

AMENDED IN ASSEMBLY APRIL 2, 2018  
AMENDED IN ASSEMBLY MARCH 15, 2018  
CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2110**

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**Introduced by Assembly Member Eggman**

February 8, 2018

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An act to amend and renumber the heading of Chapter 8.6 (commencing with Section 42490) of, and to add Chapter 8.6 (commencing with Section 42488) to, Part 3 of Division 30 of the Public Resources Code, relating to public resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 2110, as amended, Eggman. Electronics: Right to Repair Act.

Existing law, the Electronic Waste Recycling Act of 2003, enacts a comprehensive and innovative system for the reuse, recycling, and proper and legal disposal of covered electronic devices, as defined, and provides incentives to design electronic devices that are less toxic, more recyclable, and that use recycled materials.

Existing law establishes the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation under the supervision and control of the Director of Consumer Affairs. Existing law requires the director to administer and enforce provisions relating to the licensure and regulation of, among others, electronic and appliance repair dealers.

This bill would enact the Right to Repair Act. The bill ~~would~~ *would, except as provided*, require the original equipment manufacturer of 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, including diagnostic

and repair information, as specified, for the purpose of providing a fair marketplace for the repair of that equipment. The bill would require compliance with these provisions for equipment or parts that are no longer manufactured for 5 years after the date the original equipment manufacturer ceases to manufacture the equipment or parts. The bill would authorize a city, county, city and county, or the state to impose civil penalties for a violation of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares all of the  
2 following:

3 (1) Electronic waste (e-waste) generation globally was  
4 approximately 44.7 metric tons in 2016, with an expected annual  
5 growth rate of 3 to 4 percent. The United States alone generated  
6 6.3 million tons of e-waste in 2016, but only collected 22 percent  
7 of that total amount.

8 (2) Reducing the cost and difficulty of repairing electronics is  
9 critical to reducing the generation of e-waste.

10 (3) Consumers should have the right to repair at a competitive  
11 price every product that they purchase.

12 (4) Lack of competition in the electronics repair industry creates  
13 high costs for consumers, businesses, and governments.

14 (b) It is therefore the intent of the Legislature to support the  
15 adoption of policies that meaningfully address the growing quantity  
16 of e-waste that is generated in the state, and to support the reuse,  
17 repair, redistribution, and refurbishing of electronics.

18 SEC. 2. The heading of Chapter 8.6 (commencing with Section  
19 42490) of Part 3 of Division 30 of the Public Resources Code is  
20 amended and renumbered to read:

21  
22 CHAPTER 8.7. CELL PHONE RECYCLING ACT OF 2004  
23

24 SEC. 3. Chapter 8.6 (commencing with Section 42488) is added  
25 to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 8.6. THE RIGHT TO REPAIR ACT

42488. This act shall be known, and may be cited, as the Right to Repair Act.

42488.1. It is the intent of the Legislature to provide a fair marketplace for the repair of electronic equipment and to prohibit intentional barriers and limitations to third-party repair.

42488.2. For purposes of this chapter, the following definitions apply:

(a) “Authorized repair provider” means either of the following:

(1) A person or business that has an arrangement for a definite or indefinite period with an OEM in which the OEM grants to the person or business a license to use a trade name, service mark, or related characteristic for purposes of offering repair services under the name of the OEM.

(2) A person or business retained by the OEM to provide refurbishing services for the OEM’s product or products.

(b) “Documentation” means a manual, schematic diagram, reporting output, or service code description provided to the authorized repair provider for purposes of effecting repair.

(c) “Embedded software” means any programmable instructions provided on firmware delivered with equipment for the purposes of equipment operation, including all relevant patches and fixes made by the OEM for that purpose, including, but not limited to, a basic internal operating system, internal operating system, machine code, assembly code, root code, or microcode.

(d) “Equipment” means electronic equipment, or a part of electronic equipment, originally manufactured for distribution and sale in the United States.

(e) “Fair and reasonable terms” means an equitable price in light of relevant factors. “Fair and reasonable terms,” with regard to diagnostic and repair information, includes, but is not limited to, all of the following:

(1) The net cost to the authorized repair provider for similar information obtained from the OEM, excluding any discounts, rebates, or other incentive programs.

