

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 244 (Eggman)  
Version: March 27, 2023  
Hearing Date: April 11, 2023  
Fiscal: Yes  
Urgency: No  
AM

**SUBJECT**

Right to Repair Act

**DIGEST**

This bill requires manufacturers of an electronic or appliance product, as defined, with a wholesale price to the retailer of not less than \$50 to make available, on fair and reasonable terms, sufficient service documentation and prescribed functional parts and tools to owners of the product, service and repair facilities, and service dealers for specified timeframes. The bill provides that a city, a county, a city and county, or the state may bring an action in superior court to impose civil liability on a person or entity that knowingly, or reasonably should have known that it violated, these provisions as provided.

**EXECUTIVE SUMMARY**

Technological advances, and the increased use of software in a wide range of consumer products, have made it easier for manufacturers to block access to the information, parts, and programs necessary for owners to perform their own maintenance and repairs. Current law does not require manufacturers to make such information, parts, or programs available, meaning manufacturers can effectively block repairs and maintenance by anyone other than their chosen repair representatives. This bill would require manufacturers of an electronic or appliance product to make available, on fair and reasonable terms, sufficient documentation and prescribed functional parts and tools to owners of the product, service and repair facilities, and service dealers. The bill specifies that a manufacturer is not required to divulge a trade secret, except as may be necessary to comply with the bill's provisions. This bill is substantially similar to last year's SB 983 (2022), which passed this Committee on a vote of 8 to 1. The bill is sponsored by the California Public Interest Research Group (CALPIRG), Californians Against Waste, and iFixit, and supported by consumer and environmental groups, local agencies, and various individuals. The bill is opposed by a wide range of businesses and manufacturers. If the bill passes out of this Committee, it will next be heard before the Senate Appropriations Committee.

## PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Electronic and Appliance Repair Dealer Registration Law (“EAR Law”) to regulate service dealers and service contracts that address the maintenance, replacement, or repair of consumer goods. (Bus. & Prof. Code §§ 9800 et seq., 9810.)
  - a) Defines certain terms for purposes of EAR Law.
    - i. “Antenna” includes, but is not limited to, a resonant device designed especially for the purpose of capturing electromagnetic energy transmitted by direct satellite or commercial radio or television broadcasting facilities. An antenna and its associated accessories are not deemed to be a part of a set and shall be considered, under this section, to be located outside or in the attic of a residence. (Bus. & Prof. Code §§ 9801(j).)
    - ii. “Appliance” or “major home appliance” includes, but is not limited to, any refrigerator, freezer, range, microwave oven, washer, dryer, dishwasher, trash compactor, or room air-conditioner normally used or sold for personal, family, household, or home office use, or for use in private motor vehicles. (Bus. & Prof. Code §§ 9801(i).)
    - iii. “Electric set” includes, but is not limited to, any television, radio, audio or video recorder or playback equipment, video camera, video game, video monitor, computer system, photocopier, or facsimile machine normally used or sold for personal, family, household, or home office use (Bus. & Prof. Code §§ 9801(h).)
    - iv. “Rotator” when used in connection with an antenna installation or repair, includes, but is not limited to, an electromechanical device operated from a remote location to rotate an antenna on a horizontal plane. A rotator and its associated accessories are not deemed to be a part of a set and shall be considered under this section, with the exception of the directional control unit, to be located outside or in the attic of a residence (Bus. & Prof. Code §§ 9801(k).)
    - v. “Service dealer” means persons who, for compensation, engage in, or hold themselves out to the public as offering services in the business of:
      1. repairing, servicing, or maintaining an electronic set normally used or sold for personal, family, household, or home office use;
      2. installing, repairing, servicing, or maintaining equipment or a burglar alarm system for use in private motor vehicles;

3. installing, repairing, servicing, or maintaining television or radio receiver antennas, rotators, and accessories or direct satellite signal receiving equipment located on or adjacent to a residence and not involving a function that is subject to and regulated under the provisions of Chapter 9 (commencing with Section 7000) of the Business and Professions Code; or
  4. repairing, servicing, or maintaining major appliances. (Bus. & Prof. Code §§ 9801(f).)
- 2) Requires that every manufacturer making an express warranty with respect to an electronic or appliance product described under the EAR Law as an antenna, appliance or major home appliance, electric set, or rotator with a wholesale price to the retailer of not less than \$50 and not more than \$99 to make available to service and repair facilities sufficient service literature and functional parts to effect the repair of a product for at least three years after the date a product model or type was manufactured, regardless of whether the three-year period exceeds the warranty period for the product. (Civ. Code § 1793.03.)
- a) Requires the same for every manufacturer of those described products with a wholesale price of \$100 or more, except that they are required to make the service literature and functional parts available for at least seven years after the product model or type was manufactured, regardless of whether the seven-year period exceeds the warranty period for the product. (*Id.*)

This bill:

