

SECOND REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 2697

101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SHAUL.

5568H.01P

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To amend chapters 407 and 570, RSMo, by adding thereto two new sections relating to the offense of organized retail theft, with penalty provisions and a delayed effective date for certain sections.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapters 407 and 570, RSMo, are amended by adding thereto two new sections, to be known as sections 407.1700 and 570.036, to read as follows:

**407.1700. 1. For the purposes of this section, the following terms shall mean:**

**(1) "Consumer product", any tangible personal property that is distributed in commerce and that is normally used for personal, family, or household purposes, including any such property intended to be attached to or installed in any real property without regard to whether the personal property is so attached or installed;**

**(2) "High-volume third-party seller", a participant in an online marketplace who is a third-party seller and who, in any continuous twelve-month period during the previous twenty-four months, has entered into two hundred or more discrete sales or transactions of new or unused consumer products with an aggregate total of five thousand dollars or more in gross revenue. For purposes of calculating the number of discrete sales or transactions or the aggregate gross revenues under this subdivision, an online marketplace shall be required to count only sales or transactions made through the online marketplace and for which payment was processed by the online marketplace, either directly or through its payment processor;**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15           **(3) "Online marketplace", any person or entity that operates a consumer-**  
16 **directed, electronically-based or accessed platform that:**

17           **(a) Includes features that allow for, facilitate, or enable third-party sellers to**  
18 **engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer**  
19 **product in the United States;**

20           **(b) Is used by one or more third-party sellers for such purposes; and**

21           **(c) Has a contractual or similar relationship with consumers governing its use of**  
22 **the platform to purchase consumer products;**

23           **(4) "Seller", a person who sells, offers to sell, or contracts to sell a consumer**  
24 **product through an online marketplace's platform;**

25           **(5) "Third-party seller", any seller, independent of an online marketplace, who**  
26 **sells, offers to sell, or contracts to sell a consumer product through an online**  
27 **marketplace. This term shall not include a seller who:**

28           **(a) Operates the online marketplace's platform; or**

29           **(b) Is a business entity that has:**

30           **a. Made available to the general public the entity's name, business address, and**  
31 **working contact information;**

32           **b. An ongoing contractual relationship with the online marketplace to provide**  
33 **the online marketplace with the manufacture, distribution, wholesaling, or fulfillment of**  
34 **shipments of consumer products; and**

35           **c. Provided to the online marketplace identifying information, as described in**  
36 **subparagraph a. of this paragraph, that has been verified under subsection 2 of this**  
37 **section;**

38           **(6) "Verify", to confirm information provided to an online marketplace under**  
39 **this section, which may include the use of one or more methods that enable the online**  
40 **marketplace to reliably determine that any information and documents provided are**  
41 **valid, corresponding to the seller or an individual acting on the seller's behalf; not**  
42 **misappropriated; and not falsified.**

43           **2. An online marketplace shall require any high-volume third-party seller on the**  
44 **online marketplace to provide, no later than ten days after qualifying as a high-volume**  
45 **third-party seller, the following information:**

46           **(1) Bank account information, including a bank account number or, if such seller**  
47 **does not have a bank account, the name of the payee for payments issued by the online**  
48 **marketplace to such seller. The bank account or payee information required under this**  
49 **subdivision may be provided by the seller in the following ways:**

50           **(a) To the online marketplace; or**

51           **(b) To a payment processor or other third party contracted by the online**  
52 **marketplace to maintain such information, provided that the online marketplace**  
53 **ensures that it may obtain such information on demand from such payment processor or**  
54 **other third party;**

55           **(2) Contact information for such seller, including the following:**

56           **(a) With respect to a high-volume third-party seller who is an individual, the**  
57 **individual's name; or**

58           **(b) With respect to a high-volume third-party seller who is not an individual, one**  
59 **of the following forms of contact information:**

60           **a. A copy of a valid government-issued identification for an individual acting on**  
61 **behalf of such seller that includes the individual's name; or**

62           **b. A copy of a valid government-issued record or tax document that includes the**  
63 **business name and physical address of such seller;**

64           **(3) A current working email address and phone number for such seller; and**

65           **(4) A business tax identification number or, if such seller does not have a**  
66 **business tax identification number, a taxpayer identification number.**

67           **3. An online marketplace shall:**

68           **(1) Periodically, but no less than annually, notify any high-volume third-party**  
69 **seller on such online marketplace's platform of the requirement to keep any information**  
70 **collected under subsection 2 of this section current; and**

71           **(2) Require any high-volume third-party seller on such online marketplace's**  
72 **platform to, no later than ten days after receiving the notice under subdivision (1) of this**  
73 **subsection, electronically certify that:**

74           **(a) The seller has provided any changes to such information to the online**  
75 **marketplace if any such changes have occurred;**

