

HOUSE BILL No. 2731

By Committee on Federal and State Affairs

3-8

1 AN ACT concerning consumer protection; relating to online third-party
2 marketplaces and the sale of stolen merchandise; requiring such
3 marketplaces to verify and authenticate the identity of third parties who
4 sell products on their platforms; providing for enforcement by the
5 attorney general.
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. As used in this act, sections 1 through 6, and amendments
9 thereto:

10 (a) "Consumer product" means any tangible personal property that is
11 distributed in commerce and that is normally used for personal, family or
12 household purposes, including any such property intended to be attached
13 to or installed in any real property without regard to whether such tangible
14 personal property is so attached or installed.

15 (b) "High-volume third-party seller" means a participant in an online
16 marketplace's platform who is a third-party seller and who, in any
17 continuous 12-month period during the previous 24 months, has entered
18 into 200 or more separate sales or transactions of new or unused consumer
19 products for delivery in this state resulting in the accumulation of an
20 aggregate total of \$5,000 or more in gross revenues. As used in this
21 subsection, "separate sales or transactions" means sales or transactions
22 made through the online marketplace and for which payment was
23 processed by the online marketplace, either directly or through a payment
24 processor.

25 (c) "Online marketplace" means any person or entity that operates a
26 consumer-directed, electronically based or accessed platform that:

27 (1) Includes features that allow for, facilitate or enable third-party
28 sellers to engage in the sale, purchase, payment, storage, shipping or
29 delivery of a consumer product in the United States;

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

31 (3) has a contractual or similar relationship with consumers
32 governing the use by consumers of the platform to purchase consumer
33 products.

34 (d) "Person" means any individual, firm, partnership, joint venture,
35 association, corporation, limited liability company, estate, business trust,
36 receiver or any other group or combination acting as a unit.

1 (e) "Seller" means a person who sells, offers to sell or contracts to sell
2 a consumer product through an online marketplace's platform.

3 (f) "Third-party seller" means any seller, independent of an online
4 marketplace, who sells, offers to sell or contracts to sell a consumer
5 product in the United States through such online marketplace's platform.
6 "Third-party seller" does not include, with respect to an online
7 marketplace:

8 (1) A seller who operates the online marketplace's platform; or

9 (2) a business entity that has:

10 (A) Made available to the general public the entity's name, business
11 address and working contact information;

12 (B) an ongoing contractual relationship with the online marketplace
13 to provide the online marketplace with the manufacture, distribution,
14 wholesaling or fulfillment of shipments of consumer products; and

15 (C) provided to the online marketplace identifying information, as
16 described in and that has been verified in accordance with section 2, and
17 amendments thereto.

18 (g) "Verify" means to confirm information provided to an online
19 marketplace pursuant to this section, including the use of one or more
20 methods that enable the online marketplace to reliably determine that any
21 information and documents provided are valid, corresponding to the seller
22 or an individual acting on the seller's behalf, not misappropriated and not
23 falsified.

24 Sec. 2. (a) An online marketplace shall require any high-volume
25 third-party seller on the online marketplace's platform to provide the
26 online marketplace with the following information within 10 days of
27 qualifying as a high-volume third-party seller:

28 (1) Bank account number or, if the high-volume third-party seller
29 does not have a bank account, the name of the payee for payments issued
30 by the online marketplace to the high-volume third-party seller. Such bank
31 account or payee information may be provided by the seller either to:

32 (A) The online marketplace; or

33 (B) a payment processor or other third party contracted by the online
34 marketplace to maintain such information, provided that the online
35 marketplace ensures the ability to obtain such information on demand
36 from such payment processor or other third party;

37 (2) contact information, including:

38 (A) If the high-volume third-party seller is an individual, the
39 individual's name; or

40 (B) if the high-volume third-party seller is not an individual:

41 (i) A copy of a valid government-issued identification for an
42 individual acting on behalf of the high-volume third-party seller that
43 includes the individual's name; or

1 (ii) a copy of a government-issued record or tax document that
2 includes the business name and physical address of the high-volume third-
3 party seller;

4 (3) a current working email address and working phone number for
5 the high-volume third-party seller; and

6 (4) a business tax identification number or, if the high-volume third-
7 party seller does not have a business tax identification number, a taxpayer
8 identification number.

9 (b) (1) The online marketplace shall periodically, but not less than
10 annually, notify each high-volume third-party seller on the online
11 marketplace of the requirement to keep any information collected under
12 subsection (a) current and shall require each high-volume third-party
13 seller, not later than 10 days after receiving the notification, to
14 electronically certify that the seller's information is unchanged or that the
15 seller has provided any changes to the information to the online
16 marketplace. In the event that a high-volume third-party seller does not
17 provide the information or certifications required under this paragraph, the
18 online marketplace shall, after providing the seller with written or
19 electronic notice and an opportunity to provide such information or
20 certification not later than 10 days after the issuance of such notice,
21 suspend any further sales activity of such seller until the seller provides
22 such information or certification.

23 (2) The online marketplace shall verify information provided
24 pursuant to subsection (a) and any changes to such information not later
25 than 10 days after receipt of such information or changes. If a high-volume
26 third-party seller provides a copy of a valid government-issued tax
27 document, information contained within such tax document shall be
28 presumed to be verified as of the date of issuance of such record or
29 document.

30 (3) Data collected solely to comply with the requirements of this
31 section shall not be used for any other purpose unless required by law. An
32 online marketplace shall implement and maintain reasonable security
33 procedures and practices, including, but not limited to, administrative,
34 physical and technical safeguards, appropriate to the nature of the data and
35 the purposes for which the data will be used, to protect the data collected
36 to comply with the requirements of this section from unauthorized use,
37 disclosure, access, destruction or modification.

