

HOUSE BILL REPORT

HB 1614

As Reported by House Committee On:
Consumer Protection & Business

Title: An act relating to online marketplace consumer product theft and safety protection.

Brief Description: Concerning online marketplace consumer product theft and safety protection.

Sponsors: Representatives Kirby, Ryu, Berry, Johnson, J., Corry, Walen, Robertson, Rule, Santos, Frame and Young.

Brief History:

Committee Activity:

Consumer Protection & Business: 1/10/22, 1/17/22 [DPS].

Brief Summary of Substitute Bill

- Requires online marketplaces to obtain and verify banking, contact, and tax information from high-volume third-party sellers; disclose to consumers certain contact and business information for such sellers; and provides a mechanism for consumers to report suspicious activity.
- Provides for enforcement through the Consumer Protection Act; grants the Attorney General enforcement authority; and authorizes the Attorney General to develop certain implementing regulations.
- Preempts local requirements for online marketplaces to verify or disclose information from high-volume third-party sellers.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Kirby, Chair; Walen, Vice Chair; Ryu and Santos.

Minority Report: Without recommendation. Signed by 2 members: Representatives

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Dufault, Assistant Ranking Minority Member; Corry.

Staff: Michelle Rusk (786-7153).

Background:

The Consumer Protection Act (CPA) prohibits unfair or deceptive practices in trade or commerce; the formation of contracts, combinations, and conspiracies in restraint of trade or commerce; and monopolies. Persons injured by violations of the CPA may bring a civil action to enjoin further violations and recover actual damages, costs, and attorney's fees.

The Attorney General may also bring an action against any person to enjoin violations of the CPA and obtain restitution. The prevailing party may, at the discretion of the court, recover costs and attorney's fees. The Attorney General may also seek civil penalties up to the statutorily authorized maximums against any person who violates the CPA. Civil penalties are paid to the state.

Summary of Substitute Bill:

Several requirements for online marketplaces and high-volume third-party sellers are established.

An "online marketplace" is any person or entity that operates a consumer-directed electronically based or accessed platform that: (1) allows third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of consumer products in the United States; (2) hosts one or more third-party sellers; and (3) has a contractual relationship with consumers governing their use of the platform to purchase consumer products.

A "third-party seller" is any seller, independent of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through an online marketplace, but does not include:

1. a seller who operates the online marketplace's platform; or
2. a business entity that has: (i) made available to the general public the entity's name, business address, and working contact information; (ii) an ongoing contractual relationship with the online marketplace to provide for the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; and (iii) provided to an online marketplace verified identifying information.

A third-party seller is considered a "high-volume third-party seller" when, in any continuous 12-month period during the previous 24 months, it has entered into 200 or more discrete sales or transactions of new or unused consumer products and an aggregate total of \$5,000 or more in gross revenues.

Information and Verification Requirements.

Online marketplaces are required to obtain certain information from high-volume third-party sellers within 10 days of such entities qualifying as high-volume third-party sellers, including bank account or payee information, contact information, and tax identification number.

Online marketplaces are required to: (1) verify within 10 days the information obtained from high-volume third-party sellers and any changes to such information; (2) notify each high-volume third-party seller on at least an annual basis of its reporting obligations and obtain a certification from the seller within 10 days that its information is unchanged or is being updated; and (3) suspend non-responsive sellers from the marketplace, after providing a seller with written notice and 10 days to respond.

Data Security and Limitations.

Online marketplaces must implement reasonable security practices to protect data collected to comply with verification requirements, and such data may not be used for any other purpose unless required by law.

Disclosure Requirements.

Online marketplaces must require high-volume third-party sellers with an aggregate total of \$20,000 or more in annual gross revenues on such online marketplace to disclose to consumers the following seller information: full name; physical address; and contact information, including a working phone number and electronic mail (e-mail) address.

Seller information must be shared with consumers in two ways: (i) in a purchaser's order confirmation or other document made after a purchase is finalized; and (ii) in the consumer's account transaction history. A seller must also disclose if it used a different seller to supply a consumer product and, upon request, provide identification information for that seller to the purchaser.

