

BILL ANALYSIS

C.S.H.B. 3852
By: Raney
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas is experiencing exponential growth in online sales. While this growth has the potential to benefit consumers and fuel the state's economy, some marketplaces who manage third-party sellers lack legitimate oversight of these sellers, which puts consumers increasingly at risk of being exploited by criminals selling counterfeit or stolen goods. Organized retail crime not only harms legitimate businesses but also can endanger consumers who unknowingly purchase substandard products. C.S.H.B. 3852 seeks to help the legislature become more informed on this issue by providing for a study by the attorney general of the online resale of consumer goods obtained illegally and the online sale or distribution of counterfeit goods.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3852 requires the attorney general to conduct a study regarding the online resale of retail merchandise and other consumer goods obtained illegally in Texas and the online sale or distribution of counterfeit goods. The bill sets out requirements for the attorney general in conducting the study as follows:

- requires the gathering of data relating to persons who illegally obtain merchandise and other consumer goods and resell that merchandise through the use of a website;
- requires the evaluation and review of certain existing cases relating to the purchase, sale, or distribution of illegally obtained consumer goods and the sale and distribution of counterfeit goods through the use of a website;
- requires files and other information to be obtained relating to any applicable investigations from local prosecuting attorneys and local law enforcement agencies;
- requires analysis and evaluation of certain trends in illegal activity in and potential methods for mitigating the applicable purchase, sale, or distribution of property illegally obtained from a retail establishment in Texas or the sale or distribution of counterfeit goods through the use of a website;
- requires the gathering of data relating to contact information for certain third-party sellers of consumer goods online; and
- requires a determination relating to the frequency with which identifying information of such a third-party seller is verified by an online marketplace.

C.S.H.B. 3852 also does the following with regard to the study:

- requires local prosecuting attorneys and local law enforcement agencies, on request of the attorney general, to provide data for purposes of the study;
- authorizes the attorney general to collaborate with the appropriate standing committees of the house of representatives and the senate in conducting the study;
- requires the attorney general to solicit and accept input from the public in conducting the study; and
- requires the attorney general to submit a written report on the study that includes any legislative recommendations based on the study to the governor, the lieutenant governor, the speaker of the house of representatives, and the legislature not later than August 31, 2022.

The bill's provisions expire September 30, 2022.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3852 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The original set out provisions regarding required disclosures by certain third-party sellers selling goods through online marketplaces, including provisions relating to the following:

- requirements for high-volume third-party sellers participating in an online marketplace to disclose certain information;
- ongoing verification requirements and the required duties of an online marketplace; and
- violations constituting a deceptive trade practice.

While the substitute does not include provisions requiring those disclosures, the substitute defines certain related terms and instead provides for a study regarding the online resale of retail merchandise and other consumer goods obtained illegally in Texas and the online sale or distribution of counterfeit goods, including of information relating to third-party sellers selling goods through online marketplaces.

The substitute changes the bill's effective date from January 1, 2022, as in the original, to on passage or September 1, 2021, if the bill does not receive the necessary vote for immediate effect.