

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

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Legislative Document

No. 1911

H.P. 1227

House of Representatives, May 9, 2023

An Act Concerning Automotive Right to Repair

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

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

A handwritten signature in cursive script that reads "R(t) B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative WHITE of Waterville.
Cosponsored by Senator FARRIN of Somerset and
Representatives: DUCHARME of Madison, MASON of Lisbon, O'CONNELL of Brewer,
WILLIAMS of Bar Harbor, Senator: STEWART of Aroostook.

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

2 **Sec. 1. 29-A MRSA c. 15, sub-c. 2-A** is enacted to read:

3 **SUBCHAPTER 2-A**

4 **AUTOMOTIVE RIGHT TO REPAIR**

5 **§1821. Short title**

6 This subchapter may be known and cited as "the Automotive Right to Repair Act."

7 **§1822. Definitions**

8 **1. Automobile.** "Automobile" has the same meaning as in section 101, subsection 7,
9 but does not include:

10 A. A motor vehicle with a gross vehicle weight over 14,000 pounds; or

11 B. A recreational vehicle or a motor vehicle originally designed or permanently altered
12 and equipped for human habitation that is not used to transport property other than that
13 property used for human habitation or camping purposes.

14 **2. Dealer.** "Dealer" means a person engaged in the business of buying, selling,
15 exchanging or offering to negotiate, negotiating or advertising the sale of an automobile
16 under a franchise agreement with a manufacturer and who:

17 A. Has an established place of business for those purposes in this State;

18 B. Has a current dealer license issued by the Secretary of State; and

19 C. Is engaged in the diagnosis, service, maintenance or repair of automobiles or
20 automobile engines under the terms of the franchise agreement.

21 **3. Diagnostic and repair information.** "Diagnostic and repair information" includes
22 technical repair updates and diagnostic and repair tools.

23 **4. Franchise agreement.** "Franchise agreement" means a written arrangement for a
24 definite or indefinite period in which a manufacturer grants to a dealer a license to use a
25 trade name, service mark or related characteristic.

26 **5. Immobilizer system.** "Immobilizer system" means an electronic device designed
27 for the sole purpose of preventing the theft of an automobile by preventing the automobile
28 in which it is installed from starting without the correct activation or authorization code.

29 **6. Independent repair facility.** "Independent repair facility" means a person that is
30 not affiliated with a manufacturer or manufacturer's authorized dealer and that is engaged
31 in the diagnosis, service, maintenance or repair of automobiles or automobile engines.

32 **7. Manufacturer.** "Manufacturer" means a person engaged in the business of
33 manufacturing or assembling new automobiles that are sold in this State.

34 **8. Owner.** "Owner" means a person or business that owns or leases an automobile
35 registered in the State.

36 **9. Telematics services.** "Telematics services" includes, but is not limited to, any of
37 the following:

- 1 A. Automatic airbag deployment and crash notification;
- 2 B. Remote diagnostics;
- 3 C. Navigation;
- 4 D. Vehicle location;
- 5 E. Remote door unlock;
- 6 F. Transmitting emergency and vehicle location information to public safety
7 answering points; and
- 8 G. Any other service integrating vehicle location technology, wireless
9 communications or convenience features in a vehicle.

10 **§1823. Fair and reasonable terms**

11 In determining whether an agreement regarding diagnostic and repair information
12 affected by this subchapter is on fair and reasonable terms, consideration may be given to
13 relevant factors, including, but not limited to:

14 **1. Net cost.** The net cost to the manufacturer's dealerships under a franchise agreement
15 for similar diagnostic and repair information obtained from manufacturers, less any
16 discounts, rebates or other incentive programs;

17 **2. Cost to manufacturer.** The cost to the manufacturer for preparing and distributing
18 the diagnostic and repair information, excluding any research and development costs
19 incurred in designing and implementing, upgrading or altering the on-board computer and
20 related software or any other vehicle part or component and amortized capital costs for the
21 preparation and distribution of the diagnostic and repair information;

22 **3. Similar prices.** The price charged by other manufacturers for similar diagnostic and
23 repair information, including the price charged by a manufacturer for similar diagnostic
24 and repair information before the launch of manufacturer websites;

25 **4. Affordability.** The ability of aftermarket technicians or shops to afford the
26 diagnostic and repair information;

27 **5. Means of distribution.** The means by which the diagnostic and repair information
28 is distributed;

29 **6. Use of diagnostic and repair information.** The extent to which the diagnostic and
30 repair information is used, including the number of users and the frequency, duration and
31 volume of use; and

32 **7. Inflation.** The effect of inflation.