38 Sec. 3. (a) Any online marketplace shall require a high-volume third-
39 party seller with an aggregate total of \$20,000 or more in annual gross
40 revenues on such online marketplace, and that uses such online
41 marketplace's platform, to provide the online marketplace and disclose to
42 consumers in a clear and conspicuous manner the following information in
43 the order confirmation message or other document or communication

1 made to the consumer after the purchase is finalized and in the consumer's
2 account transaction history:

3 (1) Subject to subsection (b), the identity of the high-volume third-
4 party seller, including:

5 (A) The full name of the seller, including the seller's name or seller's
6 company name or the name by which the seller or company operates on
7 the online marketplace;

8 (B) the full physical address of the seller;

9 (C) contact information for the seller to allow for the direct,
10 unhindered communication with high-volume third-party sellers by users
11 of the online marketplace, including a working phone number, working
12 email address or other means of direct electronic messaging that may be
13 provided to the high-volume third-party seller by the online marketplace;
14 and

15 (2) whether the high-volume third-party seller used a different seller
16 to supply the consumer product to the consumer and, upon the request of
17 an authenticated purchaser, if such seller is different than the high-volume
18 third-party seller listed on the product listing prior to purchase, the
19 information described in paragraph (1) relating to any such seller that
20 supplied the consumer product to the purchaser.

21 (b) (1) Subject to paragraph (2), upon the request of a high-volume
22 third-party seller, an online marketplace may provide for partial disclosure
23 of the identity information required under subsection (a) in the following
24 situations:

25 (A) If the high-volume third-party seller certifies to the online
26 marketplace that the seller does not have a business address and only has a
27 residential street address, or has a combined business and residential
28 address, the online marketplace may disclose only the country and, if
29 applicable, the state in which the high-volume third-party seller resides
30 and may inform consumers that there is no business address available for
31 the seller and that consumer inquiries should be submitted to the seller by
32 phone, email or other means of electronic messaging provided to such
33 seller by the online marketplace;

34 (B) if the high-volume third-party seller certifies to the online
35 marketplace that the seller is a business that has a physical address for
36 product returns, the online marketplace may disclose the seller's physical
37 address for product returns; or

38 (C) if a high-volume third-party seller certifies to the online
39 marketplace that the seller does not have a phone number other than a
40 personal phone number, the online marketplace shall inform consumers
41 that there is no phone number available for the seller and that consumer
42 inquiries should be submitted to the seller's email address or other means
43 of electronic messaging provided to the seller by the online marketplace.

1 (2) If an online marketplace becomes aware that a high-volume third-
2 party seller has made a false representation to the online marketplace in
3 order to justify the provision of a partial disclosure under paragraph (1) or
4 that a high-volume third-party seller who has requested and received a
5 provision for a partial disclosure under paragraph (1) has not provided
6 responsive answers within a reasonable time to consumer inquiries
7 submitted to the seller by phone, email or by another means of electronic
8 messaging if provided to the seller by the online marketplace, the online
9 marketplace shall, after providing the seller with written or electronic
10 notice and an opportunity to respond not later than 10 days after the
11 issuance of such notice, suspend any future sales activity of such seller
12 unless such seller consents to the disclosure of the identity information
13 required under subsection (a).

14 (c) An online marketplace shall disclose to consumers, in a clear and
15 conspicuous manner on the product listing of any high-volume third-party
16 seller, a reporting mechanism that allows for electronic and telephonic
17 reporting of suspicious marketplace activity to the online marketplace.

18 (d) If a high-volume third-party seller does not comply with the
19 requirements to provide and disclose information under this subsection,
20 the online marketplace shall, after providing the seller with written or
21 electronic notice and an opportunity to provide or disclose such
22 information not later than 10 days after the issuance of such notice,
23 suspend any future sales activity of such seller until the seller complies
24 with such requirements.

25 Sec. 4. (a) A violation of section 2 or 3, and amendments thereto,
26 shall constitute a deceptive act or practice pursuant to K.S.A. 50-626, and
27 amendments thereto, and shall be subject to the remedies and penalties
28 provided by the Kansas consumer protection act, except as provided in
29 subsection (b).

30 (b) The attorney general shall have sole authority to enforce the
31 provisions of this act. Notwithstanding the provisions of K.S.A. 50-634,
32 and amendments thereto, or any other private remedy or private cause of
33 action pursuant to the Kansas consumer protection act, no private remedy
34 or private cause of action pursuant to the Kansas consumer protection act
35 shall be available for a violation of sections 1 through 6, and amendments
36 thereto. No criminal penalties pursuant to the Kansas consumer protection
37 act shall be imposed for a violation of sections 1 through 6, and
38 amendments thereto.

39 (c) The attorney general may adopt rules and regulations as necessary
40 to implement the provisions of this act.

41 (d) Sections 1 through 6, and amendments thereto, shall be a part of
42 and supplemental to the Kansas consumer protection act.

43 Sec. 5. No city, county, township or other political subdivision of this

1 state shall establish, mandate or otherwise require online marketplaces to
2 verify information from high-volume third-party sellers on either a one-
3 time or ongoing basis or to disclose information to consumers.

4 Sec. 6. If any provision of this act or application thereof to any person
5 or circumstances is held invalid, such invalidity shall not affect other
6 provisions or applications of the act that can be given effect without the
7 invalid provision or application, and to this end the provisions of this act
8 are declared to be severable.

9 Sec. 7. This act shall take effect and be in force from and after
10 January 1, 2023, and its publication in the statute book.