

Subject: Response to 7/25/2022 Colombo PRR
Date: Friday, October 7, 2022 at 8:21:10 AM Eastern Daylight Time
From: Julia.Lawrence@ohiohouse.gov
To: AO Records
CC: Paul.Disantis@ohiohouse.gov, Josh.Sabo@ohiohouse.gov
Attachments: image001.png

EXTERNAL SENDER

Dear Ms. Colombo:

This email responds in part to your public records request dated 7/25/2022 to Speaker Cupp and Representatives Abrams, Bird, Carruthers, Cross, McClain, Riedel, Seitz, Stoltzfus, and Wiggam for “All email communications (including emails, email attachments, calendar invitations, and calendar invitation attachments) between (a) the Representative or anyone communicating on their behalf (such as a legislative aide, assistant, or scheduler), and (b) Jason Snead (jsnead@honestelections.org and jason@jasonsnead.com), Michael Bowman (mbowman@alec.org), Hans von Spakovsky (hans.vonspakovsky@heritage.org), Jason Torchinsky (jtorchinsky@hvjt.law and jtorchinsky@holtzmanvogel.com), James Bopp, Jr. (@bopplaw.com and jboppjr@aol.com), John Eastman (jeastman@claremont.org and jeastman@ccg1776.com), and Cleta Mitchell (cleta@cletamitchell.com).”

Responsive records from the offices of Representatives Abrams, Bird, Carruthers, Cupp, Cross, McClain, Seitz, and Stoltzfus can be accessed at the following link:

<https://ohiolis.sharefile.com/d-s93064d4667d94d66aa6b7177d77bf423>

Representative Riedel has no records responsive to your request.

No records have been redacted or withheld from this response.

Please note that we have treated your email dated 9/12/2022 requesting communications with additional individuals as a separate request. Records responsive to that request will be provided subsequently.

We will continue to provide records responsive to your request dated 7/25/2022 if they are subsequently identified and determined to be responsive.

Sincerely,

Julia M. Lawrence, Esq.
Majority Deputy Legal Counsel
Ohio House of Representatives

77 South High Street, 14th Floor
Columbus, OH 43215
Office: (614) 466-1460
Email: Julia.lawrence@ohiohouse.gov



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From: Michael Bowman <mbowman@alec.org>
Sent: Tuesday, December 7, 2021 2:22 PM
To: Rep50
Subject: RE: Oppose HB 272



December 7, 2021

To: Members of the Ohio House of Representatives
From: ALEC Action
Re: Oppose HB 272

Dear Members of the Ohio House of Representatives,

ALEC Action writes encouraging you to **oppose HB 272**, which regulates the conduct of online merchants relative to "high-volume third-party sellers." The goal of HB 272 is noble—to prevent fraudulent and deceptive trade practices. There are problems with the mechanisms the proposal chooses, though, such as a tenuous link between compelled, detailed disclosures and an amorphously stated goal. Most importantly, though, the **proposal would turn online marketplaces into an arm of the government** for purposes of record keeping and intellectual property enforcement.

There are at least four ALEC policies may help guide state legislators in this matter:

- [Six Principles for Communications and Technology](#);
- [Resolution to Oppose Imposing Intermediary Liability on the Internet Under State Laws](#);
- [Principles on Online Privacy](#); and
- [Resolution Protecting Online Platforms and Services](#)

Among other things, the Six Principles for Communications and Technology establish that any proposal impacting innovative platforms be **driven by the free market**, that government strive for **competitive neutrality**, and that **deregulation should be continuously pursued to reduce burdens and promote growth**. Instead of promoting growth through deregulation, HB 272 imposes heavy-handed, if not impossible, recordkeeping and reporting requirements on online marketplaces. This would disadvantage small and individual online retailers at a time when neither they nor the Ohio economy can afford it. In fact, the proposal would give an **unfair advantage to big box stores** that do not rely on online marketplaces as their *primary* source of revenue. Online marketplaces like Etsy, Nextdoor, and Craigslist lack the resources to confirm a seller's address and the authenticity of the product for sale.

ALEC's Principles on Online Privacy acknowledge that **the marketplace is working** and that **governments should avoid undue restrictions on the information economy**.

"Parties should be able to buy or use online services with minimal government interference. Unnecessary regulation of online activities will distort development of the information marketplace by decreasing the supply and raising the cost of products and

services... *Governments already possess tools to address fraud and other harms to consumers. Additional regulation is unnecessary.*"

The burdensome reporting requirements are a serious threat to sellers' privacy. By requiring third-party sellers or online marketplaces to collect full names, addresses, telephone numbers, email addresses, bank account information, government issued identification, and tax documents, HB 272 fails to meet the standard of "minimal government interference." Instead, much like broad reporting, recordkeeping, and disclaimer requirements for online political speech and issue advocacy have chilling effects on speech, HB 272 would have a similar effect, chilling online commerce in Ohio.

Finally, HB 272 likely runs afoul of Section 230 of the Communications Decency Act. Section 230, in turn, has exceptions for both violations of federal criminal law and violations of copyright, but this does not provide a state carte blanche to regulate platforms in the name of preventing piracy or similar. As acknowledged, and resolved, by ALEC's Resolution Protecting Online Platforms and Services, Section 230 "enables prosecution of online platforms and services for violations of federal criminal law or intellectual property law." But HB 272 would take to focus of internet businesses from conforming to existing federal criminal and intellectual property law to complying with the proposal's reporting requirements. See ALEC Resolution to Oppose Imposing Intermediate Liability on the Internet Under State Laws.

