

Date of Hearing: August 3, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

SB 301 (Skinner) – As Amended June 22, 2022

Policy Committee:	Privacy and Consumer Protection	Vote:	9 - 0
	Judiciary		10 - 0

Urgency: No                      State Mandated Local Program: No                      Reimbursable: No

**SUMMARY:**

This bill requires, beginning July 1, 2023, an online marketplace to require specified high-volume third-party sellers (HVTPS) on a platform to provide certain tax and payment information to the platform and contact information to consumers. This bill also authorizes the Department of Justice (DOJ) to seek civil penalties from an online marketplace or a third-party seller in violation of this bill's requirements.

Specifically, this bill:

- 1) Provides that an online marketplace shall require a HVTPS to provide within 10 days, as specified, all of the following information:
  - a) A bank account number, or if the HVTPS does not have a bank account, the name of the payee for payments issued by the online marketplace to the seller, as specified.
  - b) Contact information including the seller's name if the seller is an individual, or a copy of a valid government-issued identification, record, or tax document that includes the business name and physical address of the seller if the seller is not an individual who has the legal authority to act on behalf of the HVTPS, a business tax identification number or tax identification number of the seller; and a valid email address and phone number of the seller.
- 2) Requires an online marketplace to mandate a HVTPS with at least \$20,000 of gross annual revenues in either of the two prior calendar years to provide specified information, including the following information, to the online marketplace, and requires the online marketplace to provide the same information to consumers in a clear and conspicuous manner:
  - a) The name of the seller and the seller's physical address.
  - b) Contact information—including physical address and telephone number—of the seller to allow for direct communication with the seller, as specified.
  - c) Whether the high-volume third-party seller uses a different seller to supply the product to the consumer upon purchase.
  - d) Contact information for the party who is responsible for supplying, delivering, or facilitating supply or delivery of the product to the consumer upon purchase – to be provided to a consumer upon purchase, if requested by the purchaser.

- 3) Requires an online marketplace to disclose to consumers, in a clear and conspicuous manner on the product listing of a HVTPS, with a reporting mechanism that allows for electronic and telephonic reporting of suspicious activity by the HVTPS to the online marketplace.
- 4) Allows the DOJ to seek a civil penalty, not to exceed \$10,000 per violation, against any online marketplace or HVTPS for violations of the provisions of this bill.
- 5) Authorizes the DOJ to recover reasonable attorney fees and costs, including expert witness fees and other litigation expenses if it prevails in an action against an online marketplace or HVTPS and authorizes the DOJ to seek preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for any violation of the requirements of this bill.

#### **FISCAL EFFECT:**

- 1) Costs (General Fund (GF)) of approximately \$1.1 million in Fiscal Year (FY) 2023-24 and \$1 million in FY 2024-25, and annually thereafter to the DOJ for additional legal 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 (GF) for outside forensic audit support to its Consumer Protection Section to support litigation.
- 2) Cost pressure (Trial Court Trust Fund (TCTF)) in the low hundreds of thousands of dollars to the trial courts to hear and adjudicate cases related to violations of this bill. It is unclear how many new actions will be filed statewide, but if 10 cases are filed in state civil court annually requiring three days or 24 hours of court time, at an average cost per hour of \$1,000 in workload costs, the cost to the trial courts would be \$240,000 annually. Although courts are not funded on the basis of workload, increased pressure on the TCTF and staff workload may create a need for increased funding for courts from the General Fund (GF) to perform existing duties.

#### **COMMENTS:**

- 1) **Purpose.** The purpose of this bill is to curb the sale of stolen goods online by increasing accountability of both online marketplaces and third-party sellers in a manner similar to S. 936 (Durbin (D-IL) (2021), the federal Inform Act. According to the author:

SB 301 would help combat the sale of stolen goods on online marketplaces by providing higher standards of accountability and verification for third-party-sellers that will then help online marketplaces identify and take action against sellers of stolen goods.

- 2) **Federal and State Legislation on Online Marketplaces.** The Inform Act is currently pending in the U.S. Senate. It requires online marketplaces to collect, verify, and disclose certain information from high-volume, third-party sellers. The Federal Trade Commission is responsible for enforcing the requirements of the Inform Act. This bill is nearly identical to the proposed federal law and several online business have asked that this bill remain substantially similar to the federal law to allow for ease of implementation. AB 1402 (Levine), Chapter 421, Statutes of 2021 requires online marketplace facilitators to collect state fees from third party retailers imposed on the sale of tangible personal property. This

bill would additionally 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.

- 3) **Related Legislation.** AB 1700 (Maienschein), requires, by January 1, 2023, the DOJ to establish on its website a reporting location for a person to report stolen items located in online marketplaces and notify law enforcement of possible stolen goods. AB 1700 is pending in the Senate Appropriations Committee.

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