



The Honorable Thomas Umberg
Chair, Senate Judiciary Committee
1021 O Street, Suite 6530
Sacramento, CA

March 27, 2024

Dear Chair Umberg and members of the Committee:

On behalf of the Chamber of Progress, a tech industry coalition promoting technology's progressive future, I write to **oppose SB 1144** relating to online marketplaces in its current form. While recent amendments do address some notable concerns, namely in adopting the "reasonably believe" standard in regards to the potential sale of stolen items, the bill is still preempted by federal law and holds platforms accountable for the actions of third party sellers.

SB 1144 is Preempted by Federal Law

In December 2022, Congress passed and President Biden signed into law HR 2617, an omnibus spending bill that included the INFORM Act, which governs the collection, verification, and disclosure of information about high-volume sellers on online marketplaces. **Federal law includes language explicitly preempting conflicting state laws, rules, and regulations** — please see Title III, Sec. 301(g).¹ Chamber of Progress worked closely with Congress to pass the federal INFORM Act. This federal law has robust support from retailers, online marketplaces, and others. More importantly, the federal law empowers consumers with greater transparency around the products they choose to purchase. By requiring appropriate verification and transparency of high-volume third party sellers, the law will deter online sales of stolen, counterfeit, and unsafe goods and protect consumers.

In addition to supporting the federal INFORM Act, online marketplaces have invested in technologies, clear policies, personnel, and processes that identify

¹ <https://www.congress.gov/bill/117th-congress/house-bill/2617/text>
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suspected bad actors and bad listings, and block them from being published and remove them from their platforms. When there is evidence that bad actors are misusing a marketplace to sell stolen or illicit goods, our partners work directly with law enforcement, retailers, and brands to bring offenders to justice.

Fortunately, there are proven models that can help to address organized retail crime (ORC). The most impactful thing the state can do is ensure law enforcement have the tools and resources necessary to pursue these criminals and prosecute them. Additionally, there are recent examples of ORC task forces in a number of states, including Illinois, Utah, Arizona, and Connecticut. The task forces bring together law enforcement, retail loss prevention experts, online marketplaces, and other key stakeholders to collaborate on investigations and prosecutions of ORC. Chamber of Progress stands ready to be engaged partners in these endeavors.

SB 1144 broadly holds online marketplaces accountable for the actions of third-party sellers

A core provision of this bill broadens the scope of transactions made by third-party sellers via an online marketplace's ability to process payment, to encompass transactions made "utilizing an online marketplace" generally. The difference implies that online marketplace platforms could be responsible for transactions that are made off platform, which are inherently outside the scope of the certification of a high-volume third-party seller. This is especially concerning because the bill simultaneously expands the recovery and relief actions that can be taken to every local district attorney, city attorney, and county counsel in the state.

For the sake of clarity and conformity with federal law, this change in transaction scope should remain applicable only to those transactions performed via the online marketplace explicitly.



SB 1144 risks re-creating a patchwork, and downgrading consumer protections

The federal INFORM Act was a moment of historic consensus between policymakers and retailers that created pathbreaking consumer protections with bipartisan support. It advanced consumer protections on a nationwide basis. SB 1144's supporters are well-intentioned, and thankfully receptive— however SB 1144 undermines the historic federal INFORM Act by potentially recreating a patchwork of state by state protections, and by broadening the scope of transactions originally covered by the federal law.

For these reasons we remain opposed to SB1144 as written.

Sincerely,

Robert Singleton
Director of Policy and Public Affairs, California and US West.