

Big Tech’s “Digital Trade” Agenda Threatens Vermont’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.

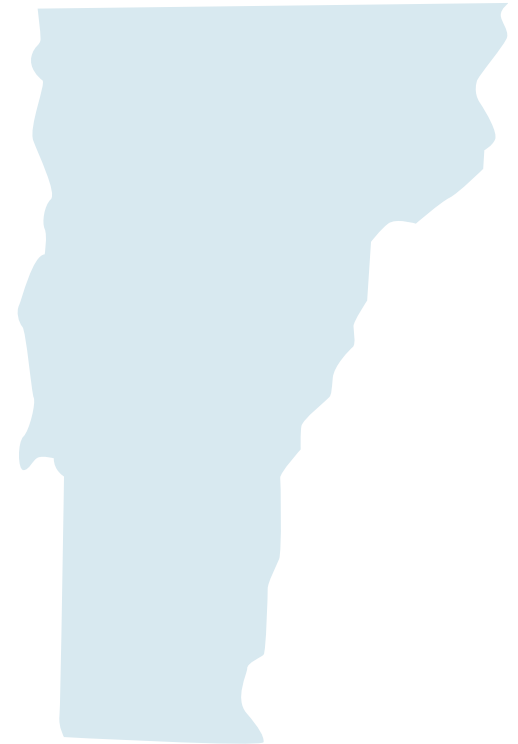
The surge in statehouse tech legislation shows that the American people—and their elected officials at every level—want action now. But few people realize that the very firms whose conduct led to this bipartisan response have a strategy to undermine tech regulation through a stealthy form of international 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.

Vermont 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 Vermont 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 Vermont policies relating to AI regulation and right to repair.



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

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 Vermont, [Act 132](#) came into effect in 2022. This act created a government agency to inventory algorithmic technologies used by the government, including information on their designs:

“(b) Inventory. The Agency of Digital Services shall conduct a review and make an inventory of all automated decision systems that are being developed, employed, or procured by State government. The inventory shall include the following for each automated decision system: (...)

(2) a description of the automated decision system’s general capabilities, including:

(A) reasonably foreseeable capabilities outside the scope of the agency’s proposed use; and

(B) whether the automated decision system is used or may be used for independent decision-making powers and the impact of those decisions on Vermont residents;

(3) the type or types of data inputs that the technology uses; how that data is generated, collected, and processed; and the type or types of data the automated decision system is reasonably likely to generate;”

By requiring agencies to create an inventory of automated decision systems, containing the categories of data the systems use to make determinations, AI developers could argue that this law requires them to disclose their algorithms. Other potentially affected legislation includes [HB 710 \(2024\)](#) and [HB 114 \(2023\)](#), which require developers and deployers of AI technologies to disclose information prior to their use.

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.

Vermont’s [2023 Fair Repair Act](#), which passed the House and is currently being considered in the Senate, is 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:

“(1) An original equipment manufacturer shall offer for sale or otherwise make available to an independent repair provider or owner the parts, tools, and documentation that the original equipment manufacturer offers for sale or otherwise makes available to an authorized repair provider.”

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. In 2024, Vermont lawmakers proposed the [Right to Repair Wheelchair Act](#), which would extend repair rights to powered wheelchairs and may also be challenged based on “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