Protecting consumers from the sale of improperly advertised or counterfeit products is a noble goal. Unfortunately, HB 272 would only harm the online marketplace by imposing heavy-handed reporting requirements without truly achieving its goal. Because it violates the U.S. Constitution and is contrary to ALEC model policies, ALEC Action encourages you to oppose HB 272.

Thank you for your consideration.

Sincerely,
Michael Bowman
President
ALEC Action

ALEC Action is the 501(c)4 affiliate of the American Legislative Exchange Council.

Visit ALECAction.org

From: Michael Bowman <mbowman@alecaction.org>
Sent: Wednesday, December 8, 2021 2:20 PM
To: Rep50
Cc: LSchalk@alec.org; Jwilliams@alec.org
Subject: RE: Oppose HB 272



December 8, 2021

To: Members of the Ohio House of Representatives
From: ALEC Action
Re: Oppose HB 272

Dear Members of the Ohio House of Representatives,

ALEC Action writes encouraging you to **oppose HB 272**, which regulates the conduct of online merchants relative to "high-volume third-party sellers." The goal of HB 272 is noble—to prevent fraudulent and deceptive trade practices. There are problems with the mechanisms the proposal chooses, though, such as adding additional burdens to small businesses without liability protections and the tenuous link between compelled, detailed disclosures and an amorphously stated goal. Most alarming, though, **the proposal would turn online marketplaces into an arm of the government, potentially in violation of the U.S. Constitution's Fourth Amendment** for purposes of law enforcement, record keeping, and intellectual property enforcement.

There are at least four ALEC policies may help guide state legislators in this matter:

- [Six Principles for Communications and Technology](#);
- [Resolution to Oppose Imposing Intermediary Liability on the Internet Under State Laws](#);
- [Principles on Online Privacy](#); and
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Among other things, the Six Principles for Communications and Technology establish that any proposal impacting innovative platforms be **driven by the free market**, that government strive for **competitive neutrality**, and that **deregulation should be continuously pursued to reduce burdens and promote growth**. Instead of promoting growth through deregulation, HB 272 imposes heavy-handed, if not impossible, recordkeeping and reporting requirements on online marketplaces. This would disadvantage small and individual online retailers at a time when neither they nor the Ohio economy can afford it. In fact, the proposal would give an unfair advantage to big box stores that do not rely on online marketplaces as their *primary* source of revenue. Online marketplaces like Etsy, Nextdoor, and Craigslist lack the resources to confirm a seller's address and the authenticity of the product for sale.

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The burdensome reporting requirements are a serious threat to sellers' privacy. By requiring third-party sellers or online marketplaces to collect full names, addresses, telephone numbers, email addresses, bank account information, government issued identification, and tax documents, HB 272 fails to meet the standard of "minimal government interference." Instead, much like broad reporting, recordkeeping, and disclaimer requirements for online political speech and issue advocacy have chilling effects on speech, **HB 272 would have a similar effect, chilling online commerce in Ohio**, likely leading to a number of eCommerce platforms no longer offering service in the state.

On top of that, the law requires platforms both to collect highly confidential personally identifying information (PII) and to "implement and maintain reasonable security procedures and standards..." While many platforms attempt to maintain reasonable standards, HB 272 would add additional burdens on them, without any promises of liability protections or indemnity due to the State's enhanced PII reporting requirements.

Additionally, the U.S. Constitution's Fourth Amendment prohibits the government from accessing certain information without probable cause and without a warrant. HB 272 allows the Attorney General to access the PII stored by platforms without a warrant for the purpose of enforcing the law. The Supreme Court has ruled that such workarounds violate the Constitution, which would jeopardize any investigation the AG may have into the sale of counterfeit goods.

The U.S. Constitution's Commerce Clause prohibits states from enacting legislation that would reach across their borders and regulate out-of-state conduct. HB 272 fails to limit its jurisdiction just to the State of Ohio, with its definition of "high-volume marketplace seller" as an example, lacks any meaningful limitation and includes transactions occurring anywhere in the country so long as the seller "enter[s] into two hundred or more discrete sales or transactions... with an aggregate total of five thousand dollars or more in gross revenue." This means that Ohio would likely include aggregate transactions rather than just calculating the transactions benefiting Ohio residents.

Finally, HB 272 likely runs afoul of Section 230 of the Communications Decency Act. Section 230, in turn, has exceptions for both violations of federal criminal law and violations of copyright, but this does not provide a state carte blanche to regulate platforms in the name of preventing piracy or similar. As acknowledged, and resolved, by ALEC's Resolution Protecting Online Platforms and Services, Section 230 "enables prosecution of online platforms and services for violations of federal criminal law or intellectual property law." But **HB 272 would take to focus of internet businesses from conforming to existing federal criminal and intellectual property law to complying with the proposal's reporting requirements.** See ALEC Resolution to Oppose Imposing Intermediate Liability on the Internet Under State Laws.

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Thank you for your consideration.

Sincerely,
Michael Bowman
President
ALEC Action

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