- 1) Requires every manufacturer of an electronic or appliance product, as defined, with a wholesale price to the retailer, or to others outside of direct retail sale, of not less than \$50 and not more than \$99.99 to make available to owners of the product, service repair facilities, and service dealers sufficient documentation and functional parts and tools, inclusive of any updates, on fair and reasonable terms in order to effect the diagnosis, maintenance, or repair of a product for at least three years after the last date a product model or type was manufactured, regardless of whether the three-year period exceeds the warranty period for the product.
- 2) Requires the same for every manufacturer of an electronic or appliance product with a wholesale price of \$100 or more, except that they are required to make the service literature and functional parts and tools available for at least seven years after the product model or type was manufactured, regardless of whether the seven-year period exceeds the warranty period for the product.
- 3) Requires every manufacturer to also make available, on fair and reasonable terms, any documentation, tools, software and parts needed to disable the lock or function,

and to reset the lock or function when disabled, during the course of diagnosis, maintenance, or repair of a product if a security lock or other security-related function is contained on any of the products described in (1) of (2) above and for the same specified time period as described in (1) or (2) above, respectively.

- 4) Provides that it does not require a manufacturer to divulge a trade secret, except as may be necessary to comply with the bill's provisions.
- 5) Defines certain terms for these purposes.
  - a) "Documentation" means any electronic or appliance product manual, diagram, reporting output, service code description, schematic, or similar information that is provided by a manufacturer to an authorized service dealer, or that is for use by the manufacturer if the manufacturer does not have any authorized service dealers, for purposes of effecting services of diagnosis, maintenance, or repair of the electronic or appliance product.
  - b) "Electronic or appliance product" or "product" means a product described under the EAR law as an antenna, appliance or major home appliance, electric set, or rotator.
    - i. An "electronic or appliance product" or "product" does not include equipment or repair parts as defined under the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act or an "alarm system" under the Alarm Company Act.
  - c) "Fair and reasonable terms" mean at costs and terms that are equivalent to the most favorable cost and terms under which the manufacturer offers the part, tool, or documentation to an authorized service dealer, or to itself, if it does not have authorized service dealers, accounting for any discount, rebate, convenient and timely means of delivery, means of enabling fully restored and updated functionality, rights of use, or other incentive or preference the manufacturer offers to an authorized service dealer.
    - i. For documentation, including any relevant updates, "fair and reasonable terms" also means at no charge, except that, when the documentation is requested in physical printed form, a charge may be included for the reasonable actual costs of preparing and sending the copy.
  - d) "Service dealer" has the same meaning as under the EAR Law.
  - e) "Trade secret" has the same meaning as set forth in subdivision (d) of Section 3426.1, or paragraph (9) of subdivision (a) of Section 499c of the Penal Code.
    - i. Information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that

are reasonable under the circumstances to maintain its secrecy.  
(Civ. Code § 3426.1(d) & Pen. Code § 499c.)

- 6) Requires a service and repair facility or service dealer that is not an authorized facility or dealer of a manufacturer to provide a written notice to any customer seeking repair of an electronic or appliance product before the repair facility or service dealer repairs the product that informs the customer that it is not a manufacturer-authorized or -affiliated service dealer for the product.
- 7) Provides that a city, a county, a city and county, or the state may bring an action in superior court to impose civil liability on a person or entity that knowingly violates these provisions, or reasonably should have known that it violated these provisions, in the amount of \$1,000 per day for the first violation, \$2,000 per day for the second violation, and \$5,000 per day for the third and any subsequent violations.
  - a) Any civil penalties collected is to be paid to the office of the city attorney, county counsel, district attorney, or Attorney General, whichever office brought the action.
  - b) The penalties collected by the Attorney General may be expended by the Attorney General, upon appropriation by the Legislature, to enforce these provisions.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

SB 244 would make it easier and cheaper to get our consumer electronics and appliances fixed. Manufacturers currently have broad authority to restrict who can access repair information, replacement parts, and the specialized tools that they design devices and products to require. This is authority that we know they are using despite little evidence of the harms they claim to protect against, according to a report to Congress by the Federal Trade Commission. Restrictions on repair have direct costs to consumers when they have to pay exorbitant prices to have devices repaired through manufacturer-authorized networks or replace the product entirely. These restrictions also ripple out into the economy, hurting local, regulated repair shops, contributing to our growing e-waste crisis, and stifling the practicality of product owners to resell their property if they choose to do so.

Electronic devices have become an essential part of our lives, and we need access to more choices when it comes to the inevitable repairs that will be needed. Providing independent repair shops and product owners with the correct information and parts to make repairs efficiently will stimulate jobs within the communities where

repairs are needed, reduce the need to replace products with simple fixes, and save money for consumers.

