

# Big Tech’s “Digital Trade” Agenda Threatens Massachusetts’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.

Massachusetts 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 Massachusetts tech bills—including some measures already signed into law—are not undermined by this international preemption plot.

**The rest of this explainer details how “digital trade” provisions conflict with specific Massachusetts 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.

The Massachusetts Right to Repair Act, which in 2013 became the first state-level right to repair law to take effect in the country, grants the owners and independent repairers of motor vehicles access to the tools necessary to perform repairs. For electronic products, including connected cars, these “tools” also include software, code, and other algorithmic tools:

*"no manufacturer of a motor vehicle may sell or lease or offer for sale or lease, (...) a new motor vehicle without affording to the owner access to the same diagnostic and repair information relative to said new motor vehicle that the manufacturer makes available to its dealers and authorized repair facilities."*

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. The 2023 Portable Wireless Device Repair Act could also be challenged based on secrecy rules.

## 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 Massachusetts, the proposed 2023 Act Preventing a Dystopian Work Environment would require disclosure of and reports on employers’ use of automated decision systems (ADS):

*"Section 4C. (...) (c) Productivity systems that use algorithms shall also be reviewed by the department of labor standards’ occupational safety and health statistics program before implementation (...)  
Section 4D. (...) a notice containing the following information shall be given to affected workers: (...) (6) A copy of any completed algorithmic impact assessments regarding the ADS in question. (...)  
Section 5. (...) (a) An employer that develops, procures, uses, or otherwise implements an ADS to make or assist an employment-related decision shall complete an Algorithmic Impact Assessment (AIA) prior to using the system, and retroactively for any ADS that is in place at the time this part takes effect (...)  
An AIA shall include, at minimum, all of the following: (i) A detailed description of the ADS and its intended purpose. (ii) A description of the data used by the ADS, including the specific categories of data that will be processed as input and any data used to train the model that the ADS relies on."*

This bill would be in conflict with algorithmic and source code secrecy rules both by requiring algorithmic productivity systems to be reviewed by the department of labor before implementation and by requiring firms to disclose algorithmic impact assessments to workers in certain cases. Another bill that could be at risk if passed is the Data Privacy Protection Act, which was introduced in 2023.

**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)**