

SENATE THIRD READING

SB 301 (Skinner)

As Amended June 22, 2022

Majority vote

SUMMARY

This bill requires online marketplaces, as defined, to require specified high-volume third-party sellers on the platform to provide certain contact, tax, identification, and payment information to the marketplace, and requires the marketplace to make specified seller contact information available to consumers, beginning July 1, 2023.

Major Provisions

- 1) Requires an online marketplace to require a high-volume third-party seller on the online marketplace to provide, within 10 days, as specified, all of the following information: bank account number, or the name of the payee for payments issued by the online marketplace to the seller if the seller does not have a bank account, as specified; contact information including the individual'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; 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 require a high-volume third-party seller 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: the name of the seller and the seller's physical address; contact information of the seller to allow for direct communication with the seller, as specified; and whether or not another party is responsible for supplying the product to the consumer upon purchase, and, if so, the same contact information for the party responsible for supplying the product to the consumer.
- 3) Requires an online marketplace to provide consumers, in a clear and conspicuous manner on the product listing of a high-volume third-party seller, with a reporting mechanism that allows for electronic and telephonic reporting of suspicious activity by the high-volume third-party seller to the online marketplace
- 4) Requires an online marketplace to suspend future sales of a seller if the seller has not provided required information within 10 days of receiving notice to certify their information, as specified.
- 5) Specifies that an online marketplace shall keep the information provided to comply with the requirements of this bill for no less than two years, and that information provided solely to comply with this bill shall not be used for any other purpose unless required by law.
- 6) Provides that a person or entity who violates any provisions 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 in the name of the people of the State of California by the

Attorney General, and provides, in addition to the civil penalty, for the recovery of reasonable attorney's fees and costs, as well as preventative relief.

COMMENTS

Over the past few years, California has enacted a number of laws to address unintended consequences associated with the growing popularity of online marketplaces, including the rise of organized retail theft. While many of these laws have dealt with criminal liability, a handful have addressed other commercial aspects of online sales such as AB 147 (Burke), Chapter 5, Statutes of 2019, which requires, among other things, online marketplaces to collect sales and use taxes on behalf of their third-party retailers, and AB 1402 (Levine), Chapter 421, Statutes of 2021, which requires marketplace facilitators to collect specified 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. The bill appears to separate its requirements between two categories of "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.

Notably, this bill places the burden of enforcing high-volume third-party sellers' disclosure requirements on the online marketplaces hosting the sellers. Online marketplaces are required to collect the specified business and tax information and ensure that the proper contact information is posted. If a third-party seller does not comply with these requirements, the online marketplace is required to provide the third-party seller with notice of the failure to comply and to suspend the third-party seller's future sales if the seller fails to comply within 10 days. Thus, while high-volume third-party sellers are required to make the disclosures, it is the online marketplaces that are required to monitor and ensure compliance by their third-party sellers. This structure is similar to California's Marketplace Facilitator Act, which requires certain high-volume online marketplace facilitators to collect state sales taxes paid to third-party sellers by California consumers from those third-party sellers and to remit them to the state. In cases where an online marketplace fails to take the required action with regard to a high-volume third-party seller, or fails to post its own required reporting mechanism, the bill authorizes the Attorney General (AG) to seek a civil penalty not to exceed \$10,000 per violation from a person or entity who violates any provision of this title, in addition to reasonable attorney's fees and costs, and appropriate preventative relief, including a permanent or temporary injunction, restraining order, or other order against any person responsible for the conduct.

The bill includes a number of important provisions that protect seller privacy and limit the purposes for which seller information can be used. For example, the bill specifies that data provided solely to comply with the requirements of the bill may not be used for any other purpose except where required by law. The bill also prudently takes into consideration the fact that not all repeat sellers have contact information that is distinct from their personal information, such as a personal residential address or personal phone number. Accordingly, this bill permits online marketplaces to instead make partial disclosures to the public for high-volume third-party sellers that do not have a physical address or phone number that is distinct than their residential address or personal phone number. The bill requires an online marketplace to retain the information provided by a seller to comply with the bill for a minimum of two years to allow for initiation of an investigation where appropriate. To protect the resulting repository of seller information against vulnerability to data breach and misuse, the bill permits a seller to redact

information from documents submitted to an online marketplace if the information is not necessary to comply with the requirements of this bill or to verify the authenticity of the document as a copy of a valid government-issued identification, government record, or tax document, as applicable. Additionally, this bill requires the marketplace to adopt reasonable security procedures and practices with respect to the required information that are appropriate to the nature of the information collected and stored, consistent with other California statutes. These protections arguably effectively balance the interest in limiting the reach of fraudulent sellers and sellers of stolen goods on online marketplaces against the protection of the privacy and security of the personal information of sellers.

According to the Author

A major contributor to the ease of selling stolen goods is the accessibility and anonymity of many online marketplaces. Many online accounts require sellers to provide little verifiable personal information, enabling an individual or entity to put stolen goods up for sale to unsuspecting consumers. It's estimated that more than \$500 billion in stolen and counterfeit items are sold annually on online marketplaces worldwide. [...] 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.

Arguments in Support

The sponsors of the bill, the Prosecutors Alliance of California, argue:

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 market places. Through online accounts with little associated personal information that is rarely verified, stolen goods can be sold to unsuspecting consumers. [...] SB 301 will help address this problem by requiring online market places to collect identifying information for individuals and companies that sell a large number of items throughout the year, and by providing limited identifying information to consumers. Collecting identifying information for sellers will discourage organized retail theft operations from using online market places and will facilitate a law enforcement investigation when the sale of stolen goods is suspected. Providing limited identifying information to consumers will also help consumers make wise choices and avoid inadvertently purchasing stolen goods. SB 301 has been carefully drafted to protect personal privacy and to ensure that it only applies to large, repeat sellers using online market places.

Arguments in Opposition

None on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 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.

VOTES

SENATE FLOOR: 34-0-6

YES: Allen, Archuleta, Atkins, Becker, Borgeas, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Newman, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

ABS, ABST OR NV: Bates, Bradford, Dahle, Min, Nielsen, Wilk

ASM PRIVACY AND CONSUMER PROTECTION: 9-0-2

YES: Gabriel, Bauer-Kahan, Berman, Choi, Cunningham, Mike Fong, Irwin, Valladares, Wilson

ABS, ABST OR NV: Bennett, Wicks

ASM JUDICIARY: 10-0-0

YES: Stone, Cunningham, Bloom, Davies, Haney, Kalra, Kiley, Maienschein, Reyes, Robert Rivas

ASM APPROPRIATIONS: 16-0-0

YES: Holden, Bigelow, Bryan, Calderon, Arambula, Megan Dahle, Davies, Mike Fong, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, McCarty

UPDATED

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CONSULTANT: Landon Klein / P. & C.P. / (916) 319-2200

FN: 0003375