

Date of Hearing: June 11, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

SB 1144 (Skinner) – As Amended June 5, 2024

**SENATE VOTE:** 33-1

**SUBJECT:** Marketplaces: online marketplaces

**SYNOPSIS**

*In 2022, the Legislature passed SB 301 (Skinner, Stats. 857, Ch. 2022), which requires online marketplaces—platforms that enable third-party sellers to sell consumer goods directly to consumers—to collect certain information from certain high-volume third-party sellers who sell to California residents on their platforms. These requirements were intended to make it more difficult to sell stolen goods on online marketplaces, thereby making it more difficult to profit from retail theft and, hopefully, disincentivizing such thefts. This bill expands the scope of current law in the following ways:*

- 1. It requires all high-volume sellers and all marketplaces to comply with the registration requirements, regardless of whether or not the payment for the items are made through the marketplace. Closing this loophole would now require marketplaces like Facebook and NextDoor to monitor the activity of high-volume sellers on their platforms.*
- 2. It expands the scope of public attorneys who can enforce the requirements related to high-volume online sellers. Currently, only the state Attorney General has the authority to bring an action against a high-volume seller or a marketplace. Under this bill, district attorneys, city attorneys and county counsel would be authorized to take action against people suspected of selling stolen merchandise.*

*This bill is scheduled to be heard in the Judiciary Committee on the same day as this Committee’s hearing. If it passes that Committee in the morning, it will be heard by this Committee in the afternoon. The bill is sponsored by the Prosecutors Alliance and supported by a number of organizations. The Computer & Communications Industry Association, Offer Up, Inc. and Technet are opposed.*

**SUMMARY:** Expands existing provisions requiring online marketplaces to collect certain information from high-volume third-party sellers and extends the authority to enforce these provisions to the district attorney in any county, a city attorney in any city, or a county counsel in any county. Specifically, **this bill:**

- 1) Expands the definition of “high-volume third party seller” by deleting the requirement that the number of transactions required to be a high-volume seller only count transactions that are made through the online marketplace for which the payment is processed directly by the marketplace or through the marketplace’s payment processor.
- 2) Expands the definition of “online marketplace” by removing language that limits the definition by requiring that the platform must have a contractual relationship with consumers governing their use of the platform and that a third party seller uses features on the platform

that allow the seller to engage in the sale, purchase, payment, storage, shipment, or delivery of a consumer product.

- 3) Expands enforcement authority to include any district attorney, city attorney or county counsel.
- 4) Requires an online marketplace to alert appropriate law enforcement agencies if it knows or should know that a third party seller is selling stolen goods unless the marketplace has already been alerted by a law enforcement agency.
- 5) Requires the marketplace to provide a mechanism that allows the marketplace and law enforcement agencies to communicate in a timely and confidential manner.
- 6) Requires the marketplace to maintain internal written policies, systems, and staff to monitor listings in order to prevent and detect organized retail crime.

**EXISTING LAW:**

- 1) Establishes requirements for online marketplaces that facilitate sales transactions between third-party sellers and consumers, and on certain third-party sellers on those online marketplaces, as set forth below. (Civ. Code §§ 1749.8–1749.8.5.)
- 2) Defines the following terms:
  - a) “Consumer product” is tangible personal property that is distributed in commerce and normally used for personal, family, or household purposes, including property intended to be attached to or installed in real property regardless of whether it is actually installed or attached.
  - b) “High-volume third-party seller” is a third-party seller 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, resulting in the accumulation of an aggregate total of \$5,000 or more in gross revenues. For purposes of this definition, only transactions for which payment is processed by the online marketplace directly or through its payment processor are counted.
  - c) “Online marketplace” is a consumer-directed, electronically accessed platform for which all of the following are true:
    - i. The platform 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 the state, and these features are used by third-party sellers.
    - ii. The platform has a contractual relationship with consumers governing their use of the platform to purchase consumer products.
  - d) “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 by or through an online marketplace.

