

Big Tech’s “Digital Trade” Agenda Threatens Rhode Island’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.

Rhode Island 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 Rhode Island 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 Rhode Island 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.

Rhode Island’s [2024 Digital Electronics Right to Repair Act](#) is intended to grant the owners and independent repairers of digital electronic products access to the tools necessary to perform repairs. For electronic products, these “tools” also include software, code, and other algorithmic tools:

"6-60-2. Requirements. (a) For digital electronic equipment and parts for such equipment that are sold or used in this state, an original equipment manufacturer shall make available to any independent repair provider and owner of digital electronic equipment manufactured by on behalf of, or sold by such original equipment manufacturer, on fair and reasonable terms, any documentation, parts, and tools, required for the diagnosis, maintenance, or repair of such digital electronic equipment and parts for this equipment, inclusive of any updates."

Right to repair laws that require manufacturers to make available to consumers and independent repair shops tools, parts, and information necessary to repair electronics could be undermined by algorithmic secrecy rules since the broad definition of algorithms would encompass repair tools such as diagnosis software, firmware, and digital keys. Other potentially affected bills include [HB 7229 \(2024\)](#) and [SB 2840 \(2024\)](#), which would extend the right to repair to agricultural equipment and wheelchairs, respectively.

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 Rhode Island’s 2024 legislative session, [HB 7521](#) proposed a requirement for AI system developers to share with deployers information on the development of automated decision tools:

"(a) A developer shall provide a deployer with a statement regarding the intended uses of the automated decision tool and documentation regarding all of the following: (1) The known limitations of the automated decision tool, including any reasonably foreseeable risks of algorithmic discrimination arising from its intended use; (2) A description of the type of data used to program or train the automated decision tool; and (3) A description of how the automated decision tool was evaluated for validity and explainability before sale or licensing."

By requiring developers to provide to deployers AI systems documentation describing the type of data used to program or train the system, this bill could be in conflict with source code secrecy rules because developers could argue that it would force them to disclose their algorithms to deployers. In the 2023 session, bills [HB 5734](#) and [HB 6286](#) also proposed transparency requirements that could be at risk due to “digital trade” secrecy guarantees.

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