76           **(b) There have been no changes to such seller's information; or**

77           **(c) Such seller has provided any changes to such information to the online**  
78 **marketplace.**

79           **4. In the event that a high-volume third-party seller does not provide the**  
80 **information or certification required under subsections 2 and 3 of this section, the online**  
81 **marketplace shall, after providing the seller with written or electronic notice and an**  
82 **opportunity to provide such information or certification no later than ten days after the**  
83 **issuance of such notice, suspend any future sales activity of such seller until such seller**  
84 **provides such information or certification.**

85           **5. (1) An online marketplace shall:**

86           **(a) Verify the information collected in subsection 2 of this section no later than**  
87 **ten days after such collection; and**

88           **(b) Verify any change to such information no later than ten days after being**  
89 **notified of such change by a high-volume third-party seller under subsection 3 of this**  
90 **section.**

91           **(2) In the case of a high-volume third-party seller who provides a copy of a valid**  
92 **government-issued tax document, any information contained in such tax document shall**  
93 **be presumed to be verified as of the date of issuance of such document.**

94           **(3) Data collected to comply solely with the requirements of this section shall not**  
95 **be used for any other purpose unless required by law.**

96           **(4) An online marketplace shall implement and maintain reasonable security**  
97 **procedures and practices, including administrative, physical, and technical safeguards,**  
98 **appropriate to the nature of the data and the purposes for which the data will be used,**  
99 **to protect the data collected to comply with the requirements of this section from**  
100 **unauthorized use, disclosure, access, destruction, or modification.**

101           **6. (1) An online marketplace shall:**

102           **(a) Require any high-volume third-party seller with an aggregate total of twenty**  
103 **thousand dollars or more in annual gross revenues on such online marketplace, and that**  
104 **uses such online marketplace's platform, to provide the information described in**  
105 **subdivision (2) of this subsection to the online marketplace; and**

106           **(b) Disclose the information described in subdivision (2) of this subsection to**  
107 **consumers in a clear and conspicuous manner in the order confirmation message or**  
108 **other document or communication made to a consumer after a purchase is finalized and**  
109 **in the consumer's account transaction history.**

110           **(2) The information required shall be the following:**

111           **(a) Subject to subdivision (3) of this subsection, the identity of the high-volume**  
112 **third-party seller, including:**

113           **a. The full name of the seller, which may include the seller's name or seller's**  
114 **company name, or the name by which the seller or company operates on the online**  
115 **marketplace;**

116           **b. The physical address of the seller; and**

117           **c. Contact information for the seller, to allow for the direct, unhindered**  
118 **communication with high-volume third-party sellers by users of the online marketplace,**  
119 **including:**

120           **(i) A current working phone number;**

121           **(ii) A current working email address; or**

122           **(iii) Other means of direct electronic messaging, which may be provided to such**  
123 **seller by the online marketplace; and**

124           **(b) Whether the high-volume third-party seller used a different seller to supply**  
125 **the consumer product to the consumer upon purchase and, upon the request of an**  
126 **authenticated purchaser, the information described in paragraph (a) of this subdivision**  
127 **relating to any such seller who supplied the consumer product to the purchaser if such**  
128 **seller is different than the high-volume third-party seller listed on the product listing**  
129 **prior to purchase.**

130           **(3) Subject to subdivision (2) of this subsection, upon the request of a high-**  
131 **volume third-party seller, an online marketplace may provide for partial disclosure of**  
132 **the identity information required under paragraph (a) of subdivision (2) of this**  
133 **subsection in the following situations:**

134           **(a) If such seller certifies to the online marketplace that the seller does not have a**  
135 **business address and only has a residential street address, or has a combined business**  
136 **and residential address, the online marketplace may:**

137           **a. Disclose only the country and, if applicable, the state in which such seller**  
138 **resides; and**

139           **b. Inform consumers that there is no business address available for the seller and**  
140 **that consumer inquiries should be submitted to the seller by phone, email, or other**  
141 **means of electronic messaging provided to such seller by the online marketplace;**

142           **(b) If such seller certifies to the online marketplace that the seller is a business**  
143 **that has a physical address for product returns, the online marketplace may disclose the**  
144 **seller's physical address for product returns; and**

145           **(c) If such seller certifies to the online marketplace that the seller does not have a**  
146 **phone number other than a personal phone number, the online marketplace shall**  
147 **inform consumers that there is no phone number available for the seller and that**  
148 **consumer inquiries should be submitted to the seller's email address or other means of**  
149 **electronic messaging provided to such seller by the online marketplace.**

150           **(4) If an online marketplace becomes aware that a high-volume third-party**  
151 **seller has made a false representation to the online marketplace in order to justify the**  
152 **provision of a partial disclosure under subdivision (1) of this subsection or that a high-**  
153 **volume third-party seller who has requested and received a provision for a partial**  
154 **disclosure under subdivision (1) of this subsection has not provided responsive answers**  
155 **within a reasonable time frame to consumer inquiries submitted to the seller by phone,**  
156 **email, or other means of electronic messaging provided to such seller by the online**  
157 **marketplace, the online marketplace shall, after providing the seller with written or**  
158 **electronic notice and an opportunity to respond no later than ten days after the issuance**  
159 **of such notice, suspend any future sales activity of such seller unless such seller consents**

160 to the disclosure of the identity information required under paragraph (a) of subdivision  
161 (2) of this subsection.

