



February 13, 2024

The Honorable Kathleen Passidomo
President, The Florida Senate
404 South Monroe Street
Tallahassee, FL 32399-1100

The Honorable Paul Renner
Speaker, Florida House of Representatives
402 South Monroe Street
Tallahassee, FL 32399-1300

By email: passidomo.kathleen.web@flsenate.gov
paul.renner@myfloridahouse.gov

Dear Speaker Renner and Senator Passidomo:

The undersigned Chief Executive Officers of the Better Business Bureaus serving Florida write to express significant concerns about the consequences of H.B. 757 and S.B. 1780.

Better Business Bureau is a network of nonprofit organizations throughout the United States and Canada with the common mission of advancing marketplace trust. For more than 100 years, consumers and businesses have relied on BBB self-regulation to set standards for marketplace trust, encourage best practices, identify role models, and call out substandard marketplace behavior. Trustworthy businesses know BBBs level the playing field by alerting consumers to the practices of unethical competitors, and consumers know BBBs are an unbiased source of pre-purchase information and fraud alerts.

BBB Business Profiles and other publications include a wealth of information to help consumers make wise buying decisions. BBBs issue press releases to advise consumers about significant warning signs or indicators of fraud. BBBs publish a rating that represents our opinion of how a business will interact with its customers. BBBs publish alerts describing information we believe to be important for consumers and businesses when deciding whether to transact with a business, such as patterns of consumer complaints, bankruptcy filings, manipulation of consumer reviews, or legal actions by governmental agencies. BBBs also serve as an impartial, virtual bulletin board, allowing customers to publish the narratives of their complaints and reviews and encouraging businesses to engage in these public conversations.

To effectively serve the business and consumer communities and honestly call out questionable or fraudulent marketplace behavior, BBBs often publish facts or reports of customer experiences that some businesses find objectionable. Some businesses go so far as to threaten or initiate legal action to try to coerce BBBs to remove an alert, BBB rating, or customer complaints. Although BBBs are nonprofit organizations with limited resources,

we also recognize that we must maintain the integrity of the information we publish and cannot give in to intimidation. For these reasons, we vigorously defend our right to publish important information that protects consumers and trustworthy businesses.

Because BBBs' marketplace impartiality is essential to our nonprofit mission and benefits both consumers and trustworthy businesses, BBBs are scrupulously non-partisan and rarely take a position supporting or opposing particular legislation. However, we believe we must express our concerns about these two bills.

H.B. 757 and S.B. 1780 would significantly increase the risks to Florida BBBs in at least two ways. Section 3 authorizes a defamation action based on material published on the Internet to be brought in any court in the state of Florida. Although BBBs and the businesses they report on are located in the same communities, a business that is unhappy with a BBB's factual statements or even expression of opinion – as it is common for untrustworthy businesses to claim they have been defamed by an unfavorable BBB rating – can use Section 3 to cause a BBB to expend more of its nonprofit resources defending an action in a distant venue.

Section 4 authorizes a veracity hearing within 60 days after a motion by one of the parties to determine whether a statement is fact or opinion and whether a factual statement is true. Coupled with Section 3, this provision would force BBBs to rush to court in remote jurisdictions without sufficient time for investigation and discovery.

BBBs frequently rely on the Florida Anti-SLAPP statute to defend against unjustified defamation lawsuits that are filed with the purpose of coercing BBBs to remove true but undesirable information that consumers should be aware of. The Anti-SLAPP statute, however, applies only if a case is deemed to be "without merit," a standard that will be harder to meet if this legislation is enacted. It also appears that the veracity hearing would allow a plaintiff to preempt a BBB's Anti-SLAPP motion, escape the burden of establishing that it had a good faith basis for its claim, and force the BBB to expend resources litigating questions of fact or opinion and veracity. Only after BBBs incur that considerable expense would the Anti-SLAPP remedies be available, assuming the plaintiff ever pays a reimbursement award.

These provisions of H.B. 757 and S.B. 1780 would raise the potential costs to BBBs of engaging in their nonprofit activities and cause us to be more cautious about publicizing untrustworthy marketplace behavior. Trustworthy businesses more often would be undercut by dishonest competitors. Florida consumers, particularly seniors, would have less information to help them stay safe from unscrupulous operators and scams.

Diminished BBB reporting would also be felt by Florida state and local governments. Florida BBBs provide information about marketplace conduct to the Federal Trade Commission's Consumer Sentinel to support enforcement actions at all levels of government. The Florida Attorney General, Department of Business Professional Regulation, local law enforcement, and other agencies receive essential marketplace information directly from the Florida BBBs. Increasing the Florida BBBs' legal risks in disseminating accurate information will cause BBBs to limit their reports to these agencies, resulting in decreased insight into potentially illegal practices.

We ask you to retain the protections for individuals and entities like BBB whose exercise of the right to free speech benefits the Florida economy and protects the interests of Florida consumers and businesses.

Signed,

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