

Outdoor Power Equipment Institute

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transmitted via e-mail: kramhinsdale@leg.state.vt.us; aclarkson@leg.state.vt.us;
mgulick@leg.state.vt.us; rbrock@leg.state.vt.us; acummings@leg.state.vt.us;
wharrison@leg.state.vt.us; smoore@leg.state.vt.us

The Honorable (Senator) Kesha Ram Hinsdale
Chair, Committee on Economic Development, Housing and General Affairs
Vermont State Senate
115 State Street
Montpelier, VT 05633-5301

The Honorable (Senator) Alison Clarkson
Vice-Chair, Committee on Economic Development, Housing and General Affairs
Vermont State Senate
115 State Street
Montpelier, VT 05633-5301

re: Opposition to VT S. 46 – An Act relating to the Vermont Fair Repair Act

Dear Chair Hinsdale and Vice-Chair Clarkson:

I write on behalf of our member companies to express our opposition to S. 46 as it is the wrong approach for outdoor power equipment and creates the potential for harm to Vermont's consumers and businesses alike.

If this legislation was to move forward, in the alternative, OPEI recommends that it be amended to include the non-road exemption language [attached] proposed by the collective industries of the *Coalition Opposed to Illegal Tampering*.

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.

Our concern with S. 46 is the potential it would create for the improper modification of and/or tampering with the safety and emission controls of outdoor power equipment, rather than addressing legitimate repair needs. I have attached further details about the OPE industry, including its effective approach to product repair & service, and details about the undue risks created by this legislation.

Thank you for the consideration of these comments, and I would be happy to address any questions you might have.



Best regards,



Daniel J. Mustico
Senior Vice President, Government & Market Affairs
dmustico@opei.org

cc: Members of the Senate Committee on Economic Development, Housing and General Affairs

attachments: 1) non-road exemption language, 2) detail information on concerns with S. 46

Non-Road Exemption Language

Manufacturers, distributors, importers or dealers of all off-road (non-road) equipment, including without limitation, farm and utility tractors, farm implements, farm machinery, forestry equipment, industrial equipment, utility equipment, construction equipment, compact construction equipment, mining equipment, turf, yard and garden equipment, outdoor power equipment (including portable generators), marine, all-terrain sports and recreational vehicles (including racing vehicles), stand-alone or integrated stationary or mobile internal combustion engines, other power sources, (including without limitation, generator sets, electric/battery and fuel cell power), power tools, and any tools, technology, attachments, accessories, components and repair parts for any of the foregoing.

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

Current legislation is overly broad with unintended consequences for consumers of outdoor power equipment (“OPE”). The OPE industry is instead committed to the consumer’s right to repair where it does not risk modifications to products which compromise consumer safety, product performance, and environmental protection.

- Modification is not repair. Modifications are outside the scope of recommendations for repair made by the manufacturer.
- Providing access to embedded software may result in modifications, not repair.

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

- \$16 billion U.S. industry
- 110 U.S. manufacturer members
- U.S. OPE industry employs 150,000 workers
- OPE includes: lawn mowers, snow throwers, chain saws, generators and more.
- OPE product use is ubiquitous in American households and businesses of all sizes, totaling approximately 250 million legacy products in use and new shipments of nearly 40 million products annually.
- OPE industry has a long history of consumer safety and environmental protection through the development of safety standards and engagement with government, including compliance with all regulations.

ABOUT OPE PRODUCTS

- Most OPE manufactured today relies on electronics and software code for various functions – including safety and environmental compliance.
- OPE product offerings are increasingly electrifying with lithium-ion battery technology – this results in the necessary use of software to control safety and operation of the machines.
- Depending on the type of power source of the OPE (e.g., gas, diesel, battery, AC), the proposed legislation can create very unique risks of product modification to products, whether intentional or not.
- Different from many of the other products impacted by this broad scope legislation, many types of OPE have significant service lives and markets for re-use, re-manufacture, and recycling.
- For OPE with shorter service lives, serviceability options are diverse and based on manufacturer consideration of price, service life, potential for consumer repair, and the complexity of the anticipated repairs.
- To effectively provide for these diverse repair needs, OPE is serviced (when applicable) through a diversity of channels including independent authorized dealers, independent service providers, and retailers.
- OPE manufacturers already provide tools necessary for the proper diagnosis, maintenance and repair of products, where safe and applicable.
- 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 IS THE WRONG APPROACH, AND FAILS TO SERVE CONSUMERS AND HARMS MANUFACTURERS

- The legislation creates risks of improper repair and modification, whether intentional or not, which poses risks to consumer safety, product performance, and environmental protection.
- 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, potential for consumer repair and the complexity of anticipated repairs.



- For products with significant service life, improper/faulty repair and/or modification can shorten the service life and/or negatively impact the re-sale value of the product.
- Improper/faulty repair and/or modification can void the product’s warranty.
- In some cases, legislation may infringe upon OEM intellectual property protections provided for under U.S. Federal law. Examples of areas where preemptive federal law may apply are copyright¹, trade secrets², fraud and abuse³, and air emission regulations⁴.

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

- Improper modification of software or hardware risks making products non-compliant with applicable safety standards, and as such unsafe. For example:
 - Modification creates the potential to impair Operator Presence Controls (OPC) which protect against injury by disabling powered components when an operator is not actively controlling equipment.
 - The integrity of the OPC of consumer pedestrian-controlled lawnmowers is required under law by a federal standard (U.S. Consumer Product Safety Commission)⁵.
 - Modifications to other controls of OPE may impair control mechanisms for speed, direction, steering, and braking.
- These safety risks apply not only to the OPE user, but commercial workplace employees and bystanders including vulnerable pedestrians where products are used in public settings for both residential and commercial purposes.
- Modifications may also result in the potential to expose OPE users to unsafe engine emission levels of carbon monoxide due to improper emission control modification.
- Where applicable to OPE, lithium-ion batteries are not amenable to any form of repair. For more information on batteries and their chargers see www.opei.org/battery-basics/.

WHY “RIGHT TO REPAIR” LEGISLATION RISKS IMPAIRMENT OF PRODUCT EMISSION CONTROLS, ENVIRONMENTAL HARM 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 (and state where applicable) jurisdiction over the regulation of engine emissions.
- The legislation further inhibits federal (and state where applicable) statutory anti-tampering provisions and may infringe upon protections of OEM intellectual property rights.
- Also where applicable (for battery-powered OPE), the legislation may inhibit federal (and state where applicable) jurisdiction over the regulation of battery and battery charger efficiency. For more information on batteries and their chargers see www.opei.org/battery-basics/.

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

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¹ The Copyright Act and Digital Millennium Copyright Act (DMCA)

² Defend Trade Secrets Act (DTSA)

³ Computer Fraud and Abuse Act (CFAA)

⁴ Clean Air Act (CAA)

⁵ U.S. Code of Federal Regulations, Part 1205, Safety Standard for Walk-Behind Power Lawn Mowers