

February 3, 2021

-- TESTIMONY --

Maryland Senate Finance Committee

re: Senate Bill 412 - Consumer Protection; Right to Repair

Chair Kelley, Vice-Chair Feldman, members of the committee

My name is Daniel J. Mustico and I represent the Alexandria-VA based Outdoor Power Equipment Institute, as its Vice President of Government & Market Affairs. I am also a proud resident of Montgomery County Maryland.

I appear today to express our industry's opposition to SB 412, on behalf of our association's 100+ U.S. manufacturer members. We are also members of the "Coalition Opposed to Illegal Tampering" which has expressed its opposition to this legislation as well.

OPEI is an international trade association representing the manufacturers and their suppliers of non-road gasoline powered engines, personal transport & utility vehicles, golf cars and consumer and commercial outdoor power equipment ("OPE"). OPE includes lawnmowers, garden tractors, trimmers, edgers, chain saws, snow throwers, tillers, leaf blowers and other related products. OPEI member companies and their suppliers contribute approximately \$16 billion to US GDP each year. OPEI members currently distribute their products across all 50 states, through a diversity of retail outlets including independent dealers who are authorized to sell and service their equipment through a contractual arrangement.

Representing Maryland in our diverse OEM membership are Stanley Black & Decker based in Towson and Wright Manufacturing based in Frederick. Across the state, our industry's diversity of products are both ubiquitous and essential to Marylander households and businesses. Nationwide there are approximately 250 million legacy products in use and new shipments of 30 million products annually.

Today, I want to focus my remarks on two fundamental concerns.

First, SB 412 **RISKS IMPAIRMENT OF PRODUCT SAFETY CONTROLS AND CREATES THE POTENTIAL FOR UNSAFE PRODUCTS.** The improper modification of software risks making OPE products non-compliant with applicable safety standards. A primary example is the potential for impairment of Operator Presence Controls (OPC) which protect the operator from injury by disabling powered components when an operator is not actively controlling the equipment. Other examples common to industry products are machine controls for product power & speed, direction, steering, and braking; as well as the attempted modification of or tampering with lithium-ion batteries which are not amenable to any form of repair.

Second, SB 412 **RISKS IMPAIRMENT OF PRODUCT EMISSION CONTROLS AND VIOLATION OF FEDERAL LAWS.** Where applicable, OPE is subject and compliant to product air emission regulations, which is governed by the machine's electronic / software controls. SB 412 risks potential product modifications and/or tampering which compromises air emission controls and compliance with the law.

In conclusion, our members and today's marketplace effectively provide for the service needs of OPE users, making SB 412 unnecessary and counterproductive for our industry, our retailers and dealers, and ultimately our customers. I have attached to my submitted testimony further details on many of my summary points today, as well as information on where OPEI provides public-facing education on this important subject.

I appreciated the opportunity to address the committee today. Thank you.

Outdoor Power Equipment Institute

WHY Outdoor Power Equipment (OPE) Manufacturers OPPOSE “Right to Repair” Legislation

State legislation is overly broad AND confuses the “Right to Repair” with improper “Right to Modify”. The OPE industry is committed to the consumer’s right to repair and has serious concerns with the unintended consequences of this legislation as currently written.

WHO WE ARE, AND IMPORTANT UNIQUE ASPECTS OF THE OPE INDUSTRY:

- \$16 billion U.S. industry;
- 105 U.S. manufacturer members;
- U.S. OPE industry employs 150,000 workers;
- OPE is manufactured with a diversity of power sources (e.g. gas, diesel, battery, AC);
- Examples include lawn mowers, snow throwers, chain saws, generators and more;
- All OPE manufactured today relies on electronics / software code for various functions;
- Product use is ubiquitous in American households and businesses of all sizes, totaling approximately 250 million legacy products in use and new shipments of 30 million products annually;
- Product offerings are increasingly electrifying with lithium-ion battery technology;
- Different from other products, many types of OPE have significant service lives and markets for re-use, re-manufacture, and recycling;
- OPE is sold and serviced (when applicable) through a diversity of channels including dealers, retailers, and e-commerce;
- Serviceability of products is diverse, as is price, and service life;
- Industry has a long history of consumer safety in-part through the development of safety standards and engagement with government.

WHY “RIGHT TO REPAIR” LEGISLATION IS THE WRONG APPROACH, FAILS TO SERVE CONSUMERS AND HARMS MANUFACTURERS:

- OPE maintenance, diagnostic, and repair needs cannot be equated with other equipment and products such as consumer electronics;
- Broad scope legislation is impractical for the OPE industry as products are significantly diverse according to price, service life, retail channel, and serviceability;
- For products with significant service life, improper/faulty repair and/or modification can negatively impact the re-sale value of the product;
- Improper/faulty repair and/or modification can void the product’s warranty;
- OPE manufacturers already provide tools necessary for the proper diagnosis, maintenance and repair of products, where applicable;
- In some cases, legislation may infringe upon OEM intellectual property protections;
- In cases where additional maintenance, diagnostic, and repair tools are still required or preferred for applicable products, effective 2023 manufacturers of residential and commercial lawn & garden equipment will offer such additional resources for purchase [for information see www.opei.org/right-repair-solutions/].



WHY “RIGHT TO REPAIR” LEGISLATION RISKS IMPAIRMENT OF PRODUCT SAFETY CONTROLS AND CREATES POTENTIAL FOR UNSAFE PRODUCTS:

- Improper modification of software risks making products non-compliant with applicable safety standards;
- Potential to impair Operator Presence Controls (OPC) which protect against injury by disabling powered components when an operator is not actively controlling equipment;
- Potential to impair all applicable machine controls including those for product power & speed, direction, steering, and braking;
- Potential to expose OPE users to unsafe engine emission levels due to improper emission control modification;
- Where applicable to OPE, lithium-ion batteries are not amenable to any form of repair.

WHY “RIGHT TO REPAIR” LEGISLATION RISKS IMPAIRMENT OF PRODUCT EMISSION CONTROLS AND VIOLATION OF FEDERAL LAWS:

- Where applicable, OPE is subject and compliant to product air emission regulations, which is governed by the machine’s electronic / software controls. “Right to Repair” legislation risks potential product modifications which compromise air emissions and compliance with the law;
- “Right to Repair” legislation potentially inhibits federal jurisdiction over the regulation of engine emissions and the protection of OEM intellectual property rights.

Learn more at www.opei.org/right-repair-solutions/