

Virginia HB 888

Opposition to HB 888 and its negative impact on Virginia's Small Businesses and Consumers

February 7, 2022

Chair Head & Members of the Committee:

We ask you to **not** advance HB 888 because it:

- hurts Virginia'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; and
- discriminates against businesses—large and small—that sell online.

HB 888 harms online marketplaces with unfair burdens that treat online sellers like criminals rather than addressing the true issues at play in retail crime. HB 888 does not address the actual theft itself or those criminal enterprises to stealing hundreds of products from the stores themselves.

Instead, HB 888 just makes it harder for Virginia's entrepreneurs, independent sellers, and small businesses to benefit from online marketplaces that enable them to compete with the big-box stores. This proposal would lessen Virginia'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 Virginia residents.

Many Virginians are engaged in selling goods through online marketplaces such as Etsy, eBay, Pinterest, or even the online version of the *Richmond News'* 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 Virginia 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 Virginians' sensitive personal information.

HB 888 requires the additional collection of often sensitive personal information for selling 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.

While HB 888 has an exception for those who do not have a business address, it requires platforms to disclose this information as a result. This distinguishes home-based businesses from their large counterparts and could make it more difficult to gain consumer trust.

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 Virginians 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 of the everyday Virginians 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 Virginians 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.

While HB 888 seeks to address the problems of criminal retail theft activity, the reality is it would punish everyday Virginians 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 advance HB 888.

Thank you again for the opportunity to testify.

Sincerely,

Chris Marchese
Counsel

NetChoice

NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.