

Republic of the Philippines
House of Representatives
Quezon City, Metro Manila

TWENTIETH CONGRESS
First Regular Session

House Bill No. **5684**



INTRODUCED BY REP. PATRICK MICHAEL “PM” D. VARGAS

AN ACT
PROMOTING THE RIGHT TO REPAIR DIGITAL ELECTRONIC PRODUCTS,
AND APPROPRIATING FUNDS THEREFOR

EXPLANATORY NOTE

The COVID-19 pandemic has paved the way for the New Normal, causing an increased demand and dependence on digital electronic products. Electronic gadgets such as mobile phones and tablets became necessities with the introduction of blended learning. Laptops and other office equipment became staples in residences with the implementation of a work-from-home setup. With the shift to online platforms of government transactions and private sector services due to mobility restrictions brought about by the health protocols, there was an inevitability of, if not absolute reliance on, digital electronic products to conduct our everyday business.

Unfortunately, the ubiquity of these devices in the modern age has resulted in an increase in electronic waste, or E-waste. The Global E-Waste Monitor (December 2020) reported that in 2019, 53.6 million metric tons of e-waste were generated around the world, with an average of 7.3 kg per capita. The number grew by 9.2 Mt since 2014 and is projected to grow to 74.7 Mt by 2030. In the same report, the Philippines recorded 425 kt of e-waste in 2019, and was identified as the third biggest generator of e-waste in the Southeast Asian region (next to Indonesia with 1.618 kt and Thailand with 621 kt). In addition, the United Nations Environment Programme (UNEP) estimates that only 20% of e-waste, which contains hazardous and toxic components, is properly collected, treated, and recycled.

Among the reasons cited for the rapid accumulation of e-waste are higher consumption of electronic products, short life cycles, and few repair options.

Sadly, the limited repair options are perpetrated by the manufacturers who employ all sorts of strategies (from specially-made screws to system locks) to restrict third-party repair, which would often be more practical to the consumer.

This bill promotes and strengthens the consumers' right to repair by making available to them necessary information and tools and empowering them to repair, on their own or through independent repair centers, their purchased electronic equipment at reasonable costs at the most convenient means possible. For instance, far-flung communities that rely on digital electronic equipment for online learning may not have ready access to authorized repair providers, and may encounter software and hardware restrictions if proper information and tools for repair are not made available.

This measure seeks to promote consumer welfare by allowing them to access and select the best option from a range of repair and refurbishment services, and not be confined to just one. It also enables consumers to optimize the use of any digital electronic product and encourage long-term usage, without resorting to immediate disposal of items, thereby reducing wastage.

This policy is also in line with the attainment of Sustainable Development Goal (SDG) 12: Responsible Consumption and Production, which lists among its targets the substantial reduction of waste generation through prevention, reduction, recycling, and reuse, and the adoption of sustainable practices among large and transnational companies.

In view of the foregoing, the immediate passage of this bill is earnestly sought.



REP. PATRICK MICHAEL "PM" D. VARGAS

Fifth District, Quezon City

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Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* – This Act shall be known as the "Right to Repair Act."

SECTION 2. *Declaration of Policy.* – The State shall adhere to the policy of protecting the interests of consumers, promoting their general welfare, and establishing the standards of conduct for businesses and industries. Thus, the State shall expand consumer choice by allowing them to have the right set of information and tools to either repair their own products or provide the option for local repair businesses to do so. The State shall also protect the consumers from possible trade and sales malpractices by manufacturers.

