

**REPORT OF THE  
CHIEF LEGISLATIVE ANALYST**

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DATE: July 26, 2023

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso *Avak Keotahian - rg For* Council File No. 23-0002-S66  
Chief Legislative Analyst Assignment No: 23-06-0360

SUBJECT: Resolution to SUPPORT SB 244 (Eggman)

CLA RECOMMENDATION: Adopt Resolution (Raman – Yaroslavsky) to include in the City’s 2023-2024 State Legislative Program, support for SB 244 (Eggman), which would require the manufacturers of electronics or appliance products to make available to product owners and service and repair facilities the parts, tools, and service materials needed to diagnose, maintain, and repair their products.

SUMMARY

The Resolution (Raman – Yaroslavsky), introduced June 14, 2023, states that electronic waste (e-waste) is one of the fastest growing waste streams and Californians throw away an estimated 46,900 cell phones every day and discard 772,000 tons of e-waste yearly. The Resolution notes that many discarded devices could be used again, but not without the proper tools and information. The Resolution references a Federal Trade Commission (FTC) report which found that “[m]any consumer products have become harder to fix and maintain” because repairs tend to require “specialized tools, difficult-to-obtain parts, and access to proprietary diagnostic software.” The Resolution continues, stating that many consumer device and appliance manufacturers restrict consumer and independent repair shops’ access to such repair materials, instead providing them only to “authorized” repair networks, reducing competition and consumer choice and resulting in higher repair prices and more devices being scrapped instead of repaired. The Resolution referenced another report by the United States Public Interest Research Group (U.S. PIRG) Education Fund, that stated that repairing instead of replacing electronic products could save American households approximately \$382 each year, adding up to over \$5 billion in savings for Californians.

The Resolution further states that SB 244 (Eggman) would require the manufacturers of electronics or appliance products to make available to product owners and service and repair facilities the parts, tools, and service materials needed to diagnose, maintain, and repair their products. The Resolution notes that providing independent repair shops and product owners with the correct information and parts to make repairs efficiently will stimulate jobs within the communities where repairs are needed, reduce unnecessary e-waste from products with simple fixes, and make it easier and cheaper to get consumer electronics and appliances fixed.

Therefore, the Resolution requests that the City support SB 244 (Eggman), which would require the manufacturers of electronics or appliance products to make available to product owners and service and repair facilities the parts, tools, and service materials needed to diagnose, maintain, and repair their products.

## **BACKGROUND**

### **Report from the Federal Trade Commission (FTC)**

In May 2021, the FTC released a report, *Nixing the Fix: An FTC Report to Congress on Repair Restrictions*, which states that, “[m]any consumer products have become harder to fix and maintain. Repairs today often require specialized tools, difficult-to-obtain parts, and access to proprietary diagnostic software. Consumers whose products break then have limited choices.”

The report references long-held concern with repair restrictions in reference to Section 102(c) of the Magnuson-Moss Warranty Act (MMWA), which is the anti-tying provision that “prohibits a warrantor of a consumer product from conditioning its warranty on the consumer’s using any article or service which is identified by brand name unless the article or service is provided for free or the warrantor obtains a waiver from the” FTC. The report notes that, since the MMWA’s enactment, technological developments have introduced new challenges that warrant a reconsideration of whether the anti-tying provision has kept pace with the evolving consumer goods repair market. Even when a warranty does not explicitly require that repairs be performed by the original equipment manufacturer (OEM) using OEM parts, many manufacturers restrict independent repair and repair by consumers through:

- Product designs that complicate or prevent repair;
- Unavailability of parts and repair information;
- Designs that make independent repairs less safe;
- Policies or statements that steer consumers to manufacturer repair networks;
- Application of patent rights and enforcement of trademarks;
- Disparagement of non-OEM parts and independent repair;
- Software locks and firmware updates; or
- End User License Agreements.

The report further notes that manufacturers explain that these repair restrictions often arise from their desire to protect intellectual property rights and prevent injuries and other negative consequences resulting from improper repairs.

### **Report from the U.S. Public Interest Research Group (PIRG) Education Fund**

In April 2023, the U.S. PIRG Education Fund released a report, *Repair Saves Families Big: Americans are Churning Through Electronics, and It’s Not Cheap*, regarding the cost of electronic waste. Their “research shows that as of 2021, American households spend about \$1,767 purchasing new electronic products per year. Despite falling prices for many electronics, this is \$287 more than the estimate in [their] last report using 2019 data, a 19% increase in just two years.” The report points out that increasing digitalization increases more replacements of electronics.

