

March 24, 2022

Arizona HB 2033

HB 2033: Increasing Costs to Consumers and Government Involvement

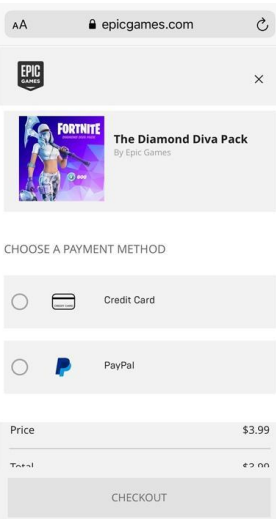
Senator Wendy Rogers, chair
Judiciary Committee
Arizona State Senate

Dear Chair Rogers, Vice-Chair Petersen, and Members of the Senate Judiciary Committee:

We ask that you **not** advance HB 2033 as amended as it will:

- Interfere in contracts between private parties;
- Allow the government to pick winners and losers;
- and Increase costs to Arizonans and app developers.

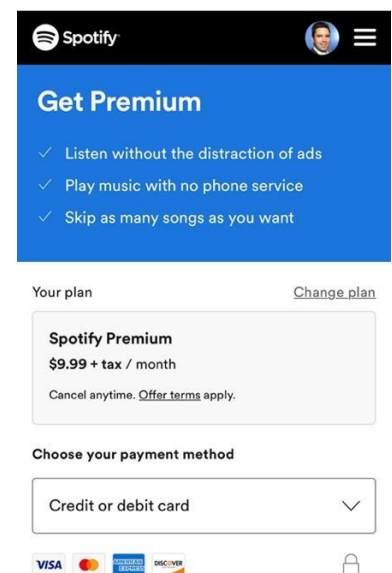
Interference with Contracts Between Private Parties



Currently app developers and consumers have a range of ways to connect. In fact, when developing a new product or service, a developer may choose a specific operating system and its app store and also options to directly connect with consumers through the web or traditional software. Similarly, they can offer multiple ways for consumers to pay ranging from the cost of the app to deciding to allow in-app purchases both through the app store or through the sale of external gift cards. Like most selling arrangements, the relationship between app stores and app developers involves a contract that lays out terms as well as price. However, HB 2033 as amended inserts the government to dictate elements of this business relationship and accompanying contract and applies this intervention only to digital spaces.

Currently, many of these contracts between these parties have provisions that allow app developers to access these digital marketplaces so long as they use the distributor's payments processing system and share a small portion of the revenue from each transaction. App distributors earn their revenue primarily by entering into fee-sharing agreements with app-developers that give them the right to a portion of the app price as well as a portion of any transactions within the app. App developers are familiar with this system and the differences in each environment as even its critics often engage in a similar model. For example, Epic actually launched its own app distributor called Epic Store, which—like other app distributors—charges third-party developers a percentage of their transactions. Since most apps are now offered at a price point of zero, distributors earn most of their income through in-app transactions.

Most of us would be shocked by the idea of the government dictating the way a mall could determine rent or the booth fee at a craft fair, but proposals such as the amended HB 2033 seek to do just that in a digital space.



HB 2033 Lets The Government Pick Winners and Losers

In some cases, parties have not been happy with the terms of these contracts after the fact. In most cases, this occurs as a dispute between the app store provider and well-established and successful app developers like Spotify, Epic Games, and Match Group, owner of Tinder. The courts are well suited to handle such disputes. HB 2033 as amended would have the government pick a side in these ongoing cases as well as future contracts, rather than allowing courts to handle the matter.

Epic Games can do transactions with users on mobile devices without using the store's app payment systems

These are not small businesses or a David versus Goliath scenario. Spotify is the largest music streaming service and has a market cap of \$50 billion. Match Group, parent company of some of the largest online dating services, is worth \$40 billion. And Epic Games, one of the largest video game companies, was valued at over \$40 billion in the [most recent transaction involving its shares](#).

HB 2200 as amended benefits these large and successful companies by limiting the terms that can be offered in the contracts and therefore sides with one successful company over another.

HB 2033 Could Increase Prices for Consumers and Small Developers

The beneficiaries of HB 2033 as amended would be the large companies unhappy with their current contract. Those harmed would be Arizonans and small developers.

HB 2033 as amended would eliminate one way app stores are able to fund their services. As a result, app stores would have to find another way to recoup this revenue or large companies may move away from offering this service. In both cases, smaller app developers would be harmed. For example, fees for distribution or other ways of collecting revenue to fund the services of an app store would increase and raise the costs of additional development. Alternatively, if the options for successful app stores were to diminish, new app developers might lose options to connect with customers or again face the increased costs associated with an earlier software era.

Arizonans would lose out too. Right now, the vetting process for apps in an app store and the use of app store payment processors creates a sense of trust for consumers when they make payments or give sensitive financial information. If an app is engaging in fraudulent or criminal activity with this information, an app store can know and suspend the bad actor. HB 2033 as amended would prohibit app store from what could be termed "retaliating" against the app, which would put Arizonans at greater risk for potential fraud. Similarly, app stores would not be able to offer parental controls in many cases as the bill would not allow them to limit the use of a different payment processor in the creation of such limits.

Arizonans might also face higher prices for apps and devices at a time when inflation continues to be a concern. App stores losing a key source of revenue would have to reduce costs, increase prices for devices, and/or begin charging to distribute apps that are free today.

Thank you again for the opportunity to testify. [We ask that you not advance HB 2033 as amended.](#)

Sincerely,

Jennifer Huddleston
Policy Counsel

NetChoice

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