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AB-1790 Marketplaces: marketplace sellers. (2019-2020)

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Assembly Bill No. 1790

CHAPTER 635

An act to add Title 1.4C (commencing with Section 1749.7) to Part 4 of Division 3 of the Civil Code, relating to business.

[Approved by Governor October 08, 2019. Filed with Secretary of State October 08, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1790, Wicks. Marketplaces: marketplace sellers.

Existing law, the Uniform Commercial Code—Sales, generally regulates transactions in goods, as defined. Existing law also generally prescribes obligations arising from particular transactions.

This bill would require a marketplace, as defined, to ensure that their terms and conditions regarding commercial relationships with marketplace sellers meet specified requirements, including that the terms and conditions are drafted in plain and intelligible language. The bill would define “marketplace seller” for these purposes as a person residing in the state who has an agreement with a marketplace and makes retail sales of services or tangible personal property through a marketplace owned, operated, or controlled by that marketplace. If a marketplace decides to suspend or terminate a marketplace seller based upon an alleged violation of law or a term, condition, or policy of the marketplace, the bill would require the marketplace to provide the marketplace seller with a written statement of reasons for that decision, as specified.

This bill would state that its provisions are severable.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Title 1.4C (commencing with Section 1749.7) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.4C. Clarity of Marketplace Terms and Conditions and Dispute Resolution Minimum Fairness

1749.7. (a) Every marketplace shall ensure that their terms and conditions regarding commercial relationships with marketplace sellers meet all of the following requirements:

- (1) Are drafted in plain and intelligible language.
- (2) Are easily available online for marketplace sellers at all stages of their commercial relationship with the marketplace, including, but not limited to, during the stage prior to the formation of a contract.
- (3) Set out the grounds for decisions to retain, or refuse to disburse, funds in its possession belonging to a marketplace seller pending investigation or resolution of a dispute between the marketplace and the marketplace seller and the grounds for

suspending or terminating a marketplace seller from participating in the marketplace.

(b) If a marketplace permits a marketplace seller to pay the marketplace to influence search results through ranking or preferential placement within the marketplace of tangible personal property or services sold by marketplace sellers through the marketplace, the marketplace, in its terms and conditions or policies, shall describe those possibilities and the effects of such payment on the ranking or preferential placement, and either (1) the price of that ranking or preferential placement or (2) how a marketplace seller may obtain written price information for such ranking or preferential placement.

(c) If a marketplace decides to suspend or terminate a marketplace seller based upon an alleged violation of law or a term, condition, or policy of the marketplace, the marketplace shall provide the marketplace seller, without undue delay, with a written statement of reasons for that decision. The written statement of reasons shall, at a minimum, do all of the following:

(1) Without disclosing information that would result in the disclosure of any proprietary, confidential, or trade secret information, or disclosing information that would hinder any investigation or prevention of deceptive, fraudulent, or illegal activity, describe the facts and circumstances that led to the decision unless the marketplace reasonably believes that giving a written statement of reasons could negatively impact the safety or property of another user or the marketplace itself.

(2) Identify the term, condition, or policy that serves as the basis for the suspension or termination.

(3) Explain whether or not the decision may be appealed, and, if so, the procedure for such an appeal.

(d) For purposes of this section, the following definitions shall apply:

(1) "Marketplace" means a physical or electronic place, including, but not limited to, a store, booth, internet website, catalog, television or radio broadcast, or a dedicated sales software application, that sells or offers for retail sale services or tangible personal property for delivery in this state and has an agreement with a marketplace seller to make retail sales of services or tangible personal property through that marketplace, regardless of whether the tangible personal property or the marketplace has a physical presence in the state.

(2) "Marketplace seller" means a person residing in the state who has an agreement with a marketplace and makes retail sales of services or tangible personal property through a marketplace owned, operated, or controlled by that marketplace.

(3) "Ranking" means the relative prominence given to the tangible personal property or services offered to consumers through a marketplace, as organized or communicated to those consumers by the marketplace, irrespective of the technological means used for that organization or communication.

SEC. 2. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.