

# MAINE STATE LEGISLATURE

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L.D. 1908

Date: 3/20/20

(Filing No. S-523)

MAJORITY

HOUSING AND ECONOMIC DEVELOPMENT

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STATE OF MAINE

SENATE

132ND LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 749, L.D. 1908, "An Act to Require the Cooperation of Original Manufacturers of Electronic Devices to Facilitate the Repair of Those Devices by Device Owners and Independent Repair Providers"

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 10 MRSA c. 247 is enacted to read:

CHAPTER 247

RIGHT TO REPAIR ELECTRONIC EQUIPMENT

§1500-PP. Definitions

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

1. Authorized repair provider. "Authorized repair provider" means:

A. An original equipment manufacturer that offers the services of diagnosis, maintenance or repair of the digital electronic equipment it manufactures; or

B. 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. For the purposes of this paragraph, "service mark" has the same meaning as in section 1521, subsection 6.

2. Authorized 3rd-party provider. "Authorized 3rd-party provider" means 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

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1 manufacturer grants to the person a license to use a trade name to distribute parts, tools or  
2 documentation under the name of or on behalf of the original equipment manufacturer.

3 **3. Diagnosis.** "Diagnosis" means the process of identifying the issue or issues causing  
4 digital electronic equipment to not be in full working order.

5 **4. Digital electronic equipment; equipment.** "Digital electronic equipment" or  
6 "equipment" means a hardware product that has a wholesale price to a retailer, or to others  
7 outside of direct retail sale, of not less than \$50 and that depends in whole or in part on  
8 digital electronics embedded in or attached to the product for the product to function.

9 "Digital electronic equipment" does not include:

10 A. A motor vehicle that is designed to transport individuals or property on a street or  
11 highway and is certified by a motor vehicle manufacturer under all requirements for  
12 the distribution and sale of motor vehicles in the United States;

13 B. A medical device or a digital electronic product intended primarily for use in a  
14 medical setting including diagnostic, monitoring or control equipment or any product  
15 or service offered through such a device or product;

16 C. Off-road or nonroad equipment, including, but not limited to, farm and utility  
17 tractors; farm implements; farm machinery; forestry equipment; industrial equipment;  
18 utility equipment; construction equipment; compact construction equipment; mining  
19 equipment; turf, yard and garden equipment; outdoor power equipment, including  
20 portable generators; aviation, marine, all-terrain sports and recreational vehicles,  
21 including racing vehicles; stand-alone or integrated stationary or mobile internal  
22 combustion engines; other power sources, including, but not limited to, generator sets,  
23 electric or battery and fuel cell power; power tools; and any tools, technology,  
24 attachments, accessories, components or repair parts for any such equipment;

25 D. Commercial and industrial electrical switchgear equipment, including power  
26 distribution equipment; commercial visual display equipment; medium-voltage or low-  
27 voltage switchgear and transformers; power control equipment such as medium-  
28 voltage or low-voltage motor control and drives; remote power panels; power  
29 distribution units and static or transfer switches; and any tools, technology,  
30 attachments, accessories, components or repair parts for any such equipment;

31 E. Safety communications equipment intended to be used for emergency response or  
32 prevention purposes by a law enforcement, fire or medical and emergency rescue  
33 services agency or other emergency service organization;

34 F. Security or life safety systems or alarm systems, including any related software or  
35 components, that have a digital electronic product embedded within them;

36 G. A video game console, including, but not limited to, a video game console machine,  
37 a handheld video game console device or other similar device or system, including any  
38 associated components or peripherals; or

39 H. A product developed or manufactured for the purpose of public health,  
40 environmental testing or water quality testing.

41 **5. Documentation.** "Documentation" means, with respect to digital electronic  
42 equipment, a manual, diagram, reporting output, service code description, circuit schematic  
43 or similar kind of information required for effecting the services of diagnosis, maintenance

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or repair of equipment manufactured or sold by an original equipment manufacturer to facilitate the diagnosis, maintenance or repair of the equipment.

6. Independent repair provider. "Independent repair provider" means an individual or business operating in the State that is not an authorized repair provider and that is not affiliated with an authorized repair provider and that is engaged in diagnosing, maintaining and repairing digital electronic equipment.

7. Maintenance. "Maintenance" means, with respect to digital electronic equipment, any action necessary to keep currently working digital electronic equipment in full working order.

8. Medical device. "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant or other similar or related article, including a component, part or accessory, as described in 21 United States Code, Section 321(h) that is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease in humans or animals.

9. Modification; modify. "Modification" or "modify" means, with respect to digital electronic equipment, any alteration to the equipment that is not maintenance and not repair.

10. Motor vehicle. "Motor vehicle" has the same meaning as in section 1171, subsection 11 and includes any component or part of the motor vehicle.

11. Motor vehicle manufacturer. "Motor vehicle manufacturer" means a business engaged in the manufacturing or assembling of motor vehicles.

