

Senate Study Bill 1233 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

A BILL FOR

1 An Act relating to the sale of certain consumer products by
2 high-volume third-party using online marketplaces and
3 including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 554E.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Consumer product*" means any tangible personal property,
5 including property that may be attached to real property,
6 that is distributed in commerce and that is normally used for
7 personal, family, or household purposes.

8 2. "*High-volume third-party seller*" means a third-party
9 seller that, in any twelve-month period during the previous
10 twenty-four months, meets all of the following criteria:

11 a. Has entered into at least two hundred discrete sales or
12 transactions on the online marketplace.

13 b. Has generated at least five thousand dollars of gross
14 revenue on the online marketplace.

15 3. "*Online marketplace*" means an internet site that includes
16 features that allow, enable, or otherwise facilitate the
17 ability of one or more third-party sellers to engage in the
18 sale, purchase, payment, storage, shipping, or delivery of a
19 consumer product in the United States.

20 4. "*Online marketplace facilitator*" means a person or
21 an affiliate of a person who owns or operates any online
22 marketplace.

23 5. "*Seller*" means a person who sells, offers to sell,
24 or contracts to sell a consumer product through an online
25 marketplace.

26 6. "*Third-party seller*" means a seller that, independent
27 of an online marketplace facilitator, sells, offers to sell,
28 or contracts to sell a consumer product through an online
29 marketplace. "*Third-party seller*" does not include a seller
30 that meets all of the following criteria:

31 a. Is a corporation, limited liability company, business
32 trust, estate, trust, partnership or association, or any other
33 legal entity that has made available to the general public the
34 entity's name, business address, and contact information.

35 b. Has a currently effective agreement with the online

1 marketplace facilitator to provide for the manufacture,
2 distribution, wholesale, or fulfillment of shipments of
3 consumer products.

4 *c.* Has provided the online marketplace facilitator with all
5 information required under section 554E.2, subsection 1.

6 7. "Verify" means to confirm the information provided by
7 a high-volume third-party seller by the use of any of the
8 following:

9 *a.* A third-party or proprietary identity verification system
10 that has the capability to confirm a high-volume third-party
11 seller's name, electronic mail address, physical address, and
12 telephone number.

13 *b.* A combination of two-factor authentication, public
14 records search, and the presentation of government-issued
15 identification.

16 **Sec. 2. NEW SECTION. 554E.2 Verification of information**
17 **related to a high-volume third-party seller — ongoing**
18 **verification.**

19 1. An online marketplace facilitator shall require a
20 high-volume third-party seller that uses the online marketplace
21 facilitator's online marketplace to provide the online
22 marketplace facilitator with all of the following information
23 within twenty-four hours after becoming a high-volume
24 third-party seller:

25 *a.* The high-volume third-party seller's bank account
26 information for the bank account into which payments issued
27 by the online marketplace facilitator to the high-volume
28 third-party seller will be or are deposited, or, if the
29 high-volume third-party seller requires the online marketplace
30 facilitator to issue payments to a third-party payee, the
31 high-volume third-party seller shall provide the online
32 marketplace facilitator with the name of the third-party payee.
33 An online marketplace facilitator may require a high-volume
34 third-party seller to provide the high-volume third-party
35 seller's bank account or third-party payee information to a

1 payment processor or other person contracted by the online
2 marketplace facilitator to maintain such information if
3 the online marketplace facilitator company may obtain the
4 information from the payment processor or person upon request.

5 *b.* The high-volume third-party seller's contact information,
6 including functioning electronic mail address, telephone
7 number, and either of the following, as applicable:

8 (1) If the high-volume third-party seller is an individual,
9 the high-volume third-party seller shall also provide the
10 online marketplace facilitator with a copy of a form of
11 current government identification issued to the individual that
12 includes a photograph of the individual, the individual's name,
13 and the individual's physical address.

14 (2) If the high-volume third-party seller is not an
15 individual, the high-volume third-party seller shall also
16 provide the online marketplace facilitator with any of the
17 following:

18 (a) A copy of a form of current government identification
19 issued to an individual acting on behalf of the high-volume
20 third-party seller that includes the individual's name and the
21 individual's physical address.

22 (b) A copy of a government record or tax-related document
23 that includes the high-volume third-party seller's name and
24 physical address.

