

1 HB318
2 216991-3
3 By Representatives Isbell, Reynolds, Whitt and Moore (P)
4 RFD: Commerce and Small Business
5 First Read: 09-FEB-22

1 ENGROSSED

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3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 Relating to online marketplaces; to require certain
9 disclosures to be made by high-volume third-party sellers of
10 certain consumer products on online marketplaces; and to
11 provide for civil remedies.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. As used in this act, the following terms
14 shall have the following meanings:

15 (1) CONSUMER PRODUCT. Any tangible personal property
16 that is distributed in commerce and that is normally used for
17 personal, family, or household purposes, including, but not
18 limited to, any property intended to be attached to or
19 installed in any real property without regard to whether it is
20 attached or installed.

21 (2) HIGH-VOLUME THIRD-PARTY SELLER. A participant in
22 an online marketplace that is a third-party seller and, in any
23 continuous 12-month period during the previous 24 months, that
24 has entered into 200 or more discrete sales or transactions of
25 new or unused consumer products of an aggregate total of five
26 thousand dollars (\$5,000) or more in gross revenue in this
27 state made through the online marketplace and for which

1 payment was processed by the online marketplace or through a
2 third party.

3 (3) ONLINE MARKETPLACE. Any person or entity that
4 operates a consumer-directed electronically based or accessed
5 platform that does all of the following:

6 a. Includes features that allow for, facilitate, or
7 enable third-party sellers to engage in the sale, purchase,
8 payment, storage, shipment, or delivery of a consumer product
9 within this state.

10 b. Is used by one or more third-party sellers.

11 c. Has a contractual or similar relationship with
12 consumers governing their use of the platform to purchase
13 consumer products.

14 (4) SELLER. A person who sells, offers to sell, or
15 contracts to sell a consumer product through an online
16 marketplace's platform.

17 (5) THIRD-PARTY SELLER. Any seller, independent of
18 an online marketplace, that sells, offers to sell, or
19 contracts to sell a consumer product in this state through an
20 online marketplace. The term does not include, with respect to
21 an online marketplace, any of the following:

22 a. A seller that operates the online marketplace's
23 platform.

24 b. A business entity that has all of the following:

25 1. Made available to the general public the entity's
26 name, business address, and working contact information.

1 2. An ongoing contractual relationship with the
2 online marketplace to provide the online marketplace with the
3 manufacture, distribution, wholesaling, or fulfillment of
4 shipments of consumer products.

5 3. Provided to the online marketplace the identity
6 information required under Section 2(a) that has been verified
7 in accordance with Section 2(d).

8 (6) VERIFY. To confirm information and documents
9 provided to an online marketplace, pursuant to this act,
10 through the use of one or more methods that enable an online
11 marketplace to reliably determine that any information and
12 documents provided are valid, correspond to the seller or an
13 individual acting on the seller's behalf, are not
14 misappropriated, and are not falsified.

15 Section 2. (a) An online marketplace shall require
16 any high-volume third-party seller on its platform, not later
17 than 10 days after qualifying as such, to provide all of the
18 following information to the online marketplace:

19 (1) A bank account number or, if the high-volume
20 third-party seller does not have a bank account, the name of
21 the payee for payments issued by the online marketplace to the
22 high-volume third-party seller. This information may be
23 provided by the high-volume third-party seller to the online
24 marketplace or to a third party contracted by the online
25 marketplace to maintain the information; provided, however,
26 that the online marketplace ensures that it can obtain the
27 information on demand from the third party.

1 (2) Contact information, which shall include either
2 of the following:

3 a. If the high-volume third-party seller is an
4 individual, the individual's name.

5 b. If the high-volume third-party seller is not an
6 individual, either of the following:

7 1. A copy of a valid government issued
8 identification for an individual acting on behalf of a seller
9 that includes the individual's name.

10 2. A copy of a valid government issued record or tax
11 document that includes the business name and physical address
12 of the high-volume third-party seller.

13 (3) A business tax identification number or, if the
14 high-volume third-party seller does not have a business tax
15 identification number, a taxpayer identification number.

