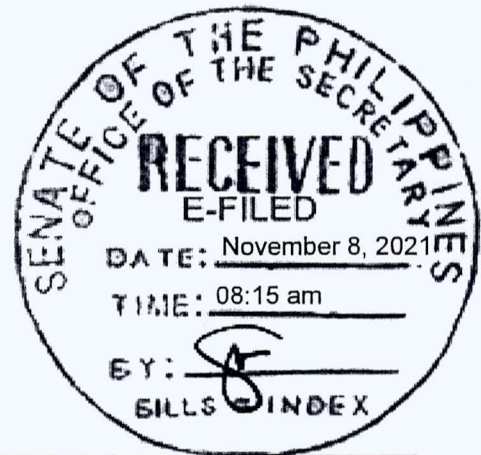


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)

SENATE

S. No. 2442



Introduced by SENATOR RAMON BONG REVILLA, JR.

**AN ACT
PROMOTING THE RIGHT TO REPAIR DIGITAL ELECTRONIC PRODUCTS,
AND APPROPRIATING FUNDS THEREFOR**

EXPLANATORY NOTE

With the onset of the New Normal, there is an increased demand and dependence on digital electronic products. Electronic gadgets such as mobile phones and tablets became necessities with the introduction of blended learning. Laptops and other office equipment became staples inside residences with the implementation of work-from-home setup. Not to mention the shift to online platforms of government transactions and private sector services due to mobility restrictions, health risks and imposition of quarantine protocols, there was inevitability of, if not absolute reliance on, digital electronic products to conduct our everyday business.

Unfortunately, the ubiquity of these devices in the modern age resulted to an increase in electronic waste or E-waste. The latest Global E-Waste Monitor reported that in 2019, 53.6 million metric tonnes of e-waste were generated around the world, with an average of 7.3 kg per capita. The number grew by 9.2 Mt since 2014 and is projected to grow to 74.7 Mt by 2030. In the same report, the Philippines recorded 425 kt of e-waste in 2019, and was identified as the third biggest generator of e-waste in the South-Eastern Asian region (next to Indonesia with 1.618 kt and Thailand with 621 kt)¹. In addition, the United Nations Environment Programme (UNEP) estimates

¹ http://ewastemonitor.info/wp-content/uploads/2020/12/GEM_2020_def_dec_2020-1.pdf

that only 20% of e-waste which contain hazardous and toxic components are properly collected, treated and recycled.

Among the reasons cited for the rapid accumulation of e-waste include higher consumption of electronic products, short life cycles, and few repair options. Sadly the limited repair options are perpetrated by the manufacturers who employ all sorts of strategies (from specially-made screws to system locks) to restrict third-party repair, which would often be more practical to the consumer.

This proposed legislation promotes and strengthens the consumers' right to repair by making available to them necessary information and tools and empowering them to repair, on their own or through independent repair centers, their purchased electronic equipment at reasonable costs at the most convenient means possible. For instance, far flung communities who use digital electronic equipment for online learning may not have ready access to authorized repair providers, and may encounter software and hardware restrictions if proper information and tools for repair are not made available.

This measure seeks to promote consumer welfare by allowing them to access and to select the best option from a range of repair and refurbishment services, and not be confined to just one. It also enables consumers to optimize the use of any digital electronic product and encourage long-term usage, without resorting to immediate disposal of items, thereby reducing wastage.

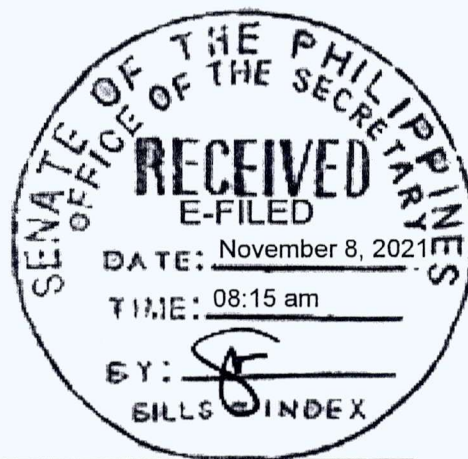
This policy is also in line with the attainment of Sustainable Development Goal (SDG) 12: Responsible Consumption and Production, which lists among its targets the substantial reduction of waste generation through prevention, reduction, recycling and reuse, and the adoption of sustainable practices among large and transnational companies.

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


RAMON BONG REVILLA, JR.

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

- 1 Section 1. *Short Title.* - This Act shall be known as the "*Right to Repair Act.*"
- 2 Sec. 2. *Declaration of Policy.* – The State shall adhere to the policy of protecting
- 3 the interests of consumers, promoting their general welfare, and establishing the
- 4 standards of conduct for businesses and industries. Thus, the State shall expand
- 5 consumer choice by allowing them to have the right set of information and tools to
- 6 either repair their own products or provide the option for local repair businesses to do
- 7 so. The State shall also protect the consumers from possible trade and sales
- 8 malpractices from manufacturers.
- 9 Sec. 3. *Definition of Terms.* – For purposes of this Act, the following terms shall
- 10 mean:
- 11 a) "Authorized repair provider" –
- 12 i) A person licensed by an original equipment manufacturer to use a
- 13 trade name, service mark, related characteristic to offer repair
- 14 services under the name of the original equipment manufacturer; or
- 15 ii) A person contracted by an original equipment manufacturer to provide
- 16 refurbishing services for products manufactured by the manufacturer.

