
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 1700 **Hearing Date:** June 21, 2022
Author: Maienschein
Version: January 25, 2022
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Theft: online marketplaces: reporting*

HISTORY

Source: Author

Prior Legislation: AB 331 (Jones-Sawyer), Ch. 113, Stats. 2021
AB 1065 (Jones-Sawyer), Ch. 803, Stats. 2018

Support: Prosecutors Alliance of California

Opposition: Chamber of Progress; TechNet

Assembly Floor Vote: 75 - 0

PURPOSE

The purpose of this bill is to require the Attorney General's website to contain a feature for the reporting of suspected stolen goods for sale on online marketplaces.

Existing law, until January 1, 2026, requires the Department of the California Highway Patrol (CHP) to coordinate with the Department of Justice (DOJ) to convene a regional property crimes task force to identify geographic areas experiencing increased levels of property crimes and assist local law enforcement with resources, such as personnel and equipment. (Pen. Code, § 13899.)

Existing law, until January 1, 2026, states that the task force shall provide local law enforcement in the identified region with logistical support and other law enforcement resources, including, but not limited to, personnel and equipment, as determined to be appropriate by the Commissioner of CHP in consultation with task force members. (Pen. Code, § 13899.)

Existing law, until January 1, 2026, creates the crime of organized retail theft which is defined as:

- Acting in concert with one or more persons to steal merchandise from one or more merchant's premises or online marketplace with the intent to sell, exchange, or return the merchandise for value;
- Acting in concert with two or more persons to receive, purchase, or possess merchandise knowing or believing it to have been stolen;

- Acting as the agent of another individual or group of individuals to steal merchandise from one or more merchant's premises or online marketplaces as part of a plan to commit theft; or,
- Recruiting, coordinating, organizing, supervising, directing, managing, or financing another to undertake acts of theft. (Pen. Code, § 490.4, subd. (a).)

Existing law requires a marketplace, as defined, to ensure that its terms and conditions regarding commercial relationships with marketplace sellers meet certain criteria, including that they are drafted in plain and intelligible language. (Civ. Code, § 1749.7.)

This bill requires the Attorney General to establish an online marketplace suspected stolen goods reporting location on their website so people can report items found online that they suspect have been stolen.

This bill defines "online marketplace" as any electronically based or accessed platform that may be accessed on an internet website or through an application, and that does both of the following:

- Includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in the state; and,
- Hosts one or more third-party sellers.

This bill provides that "online marketplace" includes, but is not limited to, Facebook Marketplace, OfferUp, Craigslist, Nextdoor, EBay, and other similar platforms.

This bill defines "third-party seller" to mean any individual or business entity, independent of an operator, facilitator, or owner of an online marketplace, who sells, offers to sell, or contracts to sell a product in the state through an online marketplace.

This bill defines "regional property crimes task force" to mean the CHP regional property crimes task force which was established to identify geographic areas experiencing increased levels of property crimes and assist local law enforcement with resources.

This bill requires, by January 1, 2023, the Attorney General to establish an online marketplace suspected stolen goods reporting location on its internet website for individuals to report items found on online marketplaces that they suspect are stolen goods.

This bill requires the Attorney General to provide information reported about suspected stolen goods to the applicable local law enforcement agencies and regional property crimes task force.

This bill requires, beginning February 1, 2023, an online marketplace to display on its electronically based or accessed platform a link to the online marketplace suspected stolen goods reporting location on the Attorney General's internet website.

This bill states that the display shall be clearly, conspicuously, and reasonably designed to be seen by all users of the platform.

COMMENTS

1. Need for This Bill

According to the author's office:

Package and retail theft is on the rise. We must be creative in our solutions to combat this problem. Thieves are seizing the opportunity to resell stolen goods on loosely regulated online marketplaces. Enabling users of these platforms to easily report items they suspect of being stolen will aid law enforcement in combatting package and retail theft and provide a disincentive for thieves to sell stolen goods on these platforms.

2. Regional Property Crimes Task Force

The Regional Property Crimes Task Force was enacted by AB 1065 (Jones-Sawyer), Chapter 803, Statutes of 2018. That bill required CHP, until January 1, 2021, to coordinate with DOJ to convene a regional property crimes task force to identify geographic areas experiencing increased levels of property crimes and assist local law enforcement with resources, such as personnel and equipment. AB 331 (Jones-Sawyer), Chapter 113, Statutes of 2021, extended the operation of the regional property crimes task force until January 1, 2026.

According to CHP's website:

As reported by the National Retail Federation, organized retail theft accounts for nearly \$30 billion in economic loss per year. This loss is carried by retailers on several levels but is ultimately passed on to consumers through price inflation to offset economic loss. While the problem is most commonly associated with shoplifting, it extends well beyond into associated organized criminal activity. Commercial burglary, vehicle burglary, identity theft, credit card fraud, forgery, and fencing (selling or distribution of) stolen property are part of a bigger picture that finance ongoing criminal operations.

In response to AB 1065, the CHP, in consultation with the DOJ, developed a task force concept to work with allied agencies to combat organized retail theft. Three regional task forces, known as Organized Retail Crime Task Forces (ORCTF), were established by the CHP in three field Divisions with the greatest need for immediate action: Golden Gate Division (encompassing the greater Bay Area), Southern Division (encompassing the greater Los Angeles region), and Border Division (encompassing Orange and San Diego counties).

(See <<https://www.chp.ca.gov/notify-chp/organized-retail-theft-program>> [as of June 9, 2022].)

This bill requires the Attorney General to establish a way for individuals to report suspected stolen goods found on online marketplaces on the DOJ website and requires information reported about suspected stolen goods to be provided to the applicable local law enforcement agencies and regional property crimes task force.