16 (4) A current working email address and telephone
17 number for the high-volume third-party seller.

18 (b) An online marketplace shall do both of the
19 following for each high-volume third-party seller on its
20 platform:

21 (1) Periodically, but not less than annually,
22 provide notification of the requirement to keep current the
23 information required under subsection (a).

24 (2) Require the high-volume third-party seller, not
25 later than 10 days after receiving the notice provided under
26 subdivision (1), to submit electronic certification of either
27 of the following:

1 a. That there have been changes to the information
2 required to be provided under subsection (a). If there have
3 been changes to the information required to be provided, the
4 high-volume third-party seller shall update the information in
5 its certified response.

6 b. That there have been no changes to the
7 information required to be provided under subsection (a).

8 (c) In the event that a high-volume third-party
9 seller does not provide the information or certification
10 required under subsection (a) or (b), the online marketplace,
11 after providing the seller with written or electronic notice
12 and an opportunity to provide the information or certification
13 not later than 10 days after the issuance of the notice, shall
14 suspend any future sales activity of the seller until the
15 seller provides the required information or certification.

16 (d) (1) An online marketplace shall verify both of
17 the following:

18 a. The information and documents required to be
19 provided under subsection (a) have been received not later
20 than 10 days after receipt of notification under subdivision
21 (b) (1).

22 b. Any change in the information or to the documents
23 have been received not later than 10 days after being notified
24 of the change by a high-volume third-party seller under
25 subsection (b).

26 (2) If a high-volume third-party seller provides a
27 copy of a valid government issued tax document, any

1 information contained within the tax document shall be
2 presumed to be verified as of the date the document was
3 issued.

4 Section 3. (a) Except as provided in subsection (b),
5 an online marketplace shall require any high-volume
6 third-party seller with an aggregate total of twenty thousand
7 dollars (\$20,000) or more in annual gross revenues on its
8 platform to provide to the online marketplace and disclose to
9 consumers in a clear and conspicuous manner all of the
10 following identity information:

11 (1) The full name of the high-volume third-party
12 seller, including the company name or the name by which the
13 seller or company operates on the online marketplace.

14 (2) The physical address of the high-volume
15 third-party seller.

16 (3) Contact information for the high-volume
17 third-party seller that will allow for direct unhindered
18 communication with the seller by consumers of the online
19 marketplace, including one or more of the following:

20 a. A current working telephone number.

21 b. A current working email address.

22 c. Other means of direct electronic messaging, which
23 may be provided by the online marketplace.

24 (4) Whether the high-volume third-party seller used
25 a different seller to supply the product to the consumer upon
26 purchase and, upon the request of an authenticated purchaser,
27 the information described in subdivisions (1) through (3)

1 relating to the different seller that is different than the
2 high-volume third-party seller listed on the product listing
3 page prior to purchase. The identity information of the
4 different seller shall be provided on the product listing
5 page, directly, via hyperlink, or, after the purchase is
6 finalized, in the order confirmation message or other document
7 or communication made to a consumer and in the consumer's
8 account transaction history.

9 (b) Upon the request of a high-volume third-party
10 seller, an online marketplace may provide for partial
11 disclosure of the identity information required under
12 subsection (a) if the high-volume third-party seller certifies
13 to the online marketplace that any of the following apply:

14 (1) The seller does not have a business address and
15 only has a residential street address, or has a combined
16 business and residential address. If this subdivision is
17 applicable, the online marketplace shall do both of the
18 following:

19 a. Disclose only the country and, if applicable, the
20 city and state in which the seller resides.

21 b. Inform consumers that there is no business
22 address available for the high-volume third-party seller and
23 that consumer inquiries should be submitted to the seller by
24 telephone, email, or other means of electronic messaging
25 provided to the seller by the online marketplace.

26 (2) The seller is a business that has a physical
27 address for product returns. If this subdivision is

1 applicable, the online marketplace shall disclose the seller's
2 physical address for product returns.

