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**SENATE BILL 5062**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Lovick, Kuderer, King, Salomon, Short, Conway, Dhingra, Robinson, Stanford, Torres, Wellman, C. Wilson, and L. Wilson

AN ACT Relating to online marketplace consumer protection caused by organized retail crime; adding a new chapter to Title 19 RCW; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  It is the intent of the legislature to require online marketplaces to verify certain information regarding high-volume third-party sellers of consumer products. It is also the intent of the legislature for online marketplaces to be transparent about the consumer products they sell and to disclose to consumers contact and other information concerning third-party sellers.

NEW SECTION. **Sec.**  (1) **Collection.** An online marketplace shall require any high-volume third-party seller on such online marketplace's platform to provide, not later than 10 days after qualifying as a high-volume third-party seller on the platform, the following information to the online marketplace:

(a) A bank account number, or, if such seller does not have a bank account, the name of the payee for payments issued by the online marketplace to such seller. The bank account or payee information required under this subsection may be provided by the seller in the following ways:

(i) To the online marketplace; or

(ii) To a payment processor or other third party contracted by the online marketplace to maintain such information, provided that the online marketplace ensures that it can obtain such information on demand from such payment processor or other third party;

(b) Contact information for such seller as follows:

(i) With respect to a high-volume third-party seller that is an individual, the individual's name; or

(ii) With respect to a high-volume third-party seller that is not an individual, one of the following forms of contact information:

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

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

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

(d) A current working email address and phone number for such seller.

(2) **Notification of change and annual certification.** An online marketplace shall:

(a) Periodically, but not less than annually, notify any high-volume third-party seller on such online marketplace's platform of the requirement to keep any information collected under subsection (1) of this section current; and

(b) Require any high-volume third-party seller on such online marketplace's platform to, not later than 10 days after receiving notice under (a) of this subsection, electronically certify that:

(i) The seller has provided any changes to such information to the online marketplace, if any such changes have occurred;

(ii) There have been no changes to such seller's information; or

(iii) Such seller has provided any changes to such information to the online marketplace.

(3) **Suspension.** In the event that 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 an opportunity to provide such information or certification not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller until such seller provides such information or certification.

(4) **Verification.** An online marketplace shall:

(a) Verify the information collected under subsection (1) of this section not later than 10 days after such collection; and

(b) Verify any change to such information not later than 10 days after being notified of such change by a high-volume third-party seller under subsection (2) of this section.

(5) **Presumption of verification.** In the case of a high-volume third-party seller that provides a copy of a valid government-issued tax document, any information contained in such document shall be presumed to be verified as of the date of issuance of such document.

(6) **Data use limitation.** Data collected solely to comply with the requirements of this section may not be used for any other purpose unless required by law.

(7) **Data security requirement.** 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 section from unauthorized use, disclosure, access, destruction, or modification.

(8) **Disclosure required.** An online marketplace shall:

(a) Require any high-volume third-party seller with an aggregate total of $20,000 or more in annual gross revenues on such online marketplace, and that uses such online marketplace's platform, to provide the information described in subsection (9) of this section to the online marketplace; and

(b) Disclose the information described in subsection (9) of this section to consumers in a clear and conspicuous manner:

(i) In the order confirmation message or other document or communication made to a consumer after a purchase is finalized; and

(ii) In the consumer's account transaction history.

(9) **Information described.** The information described in this subsection is the following:

(a) Subject to subsection (10) of this section, the identity of the high-volume third-party seller, including:

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

(ii) The physical address of the seller; and

(iii) 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) A current working phone number;

(B) A current working email address; or

(C) Other means of direct electronic messaging, which may be provided to such seller by the online marketplace; and

(b) Whether the high-volume third-party seller used a different seller to supply the consumer product to the consumer upon purchase, and, upon the request of an authenticated purchaser, the information described in (a) of this subsection relating to any such seller that supplied the consumer product to the purchaser, if such seller is different than the high-volume third-party seller listed on the product listing prior to purchase.