25 *c.* The high-volume third-party seller's business tax
26 identification number or, if the high-volume third-party
27 seller does not have a business tax identification number,
28 the high-volume third-party seller's taxpayer identification
29 number.

30 *d.* Whether the high-volume third-party seller advertises
31 or offers for sale on any other internet site the consumer
32 products that the high-volume third-party seller advertises or
33 offers for sale on the online marketplace facilitator's online
34 marketplace.

35 2. An online marketplace facilitator shall verify the

1 information provided by a high-volume third-party seller
2 pursuant to subsection 1 within three days after the online
3 marketplace facilitator's receipt of the information. A copy
4 of a tax-related document provided pursuant to subsection 1,
5 paragraph "b", subparagraph (2), subparagraph division (b),
6 shall be presumed to be verified upon the online marketplace
7 facilitator's receipt of the document.

8 3. An online marketplace facilitator shall, at least
9 annually, notify all high-volume third-party sellers that use
10 the online marketplace facilitator's online marketplace to
11 inform the online marketplace facilitator of any change to the
12 information provided by the high-volume third-party seller
13 pursuant to subsection 1, or electronically certify that there
14 are no changes to the information.

15 4. Within three days after receipt of the notification
16 provided by subsection 3, a high-volume third-party seller
17 shall inform the online marketplace facilitator of any change
18 to the information provided by the high-volume third-party
19 seller pursuant to subsection 1, or electronically certify that
20 there are no changes to the information.

21 5. An online marketplace facilitator shall suspend
22 the ability of a high-volume third-party seller to use the
23 online marketplace facilitator's online marketplace if the
24 high-volume third-party seller violates this section. An
25 online marketplace facilitator shall allow a high-volume
26 third-party seller whose ability to use the online marketplace
27 facilitator's online marketplace has been suspended to use the
28 online marketplace facilitator's online marketplace within a
29 reasonable amount of time after the high-volume third-party
30 seller provides the online marketplace facilitator with the
31 information or certification required by this section.

32 **Sec. 3. NEW SECTION. 554E.3 Required disclosures.**

33 1. An online marketplace facilitator shall require a
34 high-volume third-party seller that uses the online marketplace
35 facilitator's online marketplace to disclose to consumers the

1 name of the high-volume third-party seller in a conspicuous
2 manner in the high-volume third-party seller's product listings
3 on the online marketplace.

4 2. An online marketplace facilitator shall require a
5 high-volume third-party seller that uses the online marketplace
6 facilitator's online marketplace to disclose to consumers in
7 a conspicuous manner, either in the high-volume third-party
8 seller's product listings on the online marketplace or through
9 a conspicuously placed hyperlink in the high-volume third-party
10 seller's product listings on the online marketplace, all of the
11 following:

12 a. The high-volume third-party seller's physical address.

13 b. Whether the high-volume third-party seller also engages
14 in the manufacturing, importing, or reselling of consumer
15 products.

16 c. The high-volume third-party seller's functioning
17 electronic mail address and telephone number.

18 3. Notwithstanding subsection 2, if requested by a
19 high-volume third-party seller, an online marketplace
20 facilitator may modify the disclosures required by a
21 high-volume third-party seller in accordance with paragraph
22 "a", "b", or "c".

23 a. An online marketplace facilitator may authorize a
24 high-volume third-party seller to not disclose the high-volume
25 third-party seller's physical address if the high-volume
26 third-party seller demonstrates to the online marketplace
27 facilitator that the high-volume third-party seller only has
28 a residential address, and if the high-volume third-party
29 seller discloses the country and, if applicable, the state in
30 which the high-volume third-party seller is located. If a
31 high-volume third-party seller does not disclose its physical
32 address pursuant to this paragraph, the high-volume third-party
33 seller may inform consumers in the high-volume third-party
34 seller's product listings on the online marketplace that there
35 is no business address available and inquiries should be

1 submitted to the high-volume third-party seller by telephone
2 or electronic mail.

3 *b.* An online marketplace facilitator may authorize a
4 high-volume third-party seller to not disclose the high-volume
5 third-party seller's physical address if the high-volume
6 third-party seller demonstrates to the online marketplace
7 facilitator that the high-volume third-party seller has a
8 physical address for the return of consumer products. If a
9 high-volume third-party seller does not disclose its physical
10 address pursuant to this paragraph, the high-volume third-party
11 seller may inform consumers in the high-volume third-party
12 seller's product listings on the online marketplace of the
13 high-volume third-party seller's physical address for the
14 return of consumer products.

