



**BEFORE THE FINANCIAL INSTITUTIONS AND TECHNOLOGY COMMITTEE  
THE OHIO SENATE  
SENATOR STEVE WILSON, CHAIR**

**HOUSE BILL  
TESTIMONY OF MATT KOPPITCH  
THE OHIO MANUFACTURERS' ASSOCIATION**

**MARCH 28, 2023**

Chair Wilson, Ranking Member Smith, and members of the Senate Financial Institutions and Technology Committee, thank you for the opportunity to provide testimony on Senate Bill 73, the Digital Fair Repair Act.

My name is Matt Koppitch from the law firm Bricker & Eckler, representing The Ohio Manufacturers' Association (OMA). Created in 1910 to advocate for Ohio's manufacturers, the OMA today has approximately 1,300 members statewide. Its mission is to protect and grow Ohio manufacturing.

As you may know, manufacturing is the largest of the state's 20 major industry sectors. As of Q3 2022, manufacturing contributed more than \$130 billion annually to Ohio's economy, accounting for nearly one-fifth of Ohio's private industry GDP.

Our association strongly opposes Senate Bill 73 (SB 73).

First, the scope of this legislation goes far beyond the "right to repair" common consumer device maladies, including cracked screens, battery replacements and water damage. Indeed, if passed, this bill will impact a broad range of manufacturers, and it may well expose the intricacies of their innovation. The very thing that separates competing companies.

Indeed, OMA has serious concerns with the bill's broad application, as it potentially impacts nearly every industry of manufacturing. SB 73 applies to all products that fall within the legislation's broad definition of digital electronic equipment, which is defined to encompass nearly all products manufactured in this state including, but not limited to, small consumer electronics.

Second, SB 73 raises considerable intellectual property issues. OMA members rely on the ability to maintain trade secrets in order to keep a competitive advantage against firms at home and abroad.

While it may be argued that this legislation protects trade secrets, the actual language of SB73 indicates otherwise. SB73 requires manufacturers to disclose trade secrets "as necessary to provide documentation, parts, and tools on fair and reasonable terms." This is concerning to all OMA members.

Third, a continued obligation to provide updated source code or software updates, could – and likely would – lead to this information being widely broadcast. And the further this information is broadcast, the more likely vulnerabilities will be highlighted. OMA members must already be vigilant to an ever-changing cyber threat landscape. For those that

suggest this is hyperbole, the legislation itself requires the disclosure of any documentation, any parts, and any tools to disable locks or functions. Tools, parts, and information that could disable the lock or function of a device for repair, could disable the same for any purpose. Imagine, for a moment, the implications this bill could have on Ohio's burgeoning semiconductor industry.

Fourth, in regards to existing arrangements between manufacturers and authorized repair providers, SB 73 does not directly alter the terms of any existing arrangement between a manufacturer and an authorized repair provider. However, OMA members should be able to freely set terms with consumers and authorized repair shops within the parameters already authorized and regulated by the Federal Trade Commission.

Adding additional government intrusion at the state level to existing agreements is not only duplicative and unnecessary, but it has the potential to create unintended legal complications for all parties involved, posing significant economic and administrative burdens for consumers, authorized repair shops, and manufacturers.

The FTC has not only promulgated regulations that specifically prohibit product warranties that become void if the consumer seeks a repair from a non-authorized servicer, or uses parts not manufactured by the warrantor, but it actively enforces these regulations.

To the extent that consumers face limited or dwindling repair networks, a simple Google search shows approximately 15 device repair providers in the greater Columbus area. While I cannot speak to any independent repair provider's limitations, there appears to be plenty of options.

Finally, and perhaps most concerning, SB 73 places violations of the proposed law within Ohio's Consumer Sales Practices Act (OCSPA), exposing Ohio's manufacturers to additional private causes of action and the prospect of treble damages in certain circumstances. Even New York, who recently enacted a similar right to repair law, left enforcement to its State Attorney General.

Moreover, SB 73, as drafted, appears to expand the OCSPA beyond individual consumers to potentially include to business-to-business transactions. This is a dramatic expansion of the OCSPA.

Ohio's manufacturing industry has seen tremendous growth in recent years with continued onshoring of production and major expansions in our state. This growth is a direct result of the General Assembly and DeWine-Husted administration's efforts in establishing business friendly policies that allow our state's business community to

flourish. SB 73 poses a major threat to that progress. Companies looking for new states to call home want to ensure that their trade secrets are protected. Manufacturers invest considerable resources in developing cutting-edge technology and granting access to sensitive trade secrets, like source code, will jeopardize manufacturers' intellectual property and stifle innovation that consumer's desire. SB 73 would serve as a major deterrent for businesses wanting to call Ohio home.

Thank you for your time and I am happy to answer any questions you may have.