12. On fair and reasonable terms. "On fair and reasonable terms" means, with respect to documentation, parts and tools required for the diagnosis, maintenance and repair of digital electronic equipment, that such documentation, parts and tools are made available by the original equipment manufacturer at costs and on terms that are at least as favorable as the most favorable costs and terms under which the manufacturer offers the documentation, parts and tools to an authorized repair provider, accounting for any discount, rebate or financial incentive offered to the authorized repair provider by the manufacturer, and that:

A. With respect to documentation required for repair, such documentation is made available by the original equipment manufacturer:

(1) On terms that do not require the recipient of the documentation to be or to become an authorized repair provider; and

(2) At no charge, except that, when the documentation is requested in physical printed form, the manufacturer may require payment for the reasonable actual costs of preparing and sending the printed documentation;

B. With respect to tools required for repair, such tools are made available by the original equipment manufacturer:

(1) On terms that do not require the recipient of the tool to be or to become an authorized repair provider;

(2) Without any impediments to use; and

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1 (3) At no charge for use or operation of the tool, except that when the tool is  
2 requested in physical form, the manufacturer may require payment for the  
3 reasonable, actual costs of procuring, preparing and sending the tool; and

4 C. With respect to parts required for repair, such parts are made available by the  
5 original equipment manufacturer either directly or through an authorized 3rd-party  
6 provider, distributor or authorized repair provider on terms that do not require the  
7 recipient of the part to be or to become an authorized repair provider.

8 **13. Original equipment manufacturer; manufacturer.** "Original equipment  
9 manufacturer" or "manufacturer" means a business engaged in the selling or leasing of or  
10 in otherwise supplying new digital electronic equipment manufactured by or on behalf of  
11 the business.

12 **14. Owner.** "Owner" means an individual or business that owns digital electronic  
13 equipment purchased or used in the State.

14 **15. Part.** "Part" means, with respect to digital electronic equipment, any replacement  
15 part or assembly of parts, either new or used, or their equivalents, for maintaining or  
16 repairing digital electronic equipment manufactured or sold by the manufacturer.

17 **16. Parts pairing.** "Parts pairing" means a manufacturer's practice of using software  
18 to identify component parts through a unique identifier.

19 **17. Print imaging device.** "Print imaging device" means a component, device or  
20 system for transferring an image to a printable medium, including, but not limited to, a  
21 printer, copier, multifunction device, duplicator, mailing machine or professional imaging  
22 product.

23 **18. Repair.** "Repair" means, with respect to digital electronic equipment, any action  
24 necessary to restore the equipment to full working order. "Repair" does not include post-  
25 sale modifications that alter the originally intended functioning of the digital electronic  
26 equipment.

27 **19. Tool.** "Tool" means, with respect to digital electronic equipment, a software  
28 program, hardware implement or other apparatus, including any updates, or its equivalent,  
29 used for diagnosing, maintaining or repairing digital electronic equipment manufactured or  
30 sold by the manufacturer, including software or other mechanisms that provide a new part,  
31 program a new part, pair a new part, calibrate functionality or perform any other function  
32 required to repair the original part.

33 **20. Trade name.** "Trade name" has the same meaning as in section 1521, subsection  
34 7.

35 **21. Trade secret.** "Trade secret" means anything tangible or intangible or  
36 electronically stored or kept that constitutes, represents, evidences or records intellectual  
37 property, including secret or confidentially held designs, processes, procedures, formulas,  
38 inventions or improvements or secret or confidentially held scientific, technical,  
39 merchandising, production, financial, business or management information, or other  
40 intellectual property that falls within the meaning of a trade secret under 18 United States  
41 Code, Section 1839.

42 **§1500-QQ. Right to repair**

1     The following provisions govern the diagnosis, maintenance and repair of digital  
2     electronic equipment sold or in use in this State.

3     1. Original equipment manufacturers; requirement. Beginning January 1, 2028,  
4     and except as otherwise provided in this section, an original equipment manufacturer of  
5     digital electronic equipment sold or in use in the State on or after July 1, 2021 shall make  
6     available on fair and reasonable terms to any independent repair provider or owner of the  
7     equipment any documentation, parts or tools, or their equivalents, required for the  
8     diagnosis, maintenance or repair of the equipment.

9     An original equipment manufacturer that does not have access to documentation, parts or  
10    tools and does not offer services of diagnosis, maintenance or repair of particular digital  
11    electronic equipment is not required to produce documentation, parts or tools for that  
12    particular equipment.

13    2. Prohibited uses of parts pairing. For consumer electronic equipment that is  
14    manufactured for the first time, and first sold or used in this State, after January 1, 2028,  
15    an original equipment manufacturer may not use parts pairing to:

16    A. Prevent or inhibit an independent repair provider or an owner from installing or  
17    enabling the function of an otherwise functional replacement part or a component of  
18    consumer electronic equipment, including a replacement part or a component that the  
19    original equipment manufacturer has not approved;

20    B. Intentionally reduce the functionality or performance of consumer electronic  
21    equipment; or

22    C. Cause consumer electronic equipment to display misleading alerts or warnings,  
23    which the owner cannot immediately dismiss, about unidentified parts.

