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SB-1144 Marketplaces: online marketplaces. (2023-2024)

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Senate Bill No. 1144

CHAPTER 172

An act to amend, repeal, and add Sections 1749.8 and 1749.8.4 of, and to add Section 1749.8.9 to, the Civil Code, relating to business.

[Approved by Governor August 16, 2024. Filed with Secretary of State August 16, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1144, Skinner. Marketplaces: online marketplaces.

Existing law generally requires an online marketplace to require a high-volume third-party seller on the online marketplace to make certain disclosures. Existing law requires an online marketplace to suspend future sales activity of a high-volume third-party seller that is not in compliance with those information sharing requirements, as specified. Existing law imposes certain information retention and security requirements on an online marketplace and prohibits specified uses of that information.

Existing law generally defines a "high-volume third-party seller," for purposes of the above-described provisions, as a third-party seller who has entered into a certain number of consumer product sales transactions through an online marketplace for which payment is processed by the online marketplace, as specified. Existing law defines an "online marketplace," for purposes of those provisions, as a consumer-directed, electronically accessed platform that includes features that allow for, facilitate, or enable, and are used by, a third-party seller to engage in the sale, purchase, payment, storage, shipment, or delivery of a consumer product and that has a contractual relationship with consumers governing their use of the platform to purchase consumer products.

This bill would revise the types of transactions that qualify a third-party seller as a "high-volume third-party seller," for those purposes. Specifically, the bill would remove the conditions that the transactions be made through an online marketplace and that the online marketplace process the payment and, instead, would add the condition that the transactions were made utilizing an online marketplace. The bill would also revise the definition of "online marketplace" by removing the conditions that the above-described features be used by third-party sellers, and that the platform have the above-described contractual relationship with consumers.

Existing law requires a high-volume third-party seller to disclose and certify to the online marketplace certain identification, contact, and payment information of the seller, as specified.

This bill would require an online marketplace to establish and maintain a policy prohibiting the sale of stolen goods on the marketplace and to provide a mechanism to notify the marketplace of the sale of stolen goods, as specified. The bill would require an online marketplace to alert local, regional, or state law enforcement agencies in California if it knows or should know that a third-party seller is selling or attempting to sell stolen goods to a California resident, except as specified.

Existing law requires a person or entity who violates the above-described provisions to be liable for a civil penalty not to exceed \$10,000 for each violation and reasonable attorney's fees and costs and to be subject to preventive relief, as specified. Existing

law limits recovery and relief to a civil action brought by the Attorney General, as specified.

This bill would expand recovery and relief to a civil action brought by a district attorney in any county, a city attorney in any city or city and county, or a county counsel in any county.

The bill would make these changes operative on July 1, 2025.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares that it is the intent of the Legislature to stop theft from retail stores and community theft by curtailing the sale of stolen property on online marketplaces.

SEC. 2. Section 1749.8 of the Civil Code is amended to read:

1749.8. For purposes of this title:

(a) "Consumer product" means 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 attached or installed.

(b) (1) "High-volume third-party seller" means 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 five thousand dollars (\$5,000) or more in gross revenues.

(2) The number of discrete transactions referenced in paragraph (1) includes only those transactions through the online marketplace for which payment is processed by the online marketplace directly or through its payment processor.

(c) "Online marketplace" means a consumer-directed, electronically accessed platform for which all of the following are true:

(1) 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 this state.

(2) The features described in paragraph (1) are used by third-party sellers.

(3) The platform has a contractual relationship with consumers governing their use of the platform to purchase consumer products.

(d) "Third-party seller" means 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" means to confirm that information provided to an online marketplace pursuant to this title 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.

(f) This section shall become inoperative on July 1, 2025, and shall be repealed on January 1, 2026.

SEC. 3. Section 1749.8 is added to the Civil Code, to read:

1749.8. For purposes of this title:

(a) "Consumer product" means 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 attached or installed.

(b) "High-volume third-party seller" means a third-party seller on an online marketplace who, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete transactions utilizing the 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 five thousand dollars (\$5,000) or more in gross revenues.

(c) "Online marketplace" means a consumer-directed, electronically accessed platform that includes features that allow for, facilitate, or enable a third-party seller to engage in the sale, purchase, payment, storage, shipment, or delivery of a consumer

product in this state.

(d) "Third-party seller" means 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 utilizing an online marketplace.

(e) "Verify" means to confirm that information provided to an online marketplace pursuant to this title 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.

(f) This section shall become operative on July 1, 2025.

SEC. 4. Section 1749.8.4 of the Civil Code is amended to read:

1749.8.4. (a) A person or entity who violates any provision of this title shall be liable for a civil penalty not to exceed ten thousand dollars (\$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.

(b) In addition to the civil penalty provided by subdivision (a), the Attorney General who prevails in an action to enforce this title shall be entitled to the following relief:

(1) Reasonable attorney's fees and costs, including expert witness fees and other litigation expenses.

(2) Preventive relief, including a permanent or temporary injunction, restraining order, or other order against any person responsible for the conduct.

(c) This section shall become inoperative on July 1, 2025, and shall be repealed on January 1, 2026.

SEC. 5. Section 1749.8.4 is added to the Civil Code, to read:

1749.8.4. (a) A person or entity who violates any provision of this title shall be liable for a civil penalty not to exceed ten thousand dollars (\$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, a district attorney in any county, a city attorney in any city or city and county, or a county counsel in any county.

(b) In addition to the civil penalty provided by subdivision (a), the Attorney General, a district attorney, a city attorney in any city or city and county, or county counsel who prevails in an action to enforce this title shall be entitled to the following relief:

(1) Reasonable attorney's fees and costs, including expert witness fees and other litigation expenses.

(2) Preventive relief, including a permanent or temporary injunction, restraining order, or other order against any person responsible for the conduct.

(c) This section shall become operative on July 1, 2025.

SEC. 6. Section 1749.8.9 is added to the Civil Code, to read:

1749.8.9. (a) An online marketplace shall alert local, regional, or state law enforcement agencies in California if it knows or should know that a third-party seller is selling or attempting to sell stolen goods to a California resident, unless the online marketplace has received a notice from the law enforcement agency that the same third-party seller is suspected of selling or attempting to sell the same stolen goods on the online marketplace to a California resident.

(b) (1) An online marketplace shall do all of the following:

(A) Establish and maintain a policy prohibiting the sale of stolen goods on the online marketplace, which shall include consequences for knowingly selling stolen goods on the online marketplace, including, but not limited to, suspension or termination of the seller's account.

(B) Provide a mechanism on the online marketplace that allows any individual to notify the online marketplace that a seller is or may be selling stolen goods.

(C) Provide a mechanism on the online marketplace that allows the online marketplace and law enforcement to communicate in a timely and confidential manner, including by means of a link to a dedicated web page, online portal, or point of contact and ensure timely replies to law enforcement requests, including warrants, subpoenas, and other legal processes.

(D) Maintain internal written policies, systems, and staff to monitor listings in order to affirmatively prevent and detect organized retail crime.

(2) The policy and mechanism required by this subdivision shall be publicly posted and readily accessible to users.

(c) This section shall become operative on July 1, 2025.