

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

SB 983 (Eggman)  
Version: April 7, 2022  
Hearing Date: April 19, 2022  
Fiscal: No  
Urgency: No  
AM

**SUBJECT**

Consumer warranty protection: express warranties

**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 literature, at no charge, and prescribed functional parts and tools to owners of the product, service and repair facilities, and service dealers for specified timeframes. The bill provides for the recovery of damages for the willful or repeated violation of these provisions, as specified.

**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 service literature, at no charge, 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 provide service literature, documentation, tools, and parts on fair and reasonable terms.

The bill is sponsored by the California Public Interest Research Group (CALPIRG), Californians Against Waste, Consumer Reports, and iFixit, and supported by consumer and environmental groups, local agencies, and various individuals and independent repair businesses. The bill is opposed by a wide range of businesses, including authorized electronics repair 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) Establishes the Song-Beverly Consumer Warranty Act (Act), which sets forth standards for warranties that govern consumer goods, and outlines remedies available to purchasers. (Civ. Code § 1790 et seq.)
    - a) Provides that any independent serviceperson of consumer goods injured by the willful or repeated violation of the provisions of the Act may bring an action for recovery of damages and that judgment may be entered for three times the amount at which actual damages are assessed plus reasonable attorney fees. (Civ. Code § 1794.1.)
  - 3) Requires, under the Act, 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.
    - 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.

This bill, under the Act:

- 1) Requires every manufacturer of 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 make available to owners of the product, service repair facilities, and service dealers sufficient service literature, at no charge, 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 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 those described products 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 the inspection, 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 provide service literature, documentation, tools, software, and parts on fair and reasonable terms.
- 5) Defines certain terms for these purposes.
  - a) "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, or any additional cost, burden, or impediment the manufacturer imposes on an owner or independent service and repair facility or independent 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.
  - b) "Service dealers" has the same meaning under the EAR Law.
  - c) "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.)

- 4) Provides that any service dealer, as defined under the EAR law, injured by the willful or repeated violation of the provisions of the Act may bring an action for recovery of damages and that judgment may be entered for three times the amount at which actual damages are assessed plus reasonable attorney fees.

## COMMENTS

### 1. Author comment

The author writes:

SB 983 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

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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> (as of 3/26/22).

independent mechanics to access diagnostic tools in cars so consumers can have their cars serviced by mechanics of their choice.<sup>3</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 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>4</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>5</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>6</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>7</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 would expand existing law to require manufacturers of various electronics and appliance products to make available service literature, at no cost, 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. The author’s intent is that the bill’s provisions cover consumer electronics, and therefore, its provisions apply to products defined as antenna, appliance or major home appliance, electric set, and rotator under the EAR Law.<sup>8</sup>

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

<sup>4</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 3/23/22).

<sup>5</sup> *Id.* at 18, 28.

<sup>6</sup> *Id.* at 10, 23-24.

<sup>7</sup> *Id.* at 3-4.

<sup>8</sup> The author’s SB 605 (2021) from last year applied similar requirements as this bill to powered medical devices; however, the author has stated this bill is not intended to apply to powered medical devices.

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 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 applies the existing enforcement mechanism in the Act to these provisions and expands it to include service dealers. Specifically a serviceperson of consumer goods or service dealer injured by the willful or repeated violation of the bill is authorized to bring an action for recovery of damages, which can be treble the amount of actual damages, plus reasonable attorney fees.

The bill is sponsored by CALPIRG, Californians Against Waste, Consumer Reports, and iFixit. It is supported by many consumer and environmental groups, some local agencies, and various individuals and independent repair businesses. It is opposed by a wide range of businesses, including authorized electronics repair businesses, and manufacturers. The vast majority of authorized electronics repair businesses in opposition to this bill are not located in California.

#### 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>9</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 author's bill from last year SB 605 (2021), which provided similar requirements for manufacturers of powered medical devices, and 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

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<sup>9</sup> Pub. L. 105-304, 112 Stat. 2860 (1998).

the manufacturers' copyrights, as manufacturers could provide the 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>10</sup> Furthermore, Courts have recognized a "right of repair or renewal" under U.S. copyright law since 1901,<sup>11</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>12</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>13</sup>

The bill's requirements do implicate trade secrets as the bill requires a manufacturer to divulge a trade secret if it is necessary to provide service literature, documentation, tools, software, and parts on fair and reasonable terms. 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>14</sup> and there is no federal preemption issue under the federal Defend Trade Secrets Act.<sup>15</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.

