

March 15, 2022

The Honorable Sean Tarwater, Chairperson
House Committee on Commerce, Labor and Economic Development
Statehouse, Room 346-S
Topeka, Kansas 66612

Dear Representative Tarwater:

SUBJECT: Fiscal Note for HB 2731 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2731 is respectfully submitted to your committee.

Under HB 2731, an online marketplace would require a high-volume third-party seller to provide the online marketplace contact information, bank information, working email and phone number, business tax identification number or taxpayer identification number within 10 days of qualifying as a high-volume third-party seller. The online marketplace would be required to verify the information provided. On at least an annual basis, the online marketplace would notify the high-volume third-party seller that they must inform the online marketplace of any changes to the information provided or verify that the information is still valid. If the high-volume third-party seller has neither certified the information nor provided the changed information, the online marketplace would, after providing notice and an opportunity to provide such information or certification with 10 days, suspend the high-volume third-party seller's participation until the seller has provided the required information.

The online marketplace would require a high-volume third-party seller to provide and disclose to consumers in a conspicuous manner, either on the order confirmation message or other communication or in the consumer's account transaction history, the seller's full name, physical address, contact information that would include the phone number or email address, and if a different seller is used to supply the product to the consumer. An online marketplace would disclose to consumers a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity.

Violations of the bill would constitute a deceptive act or practice under the Kansas Consumer Protection Act. The Attorney General would enforce the provisions of HB 2731 and could adopt rules and regulations as necessary. A political subdivision could not establish, mandate, or require an online marketplace to verify information from high-volume third-party sellers on a one-time or ongoing basis or disclose information to consumers. No criminal penalties could be imposed for violations of this bill. The provisions of the bill would take effect starting January 1, 2023.

Estimated State Fiscal Effect				
	FY 2022 SGF	FY 2022 All Funds	FY 2023 SGF	FY 2023 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$76,015	\$76,015
FTE Pos.	--	--	--	--

The Office of the Attorney General (OAG) indicates it would require \$76,015 from the State General Fund in FY 2023 to investigate and enforce complaints arising from the provisions of the bill. Of that amount, \$33,996 would be for 1.00 Investigator FTE position, \$29,268 would be for 0.5 Attorney FTE position, and \$12,751 would be for other expenses related to hiring the positions. The OAG notes that the FY 2023 amount only includes half a year of expenses because the bill takes effect on January 1, 2023. For FY 2024, the OAG indicates expenditures would increase to approximately \$140,071 from the State General Fund, including \$67,992 for 1.00 Investigator FTE position, \$58,535 for 0.5 Attorney FTE position, and \$13,544 for rent, IT services, office supplies, and other expenses. The bill could generate revenues from enforcement actions; however, an estimate cannot be provided because the number and amount of enforcement actions is unknown.

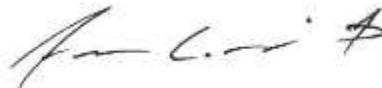
The OAG anticipates the bill could be subject to legal challenges and would likely go through the appellate process to get a definitive ruling on the validity of the law. Depending on which court system the case would be filed in, federal or state, a decision could take two to four years. The defense could be handled by existing OAG staff, but it is possible that specialized outside counsel would need to be hired. If the plaintiff would prevail, the state could also be ordered to pay the plaintiff's attorney fees and costs. However, since the scope of any potential legal challenge is unknown, a precise fiscal effect cannot be estimated.

The Office of Judicial Administration states that the bill could increase the number of cases filed in district courts because it allows for civil enforcement actions to be filed by the Attorney General. The additional cases would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. In addition, the bill could result in the collection of additional docket fees. However, the agency cannot estimate how many

additional cases would be heard and therefore a fiscal effect cannot be estimated. Any fiscal effect associated with HB 2731 is not reflected in *The FY 2023 Governor's Budget Report*.

The Kansas Association of Counties and the Kansas League of Municipalities both state that the bill would not have a fiscal effect.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt
Director of the Budget

cc: Vicki Jacobsen, Judiciary
Wendi Stark, League of Municipalities
Jay Hall, Association of Counties
Willie Prescott, Office of the Attorney General