

State Right to Repair Legislation Gains Momentum Across Nation

STATE legislatures around the country are considering—and some have enacted—right to repair legislation. The bills take a variety of forms but all aim to address growing barriers to consumers, businesses, and even the military from repairing the products they purchase.

Colorado's new law makes it easier for consumers and independent repair providers to fix motorized wheelchairs. New York's Digital Fair Repair Act (awaiting the governor's signature at this writing) would do the same for consumer electronics. These new right to repair laws are only the tip of the iceberg—the U.S. Public Interest Research Group reports that legislation was introduced in 27 states in the first few months of 2021 alone.

And, in 2020, Massachusetts voters overwhelmingly approved expanding the state's 2012 landmark Motor Vehicle Owners' Right to Repair Act to require manufacturers to make telematic data—wirelessly transmitted information generated during vehicle operation—available to independent repair providers. Manufacturers have filed a lawsuit challenging the requirements.

Also on the books are repair-related laws in Rhode Island, Indiana, and California that impose varying requirements on product manufacturers to provide service information and parts.

Repair restrictions can be driven by profit, complex technologies, or intellectual property rights, but the result is the same: owners and independent repair providers increasingly lack the specialized tools, parts, information, and access to diagnostic software needed to repair their products effectively. Planned obsolescence also limits the ability to repair.

State laws are often based on the Repair Association's model legislation and

typically require that manufacturers make available to owners and independent repair providers the documentation, parts, and tools needed for diagnosis, maintenance, and repair. In addition, manufacturers may be required to provide special documentation and parts for disabling and resetting electronic security locks.

Removing repair restrictions could lower the cost of repair and create jobs, but it also could be a sustainability game changer—reducing the environmental impacts of manufacturing new products and disposing of unrepairable ones. For example, Greenpeace estimates over 70 percent of the carbon footprint of personal computing devices occurs during manufacturing.

Repair restrictions not only thwart consumers, but businesses as well. For example, farmers have bemoaned the inability to fix their own equipment.

As iFixit's Elizabeth Chamberlain explains, one manufacturer “restricts a lot of repairs to their dealerships,” which are limited in number. As a result, “farmers around the

country report waiting weeks” for repairs “while their crops rot in the fields.”

Right to repair is also taking hold internationally, including in France, which mandates a reparability index for a wide range of products, including cell phones. The ratings are based on criteria such as the availability of parts.

Although an academic study cautions that manufacturers may raise prices to mitigate lost profits, opposition to legislation primarily comes from manufacturers and their associations. Conservative legislators and think tanks chime in as well. Intellectual property rights are a central concern, in addition to cybersecurity risks and potential injuries from repairing or using improperly repaired products.

For example, Competitive Enter-



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prise Institute's Alec Reinauer warns that requiring manufacturers to “distribute sensitive information regarding embedded software and security functions” may expose consumers to “greater cybersecurity risks.” And American Legislative Exchange Council's Bartlett Cleland argues that forcing “innovators to hand over, ‘free of charge,’” certain information to independent repair providers “would forcibly divest companies of significant value.”

But scholar Aaron Perzanowski contends that although intellectual property rights claims can be used as “leverage to threaten consumers and independent repair providers with potentially ruinous liability and legal fees,” such claims are “highly contestable in many instances, if not altogether groundless.” Recent laws address at least some manufacturers' concerns. For example, Colorado law limits their liability for “faulty or otherwise improper repairs” performed by others.

The federal government is also taking action. For example, right to repair is addressed in a 2021 executive order and the Federal Trade Commission recently announced settlements with manufacturers that unlawfully voided product warranties for consumers who use independent repair providers.

As the *New York Times* editorial board has pointed out, national legislation may not be needed, because a “state law could prove a dam buster,” since parts and repair information can be freely exchanged in interstate commerce.

Lower repair costs, create jobs, and enact a sustainability game changer