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INNOVATION ECONOMY

WRITTEN TESTIMONY OF TYLER DIERS
TECHNET
WISCONSIN STATE ASSEMBLY
ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY
REPRESENTATIVE SPIROS, CHAIRMAN
IN OPPOSITION TO AB 743

January 5, 2022

Good morning, Mr. Chairman and members of the Committee:

My name is Tyler Diers and I serve as the Midwest executive director for TechNet.

TechNet is a national, bipartisan technology trade association advocating for the innovation economy at the federal and state level. We represent 87 member companies in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

I am before you today in opposition to AB 743.

Let me begin by saying, organized retail crime is a significant issue facing all retailers today, and one that our members don't take lightly. Which is why they have invested in technologies, clear policies, personnel, and processes that identify suspected bad actors and bad listings, block them from being published and remove them from their platforms. When there is evidence that bad actors are misusing a marketplace to sell stolen or illicit goods, our members work directly with law enforcement, retailers, and brands to bring offenders to justice.

This is a complex issue. One that requires collaboration and information sharing. But the sharing of information shouldn't create additional opportunities for fraud and abuse. It shouldn't seek to benefit one type of retailer over another. It should seek to create a balanced system that both provides a way for buyers and sellers to interact, while protecting both from fraud and abuse.

Our members have been working with the proponents of this legislation for over a year to strike that balance, and prior to the bill before you being introduced, many of our members, along with a number of larger brick-and-mortar retailers, came out in support of U.S. House bill H.R.5502.

H.R.5502 reflects months of negotiations to find compromise on this issue. Now months after that compromise being reached, the proponents of the bill before you have cherry-picked sections of that bill to include here, but reverted much of the language back to legislation introduced in nearly 20 states over the last year. Legislation that has only passed in the state of Arkansas.

We find it very disingenuous that we are here today to discuss language that flies in the face of those negotiations, and as drafted this bill would have a detrimental impact on thousands of Wisconsin small businesses and individuals who use online marketplaces to legitimately make a living.

Impact on Small Sellers

The way the bill is currently drafted, it is going to hurt small sellers that sell on internet marketplaces and puts a one-size fits all approach to the diverse ecosystem of online marketplaces. A common misconception is that all online marketplaces have the same business model. While similarities exist, Amazon, Etsy, eBay, OfferUp, Poshmark, 1st Dibs, The RealReal – the list goes on and on – all have different business models with different types of sellers and customer bases.

However, one constant that remains the same is the internet has provided Wisconsin small businesses and individuals with the opportunity to instantly and conveniently sell their products to consumers across the globe. This legislation would unfortunately hurt their ability to compete by creating a new, time-consuming process of verification that big-box retailers would not have to deal with.

Efforts to stem the flow of counterfeit and other illegal goods cannot focus on online marketplaces alone. They must consider the cooperative role physical marketplaces must continue to play. Just as brick-and-mortar retailers are able to institute voluntary business practices that help to remediate the proliferation of organized retail crime, marketplaces similarly should have the same flexibility to institute business practices without discriminatory government regulation.

An Alternative Approach

We believe the issue before you is much better addressed by implementing a federal standard – a belief that is shared by the proponents of this bill as well. The agreed upon language in H.R.5502 includes federal preemption – which would effectively make legislation on the subject here in Wisconsin void.

However, we do believe the state can be creative at effectively addressing organized retail crime.

In order to curtail such activity, we stand prepared to provide you all with a draft state organized retail crime task force similar to what is passed with support from online marketplaces and retail in Arizona last year. The task force brings together law enforcement, retail loss prevention experts, online marketplaces, and other key

stakeholders to collaborate on investigations and prosecutions of organized retail crime.

And these efforts to date have been successful. Just a few weeks ago in Illinois, Attorney General Raoul successfully announced a major bust just a few months into launching the Task Force in Illinois. The Task Force recovered thousands of stolen goods at several storage units in Chicago. While a complete inventory is ongoing, the stolen goods are estimated to be worth millions of dollars.