## 2. Background: the rise of technology and right-to-repair advocacy

Over the past decade a movement has arisen that advocates for consumer rights to repair products they own or take those products to any repair professional of their choice. Right-to-repair legislation has been introduced in more than 25 states and most recently in Congress under The Fair Repair Act.<sup>1</sup> In 2021, President Biden issued an executive order that allows farmers and motorists the right to repair their own vehicles without voiding warranty protections.<sup>2</sup> Massachusetts passed the Motor Vehicle Owners Right to Repair Act in 2012, which requires auto manufacturers to allow independent mechanics to access diagnostic tools in cars so consumers can have their cars serviced by mechanics of their choice.<sup>3</sup> In 2014, major national auto industry groups signed a memorandum of understanding that made the requirements of Massachusetts Automotive Right to Repair bill a national policy.<sup>4</sup> In 2022, New York passed and the Governor signed the Digital Fair Repair Act providing consumers with the right to repair certain electronic products.<sup>5</sup> Colorado passed a bill in 2022 granting powered wheelchair owners the right to repair their own wheel chairs.<sup>6</sup> Additionally, the U.S. House of Representatives held a hearing regarding the right to repair before the Subcommittee on Underserved, Agricultural, and Rural Business Development of the Committee on Small Business on September 14, 2022.<sup>7</sup> There are right to repair bills pending in other states as well, such as Oregon's SB 542<sup>8</sup> and Minnesota's SF 1598<sup>9</sup> and companion bill HF 1337.<sup>10</sup>

The Federal Trade Commission (FTC) has also been investigating issues around right-to-repair and the effect manufacturer restrictions on repair has on consumers and the market. In 2021 it released a report, *Nixing the Fix: An FTC Report to Congress on Repair*

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<sup>1</sup> H.R. 4006 (2021-22).

<sup>2</sup> Exec. Order No. 14036, 86 FR 36987 (July 9, 2021), available at <https://www.federalregister.gov/documents/2021/07/14/2021-15069/promoting-competition-in-the-american-economy>.

<sup>3</sup> Mass. Gen. Laws Ch. 165 (2013).

<sup>4</sup> *Industry trade groups sign R2R info agreement*, Tire Business, (Jan. 23, 2014), available at <https://www.tirebusiness.com/article/20140123/NEWS/140129947/industry-trade-groups-sign-r2r-info-agreement>.

<sup>5</sup> NY Asm. Bill 7006B (2022).

<sup>6</sup> Colo. H.B. 22-1031 (2022).

<sup>7</sup> Right to Repair and What it Means for Entrepreneurs, Subcommittee on Underserved, Agricultural, and Rural Business Development, Committee on Small Business, 117<sup>th</sup> Congress, (Sept. 14, 2022).

<sup>8</sup> Oregon SB 542 (Sollman, 2023), available at <https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/SB542>.

<sup>9</sup> Minnesota SF 1598 (Kupec, 2023), available at <https://www.revisor.mn.gov/bills/bill.php?f=SF1598&y=2023&ssn=0&b=senate>.

<sup>10</sup> Minnesota HF 1337 (Fischer, 2023), available at <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF1337&ssn=0&y=2023>.

*Restrictions*, and found that “[m]any consumer products have become harder to fix and maintain” because repairs tend to require “specialized tools, difficult-to-obtain parts, and access to proprietary diagnostic software.”<sup>11</sup> In addition, many manufacturers restrict repairs only to authorized repair networks during the warranty period or will only make parts available to authorized repair networks.<sup>12</sup> Manufacturers also, increasingly, build proprietary software keys into their products: the key is essential to fix the product, but only the manufacturer and its authorized repair networks have access to the key, effectively preventing any other party (including the owner) from conducting repairs themselves.<sup>13</sup> The FTC stated, that these restrictions on repair “fall more heavily on communities of color and lower-income communities” noting that “Black and Hispanic Americans are about twice as likely as white Americans to have smartphones, but no broadband access at home” and that many “Black-owned businesses are in the repair and maintenance industries.”<sup>14</sup>

3. This bill requires manufacturers of certain consumer products to make maintenance and repair information and equipment available to owners, service and repair facilities, and service dealers, including access to digital locks.

This bill is substantially similar to last year’s SB 983 (2022), which was held in the Senate Appropriations Committee. The biggest change from last year’s bill is in the enforcement mechanism. This bill can only be enforced by a city, county, city and county, or the state whereas last year’s bill provided for a private right of action by consumers. Other changes include streamlining the notice that a service and repair facility or service dealer that is not an authorized facility or dealer of the manufacturer to inform the customer that it is not a manufacturer-authorized or manufacturer-affiliated service dealer for the product being repaired. The bill also removes references to service literature and replaces it with the defined term documentation.

This bill requires manufacturers of various electronics and appliance products to make available documentation and all functional parts and tools, inclusive of any updates, on fair and reasonable terms, to owners of the product, service and repair facilities, and service dealers in order for them to diagnose, maintain, or repair a product, including to disable and reset any lock. These requirements would apply for three years after the date a product model or type was manufactured for products that have a wholesale price of \$50 to \$99.99 and seven years for products of \$100 or more, regardless of whether the specified time period exceeds the warranty period for the product. Consumers would therefore be able to conduct maintenance and repairs on the products they own or use repair shops of their choosing, rather than having to rely on

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<sup>11</sup> Fed, Trade Comm., Nixing the Fix: An FTC Report to Congress on Repair Restrictions (2021) pp. 4, 18, 28, available at [https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing\\_the\\_fix\\_report\\_final\\_5521\\_630pm-508\\_002.pdf](https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf) (as of 3/27/23).

