

SESSION OF 2022

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2731

As Amended by House Committee on
Commerce, Labor and Economic Development

Brief*

HB 2731, as amended, would enact law requiring the verification and disclosure of identifying information of certain sellers on online marketplaces.

The bill would take effect on January 1, 2023.

***Information Required to Be Disclosed to Online
Marketplace (Section 2)***

The bill would require online marketplaces to require high-volume third-party (HVTP) sellers on the online marketplace's platform to provide the following information to the online marketplace within 10 days of becoming a HVTP seller:

- Bank account number, or the name of the payee if the HVTP seller does not have a bank account (this information would be permitted to be provided to the online marketplace's payment processor if the online marketplace ensures the ability to obtain the information on demand);
- Contact information, including name of individual or government-issued record including business name and physical address;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Working email address and working phone number; and
- Business tax identification number or taxpayer identification number.

Online marketplaces would be required to annually notify HVTP sellers of the requirement to maintain such information and would be required to suspend the sales activity of any HVTP seller that does not respond to such notification and an additional notice informing the HVTP seller of the impending suspension of sales activity within 10 days of the latter notice.

Online marketplaces would be required to verify the information within 10 days of receipt of the information. Government-issued documents would be considered verified upon receipt.

Online marketplaces would be prohibited from using data collected solely for this purpose for any other purpose unless required by law and would be required to implement security practices to protect the information collected from unauthorized use or disclosure.

Information Required to be Disclosed to Online Marketplace and Consumers (Section 3)

The bill would require online marketplaces to require HVTP sellers with an aggregate total of \$20,000 or more in annual gross revenues on the online marketplace to provide the online marketplace and disclose to consumers in a clear and conspicuous manner the following information:

- The identity of the HVTP seller, including the full name of the seller, the full physical address of the seller, and contact information for the seller to allow direct communication, including a working phone

number and working email address or other means of direct electronic messaging; and

- Whether the HVTP seller used a different seller to supply the consumer product to the consumer and, upon request of an authenticated purchaser, the identity information of any different sellers supplying the consumer product.

Upon request of a HVTP seller, an online marketplace would be permitted to provide a partial disclosure of the HVTP identity information. For a HVPT seller without a business address and only a residential street address or a combined business and residential street address, the online marketplace would be permitted to only disclose the country, and if applicable, state in which the HVTP seller resides and inform consumers no business address is available for the seller.

If a HVTP seller certifies that it has a physical address for product returns, the online marketplace would be permitted to disclose the physical address for product returns.

If a HVTP seller certifies that it does not have a phone number other than a personal phone number, the online marketplace would be required to inform consumers that no phone number is available and inquiries should be submitted via email or other electronic messaging.

If an online marketplace becomes aware of a false representation by a HVTP seller regarding limiting disclosure or that a HVTP is not responsive to consumer inquiries within a reasonable time, the online marketplace would be required to suspend sales activity of the HVTP after notice and an opportunity for the HVTP seller to respond.

Online marketplaces would be required to disclose to consumers, in a clear and conspicuous manner, a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity.

If a HVTP seller does not comply with the disclosure requirements, online marketplaces would be required to suspend the sales activity of the HVTP seller not later than 10 days after the issuance of notice and an opportunity to respond unless the HVTP seller complies with the requirements.

Additional Provisions (Sections 4-6)

Violations of the provisions of the bill would constitute deceptive acts or practices under the Kansas Consumer Protection Act and would be subject to the remedies and penalties provided under that act. The Attorney General would have the sole authority to enforce the provisions of the bill, and violations of the provisions of the bill would not give rise to any private remedy or private cause of action or any criminal penalties pursuant to the Kansas Consumer Protection Act.

The bill would authorize the Attorney General to adopt rules and regulations necessary to implement the provisions of the bill.

The bill would prohibit local governments from adopting any requirements for online marketplaces to require or verify information from HVTP sellers or to require HVTP sellers to disclose information to consumers.

The bill would include a severability clause declaring the provisions of the bill to be severable if any provision is held invalid.

Definitions (Section 1)

The bill would define “online marketplace” to mean any person or entity that operates a consumer-directed, electronically based or accessed platform that:

- 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;
- Is used by one or more third-party sellers for such purposes; and
- Has a contractual or similar relationship with consumers governing the use by consumers of the platform to purchase consumer products.

The bill would define “high-volume third-party seller” to mean a participant in 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 separate sales or transactions of new or unused consumer products for delivery in this state resulting in the accumulation of an aggregate total of \$5,000 or more in gross revenues.

The bill would also define the terms “consumer product,” “person,” “seller,” “separate sales or transactions,” and “third-party seller.”

Background

The bill was introduced by the House Committee on Federal and State Affairs at the request of Representative Miller.

House Committee on Commerce, Labor and Economic Development

In the House Committee hearing, **proponent** testimony was provided by a representative of Walmart stating the bill would incorporate into Kansas law language from pending federal law related to required identity verification and

disclosure of certain sellers on online marketplaces in response to retail industry theft concerns.

Neutral testimony was provided by a representative of Amazon.

No other testimony was provided.

The House Committee amended the bill with a technical amendment.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of the Attorney General indicates it would require \$76,015 from the State General Fund to investigate and enforce complaints arising under the bill. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2023 Governor's Budget Report*.

Consumer protection; online marketplaces; seller identity verification; disclosure