(2) The cost to the OEM for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading, or altering

1 the product, but including amortized capital costs for the  
2 preparation and distribution of the information.

3 (3) The price charged by other OEMs for similar information.

4 (4) The price charged by other OEMs for similar information  
5 prior to the launch of OEM Internet Web sites.

6 (5) The ability of aftermarket technicians or shops to afford the  
7 information.

8 (6) The means by which the information is distributed.

9 (7) The extent to which the information is used, including the  
10 number of users, and frequency, duration, and volume of use.

11 (8) Inflation.

12 (f) “Independent repair provider” means a person or business  
13 operating in the state that is not affiliated with an OEM or an  
14 OEM’s authorized repair provider, that is engaged in the diagnosis,  
15 service, maintenance, or repair of equipment, except that an OEM  
16 shall be considered an “independent repair provider” if the OEM  
17 engages in the diagnosis, service, maintenance, or repair of  
18 equipment that is not affiliated with that OEM.

19 (g) “Medical device” has the same definition as provided in the  
20 federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 321(h)).

21 (h) “Motor vehicle” has the same definition as provided in  
22 Section 415 of the Vehicle Code, except that “motor vehicle” does  
23 not include a motorcycle or a recreational vehicle or manufactured  
24 home equipped for habitation.

25 (i) “Motor vehicle dealer” has the same definition as provided  
26 in Section 285 of the Vehicle Code.

27 (j) “Motor vehicle manufacturer” has the same definition as  
28 provided in Section 672 of the Vehicle Code.

29 (k) “Original equipment manufacturer” or “OEM” means a  
30 person or business that, in the ordinary course of business, is  
31 engaged in the business of selling or leasing new equipment or  
32 parts of equipment to any person or business, and is engaged in  
33 the diagnosis, service, maintenance, or repair of equipment or parts  
34 of that equipment. “Original equipment manufacturer” does not  
35 include a motor vehicle dealer or the manufacturer of a motor  
36 vehicle or a motor vehicle part.

37 (l) “Owner” means a person or business that owns or leases  
38 equipment purchased or used in the state.

1 (m) “Part” or “service part” means a replacement part, either  
2 new or used, made available by the OEM to the authorized repair  
3 provider for purposes of effecting repair.

4 (n) “Remote diagnostics” means a remote data transfer function  
5 between equipment and the provider of repair services, including  
6 settings controls and location identification.

7 42488.3. (a) The original equipment manufacturer of  
8 equipment or parts sold and used in the state shall do both of the  
9 following:

10 (1) Make available, in a timely manner, to independent repair  
11 providers or owners of equipment manufactured by the OEM the  
12 same diagnostic and repair information that the OEM provides to  
13 authorized repair providers, including to refurbishment facilities  
14 for subcontract repairs. The information shall be provided at no  
15 charge or for the same charge that the OEM charges to, and in the  
16 same format that the OEM makes the information available to,  
17 authorized repair providers and refurbishment facilities for  
18 subcontract repair. The information shall include repair technical  
19 updates, schematic diagrams, updates, corrections to embedded  
20 software, and safety and security patches.

21 (2) (A) Except as provided in subparagraph (B), make available  
22 for purchase by the owner, the owner’s authorized agent, or an  
23 independent repair provider, equipment or service parts, including  
24 any updates to the embedded software of the equipment or parts,  
25 subject to fair and reasonable terms.

26 (B) Nothing in this chapter requires an OEM to sell equipment  
27 or service parts if the parts are no longer available to the OEM or  
28 the authorized repair provider of the OEM.

29 (b) An OEM that sells diagnostic, service, or repair  
30 documentation to an independent repair provider or to an owner  
31 in a format that is standardized with other OEMs, and on terms  
32 and conditions more favorable than the manner, terms, and  
33 conditions that an authorized repair provider receives for the same  
34 diagnostic, service, or repair documentation, shall be prohibited  
35 from requiring an authorized repair provider to continue purchasing  
36 diagnostic, service, or repair documentation in a proprietary format,  
37 unless the proprietary format includes diagnostic, service, or repair  
38 documentation or functionality that is not available in the  
39 standardized format.

1 (c) (1) An OEM of equipment sold or used in this state shall  
2 make available for purchase by owners and independent repair  
3 providers, subject to fair and reasonable terms, all diagnostic repair  
4 tools incorporating the same diagnostic, repair, and remote  
5 communications capabilities that the OEM makes available to its  
6 own repair or engineering staff or an authorized repair provider.