The report continues to note the environmental toll that this problem creates. The report states that “[t]he average American family generates about 115 pounds of electronic waste each year, and nationally, the United States generates 6.9 million tons of electronic waste.” The report further states that “when we dispose of electronics, we’re adding toxic elements such as lead, mercury, and cadmium to our landfills.”

In terms of financial savings, the report states that “[r]epair could reduce household spending on electronics and appliances by 21.6 percent, which would save an average family approximately \$382 per year. This means that across 129 million national households, repair could save Americans a total of \$49.6 billion annually.”

### **SB 244 (Eggman)**

This bill requires manufacturers of an electronic or appliance product with a wholesale price to the retailer, or to others outside of direct retail sale, of not less than \$50 and not more than \$99.99 to make available to owners of the product, service repair facilities, and service dealers sufficient documentation and functional parts and tools, inclusive of any updates, on fair and reasonable terms in order to effect the diagnosis, maintenance, or repair of a product for at least three years after the last date a product model or type was manufactured, regardless of whether the three-year period exceeds the warranty period for the product. The bill also requires the same for every manufacturer of an electronic or appliance product with a wholesale price of \$100 or more, except that they are required to make the service literature and functional parts and tools available for at least seven years after the product model or type was manufactured, regardless of whether the seven-year period exceeds the warranty period for the product.

### **DEPARTMENTS NOTIFIED**

None

### **BILL STATUS**

01/25/23	Introduced. Referred to Senate Rules Committee
02/01/23	Referred to Senate Judiciary Committee
04/13/23	Re-referred to Senate Committee on Appropriations
05/30/23	Passed in Senate. Ordered to the Assembly
06/15/23	Referred to Assembly Committee on Privacy & Consumer Protection and Assembly Judiciary Committee
07/06/23	Re-referred to Assembly Committee on Appropriations

*CD Fields*  
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Christopher Fields  
Analyst

Attachment: 1. Resolution (Raman – Yaroslavsky)  
2. SB 244 (Eggman)

RESOLUTION RULES, ELECTIONS, INTERGOVERNMENTAL RELATIONS

WHEREAS, electronic waste (e-waste) is one of the fastest growing waste streams on the planet, and it is estimated that Californians throw away 46,900 cell phones every day and discard 772,000 tons of e-waste each year; and

WHEREAS, many discarded devices could be used again, but simple repairs are impossible without the proper tools and information; and

WHEREAS, the Federal Trade Commission (FTC) released a report, *Nixing the Fix: An FTC Report to Congress on Repair Restrictions*, which found that “[m]any consumer products have become harder to fix and maintain” because repairs tend to require “specialized tools, difficult-to-obtain parts, and access to proprietary diagnostic software;” and

WHEREAS, many consumer device and appliance manufacturers restrict consumer and independent repair shops’ access to such repair materials, instead providing them only to ‘authorized’ repair networks, reducing competition and consumer choice and resulting in higher repair prices and more devices being scrapped instead of repaired; and

WHEREAS, according to a recent report by the U.S. PIRG Education Fund, *Repair Saves Families Big: Americans Are Churning Through Electronics, and It’s Not Cheap*, repairing instead of replacing electronic products could save American households approximately \$382 each year, adding up to over \$5 billion in savings for Californians; and

WHEREAS, Senate Bill 244 (Eggman) would require the manufacturers of electronics or appliance products to make available to product owners and service and repair facilities the parts, tools, and service materials needed to diagnose, maintain, and repair their products; and

WHEREAS, providing independent repair shops and product owners with the correct information and parts to make repairs efficiently will stimulate jobs within the communities where repairs are needed, reduce unnecessary e-waste from products with simple fixes, and make it easier and cheaper to get consumer electronics and appliances fixed;

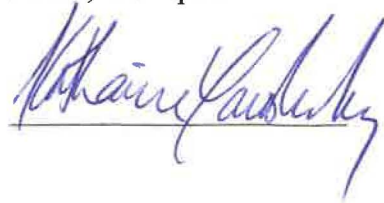
**NOW, THEREFORE, BE IT RESOLVED**, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2023-2024 State Legislative Program SUPPORT for SB 244 (Eggman), which would require the manufacturers of electronics or appliance products to make available to product owners and service and repair facilities the parts, tools, and service materials needed to diagnose, maintain, and repair their products.