- e) “Verify” is to confirm that information provided to an online marketplace pursuant to the requirements below is accurate. Methods of confirmation include the use of one or more methods that enable the online marketplace to reliably determine that the information and documents are valid, correspond to the seller or an individual acting on the seller’s behalf, are not misappropriated, and are not falsified. (Civ. Code, § 1749.8.)
- 3) Requires an online marketplace to require each high-volume third-party seller on the online marketplace to provide, not 10 days later after qualifying as a high-volume third-party seller, all of the following information to the online marketplace:
    - 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.
    - b) The high-volume third-party seller’s name, if they are an individual; if they are not an individual, a copy of a valid government-issued identification of an individual who has legal authority to act on behalf of the high-volume third-party seller, or a government document that includes the business name and address of the high-volume third-party seller.
    - c) A business or tax identification number for the business or taxpayer.
    - d) A valid email address and telephone number for the high-volume third-party seller. (Civ. Code, § 1749.8.1(a).)
  - 4) Requires an online marketplace to verify the information provided under 3) within 10 days and, on an annual basis, notify each high-volume third-party seller of the requirement to update any information within 10 days of the notification and certify that the information provided is accurate. If the high-volume third-party seller does not provide the information or certification as required, the online marketplace shall, after providing notice and opportunity to provide the information or certification, suspend any future sales activity until the information or certification is provided. (Civ. Code, § 1749.8.1(b), (c).)
  - 5) 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, in addition to the information required in 3), the following to the online marketplace and disclose it to consumers in a clear and conspicuous manner, as specified:
    - a) The full name of the high-volume third party seller, as specified.
    - b) The high-volume third-party seller’s physical address and contact information for the high-volume third-party seller, including a current working telephone, email address, or other means of direct electronic messaging, to allow users to have direct and unhindered communication with the seller. In the event that a seller certifies that they do not have a physical address or telephone number other than their residential address or personal number, the online marketplace shall direct consumers to use other methods of contact, as specified.

- c) Whether or not another party is responsible for supplying the product to the consumer upon purchase; and upon request from an authenticated purchaser, the high-volume third-party seller shall provide contact information for the party who is responsible for supplying the product. (Civ. Code, § 1749.8.2(a).)
- 6) Requires an online marketplace to disclose to consumers, in a clear or 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 the high-volume third-party seller to the online marketplace. (Civ. Code, § 1749.8.2.(b).)
- 7) Provides for the suspension of a high-volume third-party seller by an online marketplace, as follows:
  - a) The online marketplace must suspend the high-volume third-party seller if the high-volume third-party seller is not in compliance with the requirements of 4), made a false representation to the online marketplace about its lack of a business address or phone number, or made a false representation to a consumer.
  - b) The online marketplace may suspend the high-volume third-party seller if the high-volume third-party seller has not answered consumer inquiries within a reasonable time.
  - c) Before suspending a high-volume third-party seller, the online marketplace must provide notice and an opportunity to comply, as specified; if the high-volume third-party seller comes into compliance following the suspension, the online marketplace shall restore the seller, as specified. (Civ. Code, § 1749.8.2(c).)
- 8) Requires an online marketplace to retain the information provided to comply with 3)-7) for no fewer than two years, using reasonable security procedures and practices to protect the information, as specified. (Civ. Code, § 1749.8.3.)
- 9) Provides that a person or entity who violates any provision of 3)-8) shall be liable for a civil penalty of up to \$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. If the Attorney General prevails in such an action, it may recover reasonable attorney fees and costs and preventive relief, including a permanent or temporary injunction against any person responsible for the conduct. (Civ. Code, § 1749.8.4.)
- 10) Provides that 3)-9) do not apply to or affect the liability of an entity, including an entity that meets the definition of a high-volume third-party seller, for damages caused by a consumer product that is sold online. (Civ. Code, § 1749.8.5(a).)
- 11) Provides that 1)-10) became operative on July 1, 2023. (Civ. Code, § 1749.5(b).)
- 12) Establishes the INFORM Consumers Act, which imposes largely the same obligations on online marketplaces and high-volume third-party sellers as the state law set forth above. (15 U.S.C. § 45f.)
- 13) Authorizes the Federal Trade Commission (FTC), State Attorneys General, or other state officers authorized by state law to investigate and prosecute violations of the INFORM

