

Testimony before House Commerce, Labor & Economic Development Committee
HB 2731 – Consumer Protection relating to Stolen & Counterfeit Online Sales
Mike O’Neal on behalf of Walmart
March 15, 2022
In-person Testimony in SUPPORT

Mr. Chairman and members of the Committee

HB 2731 incorporates in Kansas law, language contained in pending federal legislation supported by the retail industry and large third party platforms such as eBay and Amazon relating to the sale of stolen and counterfeit merchandise through online platforms, requiring such marketplaces to verify and authenticate the identity of high-volume third-parties who sell products on those platforms and providing for civil enforcement by the Kansas Attorney General through the Kansas Consumer Protection Act.

Sec. 1. Key Definitions

- A “High-Volume” third party seller means one that in a 12-month period has 200 or more sales transactions of new or unused products with aggregate revenues of \$5000 or more.
- “Third Party seller” does NOT include the operator of the platform or a business that made available to the public the business’s name, address and working contact information; has an ongoing contractual relationship with the on-line platform to provide the on-line marketplace with the manufacture, distribution wholesaling or fulfillment of shipmen of goods; AND has provided to the on-line marketplace identifying information as set forth in Sec. 2.
- “Verify” means to confirm information provided to the on-line marketplace by a third-party seller by methods that enable the on-line marketplace to reliably determine that any information provided is valid, corresponds to the seller or the seller’s agent, not misappropriated or falsified.

Sec. 2. (a) Requires an online marketplace to require high volume sellers to provide the following info within 10 days:

- Bank account number or if none, the name of the payee’
- Contact info including name, if a person, or a copy of a valid government-issued ID of a person acting on behalf of the seller, or a government-issued record or tax document that includes the business name and physical address; a current working email address and working phone number; AND a business or taxpayer ID number.

(b) At least annually the online marketplace shall notify each high volume seller of the requirement to keep information current and confirm within 10 days that the information is unchanged or notify the online marketplace of any changes. Failing this and after providing written notice to the seller, the online marketplace shall suspend the seller until the information is provided.

Data collected solely to comply with the act may not be used for any other purpose unless required by law. The online marketplace must implement reasonable safety and security measures to protect the data.

Sec. 3. (a) The online marketplace shall require a high-volume seller with aggregate sales of \$20,000 or more to provide the marketplace and buyers with clear and conspicuous information in the order confirmation message or other communication made after the purchase and in the consumer's account transaction history: The identity of the seller, including the full name of the seller, the seller's physical address, contact information for the direct and unhindered communication with the seller, working email and phone number and whether the seller used a different seller to supply the order and if requested the same information on that other seller.

(b) Provides for circumstances where the seller has no physical address or has a combined business and residential address to protect disclosing that information and instead providing other contact information to the buyer. If the seller has only a personal phone, that information is protected and buyers are informed to use email or other disclosed means of contact provided.

If an online marketplace becomes aware that a high-volume seller has made false representations under this section and after written notice and opportunity to respond within 10 days, the marketplace shall suspend the seller unless the seller remedies the violation.

The online marketplace must disclose to consumers in a conspicuous manner on the product listing of any high-volume seller a reporting mechanism that allows for electronic AND telephonic reporting of suspicious marketplace activity. If a high-volume seller does not comply with the disclosure requirements and after 10 day written notice, the marketplace shall suspend the seller until the requirements are met.

Sec. 4. Violations of the Act constitute deceptive acts or practices under the Kansas Consumer Protection Act and subject to the civil remedies therein. The Attorney General has the sole authority to enforce and may adopt rules & regs. The Act will become part of the Kansas Consumer Protection Act.

Sec. 5. Local units of government are pre-empted from making any other requirements.

Sec. 6. Severability clause.

Attached to this testimony is the written testimony of Ryan Irsik with Walmart, a list of frequently asked questions (FAQ's) and links to news coverage highlighting the urgent need for the legislation.



March 15, 2022

Re: Support of House Bill 2731 – INFORM ACT

Dear Members of the Commerce, Labor, and Economic Development Committee,

Walmart supports House Bill 2731. This important piece of legislation would increase transparency and accountability for online marketplaces and protect your constituents. The legislation addresses the serious concern of counterfeit goods and stolen property sold via online marketplace platforms and offers essential protections for consumers in Kansas.

The U.S. Department of Homeland Security (DHS) has estimated that counterfeit and pirated goods now represent more than \$500 billion in global trade¹. In recent years, seizures of infringing goods at U.S. borders have increased significantly to nearly 33,000 in FY2019². In some instances, items are falsely labeled, made from substandard materials, or do not meet U.S. safety regulations.

As both a brick-and-mortar retailer and an online marketplace operator, we believe the seller disclosure and verification requirements within the legislation are best practices for all marketplaces and are needed to empower consumers and law enforcement officials to reduce fraudulent sales. The legislation does not harm law-abiding small sellers but rather would make it harder for bad actors to compete with lawful sellers by deceiving and defrauding customers in Kansas.

