

# Big Tech's "Digital Trade" Agenda Threatens Hawaii's 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.

Hawaii 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 Hawaiian tech bills are not undermined by this international preemption plot.

**The rest of this explainer details how "digital trade" provisions conflict with specific Hawaiian policies relating to right to repair and AI regulation.**



\*For a detailed analysis of these "digital trade" rules, see <https://rethinktrade.org/reports/international-preemption-by-trade-agreement/>

## RIGHT TO REPAIR

The Big Tech-demanded “digital trade” rule guaranteeing source code secrecy undermines market competition and consumers’ rights to access the repair tools and information needed to keep their phones, cars, and other equipment operating.

Hawaii’s Right to Repair Act, which was considered in the 2024 legislative session, would require manufacturers to grant the owners and repairers of electronics and appliances access to tools to perform repairs. For electronic products, these “tools” also include software, code, and other algorithmic tools:

*“(a) Notwithstanding any other law to the contrary, each manufacturer of an electronic or appliance product (...) shall make available to each applicable owner of the product, service and repair facility, and service dealer, sufficient documentation and functional parts and tools, including any updates thereof, on fair and reasonable terms, to effect the diagnosis, maintenance, or repair of a product (...).”*

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. Hawaii’s 2023 State Right-to-Repair Law and 2023 Medical Device Right to Repair Act also could have been challenged by “digital trade” rules if passed.

## AI REGULATION

To try to avoid civil rights and liberties violations and other harms from AI systems being rushed into use, legislators are introducing bills in statehouses nationwide that require impact assessments, bias audits, or pre-deployment testing to ensure that AI models are fair and accurate. The Big Tech-demanded “digital trade” rule that bans access to source code and algorithms would forbid such reviews from being conducted by or available to government regulators or independent bodies, as many bills require.

For instance, in Hawaii’s 2024 legislative session, legislation relating to algorithmic discrimination was introduced: SB 2524/HB 1607. This bill would require entities using algorithms for consequential decisions to audit their algorithms, complete impact assessments, and submit annual reports on algorithm usage:

*“(a) A covered entity shall (...) (3) Create and retain for at least five years an audit trail that records, for each algorithmic eligibility determination: (...) (C) The methodology used by the entity to establish the algorithm; (D) The algorithm used to make the determination; (E) Any data or sets of data used to train the algorithm; (...) (b) A covered entity shall annually submit a report containing the results of the audit mandated under this section to the department of the attorney general (...) The report shall contain the following information: (...) (2) The data and methodologies that the covered entity uses to establish the algorithms; (3) The optimization criteria of the algorithms used to make the determinations; (4) Any data or sets of data used to train the algorithms, and the source or sources of the data; (5) The methodologies the covered entity uses to render the determinations (...).”*

By requiring firms to conduct audits of their algorithms and submit reports with algorithmic information including training data to the state’s Attorney General, the policy could be challenged by covered entities based on algorithm and source code 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](http://www.rethinktrade.org)**