Consumers Act; however, a state officer may not bring a separate action for a violation while an action brought by the FTC is pending. (15 U.S.C. 45f(c) & (d).)

- 14) Provides that no state or political subdivision of a state, or territory of the United States, may establish or continue in effect any law, regulation, rule, requirement, or standard that conflicts with the requirements of the INFORM Consumers Act. (15 U.S.C. § 15f(g).)

**FISCAL EFFECT:** As currently in print, this bill is keyed fiscal.

**COMMENTS:**

1) **Background.** According to the California Department of Justice’s Open Justice database, reports of shoplifting (one aspect of retail theft) increased significantly between 2021 and 2022, but, as shown in the table below, it remained significantly lower than the years prior to the COVID19 pandemic.

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Shoplifting	93,532	97,301	108,659	98,589	91,553	89,378	90,309	64,105	64,027	81,955

In 2022, the National Retail Federation (NRF) claimed that “nearly half” of the shopping industry’s \$94.5 billion in losses due to “shrink” in 2021 were caused by “organized retail theft.”<sup>1</sup> This claim was reported widely and cited in connection with stories about retail theft incidents. Store owners said that the prevalence of retail theft led them to raise prices.<sup>2</sup> Large companies like Walmart, Home Depot, and CVS agreed that the rate of retail theft was increasing.<sup>3</sup> Media outlets carried regular stories about the huge numbers of people who were walking into stores and walking out with armloads of merchandise. Retailers large and small were ringing alarm bells about increases in retail theft. In May of 2023, CNN reported that Target was bracing to lose half a billion dollars because of rising theft. Nordstrom, Whole Foods and some other big chains said they were abandoning San Francisco because of changing economic conditions or employee safety. Many other retailers have blamed crime for closing stores.<sup>4</sup> Despite the panicked reports about increases in shoplifting, the data did not bear that out, particularly in San Francisco.<sup>5</sup>

In 2023, the NRF walked back its claim about the epidemic of organized theft because they lacked evidence to support it.<sup>6</sup> According to the Senate Judiciary Committee analysis of this bill:

<sup>1</sup> Helmore, *US retail group retracts claim that half of \$94.5bn inventory loss was from theft* (Dec. 11, 2023), The Guardian, <https://www.theguardian.com/business/2023/dec/07/retail-theft-losses-inventory-nrf>. All links in this analysis are current as of March 29, 2024.

<sup>2</sup> Stark, *Are you spending more because of retail theft? Can California workers chase shoplifters?*, Sacramento Bee (Nov. 9, 2023), available at <https://www.sacbee.com/news/california/article281619043.html>.

<sup>3</sup> Fonroque, et al., *America’s biggest companies say retail crime is an epidemic, but just how big is it?*, CNBC (Mar. 18, 2023; updated Mar. 20, 2023), <https://www.cnbc.com/2023/03/18/organized-retail-crime-debate.html>.

<sup>4</sup> Parija Kavilanz, *Why retail theft is soaring: inflation, the economy – and opportunity*, CNN (May 23, 2023), <https://www.cnn.com/2023/05/23/business/retail-crime-economy/index.html>.

<sup>5</sup> Nicole Lewis, *What the Panic Over Shoplifting Reveals About American Crime Policy*, the Marshall Project (Feb. 27, 2023), <https://www.themarshallproject.org/2023/02/27/shoplifting-retail-theft-lawmakers-response>.

<sup>6</sup> E.g., Helmore, *supra*.

