
UNFINISHED BUSINESS

Bill No: SB 301
Author: Skinner (D), et al.
Amended: 6/22/22
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

SENATE FLOOR: 34-0, 1/24/22

AYES: 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

NO VOTE RECORDED: Bates, Bradford, Dahle, Min, Nielsen, Wilk

ASSEMBLY FLOOR: 77-0, 8/22/22 - See last page for vote

SUBJECT: Marketplaces: online marketplaces

SOURCE: Prosecutors Alliance of California

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 so as to make it more difficult for third-party sellers to sell stolen goods. The bill authorizes the Attorney General to seek civil penalties from an online marketplace or a third-party seller in violation of the bill's requirements.

Assembly Amendments clarify definitions, including streamlining the definition of "third-party seller"; clarify an online marketplace's obligations when storing a

third-party seller's information; shorten the period an online marketplace must retain third-party seller information, from five years to two years; modify the requirements for when an online marketplace must suspend a seller, to include instances when a high-volume third-party seller made a false representation to the marketplace about its identity and to allow a suspension when the seller made a false representation to consumers; authorize the Attorney General, if it prevails in a civil action for a violation of the bill, to recover reasonable attorney fees and costs and seek preventive relief against the party that violated the bill; and clarify that the bill does not affect the liability of an entity for damages caused by the sale of a consumer product online.

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 third-party seller and who, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete transactions through an online marketplace for the sale of new or unused consumer products to buyers located in California, processed through 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 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) “Third-party seller” is a person or entity, independent of an online marketplace, who sells, offers to sell, or contracts with an online marketplace to sell a consumer product in the state through the online marketplace.
 - d) “Verify” means to confirm that information provided to an online marketplace pursuant to the bill’s requirements is accurate. Methods of confirmation include methods that allow the online marketplace to reliably determine that information and documents provided are valid, correspond to the seller or an individual acting on the seller’s behalf, are not misappropriated, and are not falsified.
- 2) Requires an online marketplace to require a high-volume third-party seller on the platform to provide, not later than 10 days after qualifying as a high-volume third-party seller, the following information to the platform:
- a) A bank account number or, if the high-volume third-party 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 designated by the online marketplace to maintain that information, if the processor contracts with the marketplace to maintain the information in a confidential manner and disclose the information only in response to a court order or to the online marketplace on its request.
 - b) The high-volume third-party 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 who has legal authority to act on behalf of the seller that includes the individual’s name or a copy of a valid government record or tax document dated within the last 24 months that includes the business name and physical address of the seller.
 - c) A business tax identification number or, if the high-volume third-party seller does not have such a number, a taxpayer identification number.

- d) A valid email address and telephone number for the high-volume third-party 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 at least an annual basis, notify each third-party high-volume sellers operating on the marketplace of the requirement that the seller 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 that the information accurate that either the information is unchanged or that the seller is provided updated 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. 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) Requires an online marketplace to require a high-volume third-party seller with at least \$20,000 of gross annual revenues from transactions with buyers in California through the online marketplace 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 high-volume third-party 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, to allow users of the online marketplace to have direct and unhindered communication with the seller. An online marketplace may accept partial disclosures as follows:

- i) If the high-volume third-party seller certifies to the online marketplace that they do not have a physical address other than a residential address or a combined business and residential address, the marketplace may disclose only county and state, if applicable, where the seller resides and inform consumers that inquiries should be submitted by telephone, email, or electronic means provided by the online marketplace.
 - ii) If the high-volume third-party seller certifies to the online marketplace that they do not have a telephone number other than a personal telephone number, the telephone shall inform consumers that no telephone number is available for the seller and that inquiries should be submitted by email or electronic means provided by the online marketplace.
 - b) Whether or not another party is responsible for supplying the product to the consumer upon purchase. If a third party is responsible, the third-party seller must provide contact information for the third party in response to a request from an authenticated purchaser.
- 7) 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.
- 8) Requires an online marketplace to suspend future sales activity of a high-volume third-party seller that meets any of the following criteria:
- a) The high-volume third-party seller is not in compliance with the requirements of the bill.
 - b) The high-volume third-party seller made a false representation to the online marketplace about the applicability of the provisions allowing partial disclosures of contact information.
 - c) The high-volume third-party seller made a false representation to consumers.
- 9) Permits an online marketplace to suspend future sales activity of a high-volume third-party seller that has not answered consumer inquiries within a reasonable time frame.
- 10) Requires an online marketplace to provide notice of an impending suspension to a high-volume third-party seller that is not in compliance with the

requirement to provide the seller's full name or company name and suspend the high-volume third-party seller if it does not come into compliance within 10 days. If the high-volume third-party seller comes into compliance more than 10 days after the notice, the online marketplace shall restore the seller's ability to have transactions facilitated within 10 days of receiving the information.

- 11) Requires an online marketplace to keep the information provided to it pursuant to the requirements above for no fewer than two years.
 - a) Information provided solely to comply with the above requirements shall not be used for any other purpose unless required by law.
 - b) An online marketplace shall implement and maintain reasonable security procedures and practices to protect the information from unauthorized disclosure, as specified.
 - c) A high-volume third-party seller may redact from information provided any information that is not necessary for compliance or to verify the authenticity of a document.
- 12) 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. If the Attorney General prevails in the action, it is entitled to recover reasonable attorney fees and costs, including expert witness fees and other litigation expenses, and preventive relief, including an injunction, restraining order, or other order against the person responsible for the conduct.
- 13) Provides that the requirements above to not apply to or affect the liability of an entity, including a high-volume third-party seller, for damages caused by a consumer product that is sold online.
- 14) Provides that 1)-13) will become operative on July 1, 2023.

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

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.

SUPPORT: (Verified 8/22/22)

Prosecutors Alliance of California (source)
California Retailers Association
California District Attorneys Association
Building Owners and Managers Association of California
California Automotive Wholesaler's Association
California Business Properties Association
California Business Roundtable
California Hispanic Chambers of Commerce
CALPIRG
City of San Francisco
Coalition to Protect America's Small Sellers
Commercial Real Estate Development Association, NAIOP of California
Contra Costa County District Attorney's Office
County of San Francisco
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce
Elk Grove Chamber of Commerce
GSK Consumer Healthcare
International Council of Shopping Centers
Lincoln Area Chamber of Commerce
Los Angeles District Attorney's Office
Los Angeles County Business Federation
Rancho Cordova Chamber of Commerce
Rocklin Area Chamber of Commerce
Roseville Area Chamber of Commerce
San Diego County District Attorney's Office

San Joaquin County District Attorney's Office
The Home Depot
The Toy Association
Torrance Area Chamber of Commerce
United Chamber Advocacy Network
Valley Industry and Commerce Association
Walgreen Company
Yuba Sutter Chamber of Commerce

OPPOSITION: (Verified 8/22/22)

None received

ARGUMENTS IN SUPPORT: According to the Prosecutors Alliance of California, the bill's sponsor:

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. It is estimated that more than \$500 billion in stolen and counterfeit items are sold through online marketplaces worldwide, annually.

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 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.

ASSEMBLY FLOOR: 77-0, 8/22/22

AYES: Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia,

Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Low, Maienschein, Mathis, Mayes, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon
NO VOTE RECORDED: Bigelow, Davies, Levine

Prepared by: Allison Meredith / JUD. / (916) 651-4113
8/22/22 19:58:59

**** END ****