33 **§1824. Diagnostic and repair information for model years 2002-2017**

34 The following provisions apply to manufacturers of automobiles produced in model
35 years 2002-2017.

36 **1. Provision of diagnostic and repair information.** A manufacturer shall make
37 available for purchase by owners of automobiles manufactured by that manufacturer and
38 by independent repair facilities the same diagnostic and repair information that the
39 manufacturer makes available to its dealers through the manufacturer's Internet-based
40 diagnostic and repair information system or other electronically accessible manufacturer's

1 diagnostic and repair information system. The manufacturer shall make the content in the
2 manufacturer's diagnostic and repair information system available to owners and to
3 independent repair facilities in the same form and manner and to the same extent as it is
4 made available to dealers using the diagnostic and repair information system. A
5 manufacturer shall provide access to the manufacturer's diagnostic and repair information
6 system for purchase by owners and independent repair facilities on a daily, monthly and
7 yearly subscription basis and on fair and reasonable terms.

8 **2. Aftermarket and 3rd-party services.** A manufacturer shall provide diagnostic and
9 repair information to each aftermarket scan tool company and each 3rd-party service
10 information provider with whom the manufacturer has appropriate licensing, contractual
11 or confidentiality agreements for the sole purpose of building aftermarket diagnostic tools
12 and 3rd-party service information publications and systems. Once a manufacturer makes
13 the diagnostic and repair information available as provided by this subsection, the
14 manufacturer is considered to have satisfied the requirements of this section and is not
15 responsible for the content and functionality of aftermarket diagnostic tools or service
16 information systems.

17 **§1825. Diagnostic and repair information for model years 2018 and later**

18 The following provisions apply to manufacturers of automobiles produced in model
19 years 2018 and later.

20 **1. On-board diagnostic and repair information system.** A manufacturer shall
21 provide access to the same on-board diagnostic and repair information system available to
22 dealers, including technical updates to such on-board systems, using an off-the-shelf
23 personal computer with sufficient memory, processor speed, connectivity and other
24 capabilities as specified by the manufacturer and:

25 A. A nonproprietary automobile interface device that complies with the most updated
26 version of SAE International standard J2534, commonly referred to as SAE J2534, the
27 International Organization for Standardization standard 22900, commonly referred to
28 as ISO 22900, or any successor to SAE J2534 or ISO 22900 as may be accepted or
29 published by SAE International or the International Organization for Standardization;

30 B. An on-board diagnostic and repair information system integrated and entirely self-
31 contained within the automobile, including, but not limited to, service information
32 systems integrated into an on-board display; or

33 C. A system that provides direct access to on-board diagnostic and repair information
34 through a nonproprietary automobile interface, including ethernet, universal serial bus
35 or digital versatile disc.

36 **§1826. Customer service campaigns and recalls**

37 A manufacturer may make proprietary tools, software or over-the-air software updates
38 available exclusively to dealers if the tools, software or over-the-air software updates are
39 for a specific specialized diagnostic or repair procedure developed for the sole purpose of:

40 **1. Customer service campaign.** A customer service campaign meeting the
41 requirements set out in 49 Code of Federal Regulations, Section 579.5; or

42 **2. Technical service bulletin.** Performance of a specific technical service bulletin or
43 recall after the automobile was produced, if the original automobile design was not

1 originally intended for direct interface through a nonproprietary automobile interface
2 including ethernet, universal serial bus or digital versatile disc.

3 Provision of proprietary tools, software or over-the-air software updates under this
4 section do not constitute a violation of this subchapter even if the proprietary tools, software
5 or over-the-air software updates provide functions not available through the system
6 required by section 1825 as long as the proprietary tools, software or over-the-air software
7 updates are also available to the aftermarket upon fair and reasonable terms.

8 **§1827. Exception for immobilizer system and security-related electronic modules**

9 A manufacturer may exclude information necessary to reset an immobilizer system or
10 security-related electronic modules from diagnostic and repair information provided to
11 owners and independent repair facilities. If excluded under this section, the information
12 necessary to reset an immobilizer system or security-related electronic modules must be
13 able to be obtained by owners and independent repair facilities through the secure data
14 release model system used by the National Automotive Service Task Force or other known,
15 reliable and accepted system.

