

## Updates

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California's Digital Fair Repair Act: SB 244



Governor Gavin Newsom recently approved California's [SB 244](#), also referred to as the Right to Repair Act, positioning California as a pivotal state advocating for comprehensive electronics or appliance repair rights.

Effective on July 1, 2024, the legislation will have profound implications for consumers, independent service repair facilities, and electronics and appliance manufacturers.

The Right to Repair Act follows in the footsteps of similar laws in several other states. In December of 2022, New York signed into law the Digital Fair Repair Act, which requires original equipment manufacturers (OEMs) to make available to independent repair providers and consumers the same diagnostic and repair information that is available to authorized repair providers. Shortly thereafter, Minnesota and Colorado followed suit. The Minnesota law follows New York's in many respects but requires OEMs to make parts and documentation available to consumers regardless of whether they are also made available to authorized repair providers. Colorado's version of the law has similar requirements to Minnesota's law, but mainly applies to farming equipment.

The European Union took a different approach. Manufacturers must provide independent service providers access to spare parts, repair-related information, and tools for specific goods. The specific goods are goods that are regulated under other EU legal acts (such as household washing machines, dishwashers, refrigerators, and electronic displays). Additionally, the EU law imposes an obligation on manufacturers to repair those regulated goods, either for free or for consideration, where the EU's legal acts provide repairability requirements. But if the manufacturer is based outside the EU, then the obligation falls on the manufacturer's authorized representative. If the manufacturer has no authorized representative in the EU, the obligation lies with the entity importing the goods. If there is no importer to hold accountable, then the distributor will be responsible for fulfilling the obligation. Notably, mobile phones, cordless phones, and tablets are forecasted as the next set of goods to fall under the manufacturers' obligation to repair.

Compared to these previously enacted laws, California's Right to Repair Act most closely resembles that of Minnesota.

### Key Provisions of the Right to Repair Act

- **Manufacturers' obligations.** Central to the act is the directive compelling manufacturers to provide, on fair and reasonable terms, consumers, service and repair facilities, and service dealers with both sufficient documentation and functional parts and tools (including updates) to diagnose, maintain, or repair electronics and appliances. That directive applies to a wide range of electronics and appliances that are sold in California, from smartphones and tablets to laptops and televisions. It only applies to products (such as televisions, radios, cameras, refrigerators, freezers, washers, dryers, etc.) with minimum retail or direct-to-consumer prices of more than \$50. Products related to infrastructure (e.g., agricultural, utility, industrial, mining, outdoor power, and garden equipment), alarm systems, and video game consoles are excluded.
- **Requirements for documentation.** The act requires manufacturers to provide sufficient documentation, including manuals, diagrams, reporting output, service code descriptions, and other materials that the manufacturers use or provide, to authorized repair providers to diagnose, maintain, or repair the product.
- **Requirements for parts and tools.** The act also requires manufacturers to provide functional parts for their products, including replacement parts or an assembly of parts, both new and used, that a manufacturer makes available, to authorized repair providers. Tools include hardware and software for diagnosis, maintenance, repair, calibration, or restoration of operability for products.
- **Requirements for fair and reasonable terms.** Manufacturers must offer documentation, tools, and parts to service providers on the same, most favorable terms that a manufacturer gave to an authorized repair provider for the same documentation, tools, and parts. If a manufacturer does not use an authorized repair provider, then documentation, tools, and parts must be offered at cost (not including research and development (R&D) expenses).
- **Length of obligations.** If the electronics or appliances are sold for \$50 to \$99.99, the manufacturer's obligations last for three years from the date the last model or type was manufactured. If the electronics or appliances are sold for more than \$100, the manufacturer's obligation lasts for seven years from the date the last model or type was manufactured.
- **Exceptions to manufacturers' obligations.** Manufacturers that provide equivalent or better, readily available replacements to consumers for free are not required to provide documentation, tools, or parts to anyone. Additionally, manufacturers are not required to divulge trade secrets, license any intellectual property (IP), or distribute the source code for any electronics or appliances.
- **Service providers' obligations.** Service providers that are not authorized dealers must provide written notice to consumers informing the consumer that it is not an authorized dealer prior to servicing any electronics or appliances. And such service providers must disclose if any replacement parts not from the manufacturer will be utilized.

### Changes From the Previous Obligations

- **Self-service.** Currently, under the Song-Beverly Consumer Warranty Act, similar obligations are imposed on manufacturers, but the documentation and parts need only be shared with service providers. Under the Right to Repair Act, consumers will have direct access to the documentation, parts, and tools.
- **Greater coverage of electronics and appliances.** The Song-Beverly Consumer Warranty Act imposes obligations on manufacturers only for electronics or appliances carrying an express warranty from the manufacturer. The Right to Repair Act removes the requirement of an express warranty as a prerequisite for a manufacturer to make available documentation, tools, and parts.

## Takeaways

California's Right to Repair Act creates additional obligations for manufacturers to provide both documentation and materials to service providers and consumers for electronic products and appliances, regardless of whether an express warranty was given. However, the act has its boundaries. It does not encompass every electronic product or appliance, nor does it mandate unrestricted access to all repair resources of a manufacturer. Nonetheless, manufacturers should be diligent to maintain and track the documentation, tools, and parts needed to repair products if California is a target market.

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