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INNOVATION ECONOMY



**Computer & Communications  
Industry Association**  
Open Markets. Open Systems. Open Networks.

June 7, 2024

The Honorable Nancy Skinner  
1021 O Street, Room 8630  
Sacramento, CA 95814

**RE: SB 1144 (SKINNER) INFORM Act 2.0 - OPPOSE**

Dear Senator Skinner,

The following organizations respectfully **OPPOSE SB 1144 (Skinner)**, which would unduly penalize lawful businesses using online marketplaces to sell goods and would not assist in combatting retail theft. This bill would force online marketplaces to treat all third-party sellers like high-volume sellers thereby requiring small sellers and individuals to provide sensitive personal information to online marketplaces.

We appreciate the recent amendments that address some of our concerns. However, without additional changes to the definition of high-volume seller we must remain opposed.

**SB 1144 Hurts Small Businesses and Requires Them to Disclose Additional Personal Information**

**SB 1144** hurts small businesses by layering on new requirements for small sellers to comply with in order to list their products on an online marketplace. The expansion of the definition of "high-volume seller" aims to include transactions that occur outside of the platform or marketplace. By definition, this is something that cannot be tracked by a platform since it has no access to any information regarding the ultimate transaction. For example, some online marketplaces simply facilitate a connection between buyer and seller, who then meet up in person to exchange the item and payment. In this situation there is no way for a platform to know whether a seller has actually sold an item they've listed and consequently the platform can't calculate how many sales a seller has completed for purposes of determining if they are a high-volume seller.

This difficulty was known and heavily negotiated in the state and federal INFORM act. The only way to comply with the law would be to assume every single seller is "high-volume," and subject every business to the heightened requirements in INFORM and those proposed in **SB 1144**.

Furthermore, this balance was struck to protect small sellers and their private information. INFORM requires high volume sellers to provide their name, contact information such as telephone number or email address, taxpayer identification number (which is a social security number for an individual), and physical address to an online marketplace. These sellers were excluded because it doesn't make sense for small sellers to have to provide this information to an online marketplace. The current threshold and definition captures when sellers reach a level of activity that warrants the privacy trade off. Without additional evidence, this change is unwarranted.

Lastly, a nearly identical law in Georgia requiring online marketplaces to track off-platform transactions, passed earlier this year, is now the subject of litigation. The litigation filed on June 7<sup>th</sup> argues that this requirement runs afoul of the 1<sup>st</sup> Amendment and Section 230. We

should expect if California passes SB 1144 as currently in print, similar litigation would be filed.

### **Changes to the Definition of “High-Volume Seller” Are Not a Solution for Organized Retail Crime (ORC)**

Contrary to messaging and intent language in **SB 1144**, the changes to the definition of “high-volume seller” are not a solution for ORC, nor will it do anything to assist in the recovery of stolen property. INFORM was not intended to be a solution for ORC either, as verifying information for online sellers addresses only a tiny component of a broad and intricate issue affecting society today.

### **There Is No Loophole in Existing Law Governing Online Marketplaces**

In 2022, online marketplaces and retailers came together to negotiate the federal INFORM Consumers Act, which went into effect just this past summer. These negotiations resulted in legislation that was supported by brick-and mortar retailers and online marketplaces alike. It also created an important federal framework at a time when multiple states were considering their own legislation on the issue of addressing the use of online marketplaces to move stolen goods. This included California, and the California law that passed in 2022 conformed to the language set forth in the federal law.

Now, based on an alleged “loophole” in a brand new law, **SB 1144** attempts to change the approach to online marketplaces and would make California operate under a different and more onerous law than the rest of the United States. This means that legitimate businesses using online marketplaces located anywhere in the nation would have to comport with California’s unique laws, something that small businesses are not equipped to do. This outcome is exactly the reason that the federal INFORM act included preemption language – the reality of online commerce necessitates consistency across state lines.

In addition to the INFORM Act, in California, brick-and-mortar retailers, online marketplaces, and the Attorney General agreed to a Statement of Principles in June 2023 that laid out additional commitments that are focused on identifying and addressing ORC. In the handful of months that have followed the effective date of the INFORM Act and the agreement to the Statement of Principles, there has been no evidence that there is a loophole that must be closed.

For these reasons we must respectfully **OPPOSE SB 1144**.

Thank you for your consideration. If you have any questions regarding TechNet’s position, please contact Dylan Hoffman, Executive Director, at [dhoffman@technet.org](mailto:dhoffman@technet.org) or 505-402-5738.

Sincerely,



Dylan Hoffman  
Executive Director for California and the Southwest  
TechNet

On behalf of the following organizations:

Computer & Communications Industry Association (CCIA), Khara Boender