7 (2) An OEM that provides diagnostic repair documentation to  
8 aftermarket diagnostic tool manufacturers, diagnostics providers,  
9 and third-party service information publications and systems shall  
10 have fully satisfied its obligations under this chapter and shall not  
11 be responsible for the content and functionality of those aftermarket  
12 diagnostic tools, diagnostics, or service information publications  
13 or systems.

14 (d) OEM equipment or parts sold or used in this state for the  
15 purpose of providing security-related functions shall include  
16 diagnostic, service, and repair information necessary to reset a  
17 security-related electronic function from information provided to  
18 owners and independent repair facilities. If not required to be  
19 included under this subdivision, the information necessary to reset  
20 an immobilizer system or security-related electronic module shall  
21 be obtained by owners and independent repair facilities through  
22 the appropriate secure data release systems.

23 42488.4. (a) Notwithstanding any other law, nothing in this  
24 chapter shall be construed to affect the terms of any agreement  
25 executed and in force between an authorized repair provider and  
26 an original equipment manufacturer, including, but not limited to,  
27 the performance or provision of warranty or recall repair work by  
28 an authorized repair provider on behalf of an OEM pursuant to an  
29 authorized repair agreement, except that a provision in an  
30 agreement that purports to waive, avoid, restrict, or limit an OEM's  
31 compliance with this chapter shall be void and unenforceable.

32 (b) Nothing in this chapter shall be construed to require an OEM  
33 or authorized repair provider to provide an owner or independent  
34 repair provider access to information that is not diagnostic and  
35 repair information that an OEM provides to an authorized repair  
36 provider pursuant to the terms of the agreement between the OEM  
37 and authorized repair provider.

38 (c) Nothing in this chapter applies to a motor vehicle  
39 manufacturer, a product or service of a motor vehicle manufacturer,  
40 or a motor vehicle dealer.

1 (d) (1) Nothing in this chapter ~~requires a manufacturer of~~  
2 ~~applies to~~ a medical device to implement a provision of this chapter  
3 ~~that is prohibited pursuant to the federal Food, Drug, and Cosmetic~~  
4 ~~Act (21 U.S.C. Sec. 301 et seq.) or any other federal law to the~~  
5 ~~extent that law preempts this chapter.~~ *device, a digital electronic*  
6 *product or embedded software manufactured exclusively for use*  
7 *in a health care setting, or a product or service offered in*  
8 *connection with the use of a digital electronic product*  
9 *manufactured exclusively for use in a health care setting.*

10 (2) *For purposes of this subdivision, “health care setting”*  
11 *includes, but is not limited to, acute care hospitals, long-term care*  
12 *facilities, such as nursing homes or skilled nursing facilities,*  
13 *physicians’ offices, urgent care centers, outpatient clinics, home*  
14 *settings where health care is provided at home by professional*  
15 *health care providers, emergency medical services, and specific*  
16 *sites within nonhealth care settings where health care is routinely*  
17 *delivered, such as a medical clinic embedded within a workplace*  
18 *or school.*

19 42488.5. (a) A city, county, city and county, or the state may  
20 impose civil liability on a person or entity that knowingly violated  
21 this chapter, or reasonably should have known that it violated this  
22 chapter, in the amount of one thousand dollars (\$1,000) per day  
23 for the first violation, two thousand dollars (\$2,000) per day for  
24 the second violation, and five thousand dollars (\$5,000) per day  
25 for the third and subsequent violations.

26 (b) A civil penalty collected pursuant to subdivision (a) shall  
27 be paid to the city attorney, city prosecutor, or district attorney, or  
28 Attorney General that brought the action, or to the state if the  
29 Attorney General brought the action. The penalties collected  
30 pursuant to this section by the Attorney General may be expended  
31 by the Attorney General, upon appropriation by the Legislature,  
32 to enforce this chapter.

33 42488.6. This chapter shall apply for equipment or parts that  
34 are no longer manufactured for five years after the date the OEM  
35 ceased to manufacture the equipment or parts. An OEM may  
36 continue to comply with this chapter beyond five years for  
37 equipment or parts the OEM no longer manufactures, at the  
38 discretion of the OEM.

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