There are increasing questions about whether the scope of retail theft is as high as the NRF and other sources claim.<sup>7</sup> Accepting the NRF's claim that retailers lost \$112 billion to shrink in 2022, the rate of retail theft as a percentage of overall sales is the same as it was in 2020 and 2019.<sup>8</sup> More fundamentally, however, there is a debate over whether the data on retail theft are reliable at all.<sup>9</sup> Reported numbers can vary wildly; for example, one study showed that monthly shoplifting incidents in Los Angeles were between 200-300 per month in the latter half of 2022, while another reported 500-700 monthly shoplifting incidents in the same time frame.<sup>10</sup> There is also a debate over whether retailers are under-reporting retail theft—making it difficult to track stolen products—or actually reporting more incidents of retail theft than in the past—giving rise to the appearance of higher retail theft rates.<sup>11</sup>

In the last few months, retailers have been more neutral about the threat of retail theft.<sup>12</sup> According to retailers, the reduced threat is due to some changed behavior on their part—such as cutting back on self-checkout and locking up certain merchandise—as well as state and federal legislation targeted at retail theft.<sup>13</sup>

2) **The INFORM Consumers Act.** At the end of 2021, Congress passed the INFORM Consumers Act as part of the Consolidated Appropriations Act of 2023. The INFORM Consumers Act is nearly identical to SB 301, except that it applies to the United States as a whole and gives the Federal Trade Commission (FTC) first crack at enforcement. State Attorneys General are also entitled to bring INFORM Consumers Act suits, but they may not commence such an action while an FTC action is pending, and the FTC may intervene in a pending state suit. The INFORM Consumers Act further states that “[n]o State or political subdivision of a State, or territory of the United States, may establish or continue in effect any law, regulation, rule, requirement, or standard that conflicts with the requirements of this section.” The INFORM Consumers Act took effect on June 27, 2023.<sup>14</sup>

3) **Attorney General's Joint Statement of Principles.** In June of 2023, Attorney General Rob Bonta and retailers and online marketplaces representing some of the largest share of retail and online business in the nation, signed an agreement committing to specific actions aimed at helping address the growing issue of organized retail crime. The signatories, including major brick and mortar retailers and online marketplaces, including Home Depot, eBay, and Amazon, agreed to cooperate to deter, detect, and prosecute retail theft in their stores and on their online marketplaces.

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<sup>7</sup> *E.g.*, Fonrouge, *supra*.

<sup>8</sup> Selyukh, *Retailers Howled About Retail Theft Last Year. Why Not Now?*, KQED (Mar. 12, 2024), <https://www.kqed.org/news/11978954/retailers-howled-about-theft-last-year-why-not-now>.

<sup>9</sup> Fonrouge, *supra*.

<sup>10</sup> *Compare* Lofstrom, Presentation, Crime Data on Retail Theft and Robberies in California (Dec. 19, 2023), p. 8, presented to the Assem. Select Com. on Retail Theft, hg. on Retail Crime: Community Impacts and Solutions (Dec. 19, 2023) (relying on Department of Justice data) <https://www.assembly.ca.gov/committees/selectcommitteeonretailtheft>, with *id.* at p. 9 (relying on Council on Criminal Justice, Shoplifting Trends: What You Need to Know (Nov. 2023), fig 2 (selected for Los Angeles), <https://counciloncj.org/shoplifting-trends-what-you-need-to-know/>).

<sup>11</sup> *Compare, e.g.*, Selyukh, *supra* (some retailers are not reporting retail thefts to the police), with Council on Criminal Justice, Shoplifting Trends: What You Need to Know (Nov. 2023), *supra* (discussing data suggesting that retailers in some cities are reporting shoplifting at a greater rate).

<sup>12</sup> Selyukh, *supra*.