PRESENTED BY:

  
NITHYA RAMAN

Councilmember, 4th District

SECONDED BY:



ORIGINAL

PK JUN 14 2023

AMENDED IN ASSEMBLY JUNE 29, 2023

AMENDED IN ASSEMBLY JUNE 21, 2023

AMENDED IN ASSEMBLY JUNE 15, 2023

AMENDED IN SENATE MAY 18, 2023

AMENDED IN SENATE APRIL 13, 2023

AMENDED IN SENATE MARCH 27, 2023

## SENATE BILL

**No. 244**

**Introduced by Senator Eggman**

**(Coauthors: Senators Dodd and Skinner)**

(Coauthors: Assembly Members Haney, Bennett, ~~and Wicks~~ *Wicks, Kalra, and Lowenthal*)

January 25, 2023

An act to amend and renumber the heading of Chapter 8.6 (commencing with Section 42490) of, and to add Chapter 8.6 (commencing with Section 42488) to, Part 3 of Division 30 of, the Public Resources Code, relating to solid waste management.

### LEGISLATIVE COUNSEL'S DIGEST

SB 244, as amended, Eggman. Right to Repair Act.

Existing law, the Song-Beverly Consumer Warranty Act, provides a comprehensive set of procedures for the enforcement of express and implied warranties on consumer goods, as defined. Under existing law, every manufacturer making an express warranty with respect to an electronic or appliance product, including televisions, radios, audio or video recording equipment, major home appliances, antennas, and rotators, with a wholesale price to the retailer of not less than \$50 nor

more than \$99.99 is required to make available to service and repair facilities sufficient service literature and functional parts to effect the repair of the product for at least 3 years after the date a product model or type was manufactured, regardless of whether the 3-year period exceeds the warranty period for the product. Existing law also requires every manufacturer making an express warranty with respect to an electronic or appliance product, as described above, with a wholesale price to the retailer of \$100 or more, to make available to service and repair facilities sufficient service literature and functional parts to effect the repair of the product for at least 7 years after the date a product model or type was manufactured, regardless of whether the 7-year period exceeds the warranty period for the product.

This bill would enact the Right to Repair Act. The bill would require, except as specified and regardless of whether any express warranty is made, the manufacturer of an above-described electronic or appliance product, in the above-described circumstances, and in those same circumstances but sold to others outside of direct retail sales, to make available, on fair and reasonable terms, to product owners, service and repair facilities, and service dealers, the means, as described, to effect the diagnosis, maintenance, or repair of the product, as provided. The bill would also require a service and repair facility or service dealer that is not an authorized repair provider, as defined, of a manufacturer to provide a written notice of that fact to any customer seeking repair of an electronic or appliance product before the repair facility or service dealer repairs the product, and to disclose if it uses replacement parts that are used or from a supplier that is not the manufacturer. The bill would also authorize a city, a county, a city and county, or the state to bring an action in superior court to impose civil penalties on a person or entity for violating the Right to Repair Act, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Chapter 8.6 (commencing with Section 42488)
- 2 is added to Part 3 of Division 30 of the Public Resources Code, to
- 3 read:

CHAPTER 8.6. RIGHT TO REPAIR ACT

42488. This chapter shall be known, and may be cited, as the Right to Repair Act.

42488.1. It is the intent of the Legislature to provide a fair marketplace for the repair of electronic and appliance products and to prohibit intentional barriers and limitations to third-party repair.

42488.2. (a) Notwithstanding any other law, every manufacturer of an electronic or appliance product with a wholesale price to the retailer, or to others outside of direct retail sale, of not less than fifty dollars (\$50) and not more than ninety-nine dollars and ninety-nine cents (\$99.99), shall make available to owners of the product, service and repair facilities, and service dealers, sufficient documentation and functional parts and tools, inclusive of any updates, on fair and reasonable terms, to effect the diagnosis, maintenance, or repair of a product for at least three years after the last date a product model or type was manufactured, regardless of whether the three-year period exceeds the warranty period for the product.

