

# SENATE BILL REPORT

## SB 5533

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As of January 25, 2022

**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:** Senators Keiser, King, Conway, Dhingra, Kuderer, Lovick, Randall, Rivers, Schoesler and Wilson, C..

**Brief History:**

**Committee Activity:** Environment, Energy & Technology: 1/25/22.

### Brief Summary of Bill

- Requires online marketplaces to obtain and verify contact, banking, and tax information from high-volume third-party sellers.
- Specifies disclosure, data use limitations, and security requirements.
- Provides sole Attorney General (AG) enforcement authority under the Consumer Protection Act.
- Authorizes the AG to issue regulations regarding the collection and verification of information.
- Preempts local requirements for online marketplaces to verify information from high-volume third-party sellers.
- Declares an emergency.

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### SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Staff:** Angela Kleis (786-7469)

**Background:** The Consumer Protection Act (CPA), first enacted in 1961, prohibits unfair

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methods of competition or unfair or deceptive practices in the conduct of any trade or commerce. The Attorney General (AG) and private consumers can bring actions to enforce violations of the CPA. When the AG brings an action in the name of the state or on behalf of a private citizen to restrain a person from engaging in unlawful acts under the CPA, the court may award costs, including reasonable attorneys' fees, to the prevailing party.

The Consumer Protection Division of the Office of the AG enforces the CPA. The division represents the state and the public as a whole, as opposed to individuals, when it brings actions under the CPA. Attorneys in the Consumer Protection Division cannot represent individual consumers.

**Summary of Bill: Required Information.** An online marketplace must require any high-volume third-party seller on its platform to provide specified information such as bank account or payee information, contact information, and a tax identification number. A high-volume third-party seller must provide such information within ten days of qualifying as a high-volume third-party seller.

**Certification and Verification.** An online marketplace shall at least annually (1) notify high-volume third-party sellers on its platform to keep information provided to the online marketplace current and (2) require any high-volume third-party seller on its platform to certify, within ten days of receipt of such notice, whether information changes have been provided, what information was changed, or if there have been no changes to information.

An online marketplace must verify the information provided by high-volume third-party sellers, including any notifications of changes to information, within ten days of receipt.

**Disclosure.** An online marketplace must require any high-volume third-party seller with an aggregate total of \$20,000 or more in annual gross revenues on its platform to provide the following information and disclose provided information to consumers in a clear, noticeable manner:

- the identity of the high-volume third-party seller, including current contact information; and
- whether the high-volume third-party seller used a different seller to supply the product to the consumer upon purchase.

***Exception for Partial Disclosure.*** Upon certified request from a high-volume third-party seller, an online marketplace under specified circumstances, such as the high-volume third-party seller only has a residential street address, may authorize the partial disclosure of identity information.

***Limit on Exception.*** If an online marketplace becomes aware that a high-volume third-party seller has made a false representation in order to justify the partial disclosure of information, or is not responding to consumer inquiries in a reasonable time frame, the online marketplace shall provide the high-volume third-party seller notice and an

opportunity to comply. If a high-volume third-party seller does not respond to the notice within ten days of issuance of the notice, the online marketplace must suspend any future sales activity unless the high-volume third-party seller consents to disclosure of required identification information.

Compliance. If a high-volume third-party seller does not comply with the requirements to provide and disclose information, the online marketplace must provide notice and an opportunity to comply. If a high-volume third-party does not respond within ten days of issuance of such notice, an online marketplace must suspend any future sales activity until the seller complies with the such requirements.

Data Use Limitations and Security. Data collected solely to comply with the requirements to provide specified information and certification may not be used for any other purpose unless required by law.

An online marketplace must implement and maintain reasonable security procedures and practices to protect the data collected from unauthorized use, disclosure, access, destruction, or modification.

Reporting. An online marketplace must disclose to consumers in a clear, noticeable manner on the product listing of any high-volume third-party seller a reporting mechanism that allows for reporting of suspicious marketplace activity to the online marketplace.

Enforcement. A violation of the information, certification, verification, data use limitation and security, and disclosure requirements of this act constitutes an unfair or deceptive act or practice and a violation of the CPA. The AG has sole enforcement authority. The Consumer Protection Division may issue regulations for the collection and verification of required information.

Preemption. No political subdivision may establish, mandate, or otherwise require online marketplaces to verify information from high-volume third-party sellers on a one-time or ongoing basis or disclose information to consumers.

Definitions. High-volume third party seller means a participant on an online marketplace's platform who 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 sales or transactions of new or unused consumer products and an aggregate total of \$5,000 or more in gross revenues.

Online marketplace means any person or entity that operates a consumer-directed electronically based or assessed 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 the United States;
- is used by one or more third-party sellers for such purposes; and

- has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

Third-party seller means any seller, independent of an online marketplace, who sells, offers to sell, or contract to sell a consumer product in the United States through such online marketplace's platform. It does not include, with respect to an online marketplace:

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

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:** PRO: This is a consumer protection effort. Over the past couple of years, we have seen an increase in organized crime theft. These criminals are sophisticated and coordinated and are a threat to the safety of our customers, employees, and property. This bill is the most meaningful step that we take together to help protect consumers, aid law enforcement, and prevent crime.

CON: We are concerned that the information sellers are required to disclose, pose real privacy issues. This bill imposes additional requirements on small businesses while not providing appropriate authority or resources to enforce the bill. This bill has already been rejected in several other states. The emergency clause is unrealistic.

OTHER: We appreciate that the bill closely models federal legislation. We have concerns with the emergency clause and request a delayed implementation date in order to educate sellers on the changes and update our systems.

**Persons Testifying:** PRO: Senator Karen Keiser, Prime Sponsor; Mark Johnson, Washington Retail Association; Krista Beck, Piston Services of Wenatchee, Inc.; Terry Reiland, Walgreens; Ben Dugan, CVS and CLEAR; Deborah Herron, WalMart; Rory Stallard, The Home Depot.

CON: Patrick Connor, NFIB; Montana Williams, Chamber of Progress; Nora Palattao Burnes, TechNet.

OTHER: Scott Hazlegrove, eBay.

**Persons Signed In To Testify But Not Testifying:** No one.