

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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Re: Opposition to the Unconstitutional and Discriminatory HB 1627

We ask you to **oppose HB 1627** because it:

- hurts Oklahoma’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 1627 boils down to a demand that online marketplaces treat online sellers like criminals. This is neither reasonable nor necessary.

To see why, consider first that online marketplaces are merely digital versions of shopping malls. Indeed, the two marketplaces are similar in all relevant respects.

Like a mall with individual stores, an online marketplace connects individual sellers to individual consumers. In both marketplaces, consumers decide which sellers to visit and which products to buy. And when consumers buy products, they enter into a relationship with individual sellers, not with the shopping mall or the online marketplace.

The bill’s advocates ignore this, claiming the bill is necessary to protect consumers from buying fraudulent or harmful products.

But if that were a legitimate duty to force on digital marketplaces, then why exempt physical locations like farmers’ markets and shopping malls from the bill’s coverage? After all, consumers at malls are at even greater risk of buying bad products—unlike their online-shopping peers, they don’t have immediate access to customer reviews or side-by-side product comparisons.

So just as it makes no sense to force malls to investigate every product sold within them, it makes no sense to force digital marketplaces to do the same.

1. The bill imposes impossible requirements on digital marketplaces, small businesses, and even Oklahoma residents.

If a neighbor sells a used computer 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: Oklahoma's small businesses and residents will be forced off digital marketplaces.

HB 1627's liability on online marketplaces also puts small businesses across Oklahoma 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, let alone to turn a profit, during coronavirus, it's hard to see how this cost could be justified.

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

HB 1627 risks the privacy of anyone selling an item on Nextdoor, Craigslist, or even through an online classified ad. That's because it requires every sales listing on sites like Craigslist to post the seller's name and home address in the listing itself. In other words, the public will learn that a grandma living in Oklahoma 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, Home Depot, Target, and other big-box stores are asking the Oklahoma legislature to force marketplaces to do what they don't want to. 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 of retail stores is happening in one of two locations, either was the goods are coming to the store or once the goods arrive at the stores. Which means the theft is occurring at the points of 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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Although we recognize that HB 1627 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 Oklahoma’s small businesses. Nor should Oklahomans pay the price by giving up their privacy.

We ask that you **not support HB 1627**.

Sincerely,

Carl Szabo
Vice President and General Counsel, NetChoice

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

¹ 47 USC § 230(c)(1).