
THIRD READING

Bill No: SB 301
Author: Skinner (D)
Amended: 1/13/22
Vote: 21

SENATE JUDICIARY COMMITTEE: 9-0, 1/12/22

AYES: Umberg, Borgeas, Gonzalez, Hertzberg, Jones, Laird, Stern, Wieckowski, Wiener

NO VOTE RECORDED: Caballero, Durazo

SENATE APPROPRIATIONS COMMITTEE: 7-0, 1/20/22

AYES: PORTANTINO, BATES, BRADFORD, JONES, KAMLAGER, LAIRD, WIECKOWSKI

SUBJECT: Marketplaces: online marketplaces

SOURCE: Author

DIGEST: This bill requires, starting July 1, 2023, online marketplaces to require specified high-volume third-party sellers on the platform to provide certain tax and payment information to the platform and certain contact information to consumers. This bill authorizes the Attorney General to seek civil penalties from an online marketplace or a third-party seller in violation of this bill's requirements.

ANALYSIS:

Existing law:

- 1) Provides that the United States Constitution, and the laws of the United States made in pursuant thereof, are the supreme law of the land notwithstanding any state law to the contrary. (U.S. Const., Art. IV, cl. 2.)
- 2) Gives Congress the authority to regulate commerce with foreign nations and between states, and authorizes states to regulate interstate commerce as long as the regulation is not clearly excessive in light of the stated local interest in the

regulatory burden. (U.S. Const., Art. I, § 8; *South Dakota v. Wayfair, Inc.* (2018) 138 S.Ct. 2080, 2091.)

- 3) Requires certain online marketplaces to collect sales and use taxes, and certain fees, for sales made by third-party sellers through the marketplace to buyers in California, and to remit those taxes and fees to the state on behalf of the sellers. (Rev. & Tax Code, Div. 2, Pt. 1, Ch. 1.7, §§ 6040 et seq.)

This bill:

- 1) Provides the following relevant definitions:
 - a) “High-volume third-party seller” is a participant in an online marketplace who is a third-party seller and who, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete sales to, or transactions with, buyers located in California for new or unused consumer products, processed by the online marketplace or its payment processor, resulting in the accumulation of an aggregate total of \$5,000 or more in gross revenues.
 - b) “Online marketplace” is a person or entity that operates a consumer-directed, electronically accessed platform that 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; that allows third-party sellers to use those features; and that has a contractual or similar relationship with consumers governing the use of the platform to purchase consumer products.
 - c) “Seller” is a person or entity who sells, offers to sell, or contracts to sell a consumer product through an online marketplace’s platform.
 - d) “Third-party seller” is a seller, independent of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the state through the online marketplace’s platform. The definition excludes a seller who either:
 - i) Has made available to the general public its name, business address, and working contract information; has an ongoing contractual relationship with the online marketplace to provide for the manufacture, distribution, wholesaling, or fulfillment of shipments to consumer products; and has provided to the online marketplace verified tax and payment information.

- ii) Operates the online marketplace's platform.
 - e) "Verify" means to confirm information provided to an online marketplace by reliably determining that information and documents provided are valid, corresponding to the seller or an individual acting on the seller's behalf, not misappropriated, and not falsified.
- 2) Requires an online marketplace to require a high-volume third-party seller on the marketplace's platform to provide, not later than 10 days after qualifying as a high-volume third-party seller on the platform, the following information to the platform:
- a) A bank account number or, if the seller does not have a bank account, the name of the payee for payments issued by the online marketplace to the seller. This information may be provided to the online marketplace directly or to a payment processor or other third party contracted by the online marketplace to maintain that information, if the marketplace ensures it can obtain the information from the third party on demand.
 - b) The seller's name, if the seller is an individual; or if the seller is a business entity, a copy of a valid government-issued identification for an individual acting on behalf of the seller that includes the individual's name, and a copy of a valid government record or tax document that includes the business name and physical address of the seller.
 - c) A business tax identification number or, if the seller does not have such a number, a taxpayer identification number.
 - d) A valid email address and telephone number for the seller.
- 3) Requires an online marketplace to verify the information provided pursuant to 2), or any changes to the information provided by the high-volume third-party seller, within 10 days of receipt. For information in valid government-issued tax documents, the information shall be presumed to be verified as of the date of issuance of the document. The online marketplace must keep the information provided for no fewer than five years on a secured server.
- 4) Requires an online marketplace to, on an annual basis, notify each third-party high-volume sellers on its platform of the requirement that the seller must inform the online marketplace of any changes to the information provided by the seller within 10 days of receiving the notification, and to instruct each high-volume third-party seller, as part of the notification, to electronically

certify either that the information is unchanged or that the seller is providing changes to the information.