(b) Notwithstanding any other law, every manufacturer of an electronic or appliance product with a wholesale price to the retailer, or to others outside of direct retail sale, of one hundred dollars (\$100) or more, shall make available to owners of the product, service and repair facilities, and service dealers sufficient documentation and functional parts and tools, inclusive of any updates, on fair and reasonable terms, to effect the diagnosis, maintenance, or repair of a product for at least seven years after the last date a product model or type was manufactured, regardless of whether the seven-year period exceeds the warranty period for the product.

(c) Except as necessary to comply with this section, this section does not require a manufacturer to divulge a trade secret or license any intellectual property, including copyrights or patents.

(d) This section does not require the distribution of a product's source code.

(e) A service and repair facility or service dealer that is not an authorized repair provider of a manufacturer shall provide a written notice to any customer seeking repair of an electronic or appliance product before the repair facility or service dealer repairs the

1 product that informs the customer that it is not an authorized repair  
2 provider for the product, and shall disclose if it uses any used  
3 replacement parts or replacement parts provided by a supplier other  
4 than the manufacturer of the product.

5 (f) Nothing in this section shall be construed to require a  
6 manufacturer to make available special documentation, tools, and  
7 parts that would disable or override antitheft security measures set  
8 by the owner of the product without the owner's authorization.

9 (g) Nothing in this section shall be construed to require a  
10 manufacturer to sell service parts if the service parts are no longer  
11 provided by the manufacturer or made available to an authorized  
12 repair provider.

13 (h) *(1) No manufacturer or authorized repair provider shall*  
14 *be liable for any damage or injury caused to any electronic or*  
15 *appliance product, person, or property that occurs as a result of*  
16 *repair, diagnosis, maintenance, or modification performed by a*  
17 *service dealer or owner, including, but not limited to, any of the*  
18 *following:*

19 (A) *Any indirect, incidental, special, or consequential damages.*

20 (B) *Any loss of data, privacy, or profits.*

21 (C) *Any inability to use, or reduced functionality of, the*  
22 *electronic product or appliance.*

23 (2) *Paragraph (1) does not apply to a design defect or*  
24 *manufacturing flaw that existed prior to, or independent of, the*  
25 *repair, diagnosis, maintenance, or modification performed*  
26 *pursuant to this section.*

27 ~~(h)~~

28 (i) For purposes of this section, the following definitions apply:

29 (1) "Authorized repair provider" means an individual or business  
30 that is unaffiliated with a manufacturer and that has an arrangement  
31 with the manufacturer, for a definite or indefinite period, under  
32 which the manufacturer grants to the individual or business a  
33 license to use a trade name, service mark, or other proprietary  
34 identifier to offer diagnostic, maintenance, or repair services for  
35 electronic or appliance products under the name of the  
36 manufacturer or an arrangement with the manufacturer to offer  
37 diagnostic, maintenance, or repair services for electronic or  
38 appliance products on behalf of the manufacturer. A manufacturer  
39 that offers diagnostic, maintenance, or repair services for the  
40 manufacturer's electronic or appliance products is considered an



1 authorized repair provider with respect to the electronic or  
2 appliance products if the manufacturer does not have an  
3 arrangement described in this paragraph with an unaffiliated  
4 individual or business.

5 (2) “Documentation” means any electronic or appliance product  
6 manual, diagram, reporting output, service code description,  
7 schematic, or similar information that is provided by a  
8 manufacturer to an authorized repair provider, or that is for use by  
9 the manufacturer if the manufacturer does not have any authorized  
10 repair providers, for purposes of effecting the services of diagnosis,  
11 maintenance, or repair of the electronic or appliance product.

12 (3) (A) “Electronic or appliance product” or “product” means  
13 a product, manufactured for the first-time *time*, and first sold or  
14 used in ~~California~~ *California*, on or after July 1, 2021, described  
15 in subdivision (h), (i), (j), or (k) of Section 9801 of the Business  
16 and Professions Code for which the manufacturer makes available  
17 tools, parts, and documentation to authorized repair providers, and  
18 includes products described in those subdivisions that are sold to  
19 schools, businesses, local governments, or in other methods outside  
20 of direct retail sale.

21 (B) “Electronic or appliance product” or “product” does not  
22 include any of the following:

23 (i) Equipment or repair parts as defined in Chapter 28  
24 (commencing with Section 22900) of Division 8 of the Business  
25 and Professions Code.