SECTION 3. *Definition of Terms.* – For purposes of this Act, the following terms shall mean:

a. *Authorized repair provider* –

- i. A person licensed by an original equipment manufacturer to use a trade name, service mark, or related characteristic to offer repair services under the name of the original equipment manufacturer; or
- ii. A person contracted by an original equipment manufacturer to provide refurbishing services for products manufactured by the manufacturer.

b. **Embedded software** – also known as basic internal operating system, internal operating system, machine code, assembly code, root code, or microcode, means any programmable instructions provided on firmware delivered with equipment for equipment operation, including all relevant software updates made by the original equipment manufacturer.

c. **Digital electronic product** – a part or machine containing a microprocessor originally manufactured for distribution and sale in the country.

d. Documentation – manuals, schematic diagrams, reporting output, or service code description provided to the authorized repair provider for the purpose of effecting repair.

e. **Fair and reasonable terms** – In determining whether a price is on fair and reasonable terms, consideration may be given to relevant factors, including, but not limited to:

i. The net cost to the authorized repair provider for similar parts obtained from original equipment manufacturers, less any discounts, rebates, or other incentive programs;

ii. The cost to the original equipment manufacturer for preparing and distributing the parts or product excluding any research and development costs incurred in designing and implementing, upgrading, or altering the product, but including amortized capital costs for the preparation and distribution of the parts; and

iii. The price charged by other original equipment manufacturers for similar parts or products.

f. **Independent repair provider** – a person operating who is:

i. Not affiliated with an original equipment manufacturer or an original equipment manufacturer's authorized repair provider; and

ii. Engaged in the diagnosis, service, maintenance, or repair of equipment: Provided, That an original equipment manufacturer shall be considered an independent repair provider if the original equipment manufacturer diagnoses, services, maintains, or repairs equipment that is not manufactured by the original equipment manufacturer.

g. **Medical device** – equipment that is intended for use in the diagnosis, treatment, or prevention of disease in humans or animals.

h. **Original equipment manufacturer** – a person who in the ordinary course of business sells or leases new equipment to any person and diagnoses, services, maintains, or repairs that equipment.

i. **Owner** – a person who owns or leases equipment that is purchased or used in the country.

j. *Part or service part* – any new or used component made available by an original equipment manufacturer to an authorized repair provider to repair equipment.

k. *Remote diagnosis* – any transfer of data relating to settings, controls, or location identification between equipment and a provider of repair services.

l. *Service parts* – replacement parts, either new or used, made available by the manufacturer to the authorized repair provider for the purpose of effecting repair.

m. *Trade secret* – anything tangible or intangible or electronically stored or kept, which constitutes, represents, evidences or records intellectual property, including secret or confidentially held designs, processes, procedures, formulas, inventions or improvements, or secrets of confidentially held scientific, technical, merchandising, production, financial, business, or management information, among others.

SECTION 4. *Coverage.* – Owners and independent repair providers shall be given the right to repair their own digital electronic products, including medical devices, by giving them proper information and tools from the original equipment manufacturers.

SECTION 5. *Availability of Diagnostic and Repair Information.* – Original equipment manufacturers shall make available all diagnostic and repair information, including repair technical updates, schematic diagrams, updates, corrections to embedded software, and safety and security patches to owners and independent repair providers of equipment manufactured: Provided, That they shall be offered:

1. Free of charge or for no more than what the original equipment manufacturer would charge to make the same information available to an authorized repair provider; and
2. In the same format that the original equipment manufacturer would use to make the same information available to an authorized repair provider.

SECTION 6. *Availability of Diagnostic and Repair Tools.* – Original equipment manufacturers shall make available for sale to owners and independent repair providers all diagnostic repair tools, incorporating the same diagnostic, repair, and remote diagnosis capabilities that the original equipment manufacturer makes available to its own repair or engineering staff or an authorized repair provider, upon fair and reasonable terms.

SECTION 7. *Documentation Format.* – Original equipment manufacturers shall provide diagnostic, service, or repair documentation in the standardized format only, unless the proprietary format includes diagnostic, service, or repair documentation or functionality that is not available in the standardized format.

SECTION 8. *Third-Party Providers.* – An original equipment manufacturer that provides diagnostic repair documentation to third-party diagnostic tool manufacturers, diagnostics manufacturers, or service information publications shall be deemed to have fully satisfied its obligations under Sections 5 and 6, and shall not be responsible for the content and functionality of the diagnostic tools, diagnosis, or service information publications offered or sold by the third-party manufacturers.

