

# Big Tech's "Digital Trade" Agenda Threatens New Jersey'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.

New Jersey 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 New Jersey tech bills are not undermined by this international preemption plot.

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



## 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.

New Jersey’s Fair Repair Act, which was considered in 2024, is intended to grant the owners and independent repairers of electronic products access to the tools necessary to perform repairs. For electronic products, these “tools” also include software, code, and other algorithmic tools:

*“2. a. An original equipment manufacturer of equipment sold, offered for sale, or used in this State shall make available: (1) to any independent repair provider or owner of equipment manufactured by the original equipment manufacturer, the same diagnostic, service, or repair documentation for no charge or in the same manner and in the same timeframe as the original equipment manufacturer makes diagnostic, service, or repair documentation available to its authorized repair providers; and (2) for purchase by the owner, an authorized agent, or any independent repair provider, equipment or service parts, inclusive of any updates to the embedded software of the equipment, under fair and reasonable terms.”*

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. New Jersey bill [AB 3612 \(2022\)](#) would have extended repair rights to farm equipment and, if passed, could have been at risk due to 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 New Jersey’s 2024 legislative session, [SB 1588/AB 4030](#) proposed requirements for pre-deployment and annual bias audits for algorithmic tools used in employment decisions:

*“Bias audit’ means an impartial evaluation, including but not limited to testing, of an automated employment decision tool (...) b. It shall be unlawful to sell or offer for sale in the State an automated employment decision tool unless: (1) The tool is the subject of a bias audit conducted in the past year prior to selling the tool or offering the tool for sale; (2) The sale of the tool includes, at no additional cost, an annual bias audit service that provides the results of the audit to the purchaser (...).”*

By requiring firms to conduct audits of their algorithms in consultation with third parties, AI developers could claim the policy is in conflict with algorithm and source code secrecy rules. Other potentially affected bills include [SB 3876 \(2023\)](#) and [AB 537 \(2022\)](#), which concerned an AI system inventory and the use of algorithms by automobile insurers, respectively.

**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)**