, sub-§1**, as amended by PL 2019, c. 489, §8, is further
2 amended to read:

3 **1. Timing and content of notice.** Unless the court determines under subsection 2 that
4 no notice is required, the government entity shall provide notice to the owner or user that
5 ~~content information~~ electronic device information or electronic communication
6 information was obtained by the government entity from a provider of electronic
7 communication service or remote computing service within 3 days of obtaining ~~the content~~
8 ~~information that information~~. The notice must be made by service or delivered by registered
9 or first-class mail, e-mail or any other means reasonably calculated to be effective as
10 specified by the court issuing the warrant. The notice must contain the following
11 information:

12 A. The nature of the law enforcement inquiry, with reasonable specificity;

13 B. The ~~content information~~ electronic device information or electronic communication
14 information of the owner or user that was supplied to or requested by the government
15 entity and the date on which it was provided or requested; and

16 C. The identity of the provider of electronic communication service or remote
17 computing service from whom the information was obtained.

18 **Sec. 17. 16 MRSA §643, sub-§3**, as enacted by PL 2013, c. 402, §1, is amended to
19 read:

20 **3. Preclusion of notice to owner or user subject to warrant for ~~content~~ electronic**
21 **device information or electronic communication information.** A government entity
22 acting under section 642 may include in its application for a warrant a request for an order
23 directing a provider of electronic communication service to which a warrant is directed not
24 to notify any other person of the existence of the warrant. The court may issue the order if
25 the court determines that there is reason to believe that notification of the existence of the
26 warrant will have an adverse result.

27 **Sec. 18. 16 MRSA §644, sub-§1**, as amended by PL 2019, c. 489, §9, is further
28 amended to read:

29 **1. Consent of owner or user.** When disclosure of ~~portable~~ electronic device ~~content~~
30 ~~information~~ or electronic communication information is not prohibited by federal law, a
31 government entity may obtain the information without a warrant with the informed,
32 affirmative consent of the owner or user of the ~~portable~~ electronic device concerned, except
33 when the device is known or believed by the owner or user to be in the possession of a 3rd
34 party authorized to possess the device by the owner or user.

35 **Sec. 19. 16 MRSA §644, sub-§2**, as enacted by PL 2013, c. 402, §1, is amended to
36 read:

37 **2. Consent of owner or user not required if ~~content~~ electronic device information**
38 **or electronic communication information public.** Notwithstanding subsection 1, a
39 government entity may obtain ~~content~~ electronic device information or electronic
40 communication information without a warrant if ~~the content~~ that information is otherwise
41 disclosed by anyone in a publicly accessible domain, including, but not limited to, on the
42 Internet.