<sup>12</sup> *Id.* at 18, 28.

<sup>13</sup> *Id.* at 10, 23-24.

<sup>14</sup> *Id.* at 3-4.

the manufacturer's in-house repair service or authorized repair facilities. The bill does not require manufacturers to make the necessary tools and parts available for free, but does require manufacturers to make them available at the same prices and terms offered to their authorized repair facilities or itself, accounting for any discount, rebate, convenient and timely means of delivery, means of enabling fully restored and updated functionality, rights of use, or other incentive or preference the manufacturer offers to an authorized service dealer, or any additional cost, burden, or impediment the manufacturer imposes on an owner or independent service and repair facility or independent service dealer.

The bill is intended to cover consumer electronics, and therefore, its provisions apply to products defined as antenna, appliance or major home appliance, electric set, and rotator as defined under the EAR Law. The bill specifically states it does not apply to equipment or repair parts as defined under the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act, which includes machinery, equipment, implements, or attachments used for, or in connection with landscaping or grounds maintenance, production of agricultural or forestry products, harvesting products from or raising livestock, or industrial, construction, maintenance, mining, or utility activities or applications. (See Bus. & Prof. Code § 22901(j) & (s).) The bill also specifically states it does not apply to an "alarm system" as defined under the Alarm Company Act. (See Bus. & Prof. Code § 7590.1(c)). The bill specifically states that it applies to covered products that are sold to schools, businesses, local governments, or in other methods outside of direct retail sale.

#### 4. Implications for intellectual property

Opponents of the bill suggest that granting access to the software and firmware (collectively, software) necessary to conduct repairs could harm their copyright protections in the software. They specifically mention that their software is protected by the Digital Millennium Copyright Act (DMCA),<sup>15</sup> which ensures that bad actors cannot interfere with the digital rights management tools that manufacturers use to protect their software. They further contend the bill's provisions could require granting access to proprietary information and that without contractual safeguards in place between manufacturers and authorized repair facilities manufacturers, suppliers, distributors, and repair networks are placed at risk.

These same arguments were made against the bill from last year SB 983 (2022) and the author's SB 605 (2021), which provided similar requirements for manufacturers of powered medical devices. This Committee then, as it does now, notes that it is not completely clear how manufacturers' copyrights could be at risk. The requirement to provide necessary software or keys to owners and repair facilities under this bill would not have to affect the manufacturers' copyrights, as manufacturers could provide the

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<sup>15</sup> Pub. L. 105-304, 112 Stat. 2860 (1998).



keys subject to a limited license or other agreement protecting the copyright in the same manner that they do with authorized repair facilities as the bill defines “fair and reasonable terms” as equivalent to the most favorable terms of an authorized repair facility. The provisions of the DMCA would seem to strengthen, not lessen, the manufactures’ ability to protect their intellectual property, by specifically prohibiting persons from circumventing copyright holders’ technological measures intended to control access to protected works.<sup>16</sup> Furthermore, Courts have recognized a “right of repair or renewal” under U.S. copyright law since 1901,<sup>17</sup> and this idea is reflected in the Copyright Office’s determinations that repair is lawful as a matter of copyright law under the DMCA rulemaking process.<sup>18</sup> However, it should be noted that the Copyright Office has granted specific exceptions to the prohibition against circumvention under the DMCA not a general exemption. For example, the exemption for video game consoles is limited to repair or replacement of the consoles optical drive and requires restoring any technological protection measures that were circumvented or disabled.<sup>19</sup>

The FTC commented on the issue of right-to-repair legislation and intellectual property rights in its report, stating:

A full discussion of the interplay between intellectual property and repair is beyond the scope of this report. Nonetheless, while it is clear that manufacturers’ assertion of intellectual property rights can impede repairs by individuals and independent repair shops, in many instances intellectual property rights do not appear to present an insurmountable obstacle to repair. For instance, as to copyright law, Section 117(c) of the Copyright Act provides that an owner or lessee of a machine may make a copy of a computer program for purposes of maintenance or repair. Moreover, in its most recent exemptions to the Digital Millennium Copyright Act’s anti-circumvention provisions, the Librarian of Congress has permitted the circumvention of TPMs (technological protection measures, e.g digital locks) to diagnose, maintain or repair motorized land vehicles, smart phones, home appliances and home systems. As to trade secrets, information that manufacturers already share with authorized repair centers may not qualify for trade secret protection. With regards to other possible trade secrets, model right to repair legislation exempts trade secrets from disclosure. With respect to patent law, patents could potentially impact competitive markets for repair parts if there are valid and enforced patents protecting component parts; however, only two commenters noted that manufacturers’ assertion of patent rights impedes independent repair. Thus, it is not clear that

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<sup>16</sup> See 17 U.S.C. § 1201(a).