The marketplace may provide for a partial disclosure of a seller's identity information under the following circumstances: (1) the seller demonstrates they do not have a business address and only have a residential address; (2) the seller maintains a physical address for consumer returns; or (3) the seller does not have a phone number other than a personal phone number. The marketplace must require complete disclosure if it becomes aware the seller has made a false representation to justify a partial disclosure or has not provided responsive answers to consumer inquiries within a reasonable time frame.

Reporting Requirement.

Online marketplaces must provide consumers with an electronic and telephonic mechanism for reporting suspicious marketplace activity to the online marketplace.

Enforcement.

A violation of the information, verification, disclosure, or reporting requirements of this act

constitutes an unfair or deceptive act or practice and violation of the CPA. The Attorney General has sole enforcement authority, and the Consumer Protection Division of the Office of the Attorney General may issue regulations regarding collecting and verifying required information.

Preemption.

No political subdivision may establish, mandate, or otherwise require online marketplaces to verify or disclose information from high-volume third-party sellers.

Substitute Bill Compared to Original Bill:

The substitute bill changes the effective date by removing the declaration of an emergency, giving the bill an immediate effective date, and providing an effective date of January 1, 2023.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2023.

Staff Summary of Public Testimony:

(In support) Organized retail crime is impacting the safety and security of customers, increasing prices for consumers, and decreasing product availability and the efficacy of products sold online. This bill is needed because it removes anonymity of some online sellers who want to profit from selling stolen merchandise, assists law enforcement with tracking individuals involved in organized retail crime, and assists retailers with keeping integrity of products. It is a common sense and practical policy to provide transparency for shoppers, ensure fairness for electronic commerce marketplace sellers, and bring product safety and authenticity to consumers. The bill only applies to new and unused merchandise, implements practices some retailers are already implementing, and most small businesses have the required information readily available and are already required by many states to register as a business. Retailers are implementing their own mitigation measures and security protocols to address organized retail theft, but help is needed on the legislative front. A federal bill has not passed yet, but this bill mirrors the federal language and represents a good-faith compromise with public support from the federal level. A reasonable amount of time should be allowed after passage to implement, such as six months, and creation of an organized retail theft task force should be considered, similar to other states like Illinois and Arizona.

(Opposed) These issues should be addressed at the federal level and small businesses shouldn't have to comply with various regimes and 50 different requirements. The United

States House of Representatives introduced the Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act (HR 5502) which is supported by a coalition including Amazon, and passing Washington's bill creates a patchwork of laws better addressed at the federal level. This bill creates hurdles for small sellers and is an effort by big box retailers to hurt their biggest competitors. Sophisticated counterfeiters won't be stopped and will adapt to these rules. Washington adopting this bill could lead to other legislation in other states that is not crafted as thoughtfully as Washington's legislation. There is little or no empirical evidence that shows stolen goods from physical retail stores are the stolen goods ending up online and being sold. The effective date is unrealistic because marketplaces can't comply that quickly. Compliance requires significant engineering and coding changes. The most impactful thing states can do is empower law enforcement to investigate, and there are examples of organized retail task forces in Illinois, Utah, and Connecticut. Organized prosecution efforts have been successful.

(Other) The bill does not allow for a private consumer individual who has been harmed to protect themselves and actually strips away current protections and rights existing in law. A private right of action isn't easy to bring but it is a fundamental protection and incentive to protect the consumer and a disincentive for unfair and bad practices under the Consumer Protection Act. The implementation date should be extended to get rid of the emergency effective date and use January 1, 2023, instead, which will allow time for education and provide necessary engineering and programming time.

Persons Testifying: (In support) Representative Steve Kirby, prime sponsor; Terry Reiland, Walgreens; Scott Glenn, The Home Depot; Deborah Herron, Walmart; Mark Johnson, Washington Retail Association; and Nathan Garnett, OfferUp Inc.

(Opposed) Montana Williams, Chamber of Progress; and David Edmonson, TechNet.

(Other) Scott Hazlegrove, eBay; and Larry Shannon, Washington State Association for Justice.

Persons Signed In To Testify But Not Testifying: None.