STATE OF NEW YORK

8391

IN SENATE

February 22, 2022

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer 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:

Section 1. The general business law is amended by adding a new article 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.

§ 1500. Definitions. For purposes of this article: 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 regardless of whether it is actually 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 months, has entered into two hundred or more discrete sales to, or transactions with, buyers located in New York for new or unused consumer products resulting in the accumulation of an aggregate total of five thousand dollars ($5,000) or more in gross revenues. For purposes of this subdivision, the number of discrete sales or transactions includes only those sales or transactions made through the online marketplace and for which payment is processed by the online marketplace directly or through its payment processor.

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

(a) the platform 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 this state;

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

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

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

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

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

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

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

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

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

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

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

6. "Verify" means to confirm information provided to an online marketplace pursuant to this article, including the use of one or more methods that enable the online marketplace to reliably determine that information and documents provided are valid, corresponding to the seller or an individual acting on the seller's behalf, not misappropriated, and not falsified.

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

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

(i) to the online marketplace; or

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

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

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

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

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

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

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

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

2. An online marketplace shall verify the information provided pursuant to subdivision one of this section within ten days and shall verify, within ten 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, information contained within the tax document shall be presumed to be verified as of the date of issuance of the record or document.

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

4. (a) The online marketplace shall, on at least an annual basis, notify each high-volume third-party seller on the online marketplace's platform of the requirement that the seller inform the online marketplace of any changes to the information provided by the seller pursuant to subdivision one of this section within ten days of receiving the notification and 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.

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

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

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

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

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

(2) The seller's physical address; and

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

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

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

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

(B) If the high-volume third-party seller certifies to the online marketplace that the seller does not have a telephone number other than a personal telephone number, the online marketplace shall inform consumers that there is not a telephone number available for the seller, and inquiries should be submitted to the seller's email address or electronic means provided by the online marketplace.

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

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

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

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

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

2. An online marketplace shall disclose to consumers, in a clear and 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 activity by the high-volume third-party seller to the online marketplace.

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

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

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

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