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

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<sup>10</sup> See 17 U.S.C. § 1201(a).

<sup>11</sup> *Doan v. American Book Co.*, 105 F. 772 (7th Cir. 1901).

<sup>12</sup> See Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, 86 Fed. Reg. 206, 59627 (October 28, 2021).

<sup>13</sup> *Id.* at (b)(14)(i)(ii).

<sup>14</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>15</sup> See 18 U.S.C. § 1838.

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 manufacturers are readily turning to patent law to prevent independent repair shops from obtaining spare parts. (fns. omitted)<sup>16</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>17</sup>

The opponents also argue that the right-to-repair movement is not solely about making repairs but also about being able to modify products and point to Repair.org, a website for the right-to-repair movement and coalition, which says: "It's simple. You bought it, you should own it, Period. You should have the right to use it, modify it, and repair it whenever you want."<sup>18</sup> The bill's provisions do not include the word modify and specifically state that the literature, parts, and tools that have to be provided are for the diagnosis, maintenance, and repair of the products.

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. The author has offered an amendment to make it clear that the bill's provisions would not require manufacturers to provide their source code to owners or independent repair facilities.

## 5. 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

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<sup>16</sup> Nixing the Fix: An FTC Report to Congress on Repair Restrictions *supra* at 26.

<sup>17</sup> *Id.* at 10.

<sup>18</sup> See <https://www.repair.org/aboutus#>.

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>19</sup> In regards to the issue of safety, opponents point to the example of lithium-ion battery cells, which can cause safety issues.<sup>20</sup>

The coalition of authorized repair dealers claims the bill would put consumers at risk because having authorized repair networks creates accountability and ensures quality for consumers. They argue that their time and resources invested in training to safely and correctly repair products will be undermined by the bill and argue that this bill provides favorable treatment to independent repair businesses. However, it seems that the bill actually does the opposite by providing an even playing field for all repair businesses, whether authorized or independent, to provide the same services to consumers. If a consumer can get better quality service, as the authorized repair dealers state, then consumers may choose their services over others. The main difference is that consumers would have a choice, whereas currently they do not.

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>21</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>22</sup>

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<sup>19</sup> *Id.* at 30.

<sup>20</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> (as of 3/27/22).

<sup>21</sup> Nixing the Fix: An FTC Report to Congress on Repair Restrictions *supra* at 31.

<sup>22</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> (as of 3/27/22).

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>23</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 iFixit.<sup>24</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>25</sup>

## 6. 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. (footnotes 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

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<sup>23</sup> Ana Corrales, *Coming soon: More ways to repair your Pixel phone*, Google (Apr. 8, 2022) available at [Coming soon: More ways to repair your Pixel phone \(blog.google\)](#).

<sup>24</sup> *Samsung Expands Customer-First Care Experience with new Self-Repair Program*, Samsung Newsroom U.S. (Mar. 31, 2022) available at [Samsung Expands Customer-First Care Experience with New Self-Repair Program - Samsung US Newsroom](#).

<sup>25</sup> *Apple announces Self Service Repair*, Apple Newsroom (Nov. 17, 2021) available at [Apple announces Self Service Repair - Apple](#).

manufacturers have “developed robust policies and programs to ensure that they are continually improving the sustainability of their products.”

## 7. Proposed amendments<sup>26</sup>

In order to address some of the concerns raised by the opposition related to intellectual property, the author has proposed amending the bill to state that the bill’s provisions do not require manufacturers to provide their source. In order to ensure consumers are making informed choices when getting their products repaired, the author may want to include an amendment that requires non-authorized repair facilities to provide notice to the consumer that they are not authorized by the manufacturer to repair the product or affiliated with the manufacturer. The specific amendments are:

### Amendment 1

On page 4, between lines 2 and 3, insert:

