

February 01, 2022

Chair Zack Stephenson
Commerce Finance and Policy Committee
Minnesota House of Representatives
509 Rev. Dr. Martin Luther King Jr. Blvd
St Paul, MN 55155

Re: HF 1156 – Boat Manufacturers Opposition to Digital Fair Repair

Dear Chair Stephenson and Members of the Committee:

On behalf of the National Marine Manufacturers Association (NMMA), I am writing to request that the committee oppose HF 1156, Digital Fair Repair.

By way of introduction, NMMA is the premier trade association representing manufacturers of recreational marine engines, boats and accessories in North America. NMMA member companies produce more than 80 percent of the boats, engines and accessories used by boaters and anglers in North America. Recreational boating has an estimated direct and indirect annual economic impact of \$170.3 billion. Boating in Minnesota has an annual economic impact of \$10.1 billion in 2019, provides 11,000 jobs and is the lifeblood of 690 businesses.

While there are several aspects of HF 1156 that are troubling, we will focus on how manufacturers would have to violate federal law in order to meet the mandates of this bill.

Boat owners have easy access to parts and the diagnostic software needed to perform the vast majority of repairs and adjustments. They can walk into any dealership and purchase the parts they need, from the smallest fuel injector entire lower units. They can buy the diagnostic tools and software needed to identify error codes and the repair manuals needed to decipher them. Boat engine manufacturers provide significant access.

However, the extent of that access is strictly limited by the U.S. EPA and the Clean Air Act. In order to comply with Clean Air Act and meet EPA mandates, recreational marine engine manufactures cannot provide access to pollution control devices. In guidance issued on Nov. 23, 2020 by Susan Parker Bodine, EPA Assistant Administrator for Enforcement and Compliance Assurance [attached], tampering with emission controls is a federal offense. Manufacturers are the gatekeepers. They must ensure that access to the software controlling an engine's emissions only be made available to those who can be expected to adhere with Clean Air Act mandates and to keep emission tolerances within federally required levels. OEMs must limit access to these highly-regulated sections of software to factory-trained and certified technicians, and even then some access points are only available to representatives of the manufacturer. As Ms. Bodine states in the official guidance:

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“Section 203(a)(3) of the [Clean Air] Act prohibits tampering with emissions controls, and also prohibits making and selling products with a principal effect of bypassing, defeating, or rendering inoperative emissions controls. The prohibitions in section 203(a)(3) apply to all vehicles, engines, and equipment subject to the certification requirements under section 206 of the Act, or other design requirements in the Act or regulations. This includes... nonroad vehicles (e.g., all-terrain vehicles, off-road motorcycles) and nonroad engines (e.g., marine engines, engines used in generators, lawn and garden equipment, agricultural equipment, construction equipment). Certification requirements include those for exhaust or “tailpipe” emissions, evaporative emissions, and onboard diagnostic systems.”

The language HF 1156 requires manufacturers to give the general public access to these “locked” sections of software and emission controls – and the codes needed to reset the locks that have been breached. Boat engine manufacturers simply cannot, under federal law, facilitate access to these protected areas.

HF 1156 written with the intent of going beyond giving the public or independent repair shops the ability to repair their marine engines. *It gives them the ability to tamper with emission controls and violate federal emission standards.*

For those reasons and more, we ask the committee to vote against this bill. If you have questions, please contact me at jsims@nmma.org or 612-961-2220.

Sincerely,

Jill C Sims

Jill C. Sims
Manager, Great Lakes Policy and Engagement
National Marine Manufacturers Association (NMMA)