

# Staying INFORMED: Updates Regarding State INFORM Acts

Paul L. Singer, Beth Bolen Chun

August 27, 2024

On June 27, 2023, the [Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act \(INFORM Act\)](#) went into effect. As [we have previously written](#), the INFORM Act aims to deter criminals from selling counterfeit, stolen, defective, and dangerous products through online marketplaces. The law requires online marketplaces to (1) collect and verify seller information; (2) disclose certain information to purchasers regarding high volume sellers; (3) include a reporting mechanism on each high-volume seller's product listing page so that consumers can report suspicious activity; (4) suspend noncompliant sellers; and (5) protect data they collect.

Several states have adopted their own version of the INFORM Act. Because these INFORM Acts threaten the ability of criminals to profit off of stolen merchandise when they attempt to sell through online marketplaces, many retailers have seen a shift in seller behavior to take transactions offline, or find other ways to avoid obligations under those laws. Recently, Georgia and California state legislatures introduced (and later passed) bills to address these perceived loopholes.

## Georgia

On May 6, 2024, Georgia Governor Brian Kemp signed [Senate Bill 472](#) (Act 564), the "Combating Organized Retail Crime Act." Act 564 aims to address certain loopholes in the [Georgia Inform Consumers Act](#).

- Act 564 removes the necessity for a high-volume third-party seller to be paid electronically, instead also addressing instances when the seller is paid through other, non-electronic means, like cash and check.
- Act 564 addresses instances when the high-volume third-party seller takes a transaction off of an online marketplace platform. This effectively changes obligations of online marketplaces, now requiring them to monitor significantly more transactions, including those that occur off-platform.

### *Netchoice, LLC v. Carr*

On June 6, 2024, NetChoice, LLC (NetChoice) sued the Georgia Attorney General (GA AG), seeking to enjoin Attorney General Christopher Carr from enforcing Act 564. NetChoice argued that Act 564 effectively "radically" expands online marketplaces' obligations under the Georgia Inform Consumers Act.

Among other arguments, Netchoice alleged that Act 564 is preempted by the federal INFORM Act, which forbids a state from "establish[ing] or continu[ing] in effect any law, regulation, rule, requirement, or standard that conflicts with [its] requirements." 15 U.S.C. §45f(g).

On June 30, 2024, the district court granted a motion for preliminary injunction, enjoining the GA AG from enforcing Act 564. The court concluded that, by making requirements applicable to transactions made outside of the online marketplace, Act 564 is in conflict with the federal INFORM Act, which “only” applies to transactions made through the online marketplace.

On July 15, 2024, GA AG Carr appealed the district court decision to the Eleventh Circuit.

## California

On August 16, 2024, [California Senate Bill 1144 \(“SB 1144”\)](#) was signed into law by California Governor Gavin Newsom and will be effective July 1, 2025. SB 1144 amends California Civil Code [§ 1749.8](#) and [§ 1749.8.4](#) and adds [§ 1749.8.9](#) to similarly address perceived loopholes in California’s INFORM Act. Notable changes include:

### Section 1749.8:

- This section makes the law applicable to instances when the high-volume third-party seller takes a transaction off of an online marketplace platform, similar to Georgia Act 564.
- This section also clarifies the requirement that sales must be to buyers located in California.

### Section 1749.8.4:

- This amendment permits enforcement by a district attorney, city attorney, or county counsel, expanding from just the California Attorney General.

### Section 1749.8.9:

- This section directs online marketplaces to alert law enforcement agencies in California if they know that a third-party seller is selling or attempting to sell stolen goods to a California resident.
- This section further directs online marketplaces to do the following:
- Establish and maintain a policy that prohibits the sale of stolen goods.
- Provide a mechanism that allows individuals to notify the online marketplace that a seller is or may be selling stolen goods.
- Provides a mechanism on the online marketplace that allows the online marketplace and law enforcement to communicate in a timely and confidential manner.
- Maintain internal written policies to monitor listings to prevent organized retail crime.

Given the similarities between CA SB 1144 and GA Act 564, a challenge against SB 1144 is likely. Nonetheless, we expect to see states continue to explore ways to expand or improve existing laws in their ongoing fight against organized retail crime.

Kelley Drye continues to monitor enforcement in this space, and will provide updates as they occur.