26 (ii) A product or component of an “alarm system” as defined  
27 in subdivision (c) of Section 7590.1 of the Business and Professions  
28 ~~Code~~ *Code, including a fire protection system, as defined in the*  
29 *California Fire Code*.

30 (iii) A video game console.

31 (4) (A) “Fair and reasonable terms” means at costs and terms  
32 that are equivalent to the most favorable costs and terms under  
33 which the manufacturer offers the part, tool, or documentation to  
34 an authorized repair provider, accounting for any discount, rebate,  
35 convenient and timely means of delivery, means of enabling fully  
36 restored and updated functionality, rights of use, or other incentive  
37 or preference the manufacturer offers to an authorized repair  
38 provider.

39 (B) For documentation, including any relevant updates, “fair  
40 and reasonable terms” also means at no charge, except that, when

1 the documentation is requested in physical printed form, a charge  
2 may be included for the reasonable actual costs of preparing and  
3 sending the copy.

4 (C) “Fair and reasonable” also means tools shall be made  
5 available by the manufacturer at no charge and without imposing  
6 impediments to access or use of the tools to diagnose, maintain,  
7 or repair and enable full functionality of the product, or in a manner  
8 that impairs the efficient and cost-effective performance of any  
9 such diagnosis, maintenance, or repair, except that, when a tool is  
10 requested in physical form, a charge may be included for the  
11 reasonable, actual costs of preparing and sending the tool.

12 (D) If a manufacturer does not use an authorized repair provider,  
13 “fair and reasonable terms” means at a price that reflects the actual  
14 cost to the manufacturer to prepare and deliver the part, tool, or  
15 documentation, exclusive of any research and development costs  
16 incurred.

17 (5) “Part” means any replacement part or assembly of parts,  
18 either new or used, made available by a manufacturer of an  
19 electronic or appliance product to an authorized repair provider to  
20 facilitate the maintenance or repair of a product sold by the  
21 manufacturer.

22 (6) “Service dealer” has the same meaning as defined in Section  
23 9801 of the Business and Professions Code.

24 (7) “Tool” means any software program, hardware implement,  
25 or other apparatus made available by a manufacturer of an  
26 electronic or appliance product to an authorized repair provider  
27 for the diagnosis, maintenance, or repair of the product, including  
28 software or other mechanisms that provision, program, pair a part,  
29 provide or calibrate functionality, or perform any other function  
30 required to repair the product or part back to fully functional  
31 condition, including any updates.

32 (8) “Trade secret” has the same meaning as set forth in  
33 subdivision (d) of Section 3426.1 of the Civil Code, or paragraph  
34 (9) of subdivision (a) of Section 499c of the Penal Code.

35 (9) “Video game console” means a computing device, including  
36 its components and peripherals, that is primarily used by consumers  
37 for playing video games, such as a console machine, a handheld  
38 console device, or another device or system. “Video game console”  
39 does not include a general or an all-purpose computer, which

1 includes, but is not limited to, a desktop computer, laptop, tablet,  
2 or cell phone.

3 42488.3. (a) A city, a county, a city and county, or the state  
4 may bring an action in superior court to impose civil liability on  
5 a person or entity that knowingly violated this chapter, or  
6 reasonably should have known that it violated this chapter, in the  
7 amount of one thousand dollars (\$1,000) per day for the first  
8 violation of this chapter, two thousand dollars (\$2,000) per day  
9 for the second violation, and five thousand dollars (\$5,000) per  
10 day for the third and subsequent violations.

11 (b) Any civil penalties collected pursuant to subdivision (a)  
12 shall be paid to the office of the city attorney, county counsel,  
13 district attorney, or Attorney General, whichever office brought  
14 the action. The penalties collected pursuant to this section by the  
15 Attorney General ~~may be expended by the Attorney General, upon~~  
16 ~~appropriation by the Legislature, to enforce this chapter.~~ *shall be*  
17 *deposited into the Public Rights Law Enforcement Special Fund.*

18 SEC. 2. The heading of Chapter 8.6 (commencing with Section  
19 42490) of Part 3 of Division 30 of the Public Resources Code is  
20 amended and renumbered to read:

21  
22 CHAPTER 8.7. CELL PHONE RECYCLING ACT OF 2004  
23

24  
25 REVISIONS: \_\_\_\_\_

26 Heading—Line 3.  
27 \_\_\_\_\_