



May 16, 2023

The Honorable Anthony Portantino
Chair
Senate Appropriations Committee
California State Senate
State Capitol
Sacramento, CA 95814

Re: SB 244 and the right to repair:

Dear Chair Portantino

Consumer Reports¹ writes in support of SB 244, which would secure the right to repair for consumers across California. This important legislation will help ensure that consumers have the choice to fix their own products, if they can, or to have them fixed by a repair servicer of their choosing, including servicers independent of the manufacturer. In recent years, President Biden has recognized the importance of this right, by way of Executive Order,² and the Federal Trade Commission released a landmark report, *Nixing the Fix*, which explores how repair restrictions hurt consumers.³ SB 244 would secure these important rights for California's consumers, independent businesses, and economy by enacting them into law, and we urge your support for it.

¹ Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

² Consumer Reports: White House executive order is an important step that highlights need for greater competition in the U.S. marketplace (July 9, 2021), https://advocacy.consumerreports.org/press_release/consumer-reports-white-house-executive-order-is-an-important-step-that-highlights-need-for-greater-competition-in-the-u-s-marketplace/.

³ *Nixing the Fix: An FTC Report to Congress on Repair Restrictions*, Fed. Trade Comm'n (May 2021), https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf.

CR has long supported this “right to repair,” including by developing model legislation to help guide state legislators. SB 244 follows the model act we developed.⁴ We have also incorporated this principle into the Digital Standard, a set of best practices that Consumer Reports uses to evaluate the privacy and security of software, digital platforms and services, and internet-connected products, as well as to help influence the consumer-friendly design of these products.⁵ It is important to safeguard and maintain consumers’ ability to exercise their full rights of ownership over the electronics-enabled consumer products they purchase, including the right to repair them, and the right to resell them, even as technology evolves.⁶ Ensuring an effective right to repair will also expand consumer choice in the marketplace, save consumers money, and reduce waste.

Consumers, farmers, and others who have been able in the past to choose to fix their own cars, machinery, appliances, or other products, or to call on a trusted neighborhood repair shop or mechanic, know how important these ownership rights are.

But as products from smartphones and televisions to appliances and tractors become increasingly outfitted with computer software, it has become easier for manufacturers to interfere with these rights. It’s often difficult now for consumers to make simple repairs on their devices—even simple repairs such as changing a smartphone battery or replacing a cracked screen.⁷ Not only are the electronics frequently designed in a way to intentionally prevent easy repair, but manufacturers are restricting access to the basic diagnostic information, repair tools, and replacement parts needed to fix the products. Some manufacturers even put digital locks and disabling tripwires on devices to block third-party repair.⁸

These tactics force consumers to rely on the manufacturer, or the manufacturer’s handpicked servicer, to fix these products.⁹ The manufacturer is then free to charge whatever it

⁴ *Right to Repair Model State Law*, CONSUMER REPORTS (updated December 2, 2020), <https://advocacy.consumerreports.org/research/right-to-repair-model-state-law/>.

⁵ The Digital Standard, <https://www.thedigitalstandard.org/>.

⁶ E.g., Comments of Consumers Union To U.S. Copyright Office, Software-Enabled Consumer Products Study (March 18, 2016), <http://consumersunion.org/research/comments-to-the-u-s-copyright-office-regarding-software-enabled-consumer-products/>.

⁷ Bree Fowler, *iPhone Slowing Down? It Might be Time to Replace Your Battery*, Consumer Reports (Dec. 28, 2017), <https://www.consumerreports.org/smartphones/iphone-slowing-down-it-might-be-time-to-replace-your-battery/>; Becky Worley and Sarah Messer, *Cracked iPhone Screen Help Guide: How 5 Repair Options Stack Up*, ABCNews.com (May 1, 2017), <http://abcnews.go.com/Business/cracked-iphone-screen-guide-repair-options-stack/story?id=47089610>.

⁸ Jason Koebler, *Tractor-Hacking Farmers Are Leading a Revolt Against Big Tech's Repair Monopolies*, Motherboard (Feb. 18, 2018), https://motherboard.vice.com/en_us/article/kzp7ny/tractor-hacking-right-to-repair.

⁹ Emily Matchar, *The Fight for the Right to Repair*, Smithsonian (Jul. 13, 2016), <https://www.smithsonianmag.com/innovation/fight-right-repair-180959764/>.

wishes, or even to refuse to repair the product and force the consumer to throw it away and buy a new product.

Manufacturers and their representatives have worked to defeat Right to Repair legislation, often by using spurious arguments about safety and security.¹⁰ However, security-by-obscurity is an ineffective method to safeguarding systems. This bill would better ensure the safety of products, and without sacrificing consumer choice. Independent repair technicians would have to meet whatever certification requirements are set by state law, just like authorized repair technicians. This bill would ensure that they have the same access to proper instructions that are vetted for safety.

Finally, while SB 244 doesn't have any direct costs, we understand that the Department of Justice (DOJ) estimates up to \$409,000 in potential annual enforcement costs. To help mitigate those costs, any penalties collected in accordance with the law will be paid to whichever office—be it City Attorney, County Counsel, District Attorney, or Attorney General—brought the action. This is likely to significantly defray any potential net enforcement expenses for the DOJ. In previous versions of this legislation, costs to the state would have come through court costs from private right of action, and so the current enforcement scheme was added to address that concern.

We would be happy to answer any questions, and look forward to working with you and others to secure an effective right to repair for consumers.

Sincerely,

Laurel Lehman
Policy Analyst
Consumer Reports

cc: Members, Senate Appropriations Committee

¹⁰ Mikey Campbell, *Apple Lobbies Against 'Right to Repair' Proposal in Nebraska*, Apple Insider, (March 9, 2017), <http://appleinsider.com/articles/17/03/09/apple-lobbies-against-right-to-repair-proposal-in-nebraska>.