



TECHNET
THE VOICE OF THE
INNOVATION ECONOMY

TechNet Midwest | Telephone 630.400.3439
PO Box 9497 Springfield, IL 62791
www.technet.org | @TechNetMidwest

June 9, 2020

The Honorable Mike Mueller
Michigan House of Representatives
State Capitol
124 North Capitol Avenue
Lansing, MI 48933

Re: Opposition to House Bill 5770

Dear Representative Mueller:

I write on behalf of TechNet respectfully **in opposition to HB 5770**. TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents more than three million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

HB 5770 creates a new private right of action, bans certain indemnity agreements, and prohibits third-party delivery platforms from using any likeness or intellectual property of a merchant without a written agreement. We oppose this bill because it will lead to frivolous litigation, constitutes regulatory overreach by the government, and federal law already protects the use of a restaurant's likeness or trademark.

Third-party delivery platforms have become crucial to restaurant and local businesses remaining open and continuing to generate much-needed revenue, provide safe earning opportunities for workers, and food for homebound and vulnerable residents in the community. These are valuable and ongoing partnerships that have enabled restaurants to reach new customers and compete in an e-commerce world. In fact, third-party delivery platforms were recently designated as Critical Infrastructure under the Administration's Department of Homeland Security guidance. Creating a new private right of action targeted solely at this industry will inevitably result in frivolous litigation, inhibiting delivery platforms' operations and ability to provide those essential services to feed vulnerable populations and offer income-earning opportunities to Michiganders who have recently found themselves unemployed.

Further, it is unnecessary for legislation to regulate business-to-business contracts by outlawing certain types of indemnity agreements. Regulating these contract terms is tantamount to government intervention. As a rule, TechNet is vigilant against harmful or hostile laws and regulations and promotes policies that encourage the development of entrepreneurship, mobile commerce, and the next wave of innovation in the new economy.

Narrowly defining which contractual terms third-party delivery platforms may utilize runs counter to our desire for innovation-friendly policies.

If a restaurant does not want to be on a delivery platform or needs to make changes to the information on the platform, it is the policy of our member companies to honor that request as expeditiously as possible. Michigan restaurants have greatly benefitted from the interaction with delivery platforms and get added to platforms when there is a local demand for that restaurant. While a formal partnership may be the right fit for certain restaurants, other restaurants prefer to be listed on these platforms without having to go through the time and expense of putting a written agreement in place. Requiring formal written contracts between each restaurant and platform is an unnecessary administrative burden on both the restaurant and the platform, and it would result in lost sales for restaurants that do not have the desire to review and execute a written contract.

In addition, federal law already protects the use of a restaurant's likeness or trademark. It is unnecessary to create a separate state-level means of protecting this intellectual property, especially when doing so involves the creation of a new private right of action targeted at a growing industry that is feeding and offering work opportunities for countless Michiganders.

Finally, TechNet is opposed to any cap on restaurant commissions. The introduction of a cap – regardless of duration – will result in damaging consequences and set a dangerous policy precedent. A cap would also be clear regulatory overreach. Delivery network companies are competing for restaurants' business and offer a wide range of partnership structures and commission rates to suit restaurants' needs. Commission fee structures are transparent and clear when any restaurant enters into a contractual partnership with a delivery network company. Regulating these contract terms is tantamount to government intervention, requiring wholesalers to sell their goods at a loss.

For reasons stated above, TechNet respectfully opposes HB 5770. We thank you in advance for your consideration, and please do not hesitate to reach out with any questions at 630-400-3439 or at tdiers@technet.org. Thank you for your consideration.

Sincerely,



Tyler Diers
Executive Director, Midwest
TechNet

Cc: Members, House Commerce and Tourism Committee