- (d) This section shall not be construed to require the distribution of a product’s source code.
- (e) A service and repair facility or service dealer that is not an authorized facility or dealer of a manufacturer shall 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 contains the following information:
  - (1) The service and repair facility or service dealer is not a manufacturer authorized or affiliated service dealer for the product.
  - (2) The consumer may wish to review the terms and conditions of any warranty for the equipment, as repairs not performed by a designated authorized repair provider could potentially affect the warranty.
  - (3) Warranties for consumer products are governed by the federal Magnuson-Moss Warranty Act (Title 15 U.S.C. Section 2302), which gives consumers rights and protections that apply over any conflicting provisions in the warranty.
  - (4) Under Magnuson-Moss, a warranty cannot require that maintenance and repairs be performed only by an authorized repair provider.
  - (5) Under Magnuson-Moss, if damage to equipment is shown to be caused by faulty non-brand equipment or by faulty repair of a non-authorized repair provider, that damage may not be covered by the warranty, but the warranty may otherwise remain in effect.

### Amendment 2

On page 4, at line 3, delete (d) and insert: (f)

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<sup>26</sup> The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel as well as the addition of co-authors.

## 8. Statements in support

According to bill sponsors CALPIRG, Californians Against Waste, Consumer Reports, 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 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.

Right to Repair laws like SB 983 are an important tool to slow the creation of electronic waste, by bringing more competition to the repair marketplace and allowing consumers 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. 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 983 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 983 conflict with § 1201 of the Copyright Act. [...]

Nor does SB 983 jeopardize manufacturers’ trade secret rights insofar as it would enable access to information, replacement parts, or tools. SB 983 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...

A coalition of independent repair businesses writes in support:

As businesses that work in electronics repair we face significant barriers to fix many products – barriers imposed by the manufacturers.

By blocking access to diagnostics, schematics, tools and replacement parts, manufacturers undercut or even block independent repair. As a result, we are forced to turn away business that we could easily handle otherwise. These anti-competitive practices make it harder for businesses like ours to thrive and serve our communities.

When you open a laptop or cell phone to replace a broken part, you need to know what is broken (which the diagnostics tell you), where it is situated (which the schematics indicate), and replace the broken part. Increasingly, manufacturers require special software to pair a replacement part with a device, software that some of them won’t sell to independent shops like ours. Even without parts pairing, at the end of a repair, you often need to be able to reset the software. None of this encroaches on privacy or trade secrets, as manufacturers sometimes try to claim. [...]

## 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, Entertainment Software Association, Internet Coalition, and TechNet:

On behalf of the hundreds of manufacturers and businesses our organizations represent, we respectfully oppose SB 983, 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.

SB 983 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.

Just last year, 30 state legislatures reviewed similar legislation. No bill has passed, however, as states have come to the determination that legislating repair rules for manufacturers created more issues for consumers than answers.

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.

A coalition of authorized repair businesses, the vast majority of who are not located in California, writes:

We are all authorized repair providers, which means that we partner with manufacturers to provide consumers with assurance that their products are serviced by responsibly trained and vetted repair professionals who have the necessary skills to fix their products safely and reliably. We enter into contractual relationships with manufacturers to ensure that our technicians understand the intricacies of a manufacturer's specific product line. This means that we invest time and resources procuring the knowledge that is necessary to safely repair electronic devices without compromising quality standards or undermining the safety of any products.

Manufacturers work closely with authorized repair providers because it creates an accountability link to protect consumers. Because we are authorized, we can assure that a repaired device will function as intended, and the manufacturer is willing to stand behind that assurance. This protects consumers and businesses that come to us to have their device repaired. SB 983, however, would allow independent, unvetted repair firms to gain access to a manufacturer's sensitive diagnostic information and tools without any of the key consumer protections offered by authorized repair networks.

This will put California residents more at risk and more likely to be taken advantage of by repair firms that do not have their best interests in mind. [...] Finally, SB 983 provides favorable treatment to one group of businesses (unvetted, independent repair firms) at the expense of our businesses by undercutting and minimizing the investments that we have made to become authorized repair providers. This bill would penalize our businesses by forcing manufacturers to provide sensitive diagnostic information to all unvetted third parties, regardless of whether the protections afforded by the authorized repair relationship are in place. The bill impedes on our ability to establish contractual relationships with manufacturers and instead inserts state government into business-to-business contracts. [...]