SECTION 9. *Security Functions.* – An original equipment manufacturer of equipment or parts sold or used in the country for security-related functions shall make diagnostic, service, and repair information necessary to reset a security-related electronic function from the information provided to owners and independent repair providers. An original equipment manufacturer may provide the information necessary to reset an immobilizer system or a security-related electronic module to owners and independent repair providers through an appropriate secure data release system.

SECTION 10. *Limitations.* – Nothing in this Act shall be construed to:

- a. Require an original equipment manufacturer to divulge a trade secret;
- b. Abrogate, interfere with, contradict, or alter the terms of any agreement between an authorized repair provider and an original equipment manufacturer, including the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of an original equipment manufacturer: Provided, That any provision of an agreement that waives, avoids, restricts, or limits an original equipment manufacturer's compliance with this Section shall be void;
- c. Require an original equipment manufacturer or authorized repair provider to provide an owner or independent repair provider access to non-diagnostic and repair information provided by an original equipment manufacturer to an authorized repair provider pursuant to the terms of an authorizing agreement;
- d. Require a manufacturer of a medical device to comply with any provision of this Act that conflicts with Republic Act (RA) No. 3720, otherwise known as the "Food, Drug and Cosmetic Act," as amended;

e. Avoid any warranty due to the consumer's exercise of their right to repair, including, but not limited to, resorting to independent repair providers.

SECTION 11. *Failure of Original Equipment Manufacturer to Provide Diagnostic and Repair Information and Tools.* – An owner or an independent repair provider who believes that a manufacturer has failed to provide information, including documentation, updates to firmware, safety and security corrections, diagnostics, documentation, or a tool required by this Act, shall notify the manufacturer in writing and give the manufacturer thirty (30) days from receipt of the complaint to cure the failure. If the manufacturer cures such a complaint within the cure period, damages shall be limited to actual damages in any subsequent litigation.

If the manufacturer fails to respond to the notice provided, or if an owner or an independent repair provider is not satisfied with the manufacturer's cure, the owner or independent repair provider may file a complaint before the proper court. The complaint shall include the following:

1. Written information confirming that the complainant has attempted to acquire and use, through the then available standard support function provided by the manufacturer, all relevant diagnostics, tools, service parts, documentation, and updates to embedded software, including communication with customer assistance via the manufacturer's then standard process, if made available by the manufacturer; and
2. Evidence of manufacturer notification in this Section.

It shall be penalized by imprisonment ranging from six (6) months to six (6) years and a fine of not less than One hundred thousand pesos (Php 100,000.00) but not more than One million pesos (Php 1,000,000.00), or both, at the discretion of the court.

If the offender is a corporation, the penalty may, at the discretion of the court, be imposed upon such corporation and/or upon its directors, trustees, members, officers, or employees responsible for the violation or indispensable to its commission.

The owner or independent repair provider may, however, elect to file a complaint with the Department of Trade and Industry (DTI), in accordance with the provisions of Title III, Chapter III or Title V, Chapter III of RA 7394, or the "Consumer Act of the Philippines" or such other proceeding as may be specified in the implementing rules and regulations provided under Section 13 hereof:

Provided, That fines shall not be less than One hundred thousand pesos (Php 100,000.00) but not more than One million pesos (Php 1,000,000.00).

SECTION 12. *Appropriations.* – The funding requirements for the initial implementation of this Act shall be charged against the current year’s budget of the Department of Trade and Industry. Thereafter, it shall be included in the annual General Appropriations Act.

SECTION 13. *Implementing Rules and Regulations (IRR).* – Within ninety (90) days from the approval of this Act, the DTI, in consultation with other concerned government agencies and stakeholders, shall formulate the rules and regulations implementing the provisions of this Act.

SECTION 14. *Separability Clause.* – If any provision or part hereof is held invalid or unconstitutional, the remainder of the law or the provision or part not otherwise affected shall remain in full force and effect.

SECTION 15. *Repealing Clause.* – Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule, or regulation contrary to or inconsistent with the provisions of this Act are hereby repealed, modified, or amended accordingly.

SECTION 16. *Effectivity.* – This Act shall take effect fifteen (15) days after its complete publication in the Official Gazette or in two (2) newspapers of general circulation in the Philippines.

Approved,