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Re: Opposition to SB 184

We ask you to **oppose SB 184** because it:

- hurts Ohio’s entrepreneurs, independent sellers, and small businesses;
- requires increased collection of personal information putting constituent’s privacy at greater risk;
- unfairly burdens online marketplaces and their sellers to make up for other’s failures and does not address the true problematic behavior;
- discriminates against businesses—large and small—that sell online; and
- conflicts with federal law.

SB 184 harms online marketplaces with unfair burdens that treat online sellers like criminals rather than addressing the true issues at play in retail crime. SB 184 fails to address the actual theft itself or those criminal enterprises to stealing hundreds of products from the stores themselves.

Instead, SB 184 just makes it harder for Ohio’s entrepreneurs, independent sellers, and small businesses to benefit from the online marketplaces that enable them to compete with the big-box stores. This proposal would lessen Ohio’s competitiveness compared to other states and conflict with federal law.

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

Whether as formal businesses or a modern “yard sale,” many Ohioans are engaged in selling goods through online marketplaces such as Etsy, Ebay, Craigslist, or even the online version of the Columbus Dispatch’s classified sections. These platforms have made such transactions easier and more trustworthy than ever before and lowered the cost for entrepreneurs to start their own small businesses. Unfortunately, this proposal could change this, online platforms would now have to collect significant personal information including addresses, contact information, and even bank accounts.

The result would be additional burdens for Ohio entrepreneurs and consumers that will likely force them off digital marketplaces. This is particularly concerning as many small businesses and entrepreneurs have grown to increasingly rely on these online resources during the

pandemic and changes in consumer preferences towards online shopping. Larger retailers may have the existing infrastructure to comply with these requirements or alternatives to online marketplaces, but smaller businesses will be forced to make difficult choices or worse yet, forced out-of-business.

2. The bill will require additional collection of Ohioans sensitive personal information.

SB 184 requires the additional collection of often sensitive personal information for selling online. This includes not only those Ohioan entrepreneurs running small businesses online, but even the stay-at-home mom selling the clothes her children have outgrown online. Sales listings under the proposals the seller's name and address in the listing itself. 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. The result would be either increased data privacy concerns or discouraging a productive entrepreneurial activity.

3. The bill requires online marketplaces to address the failures of big-box retail to address problematic and criminal behavior.

Organized retail crime is a real concern, but the response should be to address the underlying activity at its source and not to punish everyday Ohioans and online marketplaces.

The criminal behavior at issue is not occurring in online marketplaces, but rather it is happening in one of two locations: while the goods are in transit to the store or once the goods have arrived. That means the actual issue is better addressed at the big box retail and law enforcement level rather than raising the suspicion on the everyday Ohioans benefitting from the entrepreneurial opportunities of online marketplaces. Theft is occurring at the points connected to the store's logistics or by the store's own workers and the burden should be apportioned appropriately.

Online marketplaces already engage significant resources in responding to alerts around suspected violations related to fraudulent, counterfeit, or stolen items. This proposal places the burden for addressing these concerns on online marketplaces and penalizes honest Ohioans for these criminal enterprises by limiting their opportunities to sell their goods online. To maintain their trustworthiness, online marketplaces have a vested interest in making sure their services are used for legitimate sales and not criminal activity.

Already, law enforcement can pursue action against bad actors whether individual sellers or broader criminal enterprises. Stores can provide them with the referrals regarding these concerns.

4. The bill conflicts with federal law and could cause disruption at a federal level.

In addition to all of these concerns on a direct Ohio level, this bill will face significant issues with regards to its potential conflict with existing federal law. Furthermore, it could create

unnecessary barriers to interstate commerce, and undermine the policy framework to address this issue under consideration at a federal level.

The bill is likely already preempted due to the Communications Decency Act. Because of the bill's liability requirements for platforms based on the postings of others, it conflicts with this law's existing standard 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 This means this bill, even if passed, would likely fail judicial review under the federal Constitution's Supremacy Clause.

Additionally, this bill raises concerns about its potential impact on interstate commerce and could place burdens on Ohioans trying to sell to buyers in other states. As only Congress has the power under the Constitution to regulate interstate commerce, this too risks the bill failing judicial review even if passed.

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While SB 184 seeks to address the problems criminal retail theft activity, the reality is it would punish everyday Ohioans by placing burdens on their ability to access online marketplaces. This is a misguided approach that punishes beneficial aspects of the economy along with bad actors.

We ask that you **not support SB 184.**

Sincerely,

Jennifer Huddleston
Policy Counsel, NetChoice

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

¹ 47 USC § 230(c)(1).