

Big Tech’s “Digital Trade” Agenda Threatens Southern States’ Tech Policy Goals

Nationwide, state legislators have introduced bills to protect people from biased artificial intelligence (AI) models, online privacy violations, abuses of children and teens’ data, and anti-competitive practices by tech companies—and to guarantee our right to repair our phones, cars and other equipment.

The surge in statehouse tech legislation shows that the American people—and their elected officials at every level—want action now. But few people realize that the very firms whose conduct led to this bipartisan response have a strategy to undermine tech regulation through a stealthy form of international preemption. They want to add rules to international trade deals that limit how state and federal governments can regulate tech.



The most extreme of what these Big Tech interests misleadingly call “digital trade” rules would:

- limit governments’ powers to require impact assessments, bias audits, or pre-deployment testing of even high-risk AI and other programs if this involves government regulators or independent reviewers having access to detailed descriptions of algorithms or to source code;
- forbid right to repair polices that require manufacturers to share repair tools that depend on access to code or algorithms;
- ban regulation of international data transfers, guaranteeing rights for firms to choose where our personal data moves and is stored; and
- prohibit requirements to keep certain data locally stored, for instance to keep sensitive data within the state for privacy or any other reason.

State lawmakers’ initiatives to regulate the tech industry must not be thwarted by “digital trade” rules being pushed by Big Tech firms. We must ensure that state-level tech bills in Southern states are not undermined by this plot for international preemption.

The rest of this explainer details how “digital trade” provisions conflict with specific policies introduced in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, and Tennessee relating to the right to repair.



RIGHT TO REPAIR

“Digital trade” source code secrecy guarantees undermine market competition and consumers’ rights to access the repair tools and information needed to keep their phones, cars, wheelchairs, and other equipment operating.

The Alabama Consumer Repair Bill of Rights Act was considered in 2024. The bill was intended to grant the owners and independent repairers of agricultural equipment access to the tools necessary to perform repairs. For electronic products, including internet-connected agricultural equipment, these “tools” also include software, code, and other algorithmic tools:

“Section 3. (a) As used in this section ‘documentation, parts, or embedded software’ means any documentation, parts, embedded software, embedded software for agricultural equipment, firmware, tools, or, with owner authorization, data, that are intended for use with the equipment or any part, including updates to documentation, parts, embedded software, embedded software for agricultural equipment, firmware, tools, or, with owner authorization, data.

(b) Except as provided in subsection (c):

(1) For the purpose of providing services for equipment in the state, an original equipment manufacturer, with fair and reasonable terms and costs, shall make available to an independent repair provider or owner of the manufacturer’s equipment the documentation, parts, or embedded software, including updates to the documentation, parts, or embedded software.”

Right to repair laws that require manufacturers to make available to consumers and independent repair shops tools, parts, and information necessary to repair electronic products could be undermined by algorithm and source code secrecy rules since the broad definition of algorithms would encompass repair tools such as diagnosis software, firmware, and digital keys.

Other agricultural equipment-specific bills introduced in Southern states include Kentucky’s HB 698 (2024), Tennessee’s SB 2035/HB 2029 (2024), Florida’s HB 533/SB 422 (2023), and Mississippi’s SB 2005 (2023).

The Tennessee legislature also considered the Consumer Wheelchair Repair Bill of Rights Act in 2024, which would extend repair rights to powered wheelchairs. North Carolina’s 2023 Medical Equipment Right to Repair Act would have done the same for medical imaging and radiation therapy equipment.

In 2023, the Georgia legislature considered the Right to Repair Act, which would have granted repair rights to all digital electronic equipment, defined as any device containing a microprocessor.

All of these measures proposed requirements for equipment manufacturers to share repair information with the consumers and repairers of their products. If passed, these bills—and any right to repair bills proposed in the foreseeable future—could be at risk of legal challenge due to “digital trade” secrecy rules.

The good news is that very few of the hundreds of trade agreements in effect worldwide include Big Tech’s “digital trade” rules. The bad news is that Big Tech lobbyists are using their power and money to try to rig numerous trade deals that are being negotiated right now to derail the wave of tech regulation underway nationwide. To learn more, please visit: www.rethinktrade.org