<sup>13</sup> *Ibid.*

<sup>14</sup> See Pub. L. No. 117-328 (Dec. 29, 2022) 136 Stat. 4459, div. BB, § 301; 15 U.S.C. § 45f.

The businesses signing onto the agreement committed to the following:

- Retailers commit to filing police reports for all incidents determined to be related to Organized Retail Crime (ORC) with specific information relating to the theft—store location, suspect information, and details of the stolen items, including stock keeping unit (SKU) numbers and retail price.
- Retailers will maintain policies related to the retention of video of ORC-related incidents to aid in prosecution and keep internal rosters of individuals who can lay the foundation for the introduction of such video evidence during prosecution.
- Retailers will ensure loss prevention personnel are trained on gathering, reporting, and retaining the evidence listed above to aid in the prosecution of ORC-related incidents.
- Retailers will maintain records of ORC-related thefts in a case management system.
- Retailers will communicate with marketplaces to establish connections between ORC incidents and threat patterns across the retail ecosystem.
- Retailers will communicate with marketplaces to stay updated on trends in ORC.
- Retailers will collaborate to provide training to law enforcement on how to partner with retailers to identify, investigate, and resolve ORC investigations.
- Marketplaces will maintain staff responsible for addressing reports from law enforcement, retailers, and the public of ORC on their platforms.
- Marketplaces will maintain a dedicated webpage, online portal, or point of contact to ensure timely replies to law enforcement requests, including warrants, subpoenas, and other legal process.
- Marketplaces will maintain internal written policies, systems, and staff to monitor listings in order to affirmatively prevent and detect ORC.
- Marketplaces will maintain external policies defining marketplace rules and the consequences of violations.
- Marketplaces will maintain internal written policies that guide collaboration and information-sharing with retailers and other marketplaces, facilitated through a webpage, online portal, or dedicated point of contact, in order to collectively combat ORC.
- Marketplaces will communicate with retailers to stay updated on trends in ORC. Such communication should focus on sharing general intelligence gathered by retailers, online marketplaces, and law enforcement on how to detect and prevent common methods of ORC.

- Marketplaces will maintain internal policies relating to referring identified ORC to the appropriate law enforcement agency.<sup>15</sup>

4) **Author’s statement.** According to the author:

In 2022, I introduced SB 301 to address the increasing use of online marketplaces as the mechanism to resell stolen goods. Regulations under SB 301 required online marketplaces to ensure that high volume third party sellers on their platforms were operating legally. While SB 301 made great strides in combating the sale of stolen goods on online marketplaces, there is still more work to be done. This bill strengthens SB 301 by auditing additional regulations on those high volume third party sellers that use online marketplaces to advertise goods, but then collect the money from buyers in “offline” transactions — transactions that make it much more difficult to track whether the goods sold were stolen.

5) **How this bill would work.** In 2022, the Legislature passed SB 301 (Skinner, Stats. 857, Ch. 2022), which requires online marketplaces—platforms that enable third-party sellers to sell consumer goods directly to consumers—to collect certain information from certain high-volume third-party sellers who sell to California residents on their platforms. These requirements were intended to make it more difficult to sell stolen goods on online marketplaces, thereby making it more difficult to profit from retail theft and, hopefully, disincentivizing such thefts. This bill expands the scope of current law in the following ways:

1. It requires all high-volume sellers and all marketplaces to comply with the registration requirements, regardless of whether or not the payment for the items are made through the marketplace. Closing this loophole would now require marketplaces like Facebook and NextDoor to monitor the activity of high-volume sellers on their platforms.

In practice, under this bill, platforms that currently do not track the amount of revenue that high-volume sellers are making from their merchandise would either have to assume that every seller on their marketplace is a high-volume seller or develop a method to determine whether or not a seller who has entered into 200 or more discrete transactions utilizing the marketplace. Once those sellers are identified, the marketplace will be required to collect, verify, and retain the following information:

- Bank account information.
- The name of the seller.
- A business tax identification number.
- An email address and telephone number.