<sup>17</sup> *Doan v. American Book Co.*, 105 F. 772 (7th Cir. 1901).

<sup>18</sup> See Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 86 Fed. Reg. 206, 59627 (October 28, 2021).

<sup>19</sup> *Id.* at (b)(14)(i)(ii).

manufacturers are readily turning to patent law to prevent independent repair shops from obtaining spare parts. (fns. omitted)<sup>20</sup>

The FTC also noted that generally, intellectual property law and antitrust law share the common purpose of promoting innovation and competition, but that misuse of intellectual property rights can create barriers to independent repairs and therefore stifle competition.<sup>21</sup>

The author has indicated a willingness to continue working with the stakeholders to address their concerns and find ways to impose protections on intellectual property and secured data. Last year, the author offered an amendment to make it clear that SB 983 would not require manufacturers to provide their source code to owners or independent repair facilities and that language remains in this bill.

#### 5. Implications for trade secrets

The bill's requirements do implicate trade secrets as the bill requires a manufacturer to divulge a trade secret if it is necessary to comply with the bill's provisions. It is unclear how much of the information required to be divulged under the bill would be a trade secret as authorized repair facilities may or may not be under a legal obligation to maintain the secrecy of that information, and therefore, that information may not qualify as a trade secret under existing state law. Moreover, the Legislature has the power to create exceptions to state trade secret law<sup>22</sup> and there is no federal preemption issue under the federal Defend Trade Secrets Act.<sup>23</sup> The public policy of allowing consumers the right to repair products they own or by repair facilities of their choosing may outweigh the potential and/or tangential effects on a manufacturer's trade secrets.

#### 6. Implications for consumer safety

Opponents of the bill also claim that the bill has the potential to weaken the privacy and security features of electronic products by leading to an increased risk of hacking. They also state consumer safety could be impacted if non-authorized repair facilities and owners repair their own products due to specialized training and sophisticated tools needed to repair products safely. Manufacturers assert that limiting repairs to authorized repair facilities lessens risk to consumers of having their privacy or data compromised and increases safety for consumers.<sup>24</sup> In regards to the issue of safety,

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<sup>20</sup> Nixing the Fix: An FTC Report to Congress on Repair Restrictions *supra* at 26.

<sup>21</sup> *Id.* at 10.

<sup>22</sup> See 38 Cal.2d. 396, 398 (court held that "[o]ne legislative body cannot limit or restrict its own power or that of subsequent legislatures and, therefore, the act of one legislature does not bind its successors.")

<sup>23</sup> See 18 U.S.C. § 1838.

<sup>24</sup> *Id.* at 30.

opponents point to the example of lithium-ion battery cells, which can cause safety issues.<sup>25</sup>

The FTC concluded that “the record contains no empirical evidence to suggest that independent repair shops are more or less likely than authorized repair shops to compromise or misuse customer data[.]” and further noted that providing independent repair facilities access to the same parts and tools provided to authorized repair facilities would provide greater confidence to consumers and manufacturers in the repair activities of those facilities outside the manufacturer’s authorized network.<sup>26</sup> The bill does allow owners of a product to request repair information and parts as well, and it is unclear what risk this could pose, if any, to data security of electronic devices. It should be noted that not providing information and tools to repair products can also lead to a security risk because if manufacturers deny owners the ability to safely repair their products, they may turn to other sources for parts and information to do so. For example, farmers were hacking their equipment with firmware cracked in Eastern Europe due to the locks John Deere put on tractors and licensing agreements that only allowed authorized representatives to make repairs.<sup>27</sup>

Furthermore, manufacturers of cell phones have been creating their own initiatives around independent and self-repair showing that these arguments, at least for some products and some repairs, are not shared by all manufacturers. For example, just recently Google announced a new initiative with iFixit (one of the sponsors of the bill) that would “make it easier for independent repair professionals and skilled consumers with the relevant technical experience to access the genuine Google parts then need to repair Pixel phones.<sup>28</sup>” Samsung also announced a self-repair program for many of its most popular cell phone models, such as the Galaxy S20 and S21 family of products, stating that beginning this summer “consumers will get access to genuine device parts, repair tools, and intuitive, visual, step-by-step repair guides” in a collaboration with

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<sup>25</sup> See U.S. Consumer Product Safety Comm., CPSC Issues Consumer Safety Warning: Serious Injury or Death Can Occur if Lithium-Ion Battery Cells Are Separated from Battery Packs and Used to Power Devices, (Jan. 8, 2021), available at <https://www.cpsc.gov/Newsroom/News-Releases/2021/CPSC-Issues-Consumer-Safety-Warning-Serious-Injury-or-Death-Can-Occur-if-Lithium-Ion-Battery-Cells-Are-Separated-from-Battery-Packs-and-Used-to-Power-Devices#:~:text=WASHINGTON%2C%20D.C.%20%E2%80%93%20The%20U.S.%20Consumer,for%20individual%20sale%20to%20consumers>.

