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Re: Opposition to the Unconstitutional and Discriminatory HB 272

We ask you to **oppose HB 272** because it:

- hurts Ohio’s small businesses;
- undercuts your constituents’ privacy rights;
- requires online marketplaces to make up for big-box store’s own failures;
- discriminates against businesses—large and small—that sell online; and
- conflicts with federal law.

HB 272 boils down to a demand that online marketplaces treat online sellers like criminals. This is neither reasonable nor necessary. HB 272 also fails to address the root of retail criminal theft: the actual theft itself. Nor does HB 272 address the theft of goods traveling to retail stores. And it doesn’t it address the ability of criminal enterprises to steal hundreds of products from the stores themselves.

Instead, HB 272 just makes it harder for Ohio’s small businesses to compete with the big-box stores.

1. The bill imposes burdensome requirements on digital marketplaces, small businesses, and even Ohio residents.

If a neighbor sells over 200 candles on Nextdoor, the platform would have to collect the neighbor’s address, contact information, and even bank account—information that platforms like Nextdoor and Craigslist are unable to access easily.

The upshot: Ohio’s small businesses and residents will be forced off digital marketplaces.

HB 272’s liability on online marketplaces also puts small businesses across Ohio at a significant disadvantage against big box retailers that don’t rely on online marketplaces to reach potential customers and that already dominate our retail landscape. Given these businesses’ struggle to survive the pandemic, let alone to turn a profit, it’s hard to see how this cost could be justified.

2. The bill will force Ohioans to choose between protecting their legitimate privacy interests and earning an income.

HB 272 risks the privacy of anyone selling an item on Nextdoor, Craigslist, or even through an online classified ad. That's because it requires sales listings on sites like Craigslist to post the seller's name and address in the listing itself. In other words, the public will learn that a grandma living in Ohio makes and sells hand-knitted face masks—even if that grandma would rather others not know what she does with her spare time.

It doesn't require too much imagination to see how requiring such sensitive information be made public could lead to very dangerous—even deadly—situations.

3. The bill requires online marketplaces to do the job that big-box stores aren't.

The chief proponents of this legislation—big-box stores—are asking the Ohio legislature to saddle online marketplaces with responsibilities that are unrelated to those marketplaces. Consider that when we hear about activities of organized crime and loss from stores, we are not talking about the average shoplifter. We are talking about coordinated high-volume theft.

This theft in retail stores is happening in one of two locations: either while the goods are in transit to the store or once the goods have arrived. That means the theft is occurring at the points connected to the store's logistics or by the store's own workers.

This means the best way for stores to stop the criminal theft of products is for the stores to better police their own stores. Instead of doing the hard work of cleaning up their own problems, these big-box stores instead want to shift the responsibility to online marketplaces.

Note that today law enforcement can take action against any seller, online or off, who traffics in illegal goods. Likewise, online marketplaces have a vested interest in making sure that goods sold on their platforms are legitimate as noting in federal law protects online marketplaces from liability for violations of federal criminal law nor violations of intellectual property rights.

4. The bill conflicts with federal law.

As if all that were not bad enough, the bill also runs afoul of federal laws like the Communications Decency Act (CDA). The bill imposes liability requirements for platforms based on the postings of others. But federal law states that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”¹

So even if this bill were passed, it would not withstand judicial review under the federal Constitution's Supremacy Clause.

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¹ 47 USC § 230(c)(1).

Although we recognize that HB 272 seeks to remedy commercial problems, this bill serves only to make those problems worse—and adds even more (unintended) problems on top of those. Bad actors who use the internet to do their bidding should not be rewarded at the expense of Ohio’s small businesses. Nor should Ohioans pay the price by giving up their privacy.

We ask that you **not support HB 272.**

Sincerely,

Chris Marchese
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NetChoice is a trade association of businesses who share the goal of promoting free expression and free enterprise on the net. www.netchoice.org