24    This subsection may not be construed to prohibit parts pairing of print imaging devices.

25    3. Additional limitations and exclusions. Notwithstanding any provision of this  
26    section to the contrary:

27    A. An original equipment manufacturer is not required to:

28    (1) Provide or make available to an independent repair provider or owner  
29    documentation, parts or tools if:

30    (a) The part or tool is no longer available to the original equipment  
31    manufacturer;

32    (b) The tool is used by the original equipment manufacturer only to perform  
33    no-cost diagnostic services virtually through telephone, Internet, chat function,  
34    e-mail or similar means that do not involve the manufacturer's physically  
35    handling the owner's equipment, unless the manufacturer also makes that  
36    documentation or tool available to persons unaffiliated with the manufacturer;  
37    or

38    (c) The original equipment manufacturer provides to an independent repair  
39    provider or owner, at no additional charge, a readily available equivalent or  
40    newer replacement of the digital electronic equipment for which the  
41    documentation, parts or tools are requested;

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(2) Divulge any trade secret except as necessary to perform diagnosis, maintenance or repair on fair and reasonable terms;

(3) Make available to an independent repair provider or owner documentation, parts or tools that would disable, reset or override electronic privacy or security locks or security-related measures or functions, or disable or override antitheft security or privacy measures set by the owner of the equipment without the owner's authorization. This subparagraph may not be construed to relieve the original equipment manufacturer's obligation to make available to an independent repair provider or owner such documentation, parts or tools if the owner provides authorization;

(4) Provide documentation, parts or tools for any digital electronic equipment if reconditioning or repair of the equipment is prohibited by law;

(5) Provide documentation or tools used exclusively by the original equipment manufacturer for diagnosis, maintenance or repairs completed by machines that operate on several digital electronic equipment products simultaneously or otherwise for purposes of large-scale efficiency as long as the manufacturer makes available to independent repair providers and owners sufficient alternative documentation and tools to diagnose, maintain or repair the equipment; or

(6) Cover any repairs provided by independent repair providers or owners under a warranty;

B. An original equipment manufacturer and an authorized repair provider are not required by this section to:

(1) Provide an independent repair provider or owner any information, other than documentation, that is provided by the original equipment manufacturer to an authorized repair provider;

(2) Make available any documentation, parts or tools for the purposes of modifying or making modifications to any digital electronic equipment; or

(3) Make available any documentation, parts or tools in a manner that is inconsistent with or in violation of applicable federal or state law;

C. In complying with the requirements of this section, an original equipment manufacturer may make available documentation, parts or tools to an independent repair provider or owner directly or through an authorized repair provider or an authorized 3rd-party provider.

An authorized repair provider may make documentation, parts or tools available to an independent repair provider or owner as long as the authorized repair provider is contractually permitted by the original equipment manufacturer to provide and is not otherwise prohibited from providing the documentation, parts or tools.

This paragraph may not be construed to require an authorized repair provider or authorized 3rd-party provider to provide such documentation, parts or tools to an independent repair provider or owner or to relieve an original equipment manufacturer of its obligations to make available documentation, parts or tools to an independent repair provider or owner; and

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D. An original equipment manufacturer is not liable under this section for damages resulting from improper use of personal data or any data privacy or security breach in connection with repair, diagnosis, maintenance or modification of digital electronic equipment by an independent repair provider or owner.

This section may not be construed to abrogate, interfere with, contradict or alter the terms of any agreement between an original equipment manufacturer and an authorized repair provider, 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 such an authorized repair agreement, except that any provision in such an authorized repair agreement that purports to waive, avoid, restrict or limit an original equipment manufacturer's compliance with this section is void and unenforceable.

4. Written notice required. Before repairing digital electronic equipment subject to the requirements of this section, an independent repair provider shall provide to a customer a written notice that contains the following information:

A. That the independent repair provider is not an authorized repair provider for the digital electronic equipment; and

B. Whether the independent repair provider, in repairing digital electronic equipment, uses any used replacement parts or replacement parts provided by a supplier other than the original equipment manufacturer of the digital electronic equipment.

5. Violations. A violation of this section is a violation of the Maine Unfair Trade Practices Act.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

**SUMMARY**

This amendment replaces the bill. The amendment exempts from the bill's definition of "digital electronic equipment" a product developed or manufactured for the purposes of public health, environmental testing or water quality testing. The amendment provides that an original equipment manufacturer is not required to make available documentation, parts or tools if the original equipment manufacturer provides at no additional cost an equivalent or newer replacement of the digital electronic equipment. The amendment also clarifies that the bill's provision prohibiting parts pairing does not apply to print imaging devices.

**FISCAL NOTE REQUIRED**

(See attached)



# 132nd MAINE LEGISLATURE

LD 1908

LR 1519(02)

**An Act to Require the Cooperation of Original Manufacturers of Electronic Devices to Facilitate the Repair of Those Devices by Device Owners and Independent Repair Providers**

**Fiscal Note for Bill as Amended by Committee Amendment "A" (S-363)**  
**Committee: Housing and Economic Development**  
**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - General Fund  
Minor revenue increase - General Fund

### Correctional and Judicial Impact Statements

This bill may increase the number of civil suits filed in the court system. The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time. The collection of additional filing fees will increase General Fund revenue by minor amounts.