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The Honorable Michael Rodrigues, Chair
Senate Ways and Means
24 Beacon Street
Boston, MA 02133

Re: S.3178 CTA Opposition to Amendment #141, Consumer Right to Repair, and #164, Consumer Connected Devices

Chair Rodrigues, and Members of the Senate Ways and Means Committee,

On behalf of the Consumer Technology Association (CTA), thank you for the opportunity to provide written comments on Amendment #141, Consumer Right to Repair, and #164, Consumer Connected Devices. CTA respectfully opposes these amendments.

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 17 million American consumer technology jobs. Our members include manufacturers and retailers of the devices subject to the provisions of this legislation.

Amendment #141, Consumer Right to Repair

CTA has a number of concerns related to the proposed language in Amendment #141. These concerns build from CTA member experience across nine states that have enacted repair legislation. CTA remains concerned on the growing patchwork 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 caution the Commonwealth in moving forward with this amendment given misalignment in the current language with other existing state laws as well as industry's position on repair.

Specific to Amendment #141, CTA has the following concerns:

- **Enforcement must remain with the Attorney General.** CTA's top concern on this amendment relates to the potential cause significant harm to industry. The enforcement mechanism in Amendment #141 is private right of action (PRA) which enables consumers to file private lawsuits against manufacturers. No state repair law adopted to date allows for private right of action. Repair laws should focus on increasing access to repair options for consumers; not increasing litigation costs for manufacturers or putting companies at risk of inconsistent interpretations of laws across jurisdictions. Limited enforcement mechanisms should be given solely to the Massachusetts Attorney General in line with current repair laws across the U.S.

CTA recommends that Section 6 and Section 7 be struck in their entirety and replaced with the following language:

Section 6.(a) The Attorney General shall have exclusive authority to enforce the provisions of this bill. Subject to Section 6(b), the Attorney General may initiate an action in the name of the State to seek an injunction to restrain any violations of this bill, and seek to obtain any relief that the Attorney General is authorized to obtain under M.G.L. Ch.93A.

(b) Prior to initiating any action under this bill against any individual or business, the Attorney General shall provide the individual or business 30 days' written notice identifying the specific provisions of this bill the Attorney General alleges have been or are being violated. If within the 30-day period the individual or business cures the noticed violation and provides the Attorney General an express written statement that the alleged violations have been cured and that no such further violations shall occur, no action shall be initiated against the individual or business. Written notice by the Attorney General shall be delivered by certified mail and by first-class mail with proof of mailing. If an individual or business continues to violate this chapter following this cure period or breaches an express written statement provided to the Attorney General under this Section 6(b), the Attorney General may initiate an action as described in Section 6(a).

(c) Nothing in this bill shall be construed to create an individual or private right of action, or to provide the basis for, or be subject to, an individual or private right of action for violations of any parts of this bill, including under any other law.

- **Unrealistic implementation date for industry compliance.** The enforcement date must be at least one year from passage to ensure manufacturers have sufficient time to bring new products into compliance. Additionally, retroactive requirements on products that are already on the market, possibly for several years, should be removed. CTA recommends that Section 10 be removed and Section 11 be replaced with the following:

Section 11. This Act shall take effect one year after it shall have become a law and shall apply only to covered electronic devices that were manufactured for the first time, and first sold or used in the State, on or after the date that is one year after this bill becomes law.

- **Clarity needed on the definition of Consumer Electronic Device.** CTA appreciates the inclusion of language that states devices "generally used for personal, family or household purposes" are in scope. However, CTA's preference would be clearer language that states a covered electronic device "does not include any product sold under a business-to-government or business to-business contract that is not typically offered for sale directly by a retail seller." This definition provides a clear delineation on what is and isn't captured in the definition of covered electronic device enabling manufacturers to more easily comply.
- **Trade secret and security concerns on definition of "Documentation".** 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 or require the disclosure of codes or passwords that could present security concerns and should only ever be disclosed by the owner of the device.