16 **§1828. Applicability to mobile communications**

17 With the exception of telematics services diagnostic and repair information that is
18 provided to dealers that is necessary to diagnose and repair a customer's vehicle and that is
19 not otherwise available to an independent repair facility by means of the information or
20 tools required by this subchapter, this subchapter does not apply to telematics services or
21 any other remote or information service, diagnostic or otherwise, delivered to or derived
22 from an automobile by mobile communications.

23 **§1829. Interpretation**

24 This subchapter may not be construed to:

25 **1. Telematics services.** Abrogate a telematics services or other contract that exists
26 between a manufacturer or service provider and an owner or a dealer;

27 **2. Identity disclosure.** Require a manufacturer or a dealer to disclose to any person
28 the identity of existing customers or customer lists;

29 **3. Other agreements.** Prevent a manufacturer and an owner or independent repair
30 facility that are subject to this subchapter from agreeing to the sale of information and tools
31 on any other terms on which they agree;

32 **4. Interface.** Require a dealer to use a nonproprietary automobile interface;

33 **5. Device development.** Prohibit a manufacturer from developing a proprietary
34 vehicle diagnostic and reprogramming device, as long as the manufacturer also complies
35 with this subchapter and the manufacturer makes this device available to independent repair
36 facilities on fair and reasonable terms;

37 **6. Trade secrets.** Require a manufacturer to divulge anything that constitutes,
38 represents, evidences or records intellectual property including secret or confidentially held
39 designs, processes, procedures, formulas, inventions or improvements, secret or
40 confidentially held scientific, technical, merchandising, production, financial, business or
41 management information or anything within the definition of "trade secret" in 18 United
42 States Code, Section 1839(3);

1 **7. Physical or cyber security.** Require a manufacturer to compromise the physical or
2 cyber security of any automobile or automobile systems or components;

3 **8. Prior agreements.** Abrogate, interfere with, contradict or alter the terms of any
4 franchise agreement executed and in force between a dealer and a manufacturer on the
5 effective date of this subchapter, including, but not limited to, the performance or provision
6 of warranty or recall repair work by a dealer on behalf of a manufacturer pursuant to the
7 franchise agreement. A provision in a franchise agreement executed on or after the effective
8 date of this subchapter that purports to waive, avoid, restrict or limit a manufacturer's
9 compliance with this subchapter is void and unenforceable; or

10 **9. Information not related to diagnostics and repair of automobiles.** Require a
11 manufacturer or dealer to provide an owner or independent repair facility access to
12 information not related to diagnostics and repair of automobiles provided by a
13 manufacturer to a dealer or provided by a dealer to a manufacturer pursuant to the terms of
14 a franchise agreement.

15 **§1830. Enforcement**

16 **1. Independent repair facility or owner.** If an independent repair facility or owner
17 believes that a manufacturer has failed to provide diagnostic and repair information or a
18 tool required by this subchapter, the independent repair facility or owner may notify the
19 manufacturer in writing. A manufacturer that receives a notice under this subsection shall
20 provide the diagnostic and repair information no later than the 30th day after the date of
21 the notice. If the manufacturer fails to respond to the notice provided, or if the independent
22 repair facility or owner is not satisfied with the manufacturer's action in response to the
23 notice, the independent repair facility or owner may file a complaint in the Superior Court
24 or, if applicable, in the United States District Court for the District of Maine.

25 **2. Attorney General.** If an independent repair facility or owner has reason to believe
26 that a manufacturer has violated a provision of this subchapter, the independent repair
27 facility or owner may notify the Attorney General. The Attorney General may bring an
28 action in Superior Court for temporary or permanent injunctive relief.

29 **SUMMARY**

30 This bill is intended to be a competing measure to the Initiated Bill, "An Act Regarding
31 Automotive Right to Repair."

32 This bill requires a manufacturer of automobiles to make available for purchase, by the
33 owner of an automobile and independent repair facilities, the same diagnostic and repair
34 information, including technical updates, that the manufacturer makes available to its
35 dealers through an online or other electronically accessible manufacturer diagnostic and
36 repair information system. The bill provides specific requirements for the availability of
37 diagnostic and repair information related to specific model year vehicles. It also provides
38 for enforcement by civil action or by the Attorney General through injunctive relief.