<sup>26</sup> Nixing the Fix: An FTC Report to Congress on Repair Restrictions *supra* at 31.

<sup>27</sup> Jason Koebler, *Why American Farmers are Hacking Their Tractors With Ukrainian Firmware*, VICE (Mar. 21, 2017), available at <https://www.vice.com/en/article/xykkkd/why-american-farmers-are-hacking-their-tractors-with-ukrainian-firmware>.

<sup>28</sup> Ana Corrales, *Coming soon: More ways to repair your Pixel phone*, Google (Apr. 8, 2022) available at <https://www.blog.google/outreach-initiatives/sustainability/pixel-phone-repairs/>.

iFixit.<sup>29</sup> Apple also has a self-repair program for its iPhone 12 and 13 models, and may expand it to Mac computers as well.<sup>30</sup>

## 7. Potential of bill to reduce waste

Sponsors of the bill and a coalition of various environmental organizations point to the potential of the bill to reduce waste. The sponsors write:

According to the World Economic Forum, electronic waste is the fastest growing waste stream on the planet. It is estimated that Californians throw away 46,900 cell phones every day and discard 1.1 million tons of toxic electronic waste each year, which adds toxic heavy metals like lead, mercury, and cadmium into our landfills. Many of these discarded devices could be used again, but simple repairs can become impossible without the proper tools and information. (fns. omitted)

The sponsors also assert that the bill could lead to safer recycling of electronic products nothing that “[w]hen electronics and appliances do reach the waste stream, recyclers need to have the tools and information to get them apart safely. [Forty percent] of fires in waste management facilities in California are caused by lithium-ion batteries, which manufacturers increasingly make difficult (and dangerous) to access with proprietary screws and industrial glues (footnotes omitted).”

Opponents of the bill believe the assumption that the bill will lead to less waste is inaccurate. They point to a study by Yale and Rochester Institute of Technology published in December of 2020 titled *The evolution of consumer electronic waste in the United States* that concluded the total mass of electronic waste has been declining in America since 2015 as evidence of this assertion. They also state that “repair and reuse are important elements of electronics manufacturers sustainability efforts” and that manufacturers have “developed robust policies and programs to ensure that they are continually improving the sustainability of their products.”

## 8. Statements in support

According to bill sponsors CALPIRG, Californians Against Waste, and iFixit:

Too often, owners of electronics and independent repair shops don’t have access to repair guides or the tools and parts that are essential to extending the life of consumer electronics. When only the manufacturer or their “authorized

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<sup>29</sup> *Samsung Expands Customer-First Care Experience with new Self-Repair Program*, Samsung Newsroom U.S. (Mar. 31, 2022) available at <https://news.samsung.com/us/samsung-self-repair-program-ifixit-customer-first-care-experience/>.

<sup>30</sup> *Apple announces Self Service Repair*, Apple Newsroom (Nov. 17, 2021) available at <https://www.apple.com/newsroom/2021/11/apple-announces-self-service-repair/>.

technician” can fix something, they can charge whatever they want or claim that it can’t be fixed, to push consumers into buying new devices, leading to more waste.

SB 244 is an important way to slow the creation of electronic waste by providing independent repair shops and consumers with the repair materials they need to keep their stuff in use and out of the trash. [...]

The sponsors state that additional reasons they support the Right to Repair is: repair saves families money, greater availability of affordable used devices, more choices for consumers, less waste, safer recycling, STEM education, and more opportunities for small business.

A coalition of various consumer protection groups, including, among others, Consumer Watchdog and the Electronic Frontier Foundation, writes in support:

Manufacturers and their representatives have worked to defeat Right to Repair legislation, often by using spurious arguments about safety and security. On the contrary, this right to repair would better ensure the safety of products, and without sacrificing consumer choice. Ultimately, the best way to ensure that all repairs are done safely is to give people the information, replacement parts, and tools they need. Independent repair technicians would have to meet whatever certification requirements are set by state law, just like authorized repair technicians would. This bill would ensure that they all have the same access to proper instructions that are vetted for safety.

A coalition of various environmental groups and other advocacy organizations writes in support of the bill:

Electronic waste (e-waste) is the fastest growing waste stream on the planet – up 21% from 2015–2020 – and our ability to process waste is not keeping up. It is estimated that Californians throw away 46,900 cell phones every day and discard 1.1 million tons of toxic electronic waste each year. E-waste accounts for 70% of heavy metals in our waste stream, including lead, mercury, and cadmium. When these metals leach into groundwater, they can accumulate in fish and other aquatic life, with devastating effects on human health, from kidney disease to diabetes to cancer. [...]

