

HOUSE BILL 709

By Zachary

AN ACT to amend Tennessee Code Annotated, Title 47,
Chapter 18, relative to the Organized Consumer
Product Theft Protection Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following as a new part:

47-18-5601. This part is known and may be cited as the "Organized Consumer Product Theft Protection Act."

47-18-5602. As used in this part:

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

(2) "High-volume third-party seller" means 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 (24) months, has entered into two hundred (200) or more discrete sales or transactions of new or unused consumer products resulting in the accumulation of an aggregate total of five thousand dollars (\$5,000) or more in gross revenues;

(3) "Online marketplace" means an electronically based or accessed platform that:

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

(B) Hosts one (1) or more third-party sellers.

(4) "Seller" means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace;

(5) "Third-party seller" means:

(A) A seller, independent of an operator, facilitator, or owner of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through an online marketplace; and

(B) Does not include a seller who:

(i) Is a business entity that has made available to the general public the entity's name, business address, and working contact information;

(ii) Has an ongoing contractual relationship with the owner of the online marketplace to provide for the manufacture, distribution, wholesale, or fulfillment of shipments of consumer products; and

(iii) Has provided to the online marketplace identifying information, as described in subdivision (5)(B)(i), that has been verified; and

(6) "Verify" means to confirm information provided to an online marketplace pursuant to this section by the use of:

(A) A third party or proprietary identity verification system that has the capability to confirm a seller's name, email address, physical address, and phone number; or

(B) A combination of two-factor authentication, public records search, and the presentation of a government-issued identification.

47-18-5603. Verification.

(a) Online marketplaces doing business in this state shall require that a high-volume third-party seller on the online marketplace provide the online marketplace with the following information within twenty-four (24) hours of becoming a high-volume third-party seller:

(1) Bank account information, the accuracy of which has been confirmed directly by the online marketplace, payment processor, or other third party contracted by the online marketplace, or, if the high-volume third-party seller does not have a bank account, the name of the payee for payments issued by the online marketplace to the high-volume third-party seller. The bank account or payee information may be provided by the seller either to:

(A) The online marketplace; or

(B) A payment processor or other third-party contracted by the online marketplace to maintain the information; provided, that the online marketplace may obtain this information on demand from the payment processor or other third-party;

(2) Contact information, including:

(A) If the high-volume third-party seller is an individual, a copy of a government-issued photo identification for the individual that includes the individual's name and physical address; or

(B) If the high-volume third-party seller is not an individual, either:

(i) A copy of a government-issued photo identification for an individual acting on behalf of the high-volume third-party seller that includes the individual's name and physical address; or

(ii) A copy of a government-issued record or tax document that includes the business name and physical address of the high-volume third-party seller; and

(C) A working email address and working phone number for the high-volume third-party seller;

(3) A business tax identification number or, if the high-volume third-party seller does not have a business tax identification number, a taxpayer identification number; and

(4) Whether the high-volume third-party seller is exclusively advertising or offering the consumer product or products on the online marketplace, or if the high-volume third-party seller is currently advertising or offering for sale the same consumer product or products on any other internet websites other than the online marketplace.

(b)

(1) The online marketplace shall verify the information provided in subsection (a) within three (3) days, and shall verify within three (3) days any changes to the information that is provided to the marketplace by a high-volume third-party seller. If a high-volume third-party seller provides a copy of a valid government-issued tax document, then information contained within the tax document is presumed to be verified as of the date of issuance of the record or document.

(2) The online marketplace shall, on at least an annual basis, notify each high-volume third-party seller on the online marketplace that the seller must inform the online marketplace of any changes to the information provided by the seller pursuant to subsection (a) within three (3) days of receiving the notification.

The online marketplace shall instruct each high-volume third-party seller, as part of the notification, to electronically certify either that the seller's information is unchanged or that the seller is providing changes to the information. If the online marketplace becomes aware that a high-volume third-party seller has neither certified that the seller's information is unchanged nor provided such changed information within three (3) days of receiving such notification, then the online marketplace shall suspend the high-volume third-party seller's participation on the marketplace until the seller has either certified that the seller's information is unchanged or has provided such changed information and the information has been verified.

47-18-5604. Disclosures.

(a) Online marketplaces shall require a high-volume third-party seller in the online marketplace to provide, and shall disclose to consumers in a conspicuous manner either on the product listing or, for information other than the seller's full name, through a conspicuously placed link on the product listing, the following information:

(1) Subject to subdivision (a)(2), the identity of the high-volume third-party seller which must include:

(A) The full name of the seller;

(B) The physical address of the seller;

(C) Whether the seller also engages in the manufacturing, importing, or reselling of consumer products; and

(D) Contact information for the seller, including a working phone number and working email address. The working email address may be provided to the high-volume third-party seller by the online marketplace; and

(2) Other information determined to be necessary to address circumvention or evasion of the requirements of this section; provided, that the additional information is limited to what is necessary to address potential circumvention or evasion.

(b)

(1) Subject to subdivision (b)(1)(B), upon the request of a high-volume third-party seller, an online marketplace may provide for partial disclosure of the identity information required under subdivision (a)(1) in the following situations:

(A) If the high-volume third-party seller demonstrates to the online marketplace that the seller does not have a business address and only has a residential street address, then the online marketplace may direct the high-volume third-party seller to disclose only the country and, if applicable, the state in which the high-volume third-party seller resides on the product listing, and may inform consumers that there is no business address available for the seller and that consumer inquiries should be submitted to the seller by phone or email;

(B) If the high-volume third-party seller demonstrates to the online marketplace that the seller is a business that has a physical address for product returns, then the online marketplace may direct the high-volume third-party seller to disclose the seller's physical address for product returns; or

(C) If a high-volume third-party seller demonstrates to the online marketplace that the seller does not have a phone number other than a personal phone number, then the online marketplace shall inform

consumers that there is no phone number available for the seller and that consumer inquiries should be submitted to the seller's email address.

(2) If an online marketplace becomes aware that a high-volume third-party seller made a false representation to the online marketplace in order to justify the provision of a partial disclosure under subdivision (b)(1), or that a high-volume third-party seller who requested and received a provision for a partial disclosure under subdivision (b)(1) has not provided responsive answers within a reasonable timeframe to consumer inquiries submitted to the seller by phone or email address, the online marketplace shall withdraw its provision for partial disclosure and require the full disclosure of the high-volume third-party seller's identity information required under subdivision (a)(1) upon three-business-days' notice to the high-volume third-party seller.

47-18-5605. Reporting Mechanism.

An online marketplace shall disclose to consumers, in a conspicuous manner on the product listing of a high-volume third-party seller, a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace, and a message encouraging individuals seeking goods for purchase to report suspicious activity to the online marketplace.

47-18-5606. Fulfillment or Shipment by Different Party Than Seller.

In addition to the requirements of § 47-18-5603, an online marketplace that houses, distributes, or otherwise fulfills a consumer product order shall disclose to the consumer the identification of the high-volume third-party seller supplying the consumer product if different than the seller listed on the product listing page.

47-18-5607. Enforcement.

A violation of this part constitutes a violation of the Consumer Protection Act of 1977, compiled in this chapter.

47-18-5608. Preemption.

A political subdivision shall not establish, mandate, or otherwise require online marketplaces to verify information from high-volume third-party sellers on a one-time or ongoing basis or disclose information to consumers.

SECTION 2. The department of commerce and insurance is authorized to promulgate rules to effectuate the purposes of this act. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 3. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code commission is requested to include the headings in any compilation or publication containing this act.

SECTION 4. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 5. This act takes effect January 1, 2022, the public welfare requiring it.