



October 6, 2021

The Honorable Jim Marshall, Chair
The Honorable Rob Matzie, Chair
Pennsylvania House Consumer Affairs Committee
Capitol Building, 501 North Third Street
Harrisburg, PA 17120-3031

RE: HB 1594 – An Act Amending the Unfair Trade Practices and Consumer Protection Law

Dear Chairs Marshall and Matzie:

Internet Association (IA) represents a cross-section of online commerce and technology companies doing business in Pennsylvania and across the U.S., employing millions of people, while providing goods and services that benefit the local and national economy, including hundreds of thousands of Pennsylvanians who make a living or supplement their incomes selling on online marketplaces. We respectfully express opposition to proposed legislation **House Bill 1594**.

IA agrees with the basic premise of this legislation in that organized retail crime (ORC) is a growing threat to businesses of all sizes and the proliferation of stolen or fraudulent goods must be aggressively investigated and prosecuted. However, the legislation before you today does nothing to address the issue of ORC at its source, namely the targeting of brick and mortar retailers and brazen theft of merchandise from store shelves.

HB 1594 instead assumes the guilt of “high-volume” third party online sellers and demands they prove their innocence and legitimacy through the public disclosure of sensitive and personally identifying information on each of their products. Further, it treats all online marketplaces the same in terms of violating the Unfair Trade Practices Law, despite a multitude of diverse business models operating in the online ecosystem. IA views this bill and similar bills in other states as a transparent attempt to enact anti-competitive laws that put small businesses and entrepreneurs selling online and online marketplaces at a distinct disadvantage compared to large retailers who also have a well-established online presence, but are exempt from the legislation.

HB 1594 invades consumer privacy, unduly burdens Pennsylvania small businesses, risks increasing fraudulent activity online, and shifts enforcement burdens and liability to online marketplace operators thereby discouraging the business growth of American online retailers. The proposed legislation requires online marketplaces to:

- 1) verify the identity of sellers who become “high-volume marketplace sellers;”
- 2) require the high-volume seller to provide specific contact information on each product listing; and
- 3) create a reporting mechanism for reporting suspicious marketplace activity.

While these requirements may seem reasonable, they take a one size fits all approach to vastly



different business models that will ultimately harm Pennsylvania companies and individuals seeking to sell goods online, limiting the choice and availability of those goods for Pennsylvania. The bill will also raise small business start-up costs and increase administrative burdens associated with registering with a third-party and obtaining government records they might not otherwise be required to obtain.

Given the breadth of different business models captured under this legislation, some online marketplaces may be ill-prepared to comply with these verification and display mandates and may simply choose to cut off Pennsylvania small businesses and microbusinesses altogether. This would put small businesses across Pennsylvania at a significant disadvantage against big box retailers who do not rely on online marketplaces to reach potential customers and already dominate our retail landscape. Imposing such additional burdens on small businesses would be particularly onerous now, given how small and mid-sized companies are still seeking to recover economically from the pandemic.

HB 1594 also risks compromising the privacy of anyone selling an item on certain online marketplaces, or even those using online classified ads, as it may require listings that include the seller's name and home address. Making sensitive information like this open to the public creates many inherent privacy risks. This requirement for the wide disclosure of sensitive personally identifiable information runs counter to the current dialogue on consumer privacy and data security laws. While the legislation purports to include exemptions for sellers operating out of their residences, the exemptions fail to provide sufficient protections. For example, a marketplace must relinquish any of the limited disclosure requirements for a seller who simply has not responded to an inquiry from another user of a marketplace in a "reasonable time."

Additionally, related to privacy risks, the legislation requires payment processors to provide bank account verification information to online marketplaces which is concerning given that sharing this type of sensitive financial information could lead to an increase in fraudulent activity. The language does not provide clear direction on the bank account information verification process and if a third-party seller's merchant bank account number would need to be shared with the online marketplace. If sharing the actual account number is required, it could lead to increased potential for criminal activity, fraud, and financial harm to the seller when combined with the legislation's other requirements to make publicly available online the identifying information of the seller.

Online marketplaces should be incentivized to continue to work closely with law enforcement to identify and prosecute fraudulent online sellers, instead of shifting liability directly onto online marketplaces. Sadly, one of the unintended consequences of **HB 1594** may be an increase in the number of online listings of fraudulent and illegal products, as criminals will quickly figure out that the online marketplace bears the liability for any "violation" of the law. Of course, this would also increase the very risk to Pennsylvania residents that the bill seeks to address.

Compounding the liability issue, the bill also requires online marketplaces to create an amateur reporting mechanism for suspicious marketplace activity. This will lead to several problematic outcomes. First, suspicious marketplace activity is not always criminal activity, nor does it



always lead to criminal activity. For example, if a neighbor sells a new or gently used power tool kit for less than the big box retailer price, this could generate a suspicious activity report. The implied criminal activity may unfairly punish the neighbor when it is highly likely that the neighbor was just entrepreneurial in acquiring and selling the product at a price less than retail.

The proliferation of illegal goods online erodes the very trust that is required to bring consumers to online marketplaces, and our members invest heavily to provide a safe and trusted experience for all consumers – buyers and sellers. But solutions need to be targeted at the wrongdoer—not marketplaces who are already taking the lead in taking down such listings and working with law enforcement, retailers, and brands to put such actors out of business. Law enforcement has the experience, authority, and means to detect suspicious marketplace activity. IA would strongly recommend the Legislature consider legislation that would constitute and fund an Organized Retail Crime Task Force like what has been done in California and in Arizona. Other states such as Illinois and Utah have implemented task forces through their Attorney General. This approach has been supported by law enforcement, the e-commerce industry, and big box retailers to holistically address ORC at its source. IA and its member companies stand ready to help craft a forward-thinking law that protects consumers while being flexible enough to encourage industry innovation and growth in the Commonwealth.

For these reasons, we respectfully request that the committee not advance **HB 1594**, but rather to focus on solutions supported by law enforcement, the internet industry, and retailers that combat ORC as whole through a more collaborative and equitable approach.

Thank you for your consideration on this matter and I welcome any further discussion. I can be reached at olsen@internetassociation.org or 518-242-7828.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John Olsen', written in a cursive style.

John Olsen
Interim SVP, State Government Affairs

Cc: House Consumer Affairs Committee members
Philip Kirchner, Executive Director and Council
Nancy Lane
Beth Rosentel