

**Proposed Language to amend S.180 - An act relating to the aggregate value of stolen property in certain crimes**

Submitted to the Senate Committee on Judiciary 1/13/21

Sec. 1. Collection, Verification, and Disclosure of Information by Online Marketplaces to Inform Consumers.

(a) Collection and Verification of Information.—

(1) Collection.—

(A) In general, online marketplaces shall require that any high-volume third-party seller on the online marketplace's platform provide the online marketplace with the following information no later than 10 days after qualifying as a high-volume third-party seller on the platform:

(i) Bank account.—

(I) A bank account number, 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.

(II) The bank account or payee information required may be provided by the seller in the following ways:

(aa) to the online marketplace; or

(bb) or other third-parties 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 other third-parties.

(ii) Contact information.— Contact information for high-volume third-party sellers as follows:

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

(II) If the high-volume third-party seller is not an individual, one of the following forms of contact information:

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

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

(iii) Tax ID.— 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.

(iv) Working Email and Phone Number.— A current working email address and phone number for the high-volume third-party seller.

(B) Notification of Change; Annual Certification.— An online marketplace shall:

(i) 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 subparagraph (A) current; and

(ii) require any high-volume third-party seller on such online marketplace's platform to, not later than 10 days after receiving the notice under clause (i), electronically certify that:

(I) the high-volume third-party seller has provided any changes to such information to the online marketplace, if such changes have occurred;

(II) there have been no changes to the high-volume third-party seller's information; or

(III) the high-volume third-party seller has provided any changes to such information to the online marketplace.

(C) Suspension.— In the event that a high-volume third-party seller does not provide the information or certification required under this paragraph, 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.

(2) Verification.—

(A) In general, online marketplaces shall:

(i) verify the information collected under paragraph (1)(A) not later than 10 days after such collection; and

(ii) 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 paragraph (1)(B).

(B) 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.

(3) 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.

(4) 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.

(b) Disclosure Required.—

(1) Requirement for an online marketplace.—

(A) An online marketplace shall:

(i) 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 subparagraph (B) to the online marketplace; and

(ii) disclose the information described in subparagraph (B) to consumers in a 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.

(B) The information described in this subparagraph is the following:

(i) Subject to paragraph (2), 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:

(aa) a current working phone number;

(bb) a current working email address; or

(cc) other means of direct electronic messaging (which may be provided to the high-volume third-party seller by the online marketplace).

(ii) 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 clause (i) 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.

(2) Exceptions.—

(A) Subject to subparagraph (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 paragraph (1)(B)(i) in the following situations:

(i) If the high-volume third-party 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 the high-volume third-party 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.

(ii) If the high-volume third-party 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.

(iii) If a high-volume third-party 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.

(B) Limitations to Exceptions.— 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 subparagraph (A) or that a high-volume third-party seller who has requested and received a provision for a partial disclosure under subparagraph (A) has not provided responsive answers within a reasonable timeframe 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 paragraph (1)(B)(i).

(3) 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.

(4) Compliance.— If a high-volume third party seller does not comply with the requirements to provide and disclose information under this subsection, 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.

(c) Enforcement.—

(1) If the [Attorney General or other appropriate State authority] has reason to believe that any online marketplace has violated or is violating this section or a regulation promulgated under this section that affects one or more residents of this State, the attorney general of the State may bring a civil action in [specify appropriate court] to:

- (A) enjoin further such violation by the defendant;
- (B) enforce compliance with this section or such regulation;
- (C) obtain civil penalties in the amount set under regulations promulgated under this section;
- (D) obtain other remedies permitted under State law; and
- (E) obtain damages, restitution, or other compensation on behalf of residents of the State.

(2) For purposes of bringing a civil action under paragraph (1), nothing in this section shall be construed to prevent [chief law enforcement officer, or official or agency of the State], from exercising the powers conferred on such [chief law enforcement officer, official or agency of the State], by the laws of the State to conduct investigations, administer oaths or affirmations, or compel the attendance of witnesses or the production of documentary and other evidence.

(3) The [Attorney General or other appropriate State authority] may promulgate regulations that are necessary to enforce this Act.

(d) Definitions.— In this Act:

(1) Consumer Product.— The term “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).

(2) High-Volume Third-Party Seller.—

(A) The term “high-volume third-party seller” means a participant in an online marketplace 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.

(B) For purposes of calculating the number of discrete sales or transactions or the aggregate gross revenues under subparagraph (A), 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.

(3) Online Marketplace.— The term “online marketplace” means any person or entity that operates a consumer-directed 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 this state;

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

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

(4) Seller.— The term “seller” means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace’s platform.

(5) Third-Party Seller.—

(A) The term “third-party seller” means any 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.

(B) Exclusions.— The term “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:

(I) made available to the general public the entity’s name, business address, and working contact information;

(II) 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

(III) provided to the online marketplace identifying information, as described in subsection (a), that has been verified in accordance with that subsection.

(6) Verify.— The term “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.

(e) Preemption.— No political subdivision may establish, mandate, or otherwise require online marketplaces to collect or verify information from high-volume third-party sellers on a one-time or ongoing basis or disclose information to consumers.

(f) Effective Date.— This Act shall take effect 180 days after the date of the enactment of this Act.