- 1 b) "Embedded software" – also known as basic internal operating system,
2 internal operating system, machine code, assembly code, root code, or
3 microcode, means any programmable instructions provided on firmware
4 delivered with equipment for equipment operation, including all relevant
5 software updates made by the original equipment manufacturer.
- 6 c) "Digital electronic product" – a part or machine containing a microprocessor
7 originally manufactured for distribution and sale in the country.
- 8 d) "Documentation" – manuals, schematic diagrams, reporting output, or
9 service code description provided to the authorized repair provider for the
10 purposes of effecting repair.
- 11 e) "Fair and reasonable terms." – In determining whether a price is on fair
12 and reasonable terms, consideration may be given to relevant factors,
13 including, but not limited to:
- 14 i) The net cost to the authorized repair provider for similar parts
15 obtained from original equipment manufacturers, less any discounts,
16 rebates or other incentive programs;
- 17 ii) The cost to the original equipment manufacturer for preparing and
18 distributing the parts or product excluding any research and
19 development costs incurred in designing and implementing,
20 upgrading, or altering the product, but including amortized capital
21 costs for the preparation and distribution of the parts; and
- 22 iii) The price charged by other original equipment manufacturers for
23 similar parts or products.
- 24 f) "Independent repair provider" – a person operating who is:
- 25 i) Not affiliated with an original equipment manufacturer or an original
26 equipment manufacturer's authorized repair provider; and
- 27 ii) Engaged in the diagnosis, service, maintenance, or repair of
28 equipment; Provided, that an original equipment manufacturer shall
29 be considered an independent repair provider if the original
30 equipment manufacturer diagnoses, services, maintains, or repairs
31 equipment that is not manufactured by the original equipment
32 manufacturer.

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

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

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

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

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

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

9 Sec. 7. *Documentation Format.* – Original equipment manufacturers shall
10 provide diagnostic, service, or repair documentation in the standardized format only,
11 unless the proprietary format includes diagnostic, service, or repair documentation or
12 functionality that is not available in the standardized format.

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

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

26 Sec. 10. *Limitations.* – Nothing in this Act shall be construed to:

- 27 a) Require an original equipment manufacturer to divulge a trade secret;
28 b) Abrogate, interfere with, contradict, or alter the terms of any agreement
29 between an authorized repair provider and an original equipment
30 manufacturer, including the performance or provision of warranty or recall
31 repair work by an authorized repair provider on behalf of an original
32 equipment manufacturer; Provided, that any provision of an agreement

1 that waives, avoids, restricts, or limits an original equipment manufacturer's
2 compliance with this Section shall be void;

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

13 *Sec. 11. Failure of Original Equipment Manufacturer to Provide Diagnostic and*
14 *Repair Information and Tools.* – An owner or an independent repair provider who
15 believes that a manufacturer has failed to provide information, including
16 documentation, updates to firmware, safety and security corrections, diagnostics,
17 documentation, or a tool required by this Act shall notify the manufacturer in writing
18 and give the manufacturer thirty (30) days from receipt of the complaint to cure the
19 failure. If the manufacturer cures such a complaint within the cure period, damages
20 shall be limited to actual damages in any subsequent litigation.

21 If the manufacturer fails to respond to the notice provided, or if an owner or
22 an independent repair provider is not satisfied with the manufacturer's cure, the owner
23 or independent repair provider may file a complaint before the proper court. The
24 complaint shall include the following:

- 25 1) Written information conforming that the complainant has attempted to
26 acquire and use, through the then available standard support function
27 provided by the manufacturer all relevant diagnostics, tools, service parts,
28 documentation, and updates to embedded software, including
29 communication with customer assistance via the manufacturer's then
30 standard process, if made available by the manufacturer; and
31 2) Evidence of manufacturer notification in this Section.

1 It shall be penalized by imprisonment ranging from six (6) months to six (6)
2 years and a fine of not less than One hundred thousand pesos (Php 100,000.00) but
3 not more than One million pesos (Php 1,000,000.00) or both at the discretion of the
4 court.

5 If the offender is a corporation, the penalty may, at the discretion of the court,
6 be imposed upon such corporation and/or upon its directors, trustees, members,
7 officers, or employees responsible for the violation or indispensable to its commission.

8 The owner or independent repair provider may, however, elect to file a
9 complaint with the Department of Trade and industry in accordance with the
10 provisions of Title III, Chapter III or Title V, Chapter III of Republic Act No. 7394 or
11 the "Consumer Act of the Philippines," or such other proceeding as may be specified
12 in the implementing rules and regulations provided under Section 13 hereof; Provided,
13 That fines shall not be less than One hundred thousand pesos (Php 100,000.00) but
14 not more than One million pesos (Php 1,000,000.00).

15 Sec. 12. *Appropriations.* – The funding requirements for the initial
16 implementation of this Act shall be charged against the current year's budget of the
17 Department of Trade and Industry. Thereafter, it shall be included in the annual
18 General Appropriations Act.

19 Sec. 13. *Implementing Rules and Regulations.* – Within ninety (90) days from
20 the approval of this Act, the Department of Trade and Industry, in consultation with
21 other concerned government agencies and stakeholders, shall formulate the rules and
22 regulations implementing the provisions of this Act.

23 Sec. 14. *Separability Clause.* – If any provision or part hereof is held invalid or
24 unconstitutional, the remainder of the law or the provision or part not otherwise
25 affected shall remain valid and subsisting.

26 Sec. 15. *Repealing Clause.* – Any law, presidential decree or issuance, executive
27 order, letter of instruction, administrative order, rule, or regulation contrary to or
28 inconsistent with the provisions of this Act are hereby repealed, modified, or amended
29 accordingly.

30 Sec. 16. *Effectivity.* – This Act shall take effect fifteen (15) days after its
31 publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,