**SUPPORT**

CALPIRG (sponsor)  
Californians Against Waste (sponsor)  
Consumer Reports (sponsor)  
iFixit (sponsor)  
Access Humboldt  
Active San Gabriel Valley  
AENAC Devices  
Alltech Computers  
AscdiNatd  
Aspiration  
Associated Students, California State University Northridge Inc.  
Bay Area Computer Repairs  
BR Advisories  
Binh Repaired  
California Environmental Voters (formerly CLCV)  
California Interfaith Power & Light  
California Product Stewardship Council  
Cellphone Repair Mobiletech  
Center for Oceanic Awareness, Research, & Education  
City of Fremont  
Clean Water Action  
CleverTech LLC  
ClickAway  
Clovis iPhone & Computer Repair LLC  
Coast Electronics Radio Shack  
CommTech  
Computer Engineering Group  
Consumer Action  
Consumer Attorneys of California  
Consumer Federation of California  
Consumer Watchdog  
CPR Cell Phone Repair Poway  
Culture of Repair Project  
Curtis the Computer Guy, Inc.  
David Mercer Consulting  
Denastek  
Digital Paragon  
Electronic Frontier Foundation  
Emergency Guy, Inc.  
Environment California  
Environmental Working Group  
EZ Wireless Repair

Fillgood  
Fixit Clinic  
FixMyPC!  
FixStation  
Friends Committee on Legislation of California  
Furniturecycle  
Genius Squad-Computer, iPad, iPhone Repair  
goTRG  
Heal the Bay  
Homeboy Electronics Recycling  
iCare4Macs  
iPhone Repair Services  
iG Repairs  
iSquad Repair (Carlsbad)  
Image Wireless Inc.  
Indiana Phones  
Irvine Unified School District  
IT Department of Oakland Unified School District  
iTech iPhone & MacBook Repair  
JD Wireless Cell Phone Repair Watsonville  
Lake Tahoe Computers  
Los Gatos Union School District  
M.A.C. Berkeley  
MacDoc LLC  
MacGeek.la  
MacGuyz  
Madera Service  
Matt's Computer Services  
Media Alliance  
Monterey Computer & Smartphone Repair  
Monterey Regional Waste Management District  
MyMammothTech  
National Stewardship Action Council  
Nextgen Tech  
Northern California Recycling Association  
Oakgrove School District  
PC Repair, Inc.  
Personal Computer Support  
Phones 4 Less  
Phone Clinic  
Phone Medics  
PhoneSmart  
Phone Techs  
Phone Repair Depot

Plastic Oceans International  
Plastic Pollution Coalition  
Privacy Rights Clearinghouse  
Promacs  
Repair Association  
Robot Shark  
Robin Prior Tech Support  
San Anselmo Computer and Phone Repair  
San Francisco Bay Computer Services  
San Francisco Computer Repair  
Save Our Shores  
SC Mobile Repairs  
Secur\Repair  
Service Industry Association  
Seventh Generation Advisors  
Shoebox Electronix  
SISTECH  
South Bayside Waste Management Authority (Dba Rethinkwaste)  
StarrTec  
TCRS Circuit - Specialty Electronics Repair  
TechInSF Consulting  
Tech Kahunas LLC  
TecSmiths, Inc.  
The 5 Gyres Institute  
Tradeloop  
Trident Computer Resources, Inc.  
Upgrade Repair  
U-tec Madera  
Waveform  
What'd You Break? Tv Computer Phone Repair  
Wishtoyo Chumash Foundation  
Yucatech Technology Solutions  
Zero Waste Guy  
Zero Waste USA  
13 Individuals

### OPPOSITION

1 Hour Appliance Repair  
Absolute Repair, Inc.  
Advanced Medical Technology Association (AdvaMed)  
ACH Appliance Repair  
AFC Metro Appliance Service Inc.  
Air Conditioning, Heating and Refrigeration Institute (AHRI)

Action Maintenance

AIS Inc.

Aleman's Repair Service, Inc.

All Valley Appliance

ALPHA NE Electronics

Always Speedy Appliance Service Inc.

American Appliance & Mechanical, Inc.

Appliance Care Service Company

Appliance Doctors of North Texas

Appliance Guyz

Arnold's Appliance

Association of Home Appliance Manufacturers (AHAM)

Astro Appliance Service

Atlantic Appliance Service of New Bern

Authorized Service

Ayers Appliance Repair

Bageard Appliance Service, Inc.

