

An Act

ENROLLED SENATE
BILL NO. 418

By: Daniels of the Senate

and

Martinez, McDugle, Manger,
Worthen, and Hill of the
House

An Act relating to consumer protection; creating the Oklahoma INFORM Act; providing short title; defining terms; requiring certain sellers to disclose specified information to online marketplace; requiring certain notice by online marketplace; requiring certain electronic certification by certain sellers; requiring online marketplace to suspend sales activity under certain circumstances; providing for verification of certain information; requiring implementation of security procedures; requiring disclosure of certain information to consumers; requiring disclosure of identity of certain sellers; providing exceptions; requiring suspension of certain sales activity upon false representation of certain information; requiring disclosure of certain reporting mechanism; requiring suspension of certain sales activity upon certain noncompliance; authorizing Attorney General to bring civil action for certain violations; construing provisions; authorizing promulgation of rules under certain circumstances; prohibiting political subdivisions from imposing certain requirements on online marketplaces; providing for codification; and providing an effective date.

SUBJECT: Consumer protection

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 799A.1 of Title 15, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma INFORM Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 799A.2 of Title 15, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma INFORM Act:

1. "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" 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 (24) months, has entered into two hundred or more discrete sales or transactions of new or unused consumer products and an aggregate total of Five Thousand Dollars (\$5,000.00) or more in gross revenues. For purposes of calculating the number of discrete sales or transactions or the aggregate gross revenues, 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" 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" 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" 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. The term third-party seller does not include:

- a. a seller who operates the online marketplace's platform, or
- b. a business entity that has:
 - (1) made available to the general public the entity's name, business address, and working contact information,
 - (2) 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
 - (3) provided to the online marketplace identifying information, as described in Section 3 of this act, that has been verified in accordance with that section; and

6. "Verify" means to confirm information provided to an online marketplace pursuant to this act, and 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.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 799A.3 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. 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 ten (10) calendar days after qualifying as a high-volume third-party seller on the platform:

1. 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. Such bank account or payee information may be provided by the seller either:

- a. to the online marketplace, or
- b. to 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;

2. Contact information including:

- a. if the high-volume third-party seller is an individual, the individual's name, or
- b. if the high-volume third-party seller is not an individual, one of the following forms of contact information:
 - (1) a copy of a valid government-issued identification for an individual acting on behalf of such seller that includes the individual's name, or
 - (2) a copy of a valid government-issued record or tax document that includes the business name and physical address of such seller;

3. 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; and

4. A current working email address and phone number for the high-volume third-party seller.

B. An online marketplace shall:

1. 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 A of this section current; and

2. Require any high-volume third-party seller on such online marketplace's platform to, not later than ten (10) calendar days after receiving the notice under paragraph 1 of this subsection, electronically certify that:

- a. the high-volume third-party seller has provided any changes to such information to the online marketplace, if such changes have occurred,
- b. there have been no changes to the high-volume third-party seller's information, or
- c. the high-volume third-party seller has provided any changes to such information to the online marketplace.

C. 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 ten (10) calendar days after the issuance of such notice, suspend any future sales activity of such seller until such seller provides such information or certification.

D. 1. The online marketplace shall:

- a. verify the information collected under subsection A of this section not later than ten (10) calendar days after such collection, and
- b. verify any change to such information not later than ten (10) calendar days after being notified of such change by a high-volume third-party seller under subsection B of this section.

2. 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.

E. Data collected solely to comply with the requirements of this section may not be used for any other purpose unless required by law.

F. 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.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 799A.4 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. An online marketplace shall:

1. Require any high-volume third-party seller with an aggregate total of Twenty Thousand Dollars (\$20,000.00) 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 B of this section to the online marketplace; and

2. Disclose the information described in subsection B of this section to consumers in a conspicuous manner:

- a. in the order confirmation message or other document or communication made to a consumer after a purchase is finalized, and
- b. in the consumer's account transaction history.

B. 1. Subject to paragraph 2 of this subsection, the identity of the high-volume third-party seller shall be disclosed including:

- a. the full name of the seller, which may include the seller's name or seller's company name, or the name by which the seller or company operates on the online marketplace,
- b. the physical address of the seller, and
- c. 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:
 - (1) a current working phone number,
 - (2) a current working email address, or
 - (3) other means of direct electronic messaging which may be provided to the high-volume third-party seller by the online marketplace; and

2. 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 paragraph 1 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.

C. Subject to subsection D 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 paragraph 1 of subsection B of this section in the following situations:

1. 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:

- a. disclose only the country and, if applicable, the state in which the high-volume third-party seller resides, and
- b. 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;

2. 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; and

3. 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.

D. 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 C of this section or that a high-volume third-party seller who has requested and received a provision for a partial disclosure under subsection C 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 ten (10) calendar 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 of subsection B of this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 799A.5 of Title 15, unless there is created a duplication in numbering, reads as follows:

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.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 799A.6 of Title 15, unless there is created a duplication in numbering, reads as follows:

If a high-volume third-party seller does not comply with the requirements to provide and disclose information under this act, 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 ten (10) calendar days after the issuance of such notice, suspend any future sales activity of such seller until the seller complies with such requirements.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 799A.7 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. If the Attorney General has reason to believe that any online marketplace has violated or is violating this act or a regulation promulgated under this act that affects one or more residents of this state, the Attorney General may bring a civil action in district court to:

1. Enjoin further violation by the defendant;
2. Enforce compliance with this act or such regulation;
3. Obtain civil penalties in the amount set under regulations promulgated under this act;

4. Obtain other remedies permitted under state law; or

5. Obtain damages, restitution, or other compensation on behalf of residents of this state.

B. For purposes of bringing a civil action under subsection A of this section, nothing in this act shall be construed to prevent the Attorney General from exercising the powers conferred on the Attorney General by the laws of this state to conduct investigations, administer oaths or affirmations, or compel the attendance of witnesses or the production of documentary and other evidence.

C. If no federal law that requires online marketplaces to verify and disclose information as described in this act goes into effect prior to January 1, 2023, the Attorney General may promulgate rules necessary to implement and enforce this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 799A.8 of Title 15, unless there is created a duplication in numbering, reads as follows:

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.

SECTION 9. This act shall become effective January 1, 2023.

Passed the Senate the 20th day of May, 2022.

Presiding Officer of the Senate

Passed the House of Representatives the 20th day of May, 2022.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____