



January 15, 2019

The Honorable Roxann L. Robinson
Chair, House Science and Technology Committee
Pocahontas Building, Room W435
900 East Main Street
Richmond, Virginia 23219

Subject: HB 1754 – Electronic Products Manufacturers Opposition

Dear Chair Robinson,

On behalf of the hundreds of manufacturers and businesses our organizations represent, we express our concerns with HB 1754, legislation that would prohibit original equipment manufacturers (OEMs) of digital devices from deactivating embedded software in the digital device or altering embedded software to substantially alter the functioning of the digital device as a response to it being repaired by an independent repair provider. This legislation would lead to consumer harm, apply to a broad scope of products, and would likely violate federal copyright law.

The Science and Technology Committee rejected a similar version of this bill last session, and since that time, no state has passed legislation like HB 1754. We strongly urge the Committee to again not move forward with this bill.

Our organizations represent a broad spectrum of manufacturers of consumer electronics, home appliance, HVACR, security equipment, medical devices, toys, and other connected electronic products that stand behind the quality of their products. Our members develop products and services for a wide range of commercial, government, and consumer users that are often highly regulated. Their customers depend on these products to operate safely, securely, and accurately, whether they are being used to support banking and commercial transactions, transmit and store sensitive personal data, support industrial operations, medical applications, or deliver entertainment and other services. As businesses, government agencies, and consumers continue to increase their reliance on connected devices to help deliver efficiency, convenience, and services, it is important to remain vigilant and focused on mitigating the risks associated with the safe and secure operation of those products.

HB 1754 raises the serious potential for harm to Virginia residents. Many of the products likely captured by the bill’s definition for “digital devices,” including smartphones, tablets, drones, home appliances, video game consoles, televisions, or medical devices, are highly-integrated devices, and not intended to be dismantled unless done so by properly trained professionals. Improper handling of high-risk components or alterations threatens consumer safety and may lead to serious injuries, including burns, blindness, and death. If an independent repair provider makes a change and the digital device recognizes it as a vulnerability, that could put someone’s life at risk and the manufacturer would feel compelled to patch the change to repair the vulnerability and return the safety of the device. The OEMs efforts to fix the vulnerability would be at odds with the provisions set forth in the bill.

Additionally, the lock out measures prohibited by HB 1754 are designed to protect the owners of devices from malware and compromised software. OEMs have set up their repair structures to ensure that devices of all kinds continue to work as they should. Alterations, whether changing code, replacing a battery, or attempting to enhance a specific aspect of the device can have significant negative impacts not only on the individual device being altered, but an entire network of connected devices.

Furthermore, the lock out measures are also designed to discourage theft, such as locking a smartphone when stolen. If enacted, OEMs may not be able to discern between the legitimate owner or a thief trying to unlock the device.

HB 1754 also raises substantial conflict with federal copyright law as it essentially makes it illegal for a software developer to make changes (as used in the bill, “deactivate” or “alter”) to its software intellectual property. This would very likely result in a copyright preemption suit.

Lastly, the bill’s definition of “independent repair provider” is overly broad, and would include virtually anyone. It would be impossible for a manufacturer to ascertain the location of the independent repair provider. This legislation places no requirements on the independent repair provider to ensure they have the training, expertise, or knowledge to repair the digital device, let alone if they even have a general business license. By not including these requirements, the bill would encourage bad actors to masquerade as independent repair providers to take advantage of unsuspecting Virginia residents.

HB 1754 would lead to many unintended consequences harming consumers and businesses alike. For the reasons stated above, we must strongly oppose this bill.

Sincerely,

Northern Virginia Technology Council (NVTC)
Virginia Chamber of Commerce
Virginia Manufacturers Association
Association of Home Appliance Manufacturers (AHAM)
Computing Technology Industry Association (CompTIA)
Consumer Technology Association (CTA)
CTIA – The Wireless Association
Entertainment Software Association (ESA)

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NetChoice
Security Industry Association (SIA)
TechNet

Cc: Members of the House Science and Technology Committee
The Honorable Lee Carter