Our best chance at reducing the damaging effects of electronics manufacturing on the environment is to keep our stuff around longer, slowing consumption...  
(fns. omitted)

According to twelve intellectual property law professors who write in support of the bill:

Facilitating the repair of medical devices is consistent with federal copyright law and policy. SB 244 is in no way preempted by the Copyright Act, which merely prohibits states from enacting exclusive rights “equivalent” to those provided under federal law. 17 U.S.C. § 301(a). Nor does SB 244 conflict with § 1201 of the Copyright Act. Some devices may not yet be subject to an exemption permitting the circumvention of technological protection measures for repair purposes. But SB 244 does not require, authorize, or even contemplate circumvention. To the extent those activities are unlawful under federal law, they will remain so after the enactment of SB 244.

Nor does SB 244 jeopardize manufacturers’ trade secret rights insofar as it would enable access to information, replacement parts, or tools. SB 244 specifically exempts most trade secrets. Manufacturers must disclose information only “as necessary to provide documentation, parts, tools, and training courses and materials on fair and reasonable terms.” Since repair parts and tools are often generally known within the industry, they can’t be considered secrets. And the information necessary to enable repair would not extend to manufacturing schematics and other documents that would expose production processes...

#### 9. Statements in opposition

According to a coalition of opponents comprised of various associations representing businesses and manufacturers, including, among others, Association of Home Appliance Manufacturers, California Chamber of Commerce, Civil Justice Association of California, Consumer Technology Association, Internet Coalition, and TechNet:

On behalf of the hundreds of manufacturers and businesses our organizations represent, we respectfully oppose SB 244, legislation which would mandate original equipment manufacturers (OEMs) of digital electronic equipment or a part of the equipment sold in California to provide independent repair providers with diagnostic and repair information, software, tools, and parts – but without requiring any of the critical consumer protections afforded by authorized repair networks, such as training and competency certification, and putting at risk protections manufacturers have built in for consumer data privacy and security. Without any vetting process for qualified repair facilities, the potential for consumer harm is significant and undermines the innovations manufacturers have developed to protect customers.

Our organizations represent a broad spectrum of manufacturers of home appliances, consumer electronics, HVACR, security equipment, toys, lithium-ion batteries, and other connected electronic products, as well as companies that rely on the secure operation of these devices. All of these companies stand behind the quality of their

products. Our members develop products and services for a wide range of commercial, government, and consumer users. Their customers depend on these products to operate safely, securely, and accurately, whether they are being used to support banking and commercial transactions, transmit and store sensitive personal data, support industrial operations, medical applications, or securely offer and deliver entertainment and other services. As businesses, government agencies, and consumers continue to increase their reliance on connected devices to help deliver efficiency, convenience, and services, it is important to remain vigilant and focused on mitigating the risks associated with the safe and secure operation of those products.

SB 244 mandates that OEMs treat any independent repair provider in much the same way as authorized network providers – but without any contractual protections, requirements, or restrictions. In doing so, the bill places consumers and their data at risk, undermines the business of California companies that are part of OEM-authorized networks, and stifles innovation by putting hard-earned intellectual property in the hands of hundreds, if not thousands, of new entities. Further, the bill fails to account for the wide range of repair and refurbishment options currently available to California consumers from both OEM-authorized and independent repair sources. It also does not address advancements in sustainability by electronic product manufacturers. [...]

## 10. Proposed amendments

The Entertainment Software Association (ESA), which represents the three largest gaming console manufacturers (Microsoft, Nintendo, and Sony), have an oppose position on the bill stating that “video game console makers, publishers, and copyright owners, rely on the content protection systems built into consoles to protect against sophisticated piracy efforts” and that digital locks are used to “protect their game consoles and provide a secure media environment for players and other video game publishers and developers. These protections, known as technological protection measures (TPMs), are so important to copyright industries that international treaties concluded in 1996 ensured these digital locks were protected, and since then over 100 countries have implemented this protection in their own laws.” In order to address the concerns of ESA related to piracy, the author has agreed to exempt video game consoles from the provisions of the bill. The bill pending in Oregon<sup>31</sup> includes an exemption for video game consoles, and ESA indicated that they negotiated an exemption in the Minnesota bills as well but those amendments were not in print at the time this analysis was written. ESA is no longer opposed to the bill with the inclusion of an exemption for video game consoles.

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<sup>31</sup> Proposed Amendments to Oregon SB 542 (Sollman, 2023), available at <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/ProposedAmendment/23668>.

Additionally, the author notes that the word “component” was inadvertently left out of the exemption for products of an alarm system and wants to ensure that it is clear that the exemption in the bill for alarm systems applies to a product “or component” of an alarm system.

The specific amendments are as follows:

Amendment 1

On page 5, in line 12, strike out “equipment” and insert:

any of the following:

(i) Equipment

Amendment 2

On page 5, in line 14, strike out “Code or a” and insert:

Code.

(ii) A

Amendment 3

On page 5, in line 14, after “product” insert:

or component

Amendment 4

On page 5, between lines 16 and 17, insert:

(iii) A video game console.

