

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

NINETEENTH CONGRESS
First Regular Session

House Bill No. 6284



Introduced by Representative PABLO JOHN F. GARCIA

EXPLANATORY NOTE

It is declared a policy in Republic Act No. 7394, also known as the “Consumer Act of the Philippines,” that the State shall promote the general welfare of the consumers. It is also enshrined in the Philippine Constitution that the State shall protect consumers from trade malpractices.¹

Digital electronic products such as smartphones and laptops have technical features that are not normally accessible to the consumers. However, manufacturers of electronic products have a limited obligation to release the information and tools needed to repair devices, with some even being reported of banning third parties from doing so.² Thus, when repairs on these devices are required, consumers are always at the mercy of manufacturers who leave them no choice but to avail of their high repair costs or transact with disadvantageous independent repair providers.

The current inaccessibility of repair also forces many consumers to either leave their products at their households or totally dispose of them, which contributes to the production of electronic waste in the Philippines. In 2019 alone, the country has produced 3.9 kilograms of electronic waste per capita or a total of 32,664.41 metric

¹ Const. § 9, art. XVI.

² Paul, K. (2011, August 2). The Guardian. Retrieved from The Guardian: <https://www.theguardian.com/technology/2021/aug/02/why-right-to-repair-matters-according-to-a-farmer-a-medical-worker-a-computer-store-owner>.

tons.³ This figure is projected to further increase with more people working from home and using electronic products due to the COVID-19 pandemic.

It is thus posited that giving consumers the right to repair their digital electronic products is necessary in the pursuit of the aforementioned State policies. This bill will empower consumers by allowing them to have the right set of tools and information to either repair their digital electronic products themselves or bring them to capable independent repair providers. The bill will also ensure the compliance of manufacturers through administrative and judicial remedies while also contributing in lessening electronic waste in the country.

In view of the foregoing, the immediate passage of this bill is sought.

A handwritten signature in black ink, appearing to read 'P. Garcia', is positioned above the printed name of the representative.

Rep. PABLO JOHN F. GARCIA
3rd District, Province of Cebu

³ EMB: NATIONAL POLICY, REGULATORY FRAMEWORK ALREADY IN PLACE FOR E-WASTE MNGT. (2020, October 29). Department of Environment and Natural Resources. <https://www.denr.gov.ph/index.php/news-events/press-releases/1918-emb-national-policy-regulatory-framework-already-in-place-for-e-waste-mngt>. This is a consequence of the substantial increase in the number of electronic and electronic equipment (EEE) of Filipinos, estimated to have produced a total of 39.3 million electronic products going obsolete and 20 million stored in houses from 1995 to 2010. See Alam, Zeba F. "The Assessment of the E-Waste Management Generated from Cellular Phones, Laptops, and Laptops/Personal Computers in the Philippines." Manila Journal of Science 9 (2016).

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AN ACT
PROMOTING THE RIGHT TO REPAIR DIGITAL ELECTRONIC PRODUCTS
IN THE PHILIPPINES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

Section 1. *Short Title* - This Act shall be known as the "*Electronic Right to Repair Act*."

Section 2. *Declaration of Policies* - The State shall adhere to the policy of protecting the interests of consumers, promoting their general welfare, and establishing standards of conduct for businesses and industries. Thus, the State shall expand consumer choice by allowing them to have the right set of information and tools to either repair their own products or provide the option for local repair businesses to do so. The State shall also protect consumers from possible trade and sales malpractices from manufacturers.

Section 3. *Definition of Terms*. - For the purposes of this Act, the following terms shall mean:

- (a) "Authorized repair provider" -
 - (i) A person licensed by an original equipment manufacturer to use a trade name, service mark, or related characteristic to offer repair services under the name of the original equipment manufacturer; or
 - (ii) A person contracted by an original equipment manufacturer to provide refurbishing services for products manufactured by the manufacturer.

- (b) "Embedded software" - also known as basic internal operating system, internal operating system, machine code, assembly code, root code, or microcode, means any programmable instructions provided on firmware delivered with equipment for equipment operation, including all relevant software updates made by the original equipment manufacturer.
- (c) "Digital electronic product" - a part or machine containing a microprocessor originally manufactured for distribution and sale in the country.
- (d) "Documentation" - manuals, schematic diagrams, reporting output, or service code descriptions provided to the authorized repair provider for the purposes of effecting repair.
- (e) "Fair and reasonable terms" - in determining whether a price is on fair and reasonable terms consideration may be given to relevant factors, including, but not limited to:
 - (1) the net cost to the authorized repair provider for similar parts obtained from original equipment manufacturers, less any discounts, rebates, or other incentive programs;
 - (2) the cost to the original equipment manufacturer for preparing and distributing the parts or product excluding any research and development costs incurred in designing and implementing, upgrading or altering the product, but including amortized capital costs for the preparation and distribution of the parts; and
 - (3) the price charged by other original equipment manufacturers for similar parts or products.
- (f) "Independent repair provider" - a person or entity operating that is:
 - (i) Not affiliated with an original equipment manufacturer or an original equipment manufacturer's authorized repair provider; and
 - (ii) Engaged in the diagnosis, service, maintenance, or repair of equipment: provided, that, an original equipment manufacturer shall be considered an independent repair provider if the original equipment manufacturer diagnoses, services, maintains, or repairs

equipment that is not manufactured by the original equipment manufacturer.

