

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

Carl Szabo, Vice President and General Counsel
1401 K St NW, Suite 502
Washington, DC 20005
202-420-7485
www.netchoice.org



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Re: Opposition to the Unconstitutional and Discriminatory LB 603

We ask you to **oppose LB 603** because it:

- hurts Nebraska’s small businesses;
- undercuts your constituents’ privacy rights; and
- requires online marketplaces to make up for big-box store’s own failures; and

LB 603 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 Nebraska residents.

If a neighbor sells a used computer on Nextdoor, the platform would have to collect the neighbor’s address and contact information —information that platforms like Nextdoor and Craigslist are unable to access easily.

The upshot: Nebraska's small businesses and residents will be forced off digital marketplaces.

LB 603's liability on online marketplaces also puts small businesses across Nebraska 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 Nebraskans to choose between protecting their legitimate privacy interests and earning an income.

LB 603 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 collect the seller's name and home address.

It doesn't require too much imagination to see how requiring collection of sensitive information can create significant dangers for data breach and privacy invasions.

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 Nebraska 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.

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Although we recognize that LB 603 seeks to remedy commercial problems, this bill serves only to shift the responsibility while adding 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 Nebraska's small businesses. Nor should Nebraskans pay the price by giving up their privacy.

We ask that you **not support LB 603.**

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