

# STATE OF NEW YORK

10096

## IN ASSEMBLY

April 29, 2022

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to high-volume third-party sellers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general business law is amended by adding a new article  
2 45 to read as follows:

### ARTICLE 45

#### HIGH-VOLUME THIRD-PARTY SELLERS

##### Section 1500. Definitions.

1501. Collection and verification of information.

1502. Disclosures required.

1503. Enforcement.

1504. Preemption.

10 § 1500. Definitions. For purposes of this article: 1. "Consumer product"  
11 means tangible personal property that is distributed in commerce  
12 and normally used for personal, family, or household purposes, including  
13 property intended to be attached to or installed in real property  
14 regardless of whether it is actually attached or installed.

15 2. "High-volume third-party seller" means a participant in an online  
16 marketplace who is a third-party seller and who, in any continuous  
17 twelve-month period during the previous twenty-four months, has entered  
18 into two hundred or more discrete sales to, or transactions with, buyers  
19 located in New York for new or unused consumer products resulting in the  
20 accumulation of an aggregate total of five thousand dollars (\$5,000) or  
21 more in gross revenues. For purposes of this subdivision, the number of  
22 discrete sales or transactions includes only those sales or transactions  
23 made through the online marketplace and for which payment is processed  
24 by the online marketplace directly or through its payment processor.

25 3. "Online marketplace" means a person or entity that operates a  
26 consumer-directed, electronically accessed platform in a manner in which  
27 all of the following are true:

28 (a) the platform includes features that allow for, facilitate, or  
29 enable third-party sellers to engage in the sale, purchase, payment,  
30 storage, shipping, or delivery of a consumer product in this state;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 (b) the features set forth in paragraph (a) of this subdivision are  
2 used by third-party sellers; and

3 (c) the person or entity has a contractual or similar relationship  
4 with consumers governing their use of the platform to purchase consumer  
5 products.

6 4. "Seller" means a person or entity who sells, offers to sell, or  
7 contracts to sell a consumer product through an online marketplace's  
8 platform.

9 5. (a) "Third-party seller" means a seller, independent of an online  
10 marketplace, who sells, offers to sell, or contracts to sell a consumer  
11 product in this state through an online marketplace's platform.

12 (b) "Third-party seller" does not mean a seller that meets either of  
13 the following criteria:

14 (i) The seller is a business entity that meets all of the following  
15 criteria:

16 (A) The seller has made available to the general public the entity's  
17 name, business address, and working contact information;

18 (B) The seller has an ongoing contractual relationship with the owner  
19 of the online marketplace to provide for the manufacture, distribution,  
20 wholesaling, or fulfillment of shipments of consumer products; and

21 (C) The seller has provided to the online marketplace identifying  
22 information that has been verified; or

23 (ii) The seller operates the online marketplace's platform.

24 6. "Verify" means to confirm information provided to an online market-  
25 place pursuant to this article, including the use of one or more methods  
26 that enable the online marketplace to reliably determine that informa-  
27 tion and documents provided are valid, corresponding to the seller or an  
28 individual acting on the seller's behalf, not misappropriated, and not  
29 falsified.

30 § 1501. Collection and verification of information. 1. An online  
31 marketplace shall require a high-volume third-party seller on the online  
32 marketplace's platform to provide, not later than ten days after quali-  
33 fying as a high-volume third-party seller on the platform, all of the  
34 following information to the online marketplace:

35 (a) A bank account number, or, if the seller does not have a bank  
36 account, the name of the payee for payments issued by the online market-  
37 place to the seller. The information required by this paragraph shall  
38 be provided by either of the following methods:

39 (i) to the online marketplace; or

40 (ii) to a payment processor or other third party contracted by the  
41 online marketplace to maintain the information only if the online  
42 marketplace ensures that it can obtain the information on demand from  
43 that payment processor or other third party.

44 (b) All of the following contact information, as applicable:

45 (i) If the high-volume third-party seller is an individual, the sell-  
46 er's name;

47 (ii) If the high-volume third-party seller is not an individual, one  
48 of the following:

49 (A) A copy of a valid government-issued identification for an individ-  
50 ual acting on behalf of the seller that includes the individual's name;  
51 or

52 (B) A copy of a valid government record or tax document that includes  
53 the business name and physical address of the seller;

54 (c) A business tax identification number, or, if the seller does not  
55 have a business tax identification number, a taxpayer identification  
56 number; and

1 (d) A valid email address and telephone number for the seller.

2 2. An online marketplace shall verify the information provided pursu-  
3 ant to subdivision one of this section within ten days and shall verify,  
4 within ten days, any changes to the information that is provided to the  
5 marketplace by a high-volume third-party seller. If a high-volume third-  
6 party seller provides a copy of a valid government-issued tax document,  
7 information contained within the tax document shall be presumed to be  
8 verified as of the date of issuance of the record or document.

9 3. An online marketplace shall implement and maintain reasonable secu-  
10 rity procedures and practices, including administrative, physical, and  
11 technical safeguards, appropriate to the nature of the data and the  
12 purposes for which the data will be used, to protect the data collected  
13 to comply with the requirements of this article from unauthorized use,  
14 disclosure, access, destruction, or modification. The online marketplace  
15 shall keep the information provided in subdivision one of this section  
16 on a secured server for a period of no less than five years.

