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February 3, 2021

To: The Honorable Delores G. Kelley  
Chair, Finance Committee

From: Steven M. Sakamoto-Wengel  
Consumer Protection Counsel for Regulation, Legislation and Policy

Re: Senate Bill 412 – Consumer Protection – Right to Repair (SUPPORT)

The Consumer Protection Division of the Office of the Attorney General submits the following written testimony in support of Senate Bill 412, sponsored by Senator Hester on behalf of the Joint Cybersecurity, Information Technology, and Biotechnology Committee, which would guarantee the Right to Repair electronics at the repair facility of the consumer's choosing.

Senate Bill 412 ensures that Maryland consumers needing repairs to their electronics are not restricted to "authorized" repair facilities but, instead, may obtain repairs from independent repair facilities as well, thereby lowering repair costs for Maryland consumers and providing competition in the marketplace. The bill requires original equipment manufacturers, such as Apple, to make available to independent repair shops and the owners of digital electronic equipment the necessary documentation, parts, tools or updates to information or embedded software so that they are able to perform repairs to the equipment.

Senate Bill 412 requires the manufacturer to make the tools and information necessary for such repairs available on "fair and reasonable" terms. The bill further provides that an original equipment manufacturer is not required to divulge trade secrets. The Division believes that the manufacturers' contentions that introducing competition in electronics repair will harm consumers' privacy and security is without foundation. There is no reason to believe that repairs made by an independent repair facility would put consumers' data at risk any more than repairs at an authorized repair facility. Further, restrictions on the ability to repair electronics results in increased disposal of such items, exacerbating problems of electronic waste in the environment.

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The manufacturers' arguments against allowing independent repair shops to repair electronics are similar to those previously made by automobile manufacturers who opposed allowing consumers to have their cars repaired at the repair facility of their choice without voiding the vehicle warranty. After Massachusetts passed an automotive Right to Repair law and soon thereafter, automobile manufacturers agreed to provide the tools and instructions necessary for independent repair shops to repair vehicles, resulting in more repair options and lower repair costs for consumers. There is no reason why electronics should be treated differently.

The opponents of Right to Repair legislation raise concerns about frivolous class action lawsuits. However, individuals bringing private actions under the Consumer Protection Act must show actual damages as a result of a violation. Maryland's Consumer Protection Act provides neither statutory nor punitive damages in a private action. And the law allows for attorneys' fees to be awarded in the event that an action is deemed to be frivolous.

For these reasons, we ask that the Finance Committee return a favorable report on this bill.

cc: The Honorable Katie Hester  
Members, Finance Committee