- (g) "Medical device" - equipment that is intended for use in the diagnosis, treatment, or prevention of disease in humans or animals.
- (h) "Original equipment manufacturer" - a person or entity who in the ordinary course of business sells or leases new equipment to any person and diagnoses, services, maintains, or repairs that equipment.
- (i) "Owner" - a person that owns or leases equipment that is purchased or used in the country.
- (j) "Part" or "service part" - any new or used component made available by an original equipment manufacturer to an authorized repair provider to repair equipment.
- (k) "Remote diagnosis" - any transfer of data relating to settings, controls, or location identification between equipment and a provider of repair services.
- (l) "Service parts" - replacement parts, either new or used, made available by the manufacturer to the authorized repair provider for the purposes of effecting repair.
- (m) "Trade secret" - anything tangible or intangible or electronically stored or kept which constitutes, represents, evidences, or records intellectual property including secret or confidentially held designs, processes, procedures, formulas, inventions or improvements, or secrets of confidentially held scientific, technical, merchandising, production, financial, business or management information, among others.

Section 4. Coverage. - Owners and independent repair providers shall be given the right to repair their own digital electronic products, including medical devices, by giving them proper information and tools from the original equipment manufacturers.

Section 5. Availability of Diagnostic and Repair Information. - Original equipment manufacturers shall make available all diagnostic and repair information, including repair technical updates, schematic diagrams, updates, corrections to embedded software, and safety and security patches to owners and independent repair providers of equipment manufactured, provided that they shall be offered:

(a) Free of charge or for no more than what the original equipment manufacturer would charge to make the same information available to an authorized repair provider; and

(b) In the same format that the original equipment manufacturer would use to make the same information available to an authorized repair provider.

Section 6. *Availability of Diagnostic and Repair Tools.* - Original equipment manufacturers shall make available for sale to owners and independent repair providers all diagnostic repair tools, incorporating the same diagnostic, repair, and remote diagnosis capabilities that the original equipment manufacturer makes available to its own repair or engineering staff or an authorized repair provider, upon fair and reasonable terms.

Section 7. *Documentation Format.* - Original equipment manufacturers shall provide diagnostic, service, or repair documentation in the standardized format only, unless the proprietary format includes diagnostic, service, or repair documentation or functionality that is not available in the standardized format.

Section 8. *Third-Party Providers.* - An original equipment manufacturer that provides diagnostic repair documentation to third party diagnostic tool manufacturers, diagnostics manufacturers, or service information publications shall be deemed to have fully satisfied its obligations under Sections 5 and 6, and shall not be responsible for the content and functionality of the diagnostic tools, diagnostics, or service information publications offered or sold by third-party manufacturers.

Section 9. *Security Functions.* - An original equipment manufacturer of equipment or parts sold or used in the country for security-related functions shall make diagnostic, service, and repair information necessary to reset a security-related electronic function from the information provided to owners and independent repair providers. An original equipment manufacturer may provide the information necessary to reset an immobilizer system or a security-related electronic module to owners and independent repair providers through an appropriate secure data release system.

Section 10. *Limitations.* - Nothing in this Act shall be construed to:

(a) Require an original equipment manufacturer to divulge a trade secret;

(b) Abrogate, interfere with, contradict, or alter the terms of any agreement between an authorized repair provider and an original equipment manufacturer, including the performance or provision of warranty or recall

repair work by an authorized repair provider on behalf of an original equipment manufacturer: provided, that, any provision of an agreement that waives, avoids, restricts, or limits an original equipment manufacturer's compliance with this Section shall be void;

- (c) Require an original equipment manufacturer or authorized repair provider to provide an owner or independent repair provider access to non-diagnostic and repair information provided by an original equipment manufacturer to an authorized repair provider pursuant to the terms of an authorizing agreement;
- (d) Require a manufacturer of a medical device to comply with any provision in this Act that conflicts with Republic Act No. 3720, otherwise known as the "Food, Drug, and Cosmetic Act," as amended; or
- (e) Avoid any warranty due to the consumer's exercise of the right to repair, including but not limited to resorting to independent repair providers.

Section 11. Failure of Original Equipment Manufacturer to Provide Diagnostic and Repair Information and Tools. - An independent repair provider or owner who believes that a manufacturer has failed to provide information, including documentation, updates to firmware, safety and security corrections, diagnostics, documentation, or any tool required by this Act shall notify the manufacturer in writing and give the manufacturer 30 days from receipt of the complaint to remedy the failure. If the manufacturer rectifies such a complaint within the remedial period, damages shall be limited to actual damages in any subsequent litigation.

If the manufacturer fails to respond to the notice provided, or if an independent repair provider or owner is not satisfied with the manufacturer's remedy, the independent repair provider or owner may file a complaint to the Department of Trade and Industry in accordance with the provisions of Title III, Chapter III or Title V, Chapter III of Republic Act No. 7394 or the "Consumer Act of the Philippines": *Provided, that,* fines shall not be less than PhP 100,000 but not more than PhP 1,000,000.00.

Section 12. Appropriations. - The funding requirements for the initial implementation of this Act shall be charged against the current year's budget of the Department of Trade and Industry. Thereafter, it shall be included in the annual General Appropriations Act.

Section 13. Implementing Rules and Regulations. - Within ninety (90) days from the effectivity of this Act, the Department of Trade and Industry, in consultation with

other concerned government agencies and stakeholders, shall formulate the rules and regulations implementing the provisions of this Act.

Section 14. *Separability Clause.* - If any provision of this Act is held unconstitutional or invalid, the remaining provisions thereof not affected thereby shall remain in full force and effect

Section 15. *Repealing Clause.* - All other laws, presidential decrees, executive orders and issuances, and rules and regulations which are inconsistent with this Act are hereby repealed or modified accordingly.

Section 16. *Effectivity.* - This Act shall take effect after fifteen (15) days following its publication in the Official Gazette or in any newspaper of general circulation.

Approved,