

# The Rise of the Right to Repair: Preparing for New Laws and More Enforcement

On July 21, 2021, the Federal Trade Commission (FTC) voted unanimously to increase enforcement against practices that limit consumer repair choices. This vote signaled the FTC's commitment to the Right to Repair. The Right to Repair represents the concept that consumers should be able to fix their products themselves or through independent service providers of their choice rather than being required to go back to the manufacturer or its selected provider for all repairs. This has become a hot topic, as manufacturers have been putting more restrictions on consumers' ability to repair their own products.

The FTC can already enforce some repair restrictions under the anti-tying rule in the Magnuson-Moss Warranty Act (MMWA).<sup>[1]</sup> And President Biden recently signed an executive order that encouraged the FTC to create more rules limiting manufacturers' ability to restrict repairs. Right to Repair legislation has been proposed in Congress, and in more than half of U.S. states. With Right to Repair gaining momentum nationwide, manufacturers should be aware of current laws and how they might be changing, and consumers should be aware of their rights.

## The MMWA Prohibits Restricting Consumers' Choice of Repair Services Through Tying

The MMWA's anti-tying rule prohibits tying warranty coverage to the use of a specific brand or provider for parts and services unless the warrantor offers them free of charge. A manufacturer could violate this rule by, for example, declaring that a warranty is invalid if the buyer doesn't pay for and use the manufacturer's designated replacement parts. A manufacturer can also violate the law by insisting that consumers obtain warranty service only by paying the manufacturer's service provider. Manufacturers can avoid this problem if the consumers are not charged for warranty parts or labor. But when consumers must pay, the anti-tying rules limit what manufacturers can and cannot demand concerning repairs.

## A Few States Have Limited Laws Against Repair Restrictions in Place

Several states also have laws addressing manufacturers' restrictions on buyers' Right to Repair. Rhode Island has a law requiring manufacturers to make

### POSTED:

Aug 11, 2021

### RELATED SERVICES:

[Commercial and Competition Law](#)

<https://www.reinhartlaw.com/services/commercial-and-competition-law>

### RELATED PEOPLE:

[Laura A. Brenner](#)

<https://www.reinhartlaw.com/people/laura-brenner>

[Troy A. Hilliard](#)

<https://www.reinhartlaw.com/people/troy-hilliard>



adequate service information and replacement parts available to independent service and repair shops.<sup>[2]</sup> There are similar laws in California for manufacturers of electronic appliances, and in Indiana for manufacturers of audio and visual entertainment products.<sup>[3]</sup> These laws prevent repair restrictions by making sure that independent providers, not just the manufacturer's agents, have the tools and information they need to fix the manufacturers' products.

## **New Right to Repair Legislation Would Target More Practices**

More than 25 states are currently considering Right to Repair legislation. The proposed laws could cover a broader range of practices that Right to Repair supporters say unfairly limit consumers' options. In a recent report to Congress, the FTC highlighted several of these types of practices, including:

- Designing products so only the manufacturer can repair them;
- Making products difficult to open or remove parts from;
- Making replacement parts and repair manuals unavailable; and
- Asserting overly broad intellectual property rights.<sup>[4]</sup>

Reinhart's Commercial & Competition Law Team can help you understand the Right to Repair and the laws affecting it. For product suppliers, we can help you prepare for possible changes in state and federal laws and increased enforcement by the FTC. For product purchasers, we can help you understand your rights. Please feel free to contact [Laura Brenner](#), [Troy Hilliard](#) or any member of the Commercial & Competition Law Team if you have a question about repair restrictions, the Magnuson-Moss Warranty Act or how your own practices might be affected by upcoming changes in the law.

<sup>[1]</sup> 15 U.S.C. §§ 2301-2312.

<sup>[2]</sup> R.I. Gen. Laws § 6A-2-329.

<sup>[3]</sup> Cal. Civ. Code § 1793.03; Ind. Code, § 26-2-6-2.

<sup>[4]</sup> *Nixing the Fix: An FTC Report to Congress on Repair Restrictions* (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](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)



*These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.*