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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### SB 301 (Skinner) - Marketplaces: online marketplaces

**Version:** January 13, 2022

**Urgency:** No

**Hearing Date:** January 18, 2022

**Policy Vote:** JUD. 9 - 0

**Mandate:** No

**Consultant:** Janelle Miyashiro

**Bill Summary:** SB 301 requires online marketplaces to require qualified high-volume third-party sellers to provide specified tax, payment, and contact information to the platform and consumers, as specified.

**Fiscal Impact:** The Department of Justice anticipates costs of approximately \$1,096,000 in Fiscal Year (FY) 2023-24 and \$1,053,000 in FY 2024-25 and ongoing (General Fund). Costs include additional staff to address an increase in workload in the Consumer Protection Section within the DOJ's Public Rights Division. The DOJ also estimates annual costs of approximately \$100,000 (General Fund) for outside forensic audit support to its Consumer Protection Section.

Unknown, potentially significant workload cost pressures to the courts to adjudicate alleged violations of this measure. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations.

**Background:** An online marketplace is a type of electronic commerce website or application where multiple third parties may sell products or services. In an online marketplace, consumer transactions are processed by the marketplace platform and then fulfilled by the participating suppliers, retailers, or wholesalers.

Online marketplaces facilitate transactions between buyers and sellers, however do not directly conduct oversight into the seller's businesses. This often creates challenges to maintaining a standard of accountability for third-party-sellers, which includes the ability for platforms to verify third-party sellers and moderate the frequency of the sale of stolen goods on an online marketplace. According to retailers, organized retail theft is on the rise. One potential factor in this increase is the ease and anonymity of reselling stolen goods on online marketplaces. This bill aims to combat the sale of stolen goods on online marketplaces.

This bill is modeled after H.R. 5502, legislation currently pending before the United States House of Representatives. Both this bill and H.R. 5502 are intended to require online marketplaces to require certain third-party sellers to make certain disclosures to the online marketplaces and to consumers.

**Proposed Law:**

- Requires an online marketplace to require a qualifying high-volume third-party seller, within 10 days of qualifying as a high-volume third party seller on the marketplace platform, to provide the following information to the online marketplace:
  - A bank account number or the name of the payee for payments issued by the online marketplace to the seller. Requires this information to be provided either to the online marketplace or a payment processor or other third party contracted by the online marketplace to maintain the information only if the online marketplace ensures that it can obtain the information on demand from that payment processor or other third party.
  - The seller's name if the seller is an individual.
  - If the seller is not an individual, either a copy of a valid government-issued identification for an individual acting on behalf of the seller or valid government-issued record or tax document that includes the business name and physical address of the seller.
  - A business tax identification number or a taxpayer identification number.
  - A valid email address and telephone number for the seller.
- Requires an online marketplace to verify the high-volume third-party seller's information or changes to the seller's information within 10 days the seller provides that information.
- Requires the online marketplace to keep information on the high-volume third-party seller for at least five years on a secured server.
- Requires the online marketplace, at least annually, to notify each high-volume third-party seller on its platform about the requirement that the seller inform the marketplace of any changes to the information provided within 10 days of receiving the notification.
- If a high-volume third-party seller does not provide the required information, requires the online marketplace to suspend any future sales activity of the seller until the seller provides the information or certification.
- Requires an online marketplace to require a high-volume third-party seller with at least \$20,000 of gross annual revenue from sales to, or transactions with, buyers in California derived from the marketplace's platform in either of the two prior calendar years to provide the following information to the marketplace and to disclose the information to consumers in a clear and conspicuous manner in the order confirmation message or other communication made to a consumer after a purchase is finalized, and in the consumer's account transaction history:
  - The full name of the seller, including the seller or company's name or the name used on the online marketplace.

- The seller's physical address.
  - Contact information for the seller to allow for direct communication with the high-volume third-party seller by users of the online marketplace, including a current working telephone number, email address, or any other means of direct electronic messaging.
  - Whether or not the high-volume third-party seller used a different seller to supply the product to the consumer upon purchase.
- Upon the request of the high-volume third-party seller, specifies when an online marketplace may provide only partial disclosure of the required contact information.
- Requires the online marketplace to, after providing the seller notice and at least 10 days to respond, suspend future sales activity of a high-volume third-party seller if the seller made a false representation to the online marketplace in order to justify partial disclosure or if the seller has received a provision for partial disclosure and has not answered consumer inquiries within a reasonable timeframe.
- Requires an online marketplace to disclose to consumers on the product listing of a high-volume third-party seller, a reporting mechanism that allows for electronic and telephonic reporting of suspicious activity by the high-volume third-party seller to the online marketplace.
- Requires the online marketplace to provide notice of an impending suspension, and to not suspend the seller if the seller comes into compliance with the notification requirements within 10 days after the notice was issued.
- Provides that a person or entity who violates these requirements be liable for a civil penalty not to exceed \$10,000 for each violation, which may be assessed and recovered only in a civil action brought by the Attorney General.
- Establishes definitions.
- Provides that the bill becomes operative July 1, 2023.

**Staff Comments:** The fiscal impact of SB 301 to the courts will depend on many unknown factors, including the numbers of violations alleged to have occurred, if parties settle the matter before the filing of an action, and the factors unique to each case. While it is not known how many actions for alleged violations ultimately would be filed, it generally costs about \$8,032 (in FY 2020-2021) to operate a courtroom for one eight-hour day. Consequently, if alleged violations of SB 301 lead to the filing of cases that, combined, take 50 or more hours of court involvement, the cost pressures of this measure to the courts would surpass the Suspense File threshold. As indicated above, while courts are not funded on a workload basis, an increase in workload could result in delayed services and would create pressure to increase the backfill amount appropriated from the General Fund for trial court operations.

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