Utah AG Sean Reyes (R) has operated a program out of his office coordinating with all stakeholders (retailers, different law enforcement agencies and online marketplaces) that has yielded very positive results and had several major busts over the past few years. Florida AG Ashley Moody (R) and Connecticut AG William Tong (D) are also moving forward with similar task forces to coordinate investigations into alleged organized retail crime activities and prosecute criminals perpetrating these crimes.

These sorts of public-private partnerships are much more effective in addressing organized retail crime because you bring the right people from the right organizations together in a comprehensive way to address what all of us agree on – which is addressing organized retail crime. It's hard to imagine how this legislation would have uncovered such a bust like the one mentioned in Illinois.

Differences from the federal INFORM Act

Should this committee not be interested in a task force and want to move forward with this bill, I want to conclude by highlighting the major differences in the bill before versus the bipartisan federal bill moving through Congress.

First, it's important to restate this – both our members and the proponents of this bill believe this issue is best dealt with at the federal level. The pending legislation in Congress would establish a federal standard that prevents an unworkable patchwork of state-level regulation. Sellers are selling goods and products both in and outside of the state of Wisconsin. Uniformity is key to a thriving internet economy and a patchwork of internet regulations will only confuse sellers and stifle innovation.

The federal legislation includes stronger privacy protections for small businesses that sell online, especially those that operate from home. It still requires the disclosure of email and/or phone number, but allows that information to be disclosed after a purchase if finalized and keeps a marketplace's ability to utilize other means of direct electronic messaging such as buyer/seller communication tools to qualify as contact information vehicles. This is much different than the bill before you today which would require the information to be plastered over the internet for anyone to consume and abuse. Having their information posted on each listing exposes sellers to very valid concerns of fraud, threats, and harassment.

This is important because it helps ensure the marketplace is up to date with any buyer/seller communication. If buyers are encouraged to contact the seller off-platform or outside the buyer contact tools, there is no record or tracking of any issues that may arise. Not to mention, it could jeopardize the safety of sellers. The public could easily learn, for example, the name and home address of a high schooler in Eau Claire who makes and sells hand-knitted face masks or of a father in Appleton who has gotten into woodworking and sells his creations online, thus compromising their privacy. The open display of such personal information — required of entrepreneurial Wisconsinites with innovative products and residents monetizing their hobbies alike — could potentially lead to dangerous situations.

The timelines for which a seller would be required to provide online marketplaces the required information for verification is also significantly different. The agreed-to federal bill allows the seller to submit the information within 10 days of becoming a high volume seller as opposed to the unreasonable 24 hours in the bill today. Many small businesses selling online are shops of 1 or a few individuals, so more flexibility in the timelines before their livelihoods are forcibly shut down is a critical change needed and acknowledged in the consensus federal bill.

And lastly, the agreed-to federal bill offers greater flexibility in the types of government issued records that are required to be submitted to a marketplace for verification. The federal bill strikes the requirement for an individual to provide a government issued IDs to include a physical address (e.g., Passports do not contain physical addresses, and would discriminate against those who don't have a government ID). Instead, the consensus federal bill allows the option of a seller providing the marketplace with a government issued tax document.

These are just some of the substantive concerns we have but taken together, are significant differences that persist in this bill that are not included in the federal, agreed-to bill. These modifications would safeguard consumers while protecting innovation, giving online marketplaces flexibility in how to stop bad actors. Equally important, the federal bill would not favor one business model over another.

Conclusion

In closing, I want to thank you for the opportunity to come before you today. I want you to keep in mind the potential harm you may be causing small sellers by passing this legislation as is. Online marketplaces have provided small sellers back-end assistance to fulfill orders and operate their businesses that didn't exist 20 years ago.

There are innovative solutions to addressing organized retail crime without hurting these small sellers -- such as implementing an organized retail crime task force I mentioned. However, we understand the role you all play in crafting public policy in

the State of Wisconsin and want to be a continued partner in these legislative efforts should this committee to advance this legislation.

Thank you for your time and I'd be happy to answer any questions.