- 5) Requires an online marketplace, if a high-volume third-party seller does not provide the information or certification required in 2) and/or 4), to provide the third-party seller with written or electronic notice of the failure and an opportunity to provide the missing information/certification within 10 days. If the high-volume third-party seller fails to cure within 10 days of the issuance of the notice, the online marketplace must suspend the seller's future sales activity until the seller provides the information/certification.
- 6) Provides that data collected solely to comply with the above requirements may not be used for any purpose unless the use is required by law.
- 7) Requires an online marketplace to require a high-volume third-party seller with at least \$20,000 of gross annual revenues from sales to, or transactions with, buyers in California derived from the online marketplace's platform in either of the prior two calendar years to provide the following information to the marketplace and disclose it to consumers in a clear and conspicuous manner in the order communication, or other post-transaction communication, and in the consumer's account transaction history:
 - a) The seller's full name or company name, physical address, and direct contact information including a working telephone number, email address, or other means of direct electronic messaging.
 - i) A seller may request that the online marketplace make only a partial disclosure of the above information if the seller certifies that they do not have a physical address other than a residential address or that they do not have a telephone number other than a personal telephone number.
 - ii) Upon receiving such certification, the online marketplace should limit the disclosure to the seller's state and country of residence and/or email or electronic means of contact, and direct customers to use the alternative means.
 - b) Whether or not the seller used a different seller to supply the product to the consumer upon purchase. If the seller was not the seller on the product listing before purchase, the seller must, on request of an authenticated purchaser, provide the information described in 7)a).

- 8) Requires an online marketplace to suspend a seller who consents to make all of the disclosures required above in 7), after providing the seller with 10 days' notice of the requirement to do so, if the seller has either:
 - a) Made a false representation to the online marketplace to justify a partial disclosure of the information set forth in 7)a), or
 - b) After being allowed to make a partial disclosure pursuant to 7)a), fails to answer consumer inquiries within a reasonable timeframe.
- 9) Requires an online marketplace to disclose to consumers, in a clear and conspicuous manner 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 a third-party seller to the online marketplace.
- 10) Requires an online marketplace to suspend future sales activity of a high-volume third-party seller that is not in compliance with items 7)-9), if the seller does not comply with the requirements after 10 days' notice of impending suspension from the online marketplace.
- 11) Provides that a person or entity that violates any provision of the bill shall 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 of California.
- 12) Provides that the bill addresses a matter of statewide concern and therefore supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding online marketplaces' requirements in relation to verification of information from high-volume third-party sellers.
- 13) Provides that the bill will become operative on July 1, 2023.

Comments

According to retailers, organized retail theft is on the rise. One potential factor in this unfortunate phenomenon is the ease of reselling stolen goods on online marketplaces. This bill, which takes effect on July 1, 2023, requires online marketplaces to collect and verify certain business-related information from their high-volume third-party sellers with a specified level of sales into California, which is intended to make it more difficult for sellers of stolen goods to evade detection or consequences. This bill also requires certain high-volume third party sellers to provide contact information to consumers, which is intended to aid

consumers in making informed purchasing decisions. This bill authorizes the Attorney General to take enforcement action against online marketplaces in violation of this bill.

SB 301 is modeled after H.R. 5502, legislation currently pending before the United States House of Representatives. It is possible that, if the federal bill were passed and signed by the president, the federal bill would preempt state legislation like SB 301 pursuant to the Supremacy Clause of the United States Constitution. Given, however, that it is unknown whether the federal bill will become law, it is premature due to delay passage of this bill due to any preemption concerns. SB 301 also implicates the Dormant Commerce Clause because it regulates out-of-state third-party sellers. However, because the author has amended this bill to limit the bill's scope to sellers with a high volume of sales into California, this bill appears to impose a reasonable regulatory burden on sellers with a high level of contact with the state, as balanced against the bill's goals of protecting California's consumers and brick-and-mortar stores.

The Chamber of Progress initially opposed this bill but withdrew its opposition on January 12, 2022.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, the Department of Justice (DOJ) 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. Additionally, there are 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.

SUPPORT: (Verified 1/20/22)

California District Attorneys Association
California Retailers Association
Coalition to Protect America's Small Sellers
Contra Costa County District Attorney's Office
GSK Consumer Healthcare

Los Angeles County District Attorney's Office
Prosecutors Alliance of California
San Diego County District Attorney's Office
The Home Depot
The Toy Association
Walgreens

OPPOSITION: (Verified 1/20/22)

None received

ARGUMENTS IN SUPPORT: According to bill supporter, California Retailers Association:

Organized retail crime (ORC) is a complex, multi-faceted problem and combatting it requires a comprehensive approach. SB 301 is a critical part of that effort, as one of the key factors driving the increase in ORC is the availability and use of online marketplaces by ORC as a “fence” for stolen goods. Through the use of third-party accounts, online marketplaces can provide a seller access to a global market of consumers plus a shield of anonymity from law enforcement. ORC rings have been known to use numerous online accounts on multiple marketplaces to sell stolen goods at scale. Consumers hunting for online bargains are largely unaware that they may become unwitting accomplices to these crimes...

While a federal solution would be ideal, California cannot wait for Congressional action while retail theft runs rampant in our state. We can no longer allow organized crime to hide behind phony electronic identities and peddle stolen goods to unsuspecting consumers. SB 301 will help these criminal enterprises out of the shadows.

Prepared by: Allison Meredith / JUD. / (916) 651-4113
1/21/22 10:58:31

**** END ****