In the event the marketplace determines that the high-volume seller has had \$20,000 in gross annual sales in either of the prior two calendar years will also be required to collect, verify, and retain contact information and the physical address of the seller. Finally, the seller will be required to disclose whether or not another party is responsible for supplying the

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<sup>15</sup> Attorney General Rob Bonta, Joint Statement of Principles (June 20, 2023).  
<https://oag.ca.gov/system/files/attachments/press-docs/Final%20ORC%20Mark-Up%5B2%5D.pdf>



merchandise to the consumer and, if asked by the buyer, the contact information for the supplier.

2. It expands the scope of public attorneys who can enforce the requirements related to high-volume online sellers. Currently, only the state Attorney General has the authority to bring an action against a high-volume seller or a marketplace. Under this bill, district attorneys, city attorneys and county counsel would be authorized to take action against people suspected of selling stolen merchandise.

6) **Related legislation.** SB 301 (Skinner, Chapter 857, Statutes of 2022) 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.

AB 1700 (Maienschein, Chapter 855, Statutes of 2022), requires 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.

**ARGUMENTS IN SUPPORT:** Writing in support of the bill, the California Retailers Association notes:

Organized retail crime is a complex, multi-faceted problem and combatting it requires a comprehensive approach. The threat of organized retail crime extends beyond the storefronts—it undermines the trust and safety of the online marketplace. Building on the foundation of SB 301 (Skinner), SB 1144 enhances accountability and transparency within online marketplaces. This legislation brings critical updates to the criteria for high-volume third-party sellers and improves the measures required for online marketplaces to prevent the trafficking of stolen goods.

**ARGUMENTS IN OPPOSITION:** OfferUp, [an online classified marketplace], writes in strong opposition to the bill:

SB 1144 broadens the definition of ‘high-volume third-party sellers’ from the INFORM Consumers Act to apply to any purchase made in connection with an online marketplace, regardless of whether that payment was processed by the online marketplace or through a third party. To be clear, the definitions in the INFORM Consumers Act are not unintended loopholes – they were carefully and thoughtfully negotiated between marketplaces, retailers, and legislators over the course of the two years that the Act was considered.

SB 1144 contradicts the preemptive federal INFORM Consumers Act by drastically broadening the scope of the INFORM Consumers Act and it would establish rules that make it almost impossible for local classifieds marketplaces, like OfferUp, to comply. OfferUp is an classifieds marketplace that connects buyers and sellers within the local community to make peer-to-peer transactions possible, **which ultimately means that OfferUp is not always privy to when users meet up, how much they sell an item for, or whether they completed a transaction at all.** Therefore, every user on the platform will potentially need to be considered a ‘high-volume third-party seller’ for OfferUp to ensure compliance. The requirements of the INFORM Consumers Act were written to apply to businesses and other large volume sellers - not to individuals. However, because in-person platforms like OfferUp cannot know whether a transaction actually occurred, we may be forced to collect information on EVERY seller. The practical effects of the removal of “and for which

payment was processed by the online marketplace or through a third party” is that OfferUp and other classifieds marketplaces will be required to collect sensitive personal information (*including social security numbers, bank account numbers, driver’s licenses, and tax forms*) from every Californian that wants to sell an item on an online marketplace, or ultimately the online marketplace will be unable to operate in your state.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Prosecutors Alliance (sponsor)  
California District Attorneys Association  
California Retailers Association  
California State Association of Counties  
City of Alameda  
City of Norwalk  
City of Rocklin  
Friends Committee on Legislation of California  
Home Depot; the  
League of California Cities  
Los Angeles County District Attorney's Office  
San Diego County District Attorney's Office  
Smart Justice California, a Project of Tides Advocacy  
Stockton; City of  
Target Corporation  
Valley Industry and Commerce Association (VICA)

### **Opposition**

Computer & Communications Industry Association  
Offerup INC.  
Technet-technology Network

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