(10) **Exception.** Subject to subsection (9) of this section, upon the request of a high-volume third-party seller, an online marketplace may provide for partial disclosure of the identity information required under subsection (9)(a) of this section in the following situations:

(a) If such seller certifies to the online marketplace that the seller does not have a business address and only has a residential street address, or has a combined business and residential address, the online marketplace may:

(i) Disclose only the country and, if applicable, the state in which such seller resides; and

(ii) Inform consumers that there is no business address available for the seller and that consumer inquiries should be submitted to the seller by phone, email, or other means of electronic messaging provided to such seller by the online marketplace;

(b) If such seller certifies to the online marketplace that the seller is a business that has a physical address for product returns, the online marketplace may disclose the seller's physical address for product returns; or

(c) If such seller certifies to the online marketplace that the seller does not have a phone number other than a personal phone number, 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 or other means of electronic messaging provided to such seller by the online marketplace.

(11) **Limitation on exception.** If an online marketplace becomes aware that a high-volume third-party seller has made a false representation to the online marketplace in order to justify the provision of a partial disclosure under subsection (10) of this section or that a high-volume third-party seller who has requested and received a provision for a partial disclosure under subsection (10) of this section has not provided responsive answers within a reasonable time frame to consumer inquiries submitted to the seller by phone, email, or other means of electronic messaging provided to such seller by the online marketplace, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to respond not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller unless such seller consents to the disclosure of the identity information required under subsection (9)(a) of this section.

(12) **Reporting mechanism.** An online marketplace shall disclose to consumers in a clear and conspicuous manner on the product listing of any high-volume third-party seller a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace.

(13) **Compliance.** If a high-volume third-party seller does not comply with the requirements to provide and disclose information under this section, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to provide or disclose such information not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller until the seller complies with such requirements.

(14)(a) **Enforcement.** A violation of subsections (1) through (13) of this section constitutes an unfair or deceptive act or practice and shall be treated as a violation of the consumer protection act, chapter 19.86 RCW.

(b) The attorney general shall have sole authority for the enforcement of this act.

(c) The state consumer protection division of the attorney general's office may promulgate regulations with respect to collecting and verifying information under this section, provided that such regulations are limited to what is necessary to collect and verify such information.

(15) **Preemption.** No political subdivision may 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.

(16)(a) **Actions by other state officials.** In addition to civil actions brought by the attorney general under subsection (14) of this section, any other officer of the state who is authorized by the state to do so, except for any private person on behalf of the attorney general, may bring a civil action under subsection (14) of this section, subject to the same requirements and limitations that apply under this subsection to civil actions brought by the attorney general.

(b) Nothing in this subsection may be construed to prohibit an authorized official of the state from initiating or continuing any proceeding in a court of the state for a violation of any civil or criminal law of the state.

(17) **Definitions.** The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

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

(b)(i) "High-volume third-party seller" means a participant on an online marketplace's platform who is a third-party seller and who, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete sales or transactions of new or unused consumer products and an aggregate total of $5,000 or more in gross revenues.

(ii) For purposes of calculating the number of discrete sales or transactions or the aggregate gross revenues under (b)(i) of this subsection, an online marketplace shall only be required to count sales or transactions made through the online marketplace and for which payment was processed by the online marketplace, either directly or through its payment processor.

(c) "Online marketplace" means any person or entity that operates a consumer-directed electronically based or accessed platform that:

(i) 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;

(ii) Is used by one or more third-party sellers for such purposes; and

(iii) Has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

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

(e) "Third-party seller" means any seller, independent of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through such online marketplace's platform. "Third-party seller" does not include, with respect to an online marketplace:

(i) A seller who operates the online marketplace's platform; or

(ii) A business entity that has:

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

(B) An ongoing contractual relationship with the online marketplace to provide the online marketplace with the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; and

(C) Provided to the online marketplace identifying information, as described in subsections (1) through (7) of this section, that has been verified in accordance with subsections (1) through (7) of this section.

(f) "Verify" means to confirm information provided to an online marketplace pursuant to this section, which may include the use of one or more methods that enable the online marketplace to reliably determine that any information and documents provided are valid, corresponding to the seller or an individual acting on the seller's behalf, not misappropriated, and not falsified.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

NEW SECTION. **Sec.**  Sections 1, 2, and 4 of this act constitute a new chapter in Title 19 RCW.

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