Amendment 5

On page 5, below line 40, insert:

(6) “Video game console” means a computing device, including its components and peripherals, that is primarily used by consumers for playing video games, such as a console machine, a handheld console device, or another device or system. “Video game console” does not include a general or an all-purpose computer, which includes, but is not limited to, a desktop computer, laptop, tablet, or cell phone.

SUPPORT

California Public Interest Research Group (CALPIRG) (sponsor)  
Californians Against Waste (sponsor)  
iFixit (sponsor)  
350 Conejo/San Fernando Valley



Active San Gabriel Valley  
AscdiNatd  
Associated Students, California State University, Northridge  
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California Environmental Voters  
California Product Stewardship Council  
Carbon Cycle Institute  
Citizens' Climate Santa Cruz  
City of Berkeley Zero Waste Commission  
Clean Water Action  
Climate Action California  
Climate Reality Project: Los Angeles Chapter  
Climate Reality Project: San Fernando Valley Chapter  
Consumer Action  
Consumer Federation of California  
Consumer Reports  
Consumer Watchdog  
Educate. Advocate.  
Electronic Frontier Foundation  
Environment California  
Fillgood  
Fixit Clinic  
Fort Ord Environmental Justice Network  
Friends Committee on Legislation of California  
goTRG  
Heal the Bay  
Homeboy Electronics Recycling  
Hyde Consulting  
Media Alliance  
Mojave Desert and Mountain Recycling Authority  
Moore Institute for Plastic Pollution Research  
National Stewardship Action Council  
Northern California Recycling Association  
Natural Resources Defense Council (NRDC)  
Oakland Privacy  
Plastic Free Future  
Plastic Oceans International  
Plastic Pollution Coalition  
Privacy Rights Clearinghouse  
Recycle2riches  
ReGen Monterey  
Repair Cafe Palo Alto/Mountain View

Reuse Alliance  
Salinas Valley Recycles  
Santa Cruz Climate Action Network  
Santa Monica Community College  
Save Our Shores  
SecuRepair  
Service Industry Association  
Seventh Generation Advisors  
Sierra Club California  
South Bayside Waste Management Authority (RethinkWaste)  
Surfrider Foundation  
Sustainable Rossmoor  
The 5 Gyres Institute  
The Center for Oceanic Awareness, Research, and Education (COARE)  
The Culture of Repair Project  
The Last Plastic Straw  
The Repair Association  
The Story of Stuff Project  
Tradeloop  
Trident Computer Resources, Inc.  
Waveform  
Wishtoyo Chumash Foundation  
Zero Waste USA  
1 individual without affiliation  
9 individuals affiliated with various school boards or districts  
12 law professors

### OPPOSITION

Air Conditioning Heating and Refrigeration Institute  
Association of Home Appliance Manufacturers  
Bradford White Corporation  
California Chamber of Commerce  
California Manufacturers and Technology Association  
Civil Justice Association of California  
Consumer Technology Association  
CTIA - The Wireless Association  
Information Technology Industry Council  
Internet Coalition  
Medical Imaging & Technology Alliance  
National Electronic Manufacturers Association  
NetChoice  
PRBA - the Rechargeable Battery Association  
Repair Done Right

State Privacy and Security Coalition, Inc.  
TechNet  
Telecommunications Industry Association  
The Toy Association

### RELATED LEGISLATION

Pending Legislation: SB 271 (Dodd, 2023) requires an original manufacturer, as defined, of a powered wheelchair to provide documentation, parts, embedded software, firmware, and tools used to inspect, diagnose, maintain, and repair the wheelchair to an owner or an independent repair provider for the purposes of providing service on the equipment in the state, as specified, and to reset the lock or function when disabled in the course of providing services, as specified. SB 271 is currently pending in the Senate Business, Professions and Economic Development Committee.

Prior Legislation:

SB 983 (Eggman, 2022) was substantially similar to this bill. SB 983 died in the Senate Appropriations Committee.

SB 605 (Eggman, 2021) would have required manufacturers of powered medical devices to make the documentation, software, and parts necessary to maintain and repair such devices available to a hospital and an independent service organization engaged by the hospital, on fair and reasonable terms, so that the hospital or its engaged repair service can conduct its own maintenance and repairs. SB 605 died in the Senate Appropriations Committee.

AB 1163 (Eggman, 2019) would have required manufacturers of certain electronic or appliance products making an express warranty for products worth \$50 or more to make available sufficient service literature and functional parts, on fair and reasonable terms to owners of the equipment or products, service and repair facilities, and service dealers. AB 1163 died in the Assembly Privacy and Consumer Protection Committee.

AB 2110 (Eggman, 2018) would have required certain original equipment manufacturers of certain electronic equipment or parts sold and used in the state to, among other things, provide to independent repair providers and owners of the equipment certain parts, tools, and information for the purpose of providing a fair marketplace for the repair of that equipment. AB 2110 died in the Assembly Privacy and Consumer Protection Committee.

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