CHAMBER OF PROGRESS

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HB 641: Apple-Epic Ruling Makes Bill Unnecessary;

Taking Sides in Business Dispute Would Hurt Consumers' Smartphone Security

Rep. Paula Davis   Rep. Stephanie Hilferty
Chairman   Vice Chair
Commerce Committee   Commerce Committee
State Capitol   State Capitol
P.O. Box 4486   P.O. Box 4486
Baton Rouge, LA 70804   Baton Rouge, LA 70804

Dear Chair Davis, Vice Chair Hilferty, and House Commerce Committee members:

The Chamber of Progress urges you to **oppose HB 641**, a bill that is unconstitutional, unnecessary due to the *Epic Games v. Apple* federal court ruling, and aims to improve the balance sheet of several billion-dollar companies – while doing nothing to support small Louisiana developers and consumers.

First, the legislation violates the Dormant Commerce Clause of the United States Constitution. The Dormant Commerce Clause gives Congress the exclusive power to regulate interstate commerce. Since Apple and Google's app stores are not confined to state lines, the state of Arizona does not have the power to regulate these transactions.

Over the past year, the corporate proponents of HB 641 – Epic Games, Spotify, Match Group, and other major app developers – have worked to introduce identical legislation in other states, but they have all rejected these bills, including Arizona, Florida, and Mississippi.

Second, the federal court ruling in last year's *Epic Games vs. Apple* case makes this legislation unnecessary. Though this case is under appeal, the court's ruling provided a workaround for developers, giving them the ability to allow consumers to process payments through an app developer's own payment systems. Many large app developers, including Match Group, plan to utilize this option and are already planning ways to incentivize users to purchase digital goods and subscriptions directly through their apps.[1]

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[1] Kristin Broughton, *Match Group Hopes for Savings From Looser App-Store Payment Rules*, The Wall Street Journal, (Sept. 2021)

Notably, in this case, Judge Gonzalez Rogers recognized the value of Apple's centralized app distribution and restrictions, noting that subjecting apps to Apple's individual app reviews through human and technical review ultimately cuts down on social engineering attacks.[2]

Finally, this legislation is designed to help the bottom lines of billion dollar companies and does nothing for small app developers or consumers. Apple developers that earn less than $1 million in annual sales do not pay more than 15%. In fact, as of January 2022, Apple reports that there are around 2,000 app developers in Louisiana who use Apple's platform and none of them pay the 30% commission fee. Google developers pay no more than 15% for their first $1 million in sales. Relatedly, Google says 97% of developers that use their platform don't sell digital content and therefore pay no fees.

This bill is not about small developers or consumers. Large, successful app developers like Epic Games and Spotify are looking to save money on their app store commission fees and enhance their financial bottom lines. They have traveled from state to state, cynically dangling the prospect of relocating their companies if a state passes legislation like HB 641. But these are nothing more than repeat empty promises, which will have little impact on Arizona app developers or the state's economy.

Louisiana legislators aim to promote a fair and open market that is competitive for developers, but this bill will accomplish the exact opposite.

This bill will unconstitutionally regulate interstate commerce; is unnecessary in light of the *Epic Games v. Apple* ruling; and improperly takes sides in a multi-billion dollar business dispute between well-heeled companies. For all of these reasons, we ask that you oppose HB 641.

Thank you,

Koustubh "K.J." Bagchi
Senior Director of Technology Policy

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https://www.wsj.com/articles/match-group-hopes-for-savings-from-looser-app-store-payment-rules-11631793601

[2] *Epic Games v. Apple, Inc.*, (p. 146-147) https://www.documentcloud.org/documents/21060696-epic-v-apple-ruling