

VA SB 1455

TESTIMONY IN OPPOSITION

January 27, 2025

Dear Chair Ebbin, Members of the Senate General Laws and Technology Committee:

We respectfully urge you to **oppose SB 1455**. While the bill has been marketed as a simple tweak to existing state law, the reality is that it is an attempt to reopen a major, national policy debate. As it stands, the federal INFORM Act preempts the various state iterations of this legislation.

In sum, SB 1455 should be opposed because:

1. The existing state statute being amended is preempted by federal law;
2. Amendments to state statute serve only to create confusion and regulatory chaos; and
3. Such chaos will benefit particular market incumbents to the detriment of competition and the free market.

SB 1455 Puts Government's Thumb on the Free Market Scale

SB 1455 claims to fill a loophole in the existing statute. However, from a plain reading of the law, there does not seem to actually be a loophole that needs filling. Instead, this is an attempt to relitigate an issue that many parties engaged in good faith in to settle. Indeed, the issue is so settled that there is now a federal statute that supersedes this one. Any change to the Virginia-specific law then is an attempt to construct a state-by-state patchwork.

The federal INFORM Consumers Act, signed into law on December 29, 2022, already requires online marketplaces to collect and verify identification information for high-volume third-party sellers (those with over 200 transactions and \$5,000 in annual revenues). The Federal Trade Commission is charged with enforcing the law, with state attorneys general able to bring civil actions, and online marketplaces have already implemented compliance measures.

It appears that the only difference between SB 1455 and the federal law is a vague addition that puts the law under the Virginia Consumer Protection Act (which again, the federal law already gives state AGs authority). SB 1455 is both unnecessary and confusing to online marketplaces and small businesses. The purpose of a federal law was to create clarity across all 50 states, and while states hold the right to go

above and beyond the federal law these additions only create confusion and do nothing to combat true organized retail crime.

Having 50 different state laws and regularly amending them at the behest of particular competitors would cause chaos and amounts to the state government propping up certain businesses at the expense of others. This is a violation of free market principles and is an altogether misguided policy. If there exists a genuine issue with the statute—the federal statute—as written, Congress must pass an amendment that fixes it and applies equally and fairly to all parties. As it stands, the federal statute supersedes the Virginia one, and therefore SB 1455 would be ill-advised.

Importantly, NetChoice won an injunction against similar legislation in Georgia. In July, 2024, the U.S. District Court for the Northern District of Georgia halted Georgia’s unconstitutional INFORM Act amendments in its Act 564 from going into effect while our case, *NetChoice vs Carr*, moves through the legal system. Like Georgia’s Act 564, Virginia’s SB 1455 contradicts federal law, creates uncertainty, and fails to effectively tackle the intended problem of retail crime. It neither provides law enforcement nor marketplaces with resources to detect or prevent retail crime, nor does it give them the necessary resources to put retail thieves in jail.

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NetChoice still holds to its original position from the beginning of the debate around the federal and state INFORM Acts: that this is a law enforcement issue.

If the goal is genuinely to minimize or eliminate organized retail crime, the focus must be on giving law enforcement officers what they need to combat sophisticated criminal enterprises. Shifting the blame and the policy discussion to small sellers using online platforms misses the mark entirely.

There is nothing stopping the state from pursuing more aggressive actions against the perpetrators of organized retail crime directly. One has to imagine such an action would be wildly popular and garner the support of every retailer, whether online or offline.

Again, we ask that you **oppose SB 1455** and offer ourselves as a resource to discuss these issues in further detail. We appreciate your attention to this matter.

Sincerely,

Amy Bos
Director of State and Federal Affairs
NetChoice

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