162 (5) An online marketplace shall disclose to consumers in a clear and conspicuous  
163 manner on the product listing of any high-volume third-party seller a reporting  
164 mechanism that allows for electronic and telephonic reporting of suspicious  
165 marketplace activity to the online marketplace.

166 (6) If a high-volume third-party seller does not comply with the requirements to  
167 provide and disclose information under this subsection, the online marketplace shall,  
168 after providing the seller with written or electronic notice and an opportunity to provide  
169 or disclose such information no later than ten days after the issuance of such notice,  
170 suspend any future sales activity of such seller until the seller complies with such  
171 requirements.

172 7. (1) A violation of the provisions of this section shall be treated as a violation of  
173 sections 407.010 to 407.130 and shall be enforced solely by the attorney general.  
174 Nothing in this section shall be construed as providing the basis for, or subjecting a  
175 party to, a private civil action.

176 (2) The consumer protection section of the office of the attorney general may  
177 promulgate rules and regulations with respect to collecting, verifying, and disclosing  
178 information under this section, provided that such rules and regulations are limited to  
179 what is necessary to collect, verify, or disclose such information. Any rule or portion of  
180 a rule, as that term is defined in section 536.010, that is created under the authority  
181 delegated in this section shall become effective only if it complies with and is subject to  
182 all of the provisions of chapter 536 and, if applicable, section 536.028. This section and  
183 chapter 536 are nonseverable, and if any of the powers vested with the general assembly  
184 pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul  
185 a rule are subsequently held unconstitutional, then the grant of rulemaking authority  
186 and any rule proposed or adopted after the effective date of this section shall be invalid  
187 and void.

188 8. If the attorney general has reason to believe that any online marketplace has  
189 violated or is violating this section or a rule or regulation promulgated under this  
190 section that affects one or more residents of Missouri, the attorney general may bring a  
191 civil action in any appropriate circuit court to:

192 (1) Enjoin further such violation by the defendant;

193 (2) Enforce compliance with this section or such rule or regulation;

194 (3) Obtain civil penalties in the amount provided for under subsection 6 of this  
195 section;

196 (4) Obtain other remedies permitted under state law; and

197           **(5) Obtain damages, restitution, or other compensation on behalf of residents of**  
198 **this state.**

**570.036. 1. A person commits the offense of organized retail theft if he or she,**  
2 **while alone or with any other person or persons, commits a series of thefts of retail**  
3 **merchandise against one or more persons either on the premises of a merchant or**  
4 **through the use of an internet or network site in this state with the intent to:**

5           **(1) Return the merchandise to the merchant for value; or**

6           **(2) Resell, trade, or barter the merchandise for value in any manner including,**  
7 **but not limited to, through the use of an internet or network site.**

8           **2. The offense of organized retail theft is a class C felony if the aggregated value**  
9 **of the property or services involved in all thefts committed in this state during a period**  
10 **of one hundred twenty days is no less than one thousand five hundred dollars and no**  
11 **more than ten thousand dollars.**

12           **3. The offense of organized retail theft is a class B felony if the aggregated value**  
13 **of the property or services involved in all thefts committed in this state during a period**  
14 **of one hundred twenty days is more than ten thousand dollars.**

15           **4. In addition to any other penalty, the court shall order a person who violates**  
16 **this section to pay restitution.**

17           **5. For the purposes of this section, in determining the aggregated value of the**  
18 **property or services involved in all thefts committed in this state during a period of one**  
19 **hundred twenty days:**

20           **(1) The amount involved in a single theft shall be deemed to be the highest value,**  
21 **by any reasonable standard, of the property or services that are obtained; and**

22           **(2) The amounts involved in all thefts committed by all participants in the**  
23 **organized retail theft shall be aggregated.**

24           **6. In any prosecution for a violation of this section, the violation shall be deemed**  
25 **to have been committed and may be prosecuted in any jurisdiction in this state in which**  
26 **any theft committed by any participant in the organized retail theft was committed**  
27 **regardless of whether the defendant was ever physically present in such jurisdiction.**

          Section B. Section 407.1700 of section A of this act shall become effective on  
2 February 28, 2023.

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