

January 22, 2019

The Honorable Phil Boyle
814 Legislative Office Building
Albany, NY 12247
Via email: pboyle@nysenate.gov

Re: OPEI opposition to NY SB 710

Dear Senator Boyle:

The Outdoor Power Equipment Institute (“OPEI”) writes in opposition to SB 710 which would inappropriately provide access to sophisticated coding and diagnostic information for the repair and modification of “equipment”.

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, generators, power washers, 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.

The subject legislation defines its scope [equipment] such that it would place new adverse requirements on virtually all of our members and the overwhelming majority of the products they manufacture. Our members make considerable investments in developing cutting-edge technology, which often includes electronic functions and controls reliant upon embedded software for proper operation, diagnostics, and repair. To support such technology and customer needs, our members likewise make considerable investments in training authorized technicians to correctly analyze and address service issues. The safe and efficient operation of this equipment is of the utmost importance to our members, for the safety and well-being of their customers. In reality, almost all service information regarding parts, services and best practices for equipment is available to consumers – often at no cost to the consumer. With these pro-consumer provisions already in place, this legislation will only create anti-consumer impacts through the damage imposed upon products, their reduced re-sale value, and the potential for their reduced and unsafe performance – all as a result of improper repairs.

If adopted, this legislation would turn back long-standing and necessary protections of information necessary for digital repair, with significant potential consequences for the manufacturers. Further, this legislation would grant compulsory licenses to intellectual property without compensation to the owners (manufacturers). It is important to consider that copyright statutes, including the Digital Millennium Copyright Act (DMCA), are under exclusive *federal* jurisdiction and therefore cannot be altered by state law. The license to copyrighted material (and technological protections of), such as the software in this case, is governed exclusively by federal law and is subject to federal preemption.

In the case of emission controls, protected access to embedded software and emission control systems is necessary to assure that products are not improperly repaired or altered in ways which cause emissions to exceed legal limits. Service to emission related components should be reserved for trained experts. EPA

regulations¹ require emission control parameters are sealed or otherwise not accessible using ordinary tools to prohibit tampering with the emission control system.

Other examples of the adverse consequences of this legislation, impacting manufacturers and in many cases consumers, are:

- a.** Disclosure of proprietary information to the general public;
- b.** Dilution of time / training investment in servicing dealers;
- c.** Safety concerns if information is not used as intended;
- d.** Alterations to embedded software, which can result in:
 - i.** The unsafe operation of the product;
 - ii.** Disruption of the product's capabilities and performance;
 - iii.** The voiding of a product's warranty;
 - iv.** A lack of transparency during resale;
 - v.** A hindered customer experience.

OPEI recognizes the consumer interest in additional tools to help diagnose issues with their equipment and determine their best option for repair to maximize efficiency and minimize downtime. However, the legislation that is before you would instead create significant and adverse consequences for consumers in the form of damaged and unsafe products, as well as the detailed adverse impacts to product manufacturers. For these reasons, we urge that you oppose the subject legislation.

OPEI very much appreciates the opportunity to provide comments on this legislation, and would be happy to provide further information if requested.

Best regards,



Daniel J. Mustico
Vice President, Government & Market Affairs
(703) 678-2990; dmustico@opei.org

¹ CRF 40, Chapter I, Subchapter U, Part 1054 – Control of Emissions from New, Small Nonroad Spark-Ignition Engines and Equipment - Section 115(b) Adjustable Parameters
CFR 40, Chapter I, Subchapter U, Part 1068 – General Compliance Provisions for Highway, Stationary and Nonroad Programs – Section 101(b)(1) Tampering.