3. Existing Reporting Mechanisms

Many online marketplaces already instruct users to report suspected stolen goods to both the platform itself and law enforcement. Facebook Marketplace, for example, recommends both reporting suspected stolen goods to Facebook and to “[c]ontact your local law enforcement to file a police report.” Facebook, Help Center, *What should I do if I see a stolen item on Facebook Marketplace?*

<<https://www.facebook.com/help/312500235963976>> [as of June 13, 2022].) Ebay suggests, “If you...have reason to believe you have discovered stolen goods, we strongly encourage you to contact your local police to report the incident...” and provides information on how ebay works with law enforcement with investigations. (Ebay, <https://pages.ebay.com/securitycenter/law_enforcement_customers.html> [as of June 13, 2022].) OfferUp asks users to report “suspicious, illegal . . . behavior” to OfferUp and to additionally contact law enforcement. (OfferUp, *How to block or report someone*, <<https://help.offerup.com/hc/en-us/articles/360032336271>> [as of June 13, 2022].)

This bill seeks to make reporting suspected stolen goods easier for users by requiring online marketplaces to clearly and conspicuously display on their platforms a link to the Attorney General’s reporting system. Information received through the reporting system would be provided to local law enforcement agencies and the regional property crimes task force. As discussed above, many online marketplaces already have mechanisms in place for users to report suspected illegal activity and provide assistance to law enforcement when requested for an ongoing investigation. It is unclear whether providing another avenue for the user to report suspected stolen goods will result in more reporting.

Additionally, it appears that the Attorney General’s website already has a location for people to report suspected incidents of organized retail theft, although not specific to online marketplaces. (See <<https://oag.ca.gov/bi/retail-theft/report>> [as of June 13, 2022].) In order to report suspected theft, the reporting individual would need the name and other identifying information about the seller. This may not be available in many incidents where a person believes a third party seller on a platform is selling stolen goods, thus they would still have to report the incident to the platform themselves to investigate the individual. It is unclear whether this bill would require a change to that existing reporting mechanism.

4. Related Legislation

This bill proposes curb the sale of stolen goods through online marketplaces by providing a link to report suspected crimes to the Attorney General who would then provide this information to local law enforcement and the regional property crimes task force.

SB 301 (Skinner) is currently being considered by the Legislature as a way to curb the sale of stolen goods online by increasing accountability of both online marketplaces and address the anonymity of third-party sellers. The bill’s approach is to require online marketplaces to collect information from third-party sellers to verify their legitimacy, and to provide consumers with information about online sellers and a mechanism to report suspicious activity, and differentiates between “high-volume third-party sellers”: ones who sell over \$5,000 of new or unused consumer products; and ones that sell over \$20,000 of new or unused consumer products per year.

SB 301 is modeled after federal legislation, H.R. 5502, the Integrity, Notification, and Fairness for Online Retail Marketplaces (INFORM) for Consumers Act, a bipartisan effort supported by both brick-and-mortar retailers and online marketplaces. The INFORM Consumers Act would require online marketplaces, among other things, to provide “a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace.” (Sen. No. 936, 117th Congress, 1st Sess., § 2(b)(3)(A) (2021).) It would also require online marketplaces to place on their platforms “a message encouraging consumers seeking goods for purchase to report suspicious marketplace activity to the online marketplace.” (Sen. No. 936, 117th Congress, 1st Sess., § 2(b)(3)(B) (2021).)

SB 301 contains the following definitions for “online marketplace” and “third party sellers”:

“Online marketplace” means a person or entity that operates a consumer-directed, electronically accessed platform in a manner in which all of the following are true:

- (1) The platform includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in this state.
- (2) The features described in paragraph (1) are used by third-party sellers.
- (3) The person or entity has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

....

(e) (1) “Third-party seller” means a seller, independent of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the state through an online marketplace’s platform.

Notably, AB 1700 contains different definitions for online marketplace and third party sellers than what is currently found in SB 301. The definition of online marketplace in AB 1700 also makes references to specific platforms, i.e. Facebook Marketplace, OfferUp, Craigslist, Nextdoor, EBay which may not stand the test of time considering companies may change their names or may no longer be operational in the future.

Should this bill be amended to remove references to specific platforms? Additionally, the author may want to consider adopting the definitions in SB 301 as both bills move forward.

5. Argument in Support

According to the Prosecutor’s Alliance of California:

As prosecutors, we believe it is imperative to address the drivers of organized retail theft, including the ease with which stolen goods may be anonymously sold through online marketplaces. Through online accounts with little associated personal information that is rarely verified, stolen goods can be sold to unsuspecting consumers. It is estimated that more than \$500 billion in stolen items are sold through online marketplaces worldwide, annually.

AB 1700 will help address this problem by providing an accessible platform for the public to report suspected stolen goods that are offered for sale through an online marketplace. This information will facilitate effective law enforcement investigation of stolen goods.

6. Argument in Opposition

According to TechNet:

AB 1700 is duplicative as most online marketplaces already provide robust reporting mechanisms for fraud and suspected stolen goods. Our marketplace companies also partner with the Attorney General and local law enforcement agencies to report crimes and suspicious activity on their platforms. By compiling reports from their own reporting mechanisms, companies can efficiently take action, compile pertinent information, and refer it to the proper law enforcement authorities. AB 1700 would require online marketplaces to post a link to a separate reporting mechanism that would undercut those efforts by redirecting user reports and possibly duplicating that information, without any guarantee the appropriate follow-up for the report will be conducted.

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