



FLOOR ALERT

AB 3262 (Stone)—SUPPORT

Date: June 10, 2020
To: Members, California State Assembly
From: Maureen Mahoney, Policy Analyst, Consumer Reports

Consumer Reports, founded in 1936, is an independent, nonprofit membership organization that leverages product testing and ratings, investigative journalism, research, policy analysis, and grassroots organizing to secure important protections for consumers, including responsible product safety standards. AB 3262 helps protect consumers by ensuring that online marketplaces are held strictly liable for defective products to the same extent as brick-and-mortar retailers, incentivizing them to vet sellers and to remove harmful products from their sites. We urge your support.

Counterintuitively for consumers, platforms like Amazon do not have the same responsibilities with respect to product safety as retailers like Target or Walmart that sell products at brick-and-mortar stores.¹ If a retailer sells a defective product that causes injury to a consumer, under well-established case law, that retailer is held strictly liable for the damages.² But despite the fact that sites like Amazon sell, or benefit from the sale, of products on their platforms, Amazon has argued that they are not retailers, and therefore not liable for defective products sold on their site.³ Thus far, the courts have not definitively resolved the issue.⁴

Ensuring that platforms are strictly liable for defective products sold on their sites would address the problem of tracking down sellers of defective products on online platforms. It's not always easy to do so, in part because many of the sellers are outside the U.S. or lack sufficient identifying information—and as a result, it can be difficult to hold anyone accountable in case of injury due to dangerous products. For example, in 2015, Amazon had approximately 60,000 hoverboard listings from thousands of sellers, in contrast to big-box retailers like Target, which had only a handful of suppliers. Sellers of defective hoverboards listed on Amazon from 2015 to 2016 easily avoided accountability for unsafe products that could catch fire or explode.⁵ According to the *Wall Street Journal*, “In many of the Amazon fire-related incidents, government investigators couldn't figure out who made or imported the devices—information that helps facilitate safety measures such as recalls.”⁶ While Amazon has since taken some steps to better police their sellers, Consumer Reports has documented that—in general—platforms simply aren't doing enough to keep harmful products off their sites.⁷

This important legislation is particularly timely, as shoppers are increasingly turning to online marketplace platforms in light of COVID-19.⁸ With uncertainty in the courts, clear legislative action is needed to incentivize online marketplaces to protect these consumers and verify the safety of products to the same extent as brick-and-mortar stores do. For these reasons, we support AB 3262 and urge an **AYE** vote.

¹ Alexandra Berzon, Shane Shifflett and Justin Scheck, *Amazon Has Ceded Control of Its Site. The Result: Thousands of Banned, Unsafe or Mislabeled Products*, WSJ (Aug. 23, 2019), www.wsj.com/articles/amazon-has-ceded-control-of-its-site-the-result-thousands-of-banned-unsafe-or-mislabeled-products-11566564990.

² Greenman v. Yuba Power Prods., Inc. (1963) 59 Cal. 2d 57, <https://scocal.stanford.edu/opinion/greenman-v-yuba-power-products-inc-27186>.

³ Oberdorf v. Amazon.com, Inc., No. 18-1041 (3d Cir. 2019), 24 <https://www2.ca3.uscourts.gov/opinarch/181041p.pdf>.

⁴ P.J. D'Annunzio, *3rd Circ. Sends Amazon Products Liability Case to Pa. Supreme Court*, LAW.COM (June 3, 2020), www.law.com/thelegalintelligencer/2020/06/03/3rd-circ-sends-amazon-product-liability-case-to-pa-supreme-court.

⁵ Alexandra Berzon, *How Amazon Dodges Responsibility for Unsafe Products: The Case of the Hoverboard*, WSJ (Dec. 5, 2019), www.wsj.com/articles/how-amazon-dodges-responsibility-for-unsafe-products-the-case-of-the-hoverboard-11575563270.

⁶ *Id.*

⁷ Testimony of David Friedman, Vice President, Advocacy, Consumer Reports, to the U.S. House Committee on Energy and Commerce Subcommittee on Consumer Protection and Commerce, for the hearing titled “Buyer Beware: Fake and Unsafe Products on Online Marketplaces,” (Mar. 4, 2020), advocacy.consumerreports.org/research/testimony-of-david-friedman-vice-president-advocacy-consumer-reports-for-u-s-house-hearing-on-fake-and-unsafe-products-on-online-marketplaces.

⁸ Dominic Rushe and Michael Sainato, *Amazon Posts \$75bn First-Quarter Revenues but Expects to Spend \$4bn in Covid-19 Costs*, THE GUARDIAN (Apr. 30, 2020), www.theguardian.com/technology/2020/apr/30/amazon-revenues-jeff-bezos-coronavirus-pandemic.