"Documentation," any manual, diagram, reporting output, service code description, ~~schematic, security codes or passwords~~ or other information used in effecting the services of diagnosis, maintenance, or repair of consumer electronic devices.

- **Drafting error on the definition of “Owner”.** CTA assumes there is a drafting error on the definition of owner, and the definition should read as follows:

“Owner”; means an individual or business who ~~lawfully acquires~~ owns or leases a portable wireless covered electronic device purchased or used in the Commonwealth.

- **Fair and Reasonable Terms:** Fair and reasonable should mean “fair and reasonable”, not “most favorable costs and terms”. CTA recommends the removal of the phrase “most favorable” to ensure the integrity of the approach to fair and reasonable terms.

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 Massachusetts.

Amendment #164, Consumer Connected Devices

While CTA supports initiatives that empower consumers with greater transparency about the technology they purchase, Amendment #164 imposes requirements that will create compliance burdens for manufacturers, unacceptable litigation risk, and consumer confusion. CTA has the following concerns:

- **Private right of action creates unacceptable litigation risk.** As with Amendment #141, CTA opposes the inclusion of a private right of action in Amendment #164. Given the dynamic nature of software updates, security patches, and third-party dependencies, manufacturers can face litigation despite making good-faith compliance efforts. Support timelines can change due to evolving security threats, platform decisions by third parties, or other factors entirely outside a manufacturer’s control. Enforcement should rest exclusively with the Attorney General, consistent with CTA’s recommended language above.
- **Product packaging requirements will result in outdated consumer information.** Requiring support timeframe disclosures on product packaging is impractical. Packaging is produced months or years in advance of retail sale and cannot be updated in real time. Manufacturers diligently complying with the law may still deliver outdated information to consumers at the point of purchase. Website-based disclosure is more accurate, accessible, and updatable.
- **The minimum guaranteed support timeframe definition should allow for duration-based disclosure.** The definition of “minimum guaranteed support timeframe” should expressly allow manufacturers to define the support period as either a specific date or a specified period of time commencing with the purchase of the device. Requiring only a specific calendar date is impractical for many products, particularly where support timelines are tied to third-party platform lifecycles.
- **Six-month advance notice requirement is operationally unworkable.** Requiring manufacturers to notify consumers six months before a product’s end of support period is unrealistic. Manufacturers may not know that far in advance when support will end, particularly when those decisions are tied to third-party platform or application lifecycles outside their control. CTA strongly urges removal of the six-month advance notice requirement. Notice on or around the date of end of support is the appropriate standard.
- **Notification delivery should allow flexibility.** The amendment should require notification through one or more of the following methods rather than mandating all channels: in-product messaging through an associated application or user interface; email communications where the manufacturer possesses consumer contact data; or posting on the product-specific

webpage. Requiring all methods creates an unnecessary and uneven compliance burden and does not meaningfully improve consumer outcomes.

- **Scope is too broad.** The definition of “connected consumer product” as any device “capable of directly connecting to the Internet” captures devices where internet connectivity is entirely incidental to the product’s core function. CTA recommends narrowing the definition to cover only products whose core functionality, as marketed to consumers, depends on a connection to the internet.

Conclusion:

Given the multiple concerns outlined above for Amendment #141 and Amendment #164, we strongly encourage Massachusetts not to move forward with the proposed amendments. Our concern with Amendment #141 on repair is that variations in these nuanced provisions among state laws will be a field day for attorneys (especially with private right of action) and move the center of energy away from expanding repair and into prolonged court battles. On Amendment #164, the combination of private right of action, packaging-based disclosures, and a six-month advance notice requirement creates an unworkable compliance framework that will expose manufacturers to significant litigation risk without meaningfully improving consumer outcomes. Rather than a patchwork state mandate, we encourage Massachusetts to look to the U.S. Cyber Trust Mark as a more effective and harmonized path to consumer transparency on connected devices.

Thank you again for the opportunity to submit our concerns. Should you have any questions, please do not hesitate to contact us at kreilly@cta.tech and nmai@cta.tech.

Sincerely,

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