

**NetChoice** *Promoting Convenience, Choice, and Commerce on The Net*

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Senator Jake Files, Chairman  
Committee on Revenue & Tax  
Arkansas Senate  
Little Rock, Arkansas

March 2, 2015

**RE: Opposition to SB 527 - Notice And Reporting Requirements For Internet Sales**

Dear Chairman Files:

We understand the need for states to raise revenue. However, we worry that SB 527 exposes the private purchases of Arkansans to potential abuse and leaks by the state's tax department. Moreover, SB 527 is based on a Colorado law that federal courts have already ruled to be unconstitutional. Finally, nothing about SB 527 would bring new revenue into the state, as it would only move money from the pockets of Arkansans to state coffers. For these reasons we ask that you oppose SB 527.

Under SB 527, the Arkansas state tax department receives a list of purchases over \$500 that Arkansans make from out-of-state companies. As you can imagine, this information is private and can be very sensitive. Consider an Arkansan purchasing homeopathic treatments for a mental disorder, or making a purchase of jewelry about which their significant other does not know. In essence, SB 527 gives Arkansas tax collectors the ability to look into the personal lives of state residents.

SB 527 mirrors a 2010 Colorado law<sup>1</sup> that federal courts determined was in violation of the US Constitution – on both the dormant commerce clause and first amendment. Shortly after enactment, a federal court in Colorado enjoined the Colorado reporting mandate. Five years later, the law still remains enjoined and the state has spent thousands of dollars trying to overturn the decision.

Like the Colorado law, SB 527 would impose undue burdens on out-of-state sellers, pointing to similar constitutional infirmities and an expensive court battle with a predictable outcome.

The mandated disclosure of Arkansans' buying habits is not only invasive, but federal courts have determined that it violates the first amendment. A federal district court struck down a North Carolina reporting mandate similar to SB 527, saying:

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<sup>1</sup> Rev. Stat. § 39-21-112

“The First Amendment protects a buyer from having the expressive content of her purchase of books, music and audiovisual materials disclosed to the government. The fear of government tracking and censoring one’s reading, listening and viewing choices chills the exercise of First Amendment rights.”<sup>2</sup>

Please note that in no event would SB 527 bring new tax revenue into Arkansas, since any new sales & use tax collected just moves from the Arkansas purchaser to the state treasury.

We fully understand the need for states to seek out additional tax revenue. However, SB 527 presents new burden on Arkansans that would expose their privacy and cost the state to defend a clearly unconstitutional law.

Thank you for considering our views. Please let me know if I can provide further information.

Sincerely,



Steve DelBianco  
Executive Director, NetChoice

*NetChoice is a trade association of e-Commerce businesses. More information at [www.netchoice.org](http://www.netchoice.org)*

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<sup>2</sup> *Amazon Inc. v. Lay*, Case No. C10-664 MJP (WA Fed Ct, Oct. 10).