



March 17, 2021

The Honorable Sean Tarwater, Chair
House Commerce, Labor & Economic Development Committee
State Capitol
300 SW 10th St.
Topeka, Kansas 66612

**RE: HB 2433 – Online Marketplace Mandates
OPPOSE**

Dear Chairman Tarwater:

Internet Association (IA) represents a cross-section of online commerce and technology companies doing business in Kansas and across the U.S., employing millions of people, while providing goods and services that benefit the local and national economy. We would like to express opposition to HB 2433, a bill that has been introduced with no input from online marketplace operators. This seriously flawed bill potentially invades consumer privacy, unduly burdens small business, risks increasing fraudulent activity online and shifts enforcement burdens and liability to online marketplace operators thereby discouraging the business growth of American online retailers.

HB 2433 requires online marketplaces to: 1) verify the identity of sellers who become “high-volume third-party sellers;” 2) require the seller to provide specific contact information on its website to provide more certainty to consumers and others that they can communicate with online sellers; and 3) create a reporting mechanism for reporting of suspicious marketplace activity.

Unfortunately, these requirements will create significant confusion for marketplaces as they seek to verify the identities and accuracy of the information provided by sellers. The bill will also harm Kansas companies and individuals by creating additional burdens on Kansas small businesses seeking to sell goods online. 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.

Some online marketplaces will likely be ill-prepared to comply with these verification mandates and may simply choose to cut off Kansas small businesses and microbusinesses altogether, rather than attempting to comply with these mandates, and being forced to pay expensive liability insurance in order to avoid exposure to frivolous lawsuits. This would put small businesses across Kansas 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 at this point in time, given how small and mid-sized companies are suffering due to the global COVID pandemic.

HB 2433 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.



Additionally, related to privacy risks, HB 2433 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 bill 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 bill's other requirements to make publicly available online 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. Indeed, Section 4 of the bill states that any violation of the myriad requirements imposed on online marketplaces shall constitute a deceptive act or practice under the Kansas Consumer Protection Act. Sadly, one of the unintended consequences may be an increase in the number of online listings of fraudulent and illegal products, as wrongdoers 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 Kansas 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 very likely that the neighbor was just entrepreneurial in acquiring and selling the product at price less than retail. Second, amateur reporting of suspicious activity will lead to many erroneous reports because the amateurs will not have the expertise and investigative skills of law enforcement. Third, the suspicious activity reports (SAR) will be an onerous and considerable expense for online marketplaces. Indeed, such a mechanism will require significant investments in personnel and technology that will take into account the following wide range of factors for each product listing of a seller:

- Populating the SAR form with case information;
- Separating false positives from true positives;
- Organizing case data from fragmented sources from the online marketplace and third-party sellers; and
- Visualizing trends in cases to spot suspicious behaviors.

Online marketplaces would rather focus on truly beneficial solutions and not SARs that will be inherently prone to human error.

The proliferation of illegal goods online erodes the very trust that is required to bring consumers to online marketplaces. 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 to put such actors out of business. Law enforcement has the experience, authority, and means to detect suspicious marketplace activity. We stand ready to help craft a forward-thinking law that ensures owner's rights while being flexible enough to encourage industry innovation and growth.



For these reasons, we respectfully request that you reject HB 2433 and avoid harming Kansas's small businesses and residents.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Callahan'.

Robert Callahan
SVP, State Government Affairs

cc: Members of the House Commerce, Labor & Economic Development Committee