



September 29, 2021

The Honorable Jim Marshall
105 Ryan Office Building
P.O. Box 202014
Harrisburg, PA 17120-2014
via electronic submission

The Honorable Robert Matzie
121 Irvis Office Building
P.O. Box 202016
Harrisburg, PA 17120-2016

RE: **NEUTRAL on HB 1594 (Tomlinson): Organized Retail Crime**

Chairman Marshall & Chairman Matzie:

I am submitting these comments on behalf of the National Federation of Independent Business in Pennsylvania (NFIB PA). NFIB is the nation's leading small business advocacy organization, representing nearly 13,000 members in Pennsylvania and over 300,000 members throughout the United States. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses.

NFIB is currently neutral on HB 1594 (PN 1757).

During the last 18 months, the small and independent business community has suffered immensely, through no fault of their own. Fifty percent of all small business owners in August reported job openings they could not fill, a record high reading according to [NFIB's monthly jobs report](#). The number of unfilled job openings has remained far above the 48-year historical average of 22%. As a result of this labor shortage, businesses continue to raise compensation levels to the highest levels in 48-years, as recovery optimism fades, supply-chain disruptions are prevalent, and prices soar.

Due to the state government's inconsistent COVID-19 response, small and independent businesses were shuttered, while their big-box store neighbors were allowed to remain open. This led to some small and independent businesses migrating to an online marketplace to make up for lost revenue.

NFIB appreciates the opportunity to comment on HB 1594 (PN 1757) and welcomes the opportunity to have our questions and concerns addressed before deciding if the organization can support this legislation. NFIB staff has engaged with stakeholders on this legislation and will continue to do so as the bill moves through the legislative process.

The intent behind the legislation is admirable and this legislation will help to level the playing field for small businesses selling products through an online marketplace. Currently, criminals are undercutting legitimate small and independent businesses by selling stolen items at a fraction of the cost. This negatively impacts the ability of a small or independent business to sell their legitimate products. While an online marketplace already possesses the ability to remove uncredentialed sellers from their platform, they have failed to do so thus far, allowing criminals to sell products to the general public with limited protections for the consumer.



NFIB's questions/concerns regarding the language of HB 1594 (*PN 1757*) are as follows:

- **Confusing**: It is not abundantly clear what businesses, or individuals, this legislation applies to. It is NFIB's understanding that this legislation would not include the vast majority of NFIB member-businesses, as they already provide an online marketplace with much of this information, and it is listed on their website, but this could be more prominent in the legislation.
- The definition of a '**high-volume third-party seller**' on page 7, line 4, states that a seller is someone "who, in any continuous twelve-month period during the previous twenty-four months, has entered into 200 or more discrete transactions of new or unused consumer products resulting in the accumulation of an aggregate total of \$5,000 or more in gross revenues."
 - The timeframe of 'twelve-month period during the previous twenty-four months' is confusing. This could result in misunderstandings and unnecessary penalties, as it does not follow the calendar year, or a taxable year.
 - Would this include the single mom who sells LuLaRoe or Mary Kay products, using an online marketplace from her home?
- **Lacking Education**: HB 1594 (Tomlinson) does not address the duties of the state, or the online marketplace, on educating a small business or individual of these new requirements.
 - Who has the duty to inform a small business or individual of these new requirements?
- **Cyber Security**: NFIB has concerns with the ability of a third-party online marketplace to maintain the safety and security of a high-volume third-party seller's information. Nearly every single major company, and even small companies, have experienced being hacked by outside actors. This is an ongoing threat, that only seems to be escalating in recent years.
 - On page 2, lines 8-9, this legislation refers to a 'third party contracted by the online marketplace to maintain the information.'
 - What companies provide this type of service?
 - Was this legislation written to benefit a specific company?
 - How will these companies ensure this data remains private and secure and what laws are already in place to protect a legitimate seller?
- **Twenty-four hours to provide information**: On page 1, lines 16-19, this legislation states that, "a high-volume third-party seller on the online marketplace provide the online marketplace with all of the following information within *twenty-four hours* of becoming a high-volume third-party seller"
 - Twenty-four hours is a short turnaround time for a small business or an individual that has no finance department monitoring gross revenues on an hourly basis. NFIB members have an average size of 10 employees within their business. In fact, many NFIB members have no Human Resource department, no tax accountant on staff, and the owner of the business is often putting in 70+ hours a week.
 - While HB 1594 (*PN 1757*) states that a high-volume third-party seller must submit their information within 24 hours of meeting the definition of the term, there is no timeframe in which the online marketplace must reinstate their account on the online marketplace when back in compliance. It is recommended that a similar stipulation of 24 hours should be mandated upon the online marketplace to reinstate a complaint account once it has been suspended.



- Who has oversight over the online marketplace, a payment processor, or other third party contracted by the online marketplace to maintain the information?
- If a legitimate high-volume third-party seller has a dispute with the online marketplace regarding the information provided, there is no recourse for that seller in this legislation. They become beholden to the online marketplace who may make them wait days, if not longer, to be reinstated.
- **Regulatory Reform:** Pennsylvania desperately needs regulatory reform. This is a result of legislation commonly containing language such as, “the department may promulgate regulations.” The legislature should not continue to allow bureaucrats, who are unelected and unaccountable to the public, to essentially make law. There are nearly 163,000 regulations on business in Pennsylvania.
- **Provides too much authority to a private online marketplace:** On page 4, lines 19-21, HB 1594 states that, “Any other information determined to be necessary by the online marketplace to address any potential circumvention or evasion of the requirements under this clause.”
 - Does this legislation allow for an online marketplace to request a social security number, or other personally identifiable information, of a high-volume third-party seller? If the privately owned online marketplace can justify it as a safety measure, this legislation would permit that.
 - What would happen if a seller does not have a government issued identification card, as mentioned on page 8, lines 8-10? This legislation includes a mandate to have a state-issued identification, but no manner to remedy that should the seller not possess one.

As the above comments indicate, **NFIB has several questions on HB 1594 (Tomlinson), as currently written.** NFIB thanks Representative Tomlinson for her efforts to help thwart criminals from being able to compete against legitimate businesses on an online marketplace. The intent behind the legislation is admirable, but we must ensure that we are not creating another barrier to entrepreneurship for our small and independent business owners.

America’s small business owners are primed to hire, grow, and thrive – and the federal and state government should continue to take steps to encourage small business owners and entrepreneurs to locate their business right here in the Commonwealth.

Thank you again for the opportunity to comment on behalf of Pennsylvania’s small businesses. Please do not hesitate to contact me should you have any questions or if you would like to discuss this legislation further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory B. Moreland', written over a light blue horizontal line.

Gregory B. Moreland
NFIB PA State Director

cc: House Consumer Affairs Committee