

WRITTEN TESTIMONY OF COLLEEN DALEY
INTERNET ASSOCIATION
OHIO SENATE FINANCIAL INSTITUTIONS AND TECHNOLOGY COMMITTEE
SENATOR STEVE WILSON, CHAIRMAN
IN OPPOSITION TO SB 184

November 16, 2021

Good morning Chairman Wilson, Vice Chairman Hottinger, Ranking Member Maharath, and members of the Senate Financial Institutions and Technology Committee, my name is Colleen Daley and I am the Midwest Director of State Government Affairs for the Internet Association. IA represents over 40 of the world's leading internet companies. We are dedicated to advancing public policy solutions that foster innovation, promote economic growth, and empower people through the free and open Internet.

I am here today to explain why we oppose SB 184. I sent each of you a letter highlighting our concerns and I understand that several IA member organizations have contacted you about their opposition to this bill independently, but I appreciate the opportunity to provide testimony today on some of the internet industry's primary concerns with this legislation.

IA agrees with the basic premise of this legislation in that organized retail crime is a growing threat to businesses of all sizes and the proliferation of stolen or fraudulent goods must be aggressively investigated and prosecuted. However, the legislation before you today does nothing to address the issue of ORC at its source, namely the targeting of brick and mortar retailers and brazen theft of merchandise from store shelves.

Further, there is federal legislation that preempts the provisions in **SB 184** and similar state bills that is currently being considered in Congress. This bill is supported by online marketplaces, retail associations and their affiliates, consumer safety groups, and law enforcement and provides needed protections for small sellers and flexibility to online marketplaces seeking to combat the sale of stolen or fraudulent goods on their platforms. We would strongly urge this committee not to advance state legislation as this federal bill is poised to pass before the end of the year.

As drafted we have numerous concerns with SB 184. Our first concern is the negative effect this proposal will have on Ohio small businesses. We are concerned about how

the bill affects small businesses, micro businesses, and solo entrepreneurs who are already suffering due to the global pandemic. The verification mandates in this bill will harm small businesses selling goods online. This is because the bill will force online marketplaces to choose between increased liability exposure or removing listings of small businesses, microbusinesses, and entrepreneurs - a choice not faced by big box retailers with both in-person retail space and an online presence that are exempt from this legislation. In point of fact, the big box retailers are pushing a policy that requires small business and online marketplaces to solve a problem of theft without any corresponding accountability or responsibility on their own end in this bill.

Further, this bill's requirements will raise small businesses start-up costs and increase administrative burdens associated with registering a third-party and obtaining records they may not otherwise be required to obtain.

SB 184 assumes that any of these businesses that reach a certain threshold of success annually are doing so through illicit means, and must therefore turnover sensitive and personally identifiable information to prove their innocence and legitimacy. For many of the solely-owned or microbusinesses on these platforms, this means their home address, personal financial information, personal email address, and home phone number. This leads directly to our next concern.

Which is, compliance problems this bill creates for marketplaces of all sizes. Simply put, we find SB 184 to be unworkable with respect to

- 1) capturing and verifying identification information and bank account information of high volume sellers, and
- 2) increasing liability for privacy risks.

The practical effect for most marketplaces is that they will have to collect all seller's identification information when a seller joins the marketplace. This increases privacy risks for all sellers who will now have to give their home addresses and bank information to marketplaces. The alternative is suspension from the platform and loss of income.

Providing bank account information to marketplaces is especially concerning because sharing this sensitive financial information could lead to increased fraudulent activity. The bill does not provide clear direction on a verification process for bank information or the security of that bank information when other seller information is publicly available.

Further, the requirements of this bill regarding wide disclosure of sensitive personally identifiable information runs counter to the current dialogue on consumer privacy and data security laws being considered here in Ohio right now. While this legislation purports to include exemptions for sellers operating out of their residences, the exemptions fail to provide sufficient protections. For example, a marketplace must relinquish any of the limited disclosure requirements for a seller who simply has not responded to an inquiry from another user of a marketplace in a “reasonable time.”

If you were a sole proprietor, trying to sell your products online do you believe the verification requirements would do anything to help your business grow? These provisions only make being a small business more difficult. Simply put, there is no correlation between an honest seller providing the marketplace a bank account number or home address, and stopping a thief at a store or counterfeiter passing off fake goods.

Finally, IA believes current practices are addressing marketplace problems - IA member companies already have in place a number of procedures and practices to combat illegal and suspicious activities. I would note for you that our member organizations with platforms that allow these businesses to thrive have their own policies, and terms and conditions to regulate sellers and the goods they sell. All of them prohibit the sale of stolen and counterfeit goods, and all have a mechanism in place to report or initiate a report regarding a sale that may violate those policies.

Not to mention, they all have dedicated teams that work with the retail sector and law enforcement to investigate suspected criminal activity online. We know that our retail partners are the experts in their operations and product base, and thus coordination with them is critical.

Online marketplaces should be incentivized to continue to work closely with law enforcement to identify and prosecute fraudulent online sellers, instead of shifting liability directly onto online marketplaces. Sadly, one of the unintended consequences of **SB 184** may be an increase in the number of online listings of fraudulent and illegal products, as criminals will quickly figure out that the online marketplace bears the liability for any “violation” of the law. Of course, this would also increase the very risk to Ohio residents that the bill seeks to address.

The proliferation of illegal goods online erodes the very trust that is required to bring consumers to online marketplaces. But solutions need to be targeted at the wrongdoer—not marketplaces who are already taking the lead in taking down such

listings and working with law enforcement to put such actors out of business. Law enforcement has the experience, authority, and means to detect suspicious marketplace activity.

IA would strongly recommend the Legislature consider legislation that would constitute and fund an Organized Retail Crime Task Force like what has been done in California and under consideration in Arizona. Other states such as Illinois are implementing task forces through their Attorney General. This approach is supported by both the e-commerce industry and big box retailers and addresses ORC at its source. We stand ready to help craft a forward-thinking law that ensures owner's rights while being flexible enough to encourage industry innovation and growth in Ohio.

For these reasons, we respectfully request that the committee not advance **SB 184**, but rather to await the passage of a federal solution that creates uniformity across all fifty states and to focus on policy supported by law enforcement, the internet industry, consumer safety groups, and retailers that combats Organized Retail Crime as whole through a more collaborative and equitable approach.

Thank you for your time and consideration.