



May 2, 2022

**Oppose S. 8391: Hurts Small Online Sellers, Rejected by 15 States,
Unnecessary Due to Federal Compromise**

Senator Kevin Thomas
Chair
Senate Committee on Consumer Protection
New York State Senate

Dear Chair Thomas and members of the committee:

On behalf of Chamber of Progress, a center-left tech industry organization devoted to technology's progressive future, I encourage you to **oppose S. 8391**, a bill that would hurt small online sellers, has been rejected by at least 15 state legislatures, has little empirical evidence to support it, and is unnecessary given that both big-box retailers and online marketplace have endorsed a new compromise version of this bill at the federal level.

S. 8391 would hurt small online sellers and make them collateral damage in Walmart's battle against Amazon. Brick-and-mortar marketplace giants are trying to stifle healthy competition and will ultimately hurt Etsy artisans, eBay sellers, and other online microbusinesses. According to a recent article in *The Atlantic*, bills like S. 8391 will ultimately help Walmart by "weaken[ing] the competitive advantage of large-scale online-shopping platforms."¹ It won't stop sophisticated counterfeiters, who will surely adapt to the new rules.

At least fifteen states have rejected bills similar to S. 8391, prioritizing the needs of online entrepreneurs and consumer choice. In 2021, the retailer backers of this bill worked to pass similar legislation in at least 18 states. After careful consideration, at least 15 state legislatures decided to reject this legislation because of its negative impact on small sellers. **The only state to pass this legislation was Walmart's home state, Arkansas.**

In several state legislative hearings over the past few months, both Republican and Democratic legislators have expressed hesitation about the impacts of these bills on small online sellers. These include:

West Virginia [Senator Mike Romano](#) (D)

"Is there any evidence that this [online retail crime] is going on in West Virginia? There's a lot of shoplifting going on...but I don't think any drug addicts are running online businesses. I've not heard anybody say there was an active black market in stolen property in my area. . .

¹ Amanda Mull, *The Great Shoplifting Freak-Out*, *The Atlantic*, (Jan. 2022)

<https://www.theatlantic.com/health/archive/2021/12/shoplifting-holiday-theft-panic/621108/>

certainly nobody's come to me and said that. If you're buying from someone who is not reputable, that will take care of itself."

Georgia Rep. Bert Reeves (R)

"We all can agree that there are bad players, that we need to be able to have better tools to be able to stop what they're doing. . . but perhaps this proposal. . . it's a net that brings in way too many fish that we don't mean to bring in."

Georgia Rep. Zulma Lopez (D)

"Not everyone that is selling [online] is going to be doing anything illegal. I'm thinking about the small business owner that is growing their business. As soon as they meet that [sales] threshold they have 24 hours to comply. That is pretty cumbersome."

West Virginia Senator Amy Grady (R)

"I'm just thinking about the sellers on Etsy that sell handmade things or one-of-a-kind items, I wouldn't think they'd fall under the same category of trying to resale things that were stolen from a department store."

Walmart and its allies consistently claim retail thefts are "caused" by thieves being able to stock online platforms with stolen goods in order to resell them on online marketplaces. However, when *The Atlantic* reporter Amanda Mull recently "asked retailers how they squared falling property-crime rates with their own assertions that theft has skyrocketed, [retailers] weren't exactly forthcoming." In their rush to persuade policymakers to pass laws hurting their biggest competitors, **retailers haven't clearly established that retail theft has increased – or that online marketplaces are to blame if it is.**

University of Southampton criminologist Anita Lavorgna told *The Atlantic* that **"there's just not much empirical evidence that flipping stolen makeup or baby formula or designer handbags online is primarily the province of huge, violent criminal-conspiracy organizations."**

Finally, a federal compromise version of this bill has already been endorsed by both retailers and leading online marketplaces, making this legislation unnecessary. In October, U.S. Housemembers introduced the federal INFORM Act to combat the online sale of stolen, counterfeit, and dangerous consumer products.

Due to changes that the bill's sponsors made to address the concerns of small online sellers and marketplaces, the new legislation is now supported by both retail groups such as the Retail Industry Leaders Association and Buy Safe America Coalition, as well as a coalition including Etsy and eBay,² as well as Amazon.³ The consensus approach reflected in this new version of the legislation represents the best model for tackling this issue without harming small online sellers.

² PASS Coalition Endorses New Inform Consumers Act, Applauds Reps. Jan Schakowsky (D-IL) and Gus Bilirakis (R-FL), The Coalition of Protect America's Small Sellers, (Nov. 2021)
<http://www.protectsmall sellers.org/newsroom/pass-coalition-endorses-new-inform-consumers-act-applaud-reps-jan-schakowsky-d-il-and-gus-bilirakis-r-fl>.

³ Amazon supports the U.S. House version of the INFORM Act, Amazon, (Nov. 2021)
<https://www.aboutamazon.com/news/policy-news-views/amazon-supports-the-u-s-house-version-of-the-inform-act>

We hope you will heed the perspectives of the legislators who have assessed the consequences of passing state versions of this legislation and **oppose S. 8391**. This bill would take sides for Walmart against Amazon, while hurting small online business owners. This approach has been rejected in all but one state legislature because of its negative impact on small online sellers. Rather than pass this bill, the New York legislature should voice its support for the U.S. House of Representatives' compromise version of this legislation, which has won broad support.

Sincerely,

A handwritten signature in cursive script, appearing to read "Axc".

Alain Xiong-Calmes
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