15 *c.* An online marketplace facilitator may authorize a
16 high-volume third-party seller to not disclose the high-volume
17 third-party seller's telephone number if the high-volume
18 third-party seller demonstrates to the online marketplace
19 facilitator that the high-volume third-party seller only has
20 a personal telephone number. If a high-volume third-party
21 seller does not disclose its telephone number pursuant to
22 this paragraph, the high-volume third-party seller may inform
23 consumers in the high-volume third-party seller's product
24 listings on the online marketplace that there is no telephone
25 number available and inquiries should be submitted to the
26 high-volume third-party seller by electronic mail.

27 4. Notwithstanding subsection 3, an online marketplace
28 facilitator shall require a high-volume third-party seller to
29 disclose all information required under subsection 2 within
30 three days after the online marketplace facilitator provides
31 notice to the high-volume third-party seller if any of the
32 following occur:

33 *a.* The online marketplace facilitator determines the
34 high-volume third-party seller made a false representation to
35 the online marketplace facilitator under subsection 3.

1 *b.* A high-volume third-party seller that uses modified
2 disclosures pursuant to subsection 3 has not provided
3 responsive answers to consumer inquiries submitted to the
4 high-volume third-party seller through telephone or electronic
5 mail within a reasonable amount of time.

6 5. An online marketplace facilitator shall disclose
7 to consumers in a conspicuous manner on a high-volume
8 third-party seller's product listing on the online marketplace
9 facilitator's online marketplace a mechanism that allows
10 for the electronic and telephonic reporting of suspicious
11 activity to the online marketplace facilitator and a statement
12 encouraging consumers to report suspicious activity to the
13 online marketplace facilitator.

14 Sec. 4. NEW SECTION. 554E.4 **Fulfillment of shipment by a**
15 **different person.**

16 An online marketplace facilitator that warehouses,
17 distributes, or otherwise fulfills a consumer's order for a
18 consumer product supplied by a high-volume third-party seller
19 shall disclose to the consumer the identity of the high-volume
20 third-party seller if the online marketplace facilitator's
21 online marketplace indicated the consumer product was supplied
22 by a different seller.

23 Sec. 5. NEW SECTION. 554E.5 **Enforcement — penalties.**

24 1. The office of the attorney general shall enforce the
25 provisions of this chapter.

26 2. A violation of this chapter is an unlawful practice
27 pursuant to section 714.16, and all remedies of section 714.16
28 are available for such action.

29 Sec. 6. NEW SECTION. 554E.6 **Preemption.**

30 1. The provisions of this chapter shall be implemented
31 uniformly throughout the state and shall preempt any county
32 or municipal ordinance, rule, or regulation related to
33 the verification of information related to a high-volume
34 third-party seller or the disclosure of information by a
35 high-volume third-party seller.

1 2. Notwithstanding any law to the contrary, political
2 subdivisions shall not adopt or enforce any ordinance, rule, or
3 regulation that conflicts with this chapter.

4 Sec. 7. NEW SECTION. 554E.7 Rules.

5 The office of the attorney general shall adopt rules
6 pursuant to chapter 17A to administer and interpret this
7 chapter.

8 Sec. 8. EFFECTIVE DATE. This Act takes effect January 1,
9 2022.

10 EXPLANATION

11 The inclusion of this explanation does not constitute agreement with
12 the explanation's substance by the members of the general assembly.

13 This bill relates to the sale of certain consumer products by
14 high-volume third-party sellers using online marketplaces.

15 The bill defines "consumer product" as any tangible personal
16 property that is distributed in commerce and that is normally
17 used for personal, family, or household purposes. The bill
18 defines "high-volume third-party seller" as a participant in
19 an online marketplace that is a third-party seller and that,
20 in any 12-month period during the previous 24 months, has
21 entered into at least 200 discrete sales or transactions on the
22 online marketplace and has generated at least \$5,000 of gross
23 revenue on the online marketplace. The bill defines "online
24 marketplace" as an internet site that includes features that
25 facilitate the ability of one or more third-party sellers to
26 engage in the sale, purchase, payment, storage, shipping, or
27 delivery of a consumer product in the United States. The
28 bill defines "online marketplace facilitator" as a person
29 or an affiliate of a person who owns or operates any online
30 marketplace. The bill defines "seller" as a person who
31 sells, offers to sell, or contracts to sell a consumer product
32 through an online marketplace. The bill defines "third-party
33 seller" as a seller that, independent of an online marketplace
34 facilitator, sells, offers to sell, or contracts to sell a
35 consumer product through an online marketplace. The bill

