

**NetChoice** *Promoting free expression and free enterprise on the net*

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Sen. Adam G. Hinds, Chair  
Rep. Mark J. Cusack, Chair  
Joint Committee on Revenue  
Massachusetts State Legislature

October 17, 2021

RE: **Opposition to H3081– Digital Advertising Local Revenues Tax**

Chairs Hinds and Cusack and members of the Joint Committee on Revenue,

We ask that you not move forward with H3081 as it increases costs on Massachusetts businesses, newspapers, and has several legal flaws that expose Massachusetts citizens to expensive and wasteful legal proceedings.

First, the resulting tax burden of H3081 would fall on many Massachusetts businesses who are now advertising on social media platforms to find new customers, at a time when both businesses and customers are struggling under COVID-based restrictions. In essence, these new taxes will be paid by the Massachusetts businesses.

Second, this resulting tax burden will land on online news-outlets who rely on advertising. The Boston Herald's annual revenue of \$220 million puts this newspaper squarely in the taxation realm. Likewise, the USA Today, the Washington Post, and the New York Times, are all subject to H3081. This is why Maryland lawmakers saw local newspaper outlets oppose the Maryland tax bill on which H3081 is based.

Third, H3081 includes a facial violation of the federal Internet Tax Freedom Act ("ITFA"), 47 U.S.C. § 151. ITFA explicitly prohibits discriminatory taxes on internet services and transactions.

H3081 is facially discriminatory since it imposes this new tax only on social media advertising, and not on other forms of advertising such as billboards, magazines, newspapers, radio, and television. An action to enjoin H3081 is likely to prevail, and thus the anticipated tax revenues from this bill are not likely to be realized. In addition, a lawsuit is currently underway regarding a very similar bill in Maryland.

At the very least, Massachusetts should wait until that lawsuit is finished before risking its own efforts and resources on advancing a bill that will likely face the same fate.

We therefore ask that you not move forward with H3081, since it is bad for Massachusetts businesses and will likely be enjoined and ultimately overturned by the courts.

Sincerely,

Carl Szabo  
Vice President and General Counsel, NetChoice  
*NetChoice is a trade association promoting free expression and free enterprise. [netchoice.org](http://netchoice.org)*