Federal and state laws are already in place and enforced against brick-and-mortar retailers who sell fraudulent items in a physical retail environment. As DHS notes, "the U.S. brick-and-mortar retail store economy has a well-developed regime for licensing, monitoring, and otherwise ensuring the protections of intellectual property rights..."³ This legislation addresses the problem of insufficient transparency and accountability that is specific to online marketplaces that do not adhere to best practices of seller information disclosure and verification.

Walmart is proud to employ over 22,540 associates across 83 retail locations in Kansas. In FY 2021, Walmart spent over \$634.8 million with local suppliers, supporting over 19,499 in-state jobs, and donated more than \$7.6 million in cash and in-kind donations to charitable organizations operating in local communities.

Maintaining the trust and confidence of our online customers is essential to our business – we believe all online marketplaces should do the same.

¹ U. S. Department of Homeland Security. (2020). "Combatting Trafficking in Counterfeit and Pirated Goods: Report to the President of the United States."

² Ibid.

³ Ibid.

For these reasons, Walmart respectfully requests the Committee's support of House Bill 2731. Thank you for your consideration of this practical legislative solution that will help reduce the sale of stolen and pirated items on online marketplaces and protect Kansas consumers.

Please do not hesitate to contact Walmart with any questions or to discuss this issue further. Thank you for your consideration.

Sincerely,

Ryan Irsik

Director, Public Affairs and State and Local Government Relations

Walmart Stores, Inc.



With shopping increasingly moving from Main Street to online, Kansas lawmakers need to consider rules to prevent shadowy sellers from duping Kansas consumers with potentially dangerous counterfeit or fake products — a growing problem on online marketplace platforms. The spread of counterfeit goods online — a more than \$500 billion enterprise annually — poses a real threat for consumers, as third-party sellers are able to increasingly hide behind the anonymity allowed on the largest online marketplaces, leaving nearly 7 in 10 consumers saying they are concerned about buying fake goods online. These counterfeits not only put consumers at risk of being scammed and disappointed but pose serious risks to their health and safety.

INFORM ACT (HB 2731) Frequently Asked Questions

Who supports this effort?

3M, Lowes, Automotive Anti-Counterfeiting Council, Retail Industry Leaders Association, RITE AID, Best Buy, HP, Neiman Marcus, The Home Depot, JC Penney, CVS, Walgreens, Philips, and many more. A full list can be found here: <https://www.buysafeamerica.org/about-coalition>

Why isn't this being handled federally?

We recognize that this bill has been introduced in Congress. However, how long will it take Congress to act?

We all wish for a federal solution, but as Congress works through its process we see that the time to act is now in states like Kansas. Cross-border resale of stolen goods is particularly acute in the Midwest – with many retailers reporting increased thefts at their stores. In addition, marketplaces need to be put on notice that allowing the sale of stolen and counterfeit goods is not permitted in the great state of Kansas. The impact to retail small and large is significant.

How many states are acting?

The bill has been introduced in over 25 states and has passed at least one of the houses in 10 states. The bill arrived on the Governor's desk in Colorado on 3/11. The bill was passed and signed into law last year in Arkansas.

What does the bill do?

The bill requires online platforms that allow for third-party sellers of consumer products to verify the identity of high-volume third-party sellers, which will prevent organized retail crime. The bill will also ensure that consumers can verify basic identification and contact information for high-volume third-party sellers of consumer products on online marketplaces.

The bill directs online marketplaces to verify high-volume third-party sellers by acquiring the seller's government ID, tax ID, bank account information, and contact information.

The term "high-volume third party seller" means a participant who has made 200 or more discrete sales of new or unused consumer products in a 12-month period amounting to \$5,000 or more in the aggregate. These requirements only apply on new or unused goods, so individuals looking to clean out their closet or sell used furniture would be exempt altogether.

Home-based sellers would not be required to divulge extensive personal information, but instead only would need to provide consumers with basic contact information if a consumer has a problem with an item they purchased.

The bill also requires online marketplaces to disclose specific information* of a high-volume third party seller with an aggregate total of \$20,000 or more in annual gross revenues on such online marketplace, and that uses such online marketplace's platform.

*Disclose the information to consumers in a clear and conspicuous manner: The full name of the seller, which may include the seller name or seller's company name, or the name by which the seller or company operates on the online marketplace.

The physical address of the seller; and contact information for the seller, to allow for the direct, unhindered communication with high-volume third party sellers by users of the online marketplace, including—a current working phone number; a current working email address; or other means of direct electronic messaging (which may be provided to such seller by the online marketplace).

Example of information provided by Walmart.com on a seller:

Sold and shipped by Swiss Wrist – Sdot Watches LLC (link to site which includes phone, email, and address of the company)

Does this impact sales made from Facebook Marketplace or Craigslist where the buyer and seller meet up?

No. If all a platform does is facilitate a meeting between two people in person it does not include them.

Does the bill require sellers to list their information on platforms for all to see?

No, it does not. Most of these platforms have data agreements and are tasked with retaining the information for their use and/or the use of any law enforcement agency.

Isn't this just more red tape for sellers?