17 4. (a) The online marketplace shall, on at least an annual basis,  
18 notify each high-volume third-party seller on the online marketplace's  
19 platform of the requirement that the seller inform the online market-  
20 place of any changes to the information provided by the seller pursuant  
21 to subdivision one of this section within ten days of receiving the  
22 notification and shall instruct each high-volume third-party seller, as  
23 part of the notification, to electronically certify either that the  
24 seller's information is unchanged or that the seller is providing chang-  
25 es to the information.

26 (b) If a high-volume third-party seller does not provide the informa-  
27 tion or certification required under this section, the online market-  
28 place shall, after providing the seller with written or electronic  
29 notice and opportunity to provide the information or certification not  
30 later than ten days after the issuance of the notice, suspend any future  
31 sales activity of the seller until the seller provides the information  
32 or certification.

33 5. Data collected solely to comply with the requirements of this  
34 section shall not be used for any other purpose unless that use is  
35 required by law.

36 § 1502. Disclosures required. 1. An online marketplace shall require a  
37 high-volume third-party seller with at least twenty thousand dollars  
38 (\$20,000) of gross annual revenues from sales to, or transactions with,  
39 buyers in New York derived from the online marketplace's platform in  
40 either of the two prior calendar years to provide the following informa-  
41 tion to the online marketplace and to disclose the information to  
42 consumers in a clear and conspicuous manner in the order confirmation  
43 message, or other communication made to a consumer after a purchase is  
44 finalized, and in the consumer's account transaction history:

45 (a) (i) Except as provided in subparagraph (ii) of this paragraph, all  
46 of the following identifying information:

47 (1) The full name of the seller, which may include the seller's name  
48 or company name, or the name by which the seller or company operates on  
49 the online marketplace;

50 (2) The seller's physical address; and

51 (3) Contact information for the seller to allow for the direct,  
52 unhindered communication with high-volume third-party sellers by users  
53 of the online marketplace, including a current working telephone number,  
54 email address, or any other means of direct electronic messaging.

55 (ii) (1) Subject to clause two of this subparagraph, upon the request  
56 of a high-volume third-party seller, an online marketplace may provide

1 only partial disclosure of the information described in this paragraph  
2 as follows:

3 (A) If the high-volume third-party seller certifies to the online  
4 marketplace that the seller does not have a physical address other than  
5 a residential physical address, the online marketplace may disclose only  
6 the country and state, if applicable, in which the seller resides and  
7 inform consumers that inquiries should be submitted to the seller by  
8 telephone, email, or electronic means provided by the online market-  
9 place; or

10 (B) If the high-volume third-party seller certifies to the online  
11 marketplace that the seller does not have a telephone number other than  
12 a personal telephone number, the online marketplace shall inform consum-  
13 ers that there is not a telephone number available for the seller, and  
14 inquiries should be submitted to the seller's email address or electron-  
15 ic means provided by the online marketplace.

16 (2) An online marketplace shall, after providing the seller notice and  
17 at least ten days to respond, suspend future sales activity of that  
18 seller unless the seller consents to the disclosure of all information  
19 described in paragraph (a) of this subdivision if either of the follow-  
20 ing is true:

21 (A) A high-volume third-party seller has made a false representation  
22 to the online marketplace in order to justify partial disclosure pursu-  
23 ant to this subparagraph;

24 (B) A seller that has received a provision for partial disclosure  
25 pursuant to this subparagraph has not answered consumer inquiries within  
26 a reasonable timeframe.

27 (b)(i) Whether or not the high-volume third-party seller used a  
28 different seller to supply the product to the consumer upon purchase.

29 (ii) If requested by an authenticated purchaser, the information  
30 described in paragraph (a) of this subdivision that is related to a  
31 seller described by subparagraph (i) of paragraph (a) of this subdivi-  
32 sion if that seller is not the seller on the product listing before  
33 purchase.

34 2. An online marketplace shall disclose to consumers, in a clear and  
35 conspicuous manner on the product listing of a high-volume third-party  
36 seller, a reporting mechanism that allows for electronic and telephonic  
37 reporting of suspicious activity by the high-volume third-party seller  
38 to the online marketplace.

39 3. An online marketplace shall suspend future sales activity of a  
40 high-volume third-party seller that is not in compliance with the  
41 requirements of this article. An online marketplace shall provide notice  
42 of an impending suspension pursuant to this section and shall not  
43 suspend the seller if the seller becomes in compliance with this section  
44 on or before ten days after the notice was issued.

45 § 1503. Enforcement. A person or entity who violates any provision of  
46 this article shall be liable for a civil penalty not to exceed ten thou-  
47 sand dollars (\$10,000) for each violation, which may be assessed and  
48 recovered only in a civil action brought in the name of the people by  
49 the attorney general.

50 § 1504. Preemption. This article shall supersede and preempt all  
51 rules, regulations, codes, ordinances, and other laws adopted by any  
52 city, county, municipality, or local agency regarding online market-  
53 places requirements in relation to verification of information from  
54 high-volume third-party sellers.

55 § 2. This act shall take effect July 1, 2023.