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Testimony on House Bill 22-1099
Before the Committee on Business Affairs & Labor,
Colorado House of Representatives
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Chairman Roberts and members of the Committee, thank you for the opportunity to discuss with you today the growing problem of online retail theft. Online retail theft is, without question, a growing problem for retailers and consumers. And we need swift action to cut off the demand and ease by which criminal organizations can misuse online platforms to sell stolen goods. House Bill 22-1009 aims at a key driver of the recent spike in retail thefts—the ease in which online platforms can provide an anonymous and low-risk method to resell stolen goods.

To understand how prevalent the misuse of online platforms for selling stolen products is, simply login on to eBay, or go to your Facebook account and scroll through the Facebook Marketplace function. There you will quickly see:

- photos of car trunks and hatchbacks filled with dozens of undelivered packages, billed as “mystery box” packages available for sale;
- postings for the sale of “undeliverable mail”;
- listings with images of rooms and garages filled with hundreds of unopened Amazon boxes, described as “unclaimed packages” or “returned goods”; and
- warehouse photos of stacks of boxes of unopened brand name tools, offered for sale at a fraction of the price you would find at retail stores.

In the past, theft was a much riskier game. Stealing a product and then reselling it meant having to meet buyers face-to-face, or having a buyer visit a garage filled with stolen merchandise. Thieves undertook a risk of arrest when attempting to resell.

But with the rise of on-line platforms, that risk is close to zero. A theft ring can simply create a fake account, click the option to become a third-party seller, post their stolen items online, and ship stolen products anonymously. The ease in which

this can be done and the anonymity provided has made retail theft—both shoplifting from retailers as well as porch piracy theft—a much less risky and much more profitable crime.

And these crimes have major impacts on working families leading to increases in costs for goods as well as added costs to businesses for security systems and personnel to guard their inventory. This trend is very much impacting Colorado's businesses, as you will hear from our partners in the private sector and the Colorado Retail Council which we worked with collaboratively on this bill and you will be hearing from today.

HB 22-1099 fills an important gap to bolster the fight against online retail theft. The work of law enforcement is critical in cutting off these crime rings, but it's essential that we supplement that work by clamping down on tools that lower the risk for these thefts. That means making it less easy and less anonymous to sell stolen goods through online platforms.

The bill requires online marketplaces to place requirements for the privilege of high-volume selling. This includes: (1) verifying to the marketplace the seller's information, including contact information; and (2) requiring the seller to disclose to consumers their identity, including the seller's full name and the origins of the products being sold. And critically, the bill calls for online marketplaces to create an easy-to-see and -use reporting mechanism to report suspicious marketplace activities. So when a consumer sees blatantly criminal postings like the ones I mentioned earlier, they have a simple tool to flag such postings.

One critical consideration for the Committee is that requirements of this type should be targeted to those online sellers most likely to be fueled and run by crime rings, and not impose undue requirements and burdens on small businesses that move their retail through the Internet. HB 22-1099 protects those small businesses. By only applying the bill's requirements to "high-volume third-party sellers", the disclosure and verification requirements will only attach to sellers that move a volume of inventory and sales that will capture large-scale crime rings, and are unlikely to impact mom-and-pop retailers. We should always ensure that burdens placed on business owners are both necessary and targeted appropriately to protect the marketplace—as an attorney who spent much of my career investigating antitrust cases and enforcing consumer laws, I believe that HB 22-1099 does just that.

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Mr. Chairman, committee members, thank you for the opportunity to visit with you today. This bill is the product of collaboration between the private sector and government—I wish to thank the business leaders who we partnered with in crafting this legislation. And I am particularly grateful for the leadership of Representatives Carver and Roberts for bringing this most needed change to our lawbooks.

Thank you for the opportunity to speak to you today in support of HB 22-1099, and I am happy to answer any questions you may have.