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THE VOICE OF THE
INNOVATION ECONOMY

December 6, 2021

The Honorable Dick Stein, Chair
Ohio House Commerce and Labor Committee
77 South High Street
12th Floor
Columbus, OH 43215

Re: Opposition Testimony to HB 272

Dear Chairman Stein and members of the Committee:

My name is Tyler Diers and I serve as the Midwest executive director for the for TechNet. Thank you again for allowing me back before your committee today.

TechNet is a national, bipartisan technology trade association advocating for the innovation economy at the federal and state level. We represent 85 member companies in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

We are opposed to HB 272 for 3 main reasons. One, this legislation would have a negative effect on small sellers; two, it would do little to actually curb organized retail crime (or ORC); and three, there are other alternatives to addressing ORC than HB 272.

Impact on Small Sellers and Privacy Implications

This bill would have negative consequences on small marketplace sellers that sell on online marketplaces. The bill seeks to define these small sellers as “high volume sellers” even though you could be considered a high-volume seller for simply making 4 sales a week on an online marketplace.

This bill casts a wide net and treats all marketplace sellers as if they’re criminals, when in reality an overwhelming majority of these sellers are good, honest actors. At a time when many state governments are trying to find ways to reduce red tape on businesses, this bill seems to be adding additional requirements on those who need regulatory relief the most. This bill hurts small businesses and favors large retailers who do not need an online marketplace to connect with their customers.

This bill also raises some significant privacy concerns and is not privacy protective. It would force Ohioans to compromise privacy information in order to sell on online

platforms and if they don't feel like supplying some of this sensitive information, then they'd have to forgo selling and lose essential revenue streams.

There was some confusion at the last hearing that the address of sellers was not required to be posted online. I wanted to take the time today to ensure that members of the Committee are aware of these provisions.

Page 6, line 135: *Sec. 1349.67. (A) An online marketplace shall require a high-volume third-party seller to **disclose to consumers in this state in a conspicuous manner either on the product listing or, for information other than the high-volume third-party seller's full name, through a conspicuously placed link on the product listing**, the following information: (1) Subject to division (B) of this section, the identity of the high-volume third-party seller, including all of the following: (a) **The full name of the high-volume third-party seller**; (b) **The full physical address of the high-volume third party seller**;¹ (c) Whether the high-volume third-party seller also engages in the manufacturing, importing, or reselling of consumer products; (d) Contact information for the high-volume third-party seller, including a working telephone number and working electronic mail address. Such working electronic mail address may be provided to the high-volume third-party seller by the online marketplace.*

Another committee member pointed to Page 7 of the bill where there is language that allows for partial disclosure of the identity information. While it is true that *the seller can then request that such sensitive information not be posted by the marketplace*, that's all this is, a request. The seller must certify that they don't have a separate home address or phone number to prevent disclosure of these items, but the bill allows marketplaces the discretion to decide whether or not to honor this request for partial disclosure.

It's up to the marketplace, who has civil liability for granting partial disclosures when they shouldn't be, and for not suspending sellers who do not comply perfectly with the bill's requirements. So, a small seller working out of their home may suddenly be faced with a hard choice under this bill: (a) have their business suspended, or (b) send the marketplace their sensitive information and hope the marketplace grants their request to not post their home address and personal phone number for the world to see.

Additionally, even if the marketplace agrees that the seller's info should be protected, the bill states that the marketplace must constantly assess this decision and reverse it if (Page 8 lines 197 – 203): (1) the marketplace becomes "aware" that seller gave false representation on the need for partial disclosure; or (2) the seller is not providing "responsive answers" in a "reasonable timeframe" to

¹ See also, LSC Bill Analysis, pp. 2, 3; LSC Fiscal Note and Local Impact Statement, p. 2.

consumer inquiries via email or phone. If either of those events occur, the seller must be suspended until they agree to the full disclosure of their sensitive information.

It was also stated by committee last time around that it was very important for a buyer on a platform to be able to reach out directly to a seller on a platform and this is the reason this information needs to be posted on the platform. We disagree. Marketplaces are dedicated to maintaining the trustworthiness of their platforms and ensuring the safety of their users. Indiscriminately mandating the direct communication between buyers and sellers to occur off-platform prevents marketplaces from ensuring the safety of its users.

Marketplaces operate a variety of direct communication tools between buyers and sellers **on-platform** which allows marketplaces to protect their users. Without these controls, the privacy and safety of users can be seriously compromised if the ability to communicate off-platform is mandated or, at a minimum, facilitated by HB 272.

Any legislation should represent the diversity in business models and desire of marketplaces to ensure the safety of its users by allowing flexibility in how buyers and sellers interact.

The private right of action, which was lauded by the retail groups, should also be a reason to oppose this bill. A violation of the bill's requirements is considered an unfair or deceptive act or practice in violation of the Consumer Sales Practices Act, for which two civil remedies would be available. First, the Attorney General's Office can investigate violations, seek a declaratory judgment, an injunction or other equitable relief, or organize and bring a class action. Second, a person who is injured by such a violation has a cause of action and is entitled to relief. Potentially, this could mean that any minor infraction or disagreement about any of the vague standards in the bill leads to more lawsuits.²

At a time when policymakers and companies are working to improve privacy protection for individuals, this amendment is swimming against the tide of that progress by requiring personal information to be plastered all over the internet.

Bill Does Little to Address ORC

This bill would do little to actually curb organized retail crime. Efforts to stem the flow of counterfeit and other illegal goods cannot focus on online marketplaces alone. They must consider the cooperative role physical marketplaces continue to play.

As I've stated before, the internet isn't stealing items off of in-store shelves. Thieves and often times, employees are. This is as much of shrink issue as it is

² LSC Fiscal Note and Local Impact Statement, pp.2-3.

anything else. Just as brick-and-mortar retailers are able to institute voluntary business practices that help to remediate the proliferation of organized retail crime, marketplaces similarly should have the same flexibility to institute business practices without heavy-handed regulation.

I would also like to point out that some of the big-box retailers that are for the bill would be exempted from the bill because they have an ongoing contractual relationship with third party sellers selling onto their platforms (page 2, line 42).

An Alternative Approach

While, we believe the issue of organized retail crime is much better addressed by implementing a federal standard, we do believe the state can be creative at effectively addressing organized retail crime.

As stated previously, we believe this does little to actually address ORC. In order to curtail such activity, we stand prepared to provide you all with a draft state organized retail crime task force similar to what is passed with support from online marketplaces, and retail in Arizona earlier this year. The task force brings together law enforcement, retail loss prevention experts, online marketplaces, and other key stakeholders to collaborate on investigations and prosecutions of organized retail crime.

And these efforts to date have been successful. Just last week in Illinois, Attorney General Raoul successfully announced a major bust just a few months into launching the Task Force in Illinois. The Task Force recovered thousands of stolen goods at several storage units in Chicago. While a complete inventory is ongoing, the stolen goods are estimated to be worth millions of dollars.

These sorts of public-private partnerships are much more effective in addressing organized retail crime because you bring the right people from the right organizations together in a comprehensive way to address what all of us agree on – which is addressing organized retail crime.

Closing

In closing, this legislation risks the privacy and personal information of small businesses and online sellers, does little to address ORC, and would only add additional red tape on businesses that need regulatory relief the most. Opening up Ohio to frivolous lawsuits and finger pointing does not address ORC. Let's reject this legislation, allow cooler heads to prevail, establish an organized retail crime task force, and stop this activity in its tracks.

Thank you, Mr. Chair, for allowing me time today. I'd be happy to answer any questions you or the committee may have.