

Georgia Online Marketplace Updates Prove Controversial

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An update to a Georgia law regulating high-volume third-party sellers on ecommerce platforms that takes effect July 1, 2024 has proved controversial for wrapping in not only sales “through” the platform but also sales made by “utilizing” it. This update to the law in Georgia comes a year after the federal INFORM Act took effect, 15 U.S.C. § 45f. The federal counterpart, like the Georgia law, regulates how ecommerce platforms must verify, collect, and disclose information on their high-volume third-party sellers.

The new updates under Georgia Act 564 (formerly Senate Bill 472) present minor changes to a few key definitions in Georgia’s online marketplace requirements in ways that deviate from the federal INFORM Act.

Specifically, the law changes the definition of high-volume third-party seller in a way that may wrap in new or additional sales. Under the existing federal and Georgia state laws, high-volume third-party sellers are generally those with at least 200 product sales on that platform totaling \$5,000 or more in gross revenue. For the federal law, that can include all sales on the platform. To qualify under the Georgia law, it includes only sales and revenues in that state. Until July 1, 2024, both the federal and Georgia laws considered a sale for this purpose to include only those made through the online platform with payment processing handled by the platform or its processor.

The new Georgia law potentially expands that definition for Georgia sales by removing the requirement that the platform or its payment processor handled the payment, and including all sales made by “utilizing” the platform rather than “through” the platform. Notably, this requirement does not apply to businesses that publicly disclose their own name, address, and contact information, report their identity information to the marketplace, and have ongoing contractual relationships with the marketplace for consumer product manufacturing, distribution, wholesaling, or fulfillment.

As interpreted by NetChoice LLC in its challenge to the law’s implementation, this change would expand the law to include a wide variety of sales occurring offline that were somehow aided by the platform. NetChoice, an industry group serving major ecommerce platforms, filed a lawsuit this month seeking injunctive and declaratory relief to prevent enforcement of the law. The complaint argues that Georgia’s online marketplace amendments overstep reasonable regulatory boundaries by requiring

platforms to investigate and record transactions outside of their current visibility.

Dubbed the “Combating Organized Retail Crime Act,” Act 564 was initiated in February 2024 and signed into law by Governor Brian Kemp on May 6, 2024. Its modifications to the Georgia Inform Consumers Act, which first went into effect January 1, 2023, aim to bolster oversight of ecommerce platforms to prevent the sale of stolen and counterfeit goods, a goal on the forefront of retailers’ minds.

Putting it into practice: Georgia is not the only state with unique online marketplace reporting requirements that differ from the federal INFORM Act. Online sellers and platforms alike should periodically review their reporting processes to ensure they are up to date on complying with both federal and state identity verification requirements.

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