

NetChoice Promoting free enterprise and free expression on the net



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House Commerce Committee, Subcommittee #4
Virginia House of Delegates

Re: Opposition to [SB 341](#), regarding online marketplaces

We ask you to **oppose SB 341** because it:

- hurts Virginia's small businesses;
- undercuts your constituents' privacy rights;
- requires online marketplaces to assume responsibility for big-box stores' challenges;
- discriminates against businesses—large and small—that sell online; and
- conflicts with federal law.

SB 341 basically demands that online marketplaces treat their sellers like criminals. This is neither reasonable nor necessary. SB 341 also fails to address the root cause of retail criminal theft: the actual theft itself. Nor does SB 341 address the theft of goods along the supply chain from distributors to retail stores. And it doesn't address the ability of criminal enterprises to steal pallets of products from warehouses and loading docks.

Instead, SB 341 just makes it harder for Virginia's small businesses to compete with big-box stores.

1. The bill imposes burdensome requirements on digital marketplaces, small businesses, and even Virginia residents.

If a neighbor sells 200 custom candles on Facebook Marketplace, the platform would have to collect the neighbor's address, contact information, and bank account. The upshot is that some Virginia small businesses would not use digital marketplaces to avoid the scope of the law. This will, at the same time, expose Virginians to less safe transactions and increase criminal opportunities.

SB 341's liability on online marketplaces also puts small businesses across Virginia at a significant disadvantage against big box retailers who already dominate our retail landscape and do not rely on online marketplaces to reach customers. Given how small businesses struggled to survive the pandemic, let alone to turn a profit, it's hard to see how this cost would be justified.

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

SB 341 risks the privacy of anyone selling online. That’s because it requires listings on sites like Etsy to post the seller’s name and address in the listing itself. So the public will see that a Virginia grandma sells hand-made candles—even if that grandma would rather not have that information made public.

3. The bill requires online marketplaces to do the job that big-box stores are failing to do.

The chief proponents of this legislation—big-box stores—are asking the Virginia legislature to saddle online marketplaces with responsibilities that are unrelated to those marketplaces. Consider that 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 in retail stores is happening in one of two locations: either while the goods are in the supply chain or after the goods have arrived. That means the theft is occurring at the points connected to the store’s logistics network and accessible mainly to the store’s own workers. The best way to stop this kind of theft is for the chains to better police their own supply chain and stores.

But instead of doing the difficult and delicate work of policing their own problems, these big-box stores want the legislature to shift the responsibility to online marketplaces where some stolen goods may eventually be sold.

Today, law enforcement can act against any seller, online or off, who sells stolen goods. Online marketplaces have an interest in making sure that goods sold on their platforms are legitimate, since online marketplaces are liable for violations of federal criminal laws and intellectual property laws.

4. The bill conflicts with federal law.

SB 341 also runs afoul of federal laws like the Communications Decency Act (CDA) by imposing liability on platforms for content posted by users. 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.” (47 USC § 230(c)(1))

So even if this bill were enacted, it would not withstand judicial review.

Although we recognize that SB 341 seeks to remedy commercial problems, this bill does not solve theft problems. And Virginians should not be forced to surrender the privacy of their bank account numbers.

This is a misguided approach that punishes beneficial aspects of the economy. We ask that you not advance SB 341

Sincerely,
Steve DelBianco
President & CEO

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