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Representative Joseph J. Solomon, Jr. Chair
Representative William W. O'Brien, First Vice Chair
Representative Justine A. Caldwell, Second Vice Chair
House Corporations Committee
Room 101 – State House
82 Smith Street
Providence, RI 02903

Re: CTA Testimony to H7180– Oppose

Chair LaMountain, Vice Chair McKenney, and Members of the House Corporations Committee,

On behalf of the Consumer Technology Association (CTA), thank you for the opportunity to provide testimony to House Bill 7180 (H7180), Digital Electronics Right to Repair Act. CTA respectfully opposes H7180.

CTA is the trade association representing the U.S. consumer technology industry. Our members are the world's leading innovators – from startups to global brands to retailers – helping support more than 18 million American consumer technology jobs. Our members include manufacturers of digital electronic equipment subject to the provisions of this legislation.

Patchwork Concerns

Given eight states have enacted repair legislation, CTA is concerned about a patchwork of varying repair requirements emerging across the United States. CTA supports a national repair approach that will ensure that consumers and independent repair providers receive the same or equivalent treatment as manufacturer-authorized repair providers for purposes of repairing consumer technology devices. CTA also stands ready to work with repair advocates to establish a national Memorandum of Understanding to facilitate repair nationally.

Enactment of varying state repair laws with different requirements and definitions subject to differing interpretations by state courts and regulators is a major concern for our industry. **We strongly encourage Rhode Island to not move forward with H7180 to avoid the proliferation of the patchwork of repair laws across the U.S.**

Concerns Specific to H7180

CTA has identified several areas of concern for members where the language in H7180 must be amended for better alignment across states or to ensure reasonable accommodation for industry that other states have recognized and put into law while ensuring both that repairs can be made by consumers and independent repair shops without substantially compromising safety and security concerns.

CTA recommends the following changes and welcomes additional discussion:

- **Requirements and Applicability:** CTA wants to ensure that independent repair providers are provided with the same parts, tools, and documentation that are provided to authorized repair providers. Additionally, CTA wants to ensure a forward-looking applicability of the requirements to provide business certainty to manufacturers. CTA suggests amending the language in 6-63-2(a) to the following:

For digital electronic equipment and parts for such equipment that are manufactured for the first time, and first sold or used in this state, an original equipment manufacturer shall make available to any independent repair provider and owner of digital electronic equipment manufactured by on behalf of, or sold by such original equipment manufacturer, on fair and reasonable terms, any documentation, parts, and tools, required for the diagnosis, maintenance, or repair of such digital electronic equipment and parts for this equipment, inclusive of any updates that the manufacturer makes available to an authorized repair provider. The documentation, parts and tools shall be made available either directly by such original equipment manufacturer or via an authorized repair provider or distributor.

CTA also wants to ensure that manufacturers are provided with options for compliance that align with their business practices. As such, CTA recommends inclusion of the following as a new 6-63-2(d):

This bill shall not apply if the manufacturer provides to the original purchaser either one of the following:

- (1) a reimbursement; or
- (2) equivalent or better, readily available replacement digital electronic equipment at a price that is no more than the total cost of the sum of the parts.

- **Product Exemptions for Digital Electronic Equipment:** Consistent with other repair laws, CTA recommends language exempting business to business (B2B) and business to government (B2G) sales including critical infrastructure equipment and commercial and industrial electronic equipment. These products are governed via contractual agreements between manufacturers and the purchasing entity, designed to meet and service the needs of those specific customers. Additionally, security concerns arise with providing parts, tools and documentation for critical infrastructure and commercial and industrial equipment outside the terms and conditions of a contractual relationship. The focus on H7180 should remain on consumer products only.
- **Limitations:** CTA wants to ensure that there are no requirements on divulging trade secrets. CTA suggests the following amendment to 6-63-5(a):

Nothing in this chapter shall be construed to require an original equipment manufacturer to divulge any trade secret to any owner or independent service provider, ~~except as necessary to perform diagnosis, maintenance, or repair on fair and reasonable terms.~~
- **Fair and Reasonable:** Manufacturers should only be required to ensure independent repair providers have access to the same documentation, parts, and tools that manufacturers provide to authorized repair providers. CTA strongly encourages 6-63-3(6) for “On fair and reasonable terms” to be amended as follows:

(i) At costs and terms that are equivalent to the most favorable costs and terms costs and terms under which an original equipment manufacturer offers to an authorized repair provider, accounting for any discount, rebate, convenient and timely means of delivery, means of enabling fully restored and updated functionality, rights of use, or other incentive and preference the original manufacturer offers to an authorized repair provider, or any additional cost, burden, or impediment the original equipment manufacturer imposes on an owner or independent repair provider

Additionally, standard business practice would warrant different pricing for different volumes of parts or products. CTA recommends striking the current language in (iv) and replacing with:

With respect to parts, that such parts are made available by the original equipment manufacturer, either directly or through an authorized distributor or repair provider, that parts may be provided as pre-assembled components in certain circumstances, at reasonable costs and on terms under which an OEM offers the part to an authorized repair provider and that are not conditioned on an arrangement described in section (1) of this bill.

- **Documentation Definition:** The definition of documentation should be amended to the following to ensure that manufacturers aren't required to divulge information that might otherwise be considered a trade secret.
"Documentation." A manual, maintenance procedures, functional and wiring diagrams, reporting output, service code description, ~~circuit board schematic, security code, password,~~ training material, troubleshooting information, list of required tools, parts list, or any similar kind of information, or its equivalent other guidance or information used in effecting the services of diagnosis, maintenance and repair of digital electronic equipment and made available by the manufacturer to an authorized repair provider for the purpose of effecting the services, diagnosis, maintenance, or repair of digital electronic equipment manufactured or sold by the manufacturer.
- **Parts Definition:** The definition of part should include one critical exemption:
"Part does not include printed circuit board assemblies that may allow device cloning in violation of 18 U.S.C. Section 1029 or other applicable law".
- **Consumer Rights:** As found in other state repair laws, consumers should be provided with basic information about the repair provider and parts provided by the independent repair provider, and such independent repair provider should be required to protect consumer data and recycle responsibly. If the main point of this legislation is to expand consumer rights, there should be a concurrent expansion of disclosure to consumers of who is doing the repair – which other states have recognized.

Conclusion:

Given the multiple concerns outlined above, we strongly encourage Rhode Island not to move forward with H7180 as written. Our concern is that variations in these nuanced provisions among state laws will be a field day for attorneys and move the center of energy away from expanding repair and into prolonged court battles. CTA has developed model legislation on repair in conjunction with TechNet. We would welcome the opportunity to discuss this language as a path forward for repair in Rhode Island or incorporate the changes CTA has proposed above.

Thank you again for the opportunity to testify. If you should have any questions, please do not hesitate to contact me at kreilly@cta.tech.

Sincerely,

A handwritten signature in black ink, appearing to read 'Katie Reilly', with a long horizontal stroke extending to the right.

Katie Reilly
VP, Environmental Affairs and Industry Sustainability
Consumer Technology Association