

# MAINE STATE LEGISLATURE

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Date: 3/20/16

MINORITY

HOUSING AND ECONOMIC DEVELOPMENT

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STATE OF MAINE

SENATE

132ND LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "B" 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 PERSONAL DIGITAL ELECTRONIC EQUIPMENT

§1500-PP. Right to repair

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Authorized repair provider" means:

(1) An original equipment manufacturer that offers the services of diagnosis, maintenance or repair of its own personal digital electronic equipment and that does not have an arrangement described in subparagraph (2) with an unaffiliated individual; or

(2) An individual 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 individual 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 personal digital electronic equipment under the name of or on behalf of the original equipment manufacturer.

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

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1 C. "Documentation" means, with respect to personal digital electronic equipment, a  
2 manual, diagram, reporting output, service code description or similar kind of  
3 information required for effecting the services of diagnosis, maintenance or repair of  
4 equipment manufactured or sold by an original equipment manufacturer to facilitate  
5 the diagnosis, maintenance or repair of the equipment.

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

14 (1) With respect to documentation required for repair, such documentation is made  
15 available by the original equipment manufacturer;

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

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

21 (2) With respect to tools required for repair, such tools are made available by the  
22 original equipment manufacturer;

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

25 (b) Without any impediments to use; and

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

29 (3) With respect to parts required for repair, such parts are made available by the  
30 original equipment manufacturer either directly or through an authorized  
31 distributor or authorized repair provider on terms that do not require the recipient  
32 of the part to be or to become an authorized repair provider.

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

37 F. "Maintenance" means, with respect to personal digital electronic equipment, any  
38 action necessary to keep currently working personal digital electronic equipment in full  
39 working order.

40 G. "Modification" or "modifying" means, with respect to personal digital electronic  
41 equipment, any alteration to the equipment that is not maintenance and not repair.

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COMMITTEE AMENDMENT "B" to S.P. 749, L.D. 1908 (S-564)

1 H. "Original equipment manufacturer" or "manufacturer" means a business engaged in  
2 the selling or leasing of or in otherwise supplying new personal digital electronic  
3 equipment manufactured by or on behalf of the business.

4 I. "Owner" means an individual or business that owns or leases personal digital  
5 electronic equipment purchased or used in the State.

6 J. "Part" means, with respect to personal digital electronic equipment, any replacement  
7 part or assembly of parts, either new or used, or their equivalents, for maintaining or  
8 repairing personal digital electronic equipment manufactured or sold by the  
9 manufacturer. "Part" does not include printed circuit board assemblies that may allow  
10 device cloning in violation of 18 United States Code, Section 1029 or other applicable  
11 law.

12 K. "Personal digital electronic equipment" or "equipment" means a hardware product  
13 that:

- 14 (1) Is a computer, cellular telephone or tablet;  
15 (2) Is sold at:  
16 (a) Retail to an individual for personal, household, family or home office use;  
17 or  
18 (b) Retail or wholesale to an educational institution for educational purposes;  
19 (3) Has a wholesale price to a retailer, or to others outside of direct retail sale, of  
20 not less than \$50; and  
21 (4) Depends in whole or in part on digital electronics embedded in or attached to  
22 the product for the product to function.

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

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

33 N. "Trade secret" means anything tangible or intangible or electronically stored or kept  
34 that constitutes, represents, evidences or records intellectual property, including secret  
35 or confidentially held designs, processes, procedures, formulas, inventions or  
36 improvements or secret or confidentially held scientific, technical, merchandising,  
37 production, financial, business or management information, or other intellectual  
38 property that falls within the meaning of a trade secret under 18 United States Code,  
39 Section 1839(3).

40 2. Original equipment manufacturers; requirement. Beginning January 1, 2028  
41 and except as otherwise provided in this section, an original equipment manufacturer of  
42 personal digital electronic equipment sold or in use in the State on or after January 1, 2028

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1 shall make available on fair and reasonable terms to any independent repair provider or  
2 owner of the equipment any documentation, parts or tools, or their equivalents, required  
3 for the diagnosis, maintenance or repair of the equipment.

