

ALERT

State “Right to Repair” Patchwork Grows as Electronic Device Manufacturers Face New Compliance Deadlines

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On May 28, 2024, Colorado became the fifth state to adopt a “right to repair” law, with Governor Jared Polis signing HB 1121, the “Consumer Right to Repair Digital Electronic Equipment” bill. Colorado now joins California, Minnesota, Oregon, and New York to enact repair laws that apply to consumer devices. Currently, only the New York repair law is in effect – but the laws in California and Minnesota will become effective in just over a month on July 1, 2024, and the Colorado and Oregon laws will take effect in 2026 and 2027, respectively.

The laws share several similarities. Overall, they generally require electronic device manufacturers to make available parts, tools, and documentation to enable repair by independent repair providers and consumers. They also give the State Attorney General authority to investigate and bring actions for violations.

At the same time, each law has important differences that will be meaningful for applicability and compliance. For example, while each law applies to a wide range of electronic devices, such as personal computers and mobile phones, each also differs in the scope of coverage and exclusions. The laws also differ on the terms under which parts, tools, and documentation must be provided and the range of exceptions that might apply for safety, cybersecurity, and other purposes. Each law also includes some level of trade secret and intellectual property protections that manufacturers will need to closely consider.

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Overall, these laws will affect how manufacturers manage repair networks and device repair. The laws also come against the backdrop of the Federal Trade Commission prioritizing right-to-repair policy initiatives and bringing related actions under the Magnuson-Moss Warranty Act (MMWA). Manufacturers of consumer electronics and other electronic devices should review these requirements closely and monitor potential enforcement from State Attorneys General.

Below we provide more detail as companies evaluate compliance with these novel laws.

Scope. Each of these repair laws generally applies to original equipment manufacturers (OEMs) of digital electronic equipment. Covered devices include mobile phones, as well as personal computers, many IoT devices, and other consumer electronics. The exact scope of covered devices differs by state, and states include different exemptions, including exemptions for video game consoles, energy storage systems, medical devices, and motor vehicles. The laws also apply only to equipment first sold or used in the state after certain dates, and in some cases manufactured after certain dates, again with the scope varying by state.

Requirements. Under these repair laws, manufacturers are generally required to make available any necessary documentation, parts, and tools to independent repair providers and consumers on “fair and reasonable terms.” Each state’s definition of “fair and reasonable” varies. For example, California generally requires that costs and terms for providing parts be equivalent to the most favorable costs and terms the OEM offers to an authorized service provider (ASP), while New York requires that parts must be made available at “reasonable costs and terms.”

Requirements vary further depending on whether the OEM uses an ASP for repairs. For example, California provides that if a manufacturer does not use an ASP, “fair and reasonable terms” means at a price that reflects the actual cost to the manufacturer to prepare and deliver a part, tool, or documentation, exclusive of any research and development costs incurred.

Trade Secret and Other Exceptions. The state repair laws contain a number of exceptions. Notably, all five of these laws contain some level of protection against OEMs divulging trade secrets or licensing intellectual property to an owner or independent service provider, though the language of this exception differs across laws.

Additionally, the laws contain varying forms of security or safety exceptions. For example, the New York, California, Colorado, and Oregon laws provide that OEMs shall not be required to make available documentation, tools, and parts that would disable or override anti-theft security measures set by the owner without the owner’s authorization. Minnesota specifically provides that an OEM shall not be required to make available parts, documentation, or tools related to cybersecurity which could reasonably be used to compromise cybersecurity or cybersecurity equipment. On the safety front, New York further allows OEMs to offer parts, such as integrated batteries, to independent repair providers or owners pre-assembled with other parts rather than as individual components, where the individual components may pose a heightened safety risk if installed improperly.

Parts Pairing. Unlike the three laws that are or will be in effect this year, Oregon and Colorado also have adopted provisions dealing with "parts pairing," which the laws define as "a manufacturer's practice of using software to identify component parts through a unique identifier." Each restricts the use of "parts pairing" in specified circumstances, including in certain situations where it can inhibit the functioning of a replacement part or equipment component.

Enforcement. Each repair law gives the respective State's Attorney General enforcement authority, with specific penalties under a number of them. For example, in New York, the Attorney General may impose a civil penalty of not more than \$500 for each violation, while in Oregon, the Attorney General may impose a penalty of up to \$1,000 for each day the violation continues. The California law allows the Attorney General to impose liability in the amount of \$1,000 per day for the first violation, \$2,000 per day for the second violation, and \$5,000 per day for the third and subsequent violations.

Effective Dates:

- New York's law became effective **December 28, 2023**.
- The laws in Minnesota and California will become effective **July 1, 2024**.
- The new Colorado law will become effective **January 1, 2026**.
- Oregon's law will become effective **July 1, 2027**.

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