These polices support legitimate business of all sizes selling online. There is no added red tape for sellers — the basic information required under the INFORM Act is something that every legitimate small business has readily available. Basic transparency and verification only hurts those abusing these platforms to sell counterfeit and stolen goods.

What about the casual seller or hobbyist? Why should they provide this information?

The casual seller and hobbyist are exempted from the bill's requirements. Anyone selling at the levels we are already talking about, and is a legitimate seller, should be disclosing most of this information to any state's relevant business licensing department and/or the IRS. So, it is a misrepresentation to suggest this is overwhelming or overly burdensome.

How is this helping combat Organized Retail Crime?

It is one piece of the puzzle. If we can close the door that has been left open by marketplaces to sell stolen or counterfeit goods, that is one way to limit organized actors and their ability to sell goods acquired through ill-gotten gains.

This bill is not about arresting our way out of organized retail crime. It is about closing a window for organized actors to sell stolen goods on online marketplaces.

Recent news coverage highlights the urgent need to bolster marketplace transparency on e-commerce platforms:

- **Dallas Morning News:** North Texas feds say crime ring traveled U.S. to steal retail goods and sell on Amazon
 - The next time you make a purchase from a third-party seller on Amazon or eBay, you may be buying stolen goods. More than two-dozen people have been charged in federal court in Dallas with being part of a crime ring in which thieves shoplifted goods from stores across the U.S. like Walmart and Best Buy. They then sold the products on online platforms such as Amazon and eBay, according to the indictment.
- **Detroit Free Press:** Feds: Thieves stole used urine tubes from Beaumont, sold them on eBay, Amazon
 - In what prosecutors are describing as an inside-job, two former Beaumont employees and a businessman have been charged with stealing medical devices and supplies from a hospital and reselling them on the internet, including tubes that had been previously used in surgeries. Among the stolen goods were thin tubes that are inserted through the urethra to examine the bladder, some of which may have been contaminated as they were stolen from the cleaning and disinfectant room after being used in surgical proceedings, prosecutors allege.
- **Fox Business:** Fake coronavirus products on Amazon: What to look for
 - A number of Amazon products in high demand amid the novel coronavirus outbreak are being counterfeited. Saoud Khalifah, founder and CEO of counterfeit finder and app Fakespot, said his company identifies counterfeit respiratory masks and gloves every day. Fakespot has also identified counterfeit hand sanitizer, COVID-19 information books and test kits, though those are less frequent.
- **Gizmodo:** Weapons, Ivory, and Other Items Banned by Etsy Still Widely Available on Marketplace, Investigation Finds
 - The online marketplace Etsy has been flooded with activity since the pandemic's onset as millions flocked to online shopping to stave off lockdown blues. However, that pandemic-fueled growth is also highlighting Etsy's struggle to moderate what goes up for sale on its platform. A recent Insider investigation found roughly 800 listings that violate the company's prohibited items policy, including pet remains, pornographic material, weapons, and a

slew of mass-produced products being passed off as handmade items.

- **NBC News:** Amazon driver part of \$10 million theft ring, FBI says
 - A Washington state theft ring including a pair of Amazon delivery drivers sold at least \$10 million dollars' worth of stolen goods on Amazon over the course of six years. Two storefront businesses posing as pawnshops bought goods from shoplifters to then ship them to Amazon warehouses, where they were stored until being sold online.
- **Oregon Business Report:** Oregon Couple Ran Counterfeit Goods Scheme From US Embassy
 - A U.S. Department of State employee and his spouse were sentenced for their roles in an international conspiracy to traffic in counterfeit goods from the U.S. Embassy in Seoul, Republic of Korea. Gene Leroy Thompson Jr., 54, was sentenced to 18 months in federal prison and three years' supervised release. Thompson Jr.'s wife, Guojiao "Becky" Zhang, 40, was sentenced to three years' supervised release to include 8 months of home detention. Thompson Jr. and Zhang were also ordered to forfeit a combined total of \$229,302 and pay \$740 in restitution.
- **Sentinel & Enterprise:** Police: Leominster video store owner used drug addicts, shoplifters to steal more than \$1M
 - The owner of a Leominster video store was arrested after police said he hired "known drug addicts and prolific shoplifters" to steal items for him from various stores, which he then allegedly sold online for profits exceeding \$1 million. The arrest of 66-year-old John Duplease — owner of Adopt A Video — follows a yearlong investigation led by the Leominster Police Department Criminal Investigation Bureau, which broke up the Lancaster resident's criminal enterprise, according to a press release issued by the Lancaster Police Department on Thursday.
- **WMAQ:** Fake CDC Vaccine ID Cards Being Sold Online In Illinois
 - Scammers are cashing in on fake CDC vaccination identification cards as the demand for proof of vaccination is expected to build. The blank cards are being sold on sites like Craigslist, eBay, and OfferUp, and NBC 5 has found multiple postings in the Chicago area. Chad Anderson, a senior security researcher for Domaintools, a group tracking cyber threats around the world, is one of the first to publish his findings.