3 (3) The seller does not have a telephone number
4 other than a personal telephone number. If this subdivision is
5 applicable, the online marketplace shall inform consumers that
6 there is no telephone number available for the seller and that
7 consumer inquiries should be submitted to the seller's email
8 address or other means of electronic messaging provided to the
9 seller by the online marketplace.

10 (c) (1) Subject to subdivision (3), an online
11 marketplace shall suspend any future sales activity of a
12 high-volume third-party seller if the online marketplace
13 becomes aware of either of the following:

14 a. That the high-volume third-party seller has made
15 a false representation to the online marketplace in order to
16 justify the provision of a partial disclosure of the identity
17 information under subsection (b).

18 b. That the high-volume third-party seller that has
19 requested and received a provision for a partial disclosure
20 has not provided responsive answers within a reasonable time
21 frame to consumer inquiries submitted to the seller by
22 telephone, email, or other means of electronic messaging
23 provided to the seller by the online marketplace.

24 (2) Prior to any suspension under this subsection,
25 the online marketplace shall provide the high-volume
26 third-party seller with written or electronic notice and an

1 opportunity to respond not later than 10 days after the
2 issuance of the notice.

3 (3) A high-volume third-party seller may avoid
4 suspension under this subsection by consenting to the
5 disclosure of the identity information required under
6 subsection (a).

7 (d) If a high-volume third-party seller does not
8 comply with the requirements to provide and disclose
9 information under this section, then, after providing the
10 seller with written or electronic notice and an opportunity to
11 provide or disclose the information not later than 10 days
12 after the issuance of the notice, the online marketplace shall
13 suspend any future sales activities of the seller until the
14 seller complies with the requirements.

15 Section 4. An online marketplace shall disclose to
16 consumers in a clear and conspicuous manner, on the product
17 listing of any high-volume third-party seller, a reporting
18 mechanism that allows for electronic and telephonic reporting
19 of suspicious marketplace activity to the online marketplace.

20 Section 5. (a) Information or documents collected
21 solely to comply with the requirements this act shall not be
22 used for any other purpose unless required by law.

23 (b) An online marketplace shall implement and
24 maintain reasonable security procedures and practices,
25 including administrative, physical, and technical safeguards,
26 appropriate to the nature of the data and the purposes for
27 which the data will be used, to protect the information or

1 documents collected to comply with the requirements of this
2 article from unauthorized use, disclosure, access,
3 destruction, or modification.

4 Section 6. (a) If the Attorney General has reason to
5 believe that any online marketplace has violated or is
6 violating this act and the violation affects one or more
7 residents of this state, the Attorney General may bring a
8 civil action in any appropriate court to do any of the
9 following:

10 (1) Enjoin the violation by the defendant.

11 (2) Enforce compliance with this act.

12 (3) Obtain damages, restitution, or other
13 compensation on behalf of the residents of this state.

14 (4) Obtain other remedies permitted under state law;
15 provided, that such remedies shall not include any remedy to
16 enjoin or limit in any way an online marketplace's
17 participation in the state Simplified Use Tax Remittance
18 Program, as defined under Section 40-23-191, Code of Alabama
19 1975.

20 (b) Nothing in this act shall be construed as
21 imposing any requirement, qualification, or condition for an
22 online marketplace to be eligible to participate in the state
23 Simplified Use Tax Remittance Program.

24 ~~(b)~~ (c) Nothing in this act shall be construed to
25 prohibit any district attorney, law enforcement officer,
26 official, or agency of this state from initiating or
27 continuing any proceeding in a court against an online

1 marketplace for a violation of any other civil law or a
2 criminal law of this state.

3 Section 7. This act shall become effective on ~~the~~
4 ~~first day of the third month~~ January 1, 2023, following its
5 passage and approval by the Governor, or its otherwise
6 becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Commerce and
Small Business..... 09-FEB-22

Read for the second time and placed
on the calendar..... 09-MAR-22

Read for the third time and passed
as amended..... 17-MAR-22

Yeas 99, Nays 0, Abstains 2

Jeff Woodard
Clerk