1 establishes that "third-party seller" does not include a
2 seller that is a legal entity that has made available to the
3 general public the entity's name, business address, and contact
4 information; has a currently effective agreement with the
5 online marketplace facilitator to provide for the manufacture,
6 distribution, wholesale, or fulfillment of shipments of
7 consumer products; and that has fully complied with new Code
8 section 554E.2. The bill defines "verify" to mean to confirm
9 the information provided by a high-volume third-party seller by
10 the use of certain methods enumerated in the bill.

11 The bill provides that an online marketplace facilitator
12 shall require a high-volume third-party seller using the
13 online marketplace facilitator's online marketplace to provide
14 the online marketplace facilitator with certain information,
15 including the high-volume third-party seller's bank account
16 information, contact information, business tax identification
17 number or taxpayer identification number, and whether the
18 high-volume third-party seller advertises or offers for sale
19 on any other internet site the consumer products that the
20 high-volume third-party seller advertises or offers for sale
21 on the online marketplace facilitator's online marketplace.
22 The bill requires an online marketplace facilitator to verify
23 this information. Additionally, the bill requires an online
24 marketplace facilitator and a high-volume third-party seller to
25 keep the information up to date. The bill authorizes an online
26 marketplace facilitator to suspend the ability of a high-volume
27 third-party seller to use the online marketplace facilitator's
28 online marketplace if the high-volume third-party seller fails
29 to keep the information up to date.

30 The bill provides that an online marketplace facilitator
31 shall require a high-volume third-party seller that uses the
32 online marketplace facilitator's online marketplace to disclose
33 to consumers the name of the high-volume third-party seller in
34 a conspicuous manner in the high-volume third-party seller's
35 product listings. Additionally, the bill provides that an

1 online marketplace facilitator shall require a high-volume
2 third-party seller to disclose to consumers in a conspicuous
3 manner, either in the high-volume third-party seller's product
4 listings or through a conspicuously placed hyperlink in
5 the high-volume third-party seller's product listings, the
6 high-volume third-party seller's physical address; whether
7 the high-volume third-party seller also engages in the
8 manufacturing, importing, or reselling of consumer products;
9 and the high-volume third-party seller's functioning electronic
10 mail address and telephone number. The bill authorizes an
11 online marketplace facilitator to modify these disclosures in
12 certain enumerated cases.

13 The bill requires an online marketplace facilitator to
14 disclose to consumers in a conspicuous manner on a high-volume
15 third-party seller's product listing a mechanism that allows
16 for the electronic and telephonic reporting of suspicious
17 activity to the online marketplace facilitator.

18 The bill requires an online marketplace facilitator that
19 warehouses, distributes, or otherwise fulfills a consumer's
20 order for a consumer product supplied by a high-volume
21 third-party seller to disclose the identity of the high-volume
22 third-party seller if the online marketplace facilitator's
23 online marketplace indicated the consumer product was supplied
24 by a different seller.

25 The bill provides that the office of the attorney general
26 shall enforce the provisions of the new Code chapter.
27 Additionally, the bill provides that a violation of the
28 new Code chapter is an unlawful practice pursuant to Code
29 section 714.16. Several types of remedies are available
30 if a court finds that a person has committed an unlawful
31 practice, including injunctive relief, disgorgement of moneys
32 or property, and a civil penalty not to exceed \$40,000 per
33 violation.

34 The bill provides that the provisions of the new Code chapter
35 shall preempt any county or municipal ordinance, rule, or

1 regulation related to the verification of information related
2 to a high-volume third-party seller or the disclosure of
3 information by a high-volume third-party seller. The bill
4 prohibits a political subdivision from adopting or enforcing
5 any ordinance, rule, or regulation that conflicts with the new
6 Code chapter.

7 The bill requires the attorney general to adopt rules to
8 administer and interpret the bill.

9 The bill takes effect January 1, 2022.