4 Alternatively, an original equipment manufacturer may elect to comply with the  
5 requirements of this subsection by providing to the original owner of personal digital  
6 electronic equipment subject to the requirements of this subsection a reimbursement or the  
7 equivalent or better and readily available replacement personal digital electronic equipment  
8 at a price that is no more than the total cost of the sum of the parts of the equipment.

9 **3. Additional limitations and exclusions. Notwithstanding any provision of this**  
10 **section to the contrary:**

11 **A. An original equipment manufacturer is not required by this section to:**

12 **(1) Provide or make available documentation, parts or tools to an independent**  
13 **repair provider or owner if:**

14 **(a) The part or tool is no longer available to the original equipment**  
15 **manufacturer; or**

16 **(b) The documentation or tool is used by the original equipment manufacturer**  
17 **only to perform no-cost diagnostic services virtually through telephone,**  
18 **Internet, chat function, e-mail or similar means that do not involve the**  
19 **manufacturer's physically handling the owner's equipment, unless the**  
20 **manufacturer also makes that documentation or tool available to individuals**  
21 **unaffiliated with the manufacturer;**

22 **(2) Divulge any trade secret;**

23 **(3) License any intellectual property, including copyrights or patents, to any**  
24 **independent repair provider or owner;**

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

32 **(5) Provide documentation, parts or tools for any personal digital electronic**  
33 **equipment if reconditioning or repair of the equipment is prohibited by law,**  
34 **regulation or building or electrical code;**

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

41 **(7) Warrant any repairs provided by independent repair providers or owners;**

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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 personal 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:

(1) 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.

(a) This section 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.

(b) 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; and

(2) Restrict access to certain secure parts of a device by an independent repair provider or owner as long as the access restriction does not prevent the independent repair provider or owner from completing repairs that can otherwise be completed by an authorized repair provider; and

D. An original equipment manufacturer is not liable under this section for improper use of personal data or any data privacy or security breach in connection with repair, diagnosis, maintenance or modification of personal 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 personal 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:

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

3 B. That the customer should review the terms and conditions of any warranty for the  
4 personal digital electronic equipment as repairs not performed by an authorized repair  
5 provider may affect the warranty;

6 C. That warranties for consumer products are governed by the federal Magnuson-Moss  
7 Warranty - Federal Trade Commission Improvement Act, 15 United States Code,  
8 Chapter 50, which:

9 (1) Gives consumers rights and protections that supersede conflicting provisions  
10 in the warranty for the consumer product;

11 (2) Provides that a warranty for the consumer product may not require  
12 maintenance and repairs to be performed only by an authorized repair provider;  
13 and

14 (3) Provides that, if damage to the consumer product is shown to be caused by  
15 equipment not offered or sold by the original equipment manufacturer or by faulty  
16 repair performed by a repair provider that is not an authorized repair provider, that  
17 damage may not be covered by the warranty but the warranty may otherwise  
18 remain in effect; and

19 D. Whether the independent repair provider, in repairing personal digital electronic  
20 equipment, uses any used replacement parts or replacement parts provided by a  
21 supplier other than the original equipment manufacturer of the personal digital  
22 electronic equipment.

23 5. Violations. If an independent repair provider or owner has reason to believe that  
24 an original equipment manufacturer has violated a provision of this section, the  
25 independent repair provider or owner may notify the Attorney General. The Attorney  
26 General may bring an action in the Superior Court of the county in which the violation  
27 occurred for temporary or permanent injunctive relief.'

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

30 **SUMMARY**

31 This amendment, which is the minority report of the committee, replaces the bill and  
32 changes the title. The amendment establishes a requirement that, beginning January 1,  
33 2028, an original equipment manufacturer of personal digital electronic equipment, which  
34 includes, but is not limited to, laptops, computers, cellular telephones and tablets, sold or  
35 in use in the State on or after January 1, 2028 must make available on fair and reasonable  
36 terms to any independent repair provider or owner of the equipment documentation, parts  
37 or tools required for the diagnosis, maintenance or repair of the equipment.

38 **FISCAL NOTE REQUIRED**

39 (See attached)

**COMMITTEE AMENDMENT**



# 132nd MAINE LEGISLATURE

LD 1908

LR 1519(03)

**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 "B" (CSSE04)**  
**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.