Baker Appliance Repair

Beaumont Chamber of Commerce

Bell Appliance

Benzie Appliance Repair

Best Service Company

Bestway Appliance Repair

Blackford Appliance Repair, LLC

Bochow & Waters Inc.

Cabinet Wizard Corp.

California Chamber of Commerce

California Manufacturers & Technology Association (CMTA)

Cannon's Appliance Service LLC

Capital Appliance Service Inc.

Capital City Appliance Service, Inc.

Carey's Appliance Service LLC

Carnley Services, Inc.

Chuck's Appliance Repair

Citrus Heights Chamber of Commerce

Civil Justice Association of California (CJAC)

CJ'S Appliance Repair Inc.

Consumer Technology Association (CTA)

CTIA - The Wireless Association

Dracut Appliance

Doctor Appliance LLC

Dollings Appliance & Refrigeration

Duncan Home Services  
Durocher's Online  
Eagle Head Enterprises  
Ed's Appliance Store  
Electronic Enterprises of South Ohio LLC  
Elite Appliance  
Entertainment Software Association (ESA)  
e-Town Appliance Service  
EuroTechs  
Factory Appliance Service LLC  
Ford's Electronics and Appliance Inc.  
George's Appliance  
Goldman Appliances, Inc.  
Gourmet Appliance Co.  
Henry's Electric, Inc.  
Herald's Appliance and Electronics, Inc.  
Herb Snow & Son  
Heber Appliance  
High Desert Appliance  
Honest and Fair Appliance Repair, LLC  
Huff Appliance Service LLC  
IAM Appliance Service  
Information Technology Industry Council (ITI)  
Internet Coalition  
J&B Appliance LLC  
J&R Appliance Repair, LLC  
JB Appliance Service LLC  
JDM Appliance Repair  
Jeannie's Appliance Services  
Jimmy's Range & Appliances, Inc.  
Joe Day's Midwest Best Appliances  
Joe Fisher Repair and Services  
Judd and Black  
Kearney Appliance Repair  
Kimbrow's Appliance Service & Sales  
Kitchen's Only, Inc.  
Knodle's Appliance Service Company, Inc.  
La Canada Chamber of Commerce  
Mainely Rent To Own Inc.  
Master Appliance  
Medical Imaging & Technology Alliance (MITA)  
Milton's Appliance  
Mr. Appliance

Mr. Appliance of Asheville  
Mr. Appliance of Baton Rouge  
Mr. Appliance of Charlotte, DeSoto and S Sarasota  
Mr. Appliance of Clermont & Apopka  
Mr. Appliance of Lee County  
Mr. Appliance of Mentor  
Mr. Appliance of Naples  
Mr. Appliance of Northeast Louisville  
Mr. Appliance of Plano  
Mr. Appliance of Salem  
Mr. Appliance of Youngstown  
National Electronic Manufacturers Association  
NetChoice  
Omega Services  
Pete Anchor Appliance  
PRBA - The Rechargeable Battery Association  
Premier Service Group Enterprise, Inc.  
Price's Appliance Repair  
Pro Appliance Service  
Rader's Appliance Repair  
Radio TV Center  
Red & White Appliance Service  
Repair Done Right  
Richardson Appliance Service LLC  
Rick's Appliance Service LLC  
Riddle's Appliance Service LLC  
Sarah's Appliance Repair  
Scott's Appliance Repair  
Security Industry Association (SIA)  
Seiler Appliance Service  
Servco Appliance Service  
Service By Rich  
Shields Appliance Service  
Siano Appliance Distributions  
Simon's Appliance  
Southwest Appliance  
State Privacy and Security Coalition, Inc.  
Steve's Appliance & Furniture  
Sun Appliance  
Tarheel Appliance Repair  
TC Appliance  
TechNet  
Telecommunications Industry Association (TIA)

The Appliance Center  
The Appliance Guys  
The Toy Association  
TNR Appliance  
Tri-Lakes Appliance Repair, Inc.  
United Refrigeration and Appliance  
VanDrie Home Furnishings  
Vic's Refrigeration & Appliance Service  
Video Repair Place LTD  
Ward Elkins, Inc.  
Wickford Appliance Inc.  
Williamston Appliance Repair  
XP Electronics Inc.  
Yasania's Appliance Repair  
Yudin's Appliances

#### **RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

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 2210 died in the Assembly Privacy and Consumer Protection Committee.

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