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**SB-301 Marketplaces: online marketplaces.** (2021-2022)

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**Senate Bill No. 301**

**CHAPTER 857**

An act to add Title 1.4D (commencing with Section 1749.8) to Part 4 of Division 3 of the Civil Code, relating to business.

[ Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 301, Skinner. Marketplaces: online marketplaces.

Existing law requires a marketplace, as defined, to ensure that its terms and conditions regarding commercial relationships with marketplace sellers meet certain criteria, including that they are drafted in plain and intelligible language.

This bill would, commencing July 1, 2023, require an online marketplace, as defined, to require a high-volume third-party seller on the online marketplace, not later than 10 days after qualifying as a high-volume third-party seller, to provide to the online marketplace specified information, including certain contact information and a bank account number or, if the seller does not have a bank account, the name of the payee for payments issued by the online marketplace to the seller, as prescribed. The bill would require an online marketplace to suspend future sales activity of a high-volume third-party seller that is not in compliance with the provisions described in this paragraph, as specified.

This bill would require the online marketplace to verify the information provided by the high-volume third-party seller pursuant to the provisions described above within 10 days and would require the online marketplace to verify within 10 days any changes to the information and to, at least annually, notify each high-volume third-party seller on the online marketplace that the seller must inform the online marketplace of any changes to the information, as provided.

This bill would also require an online marketplace to, among other things, require a high-volume third-party seller with at least \$20,000 of gross annual revenues from transactions with buyers in California through the online marketplace to provide, subject to certain exceptions, certain information, including the seller's physical address, to the online marketplace and to disclose the information to consumers in a clear and conspicuous manner in the order confirmation message, or other communication made to a consumer after a purchase is finalized, and in the consumer's account transaction history. The bill would require an online marketplace to suspend future sales activity of a high-volume third-party seller under certain circumstances, including that the high-volume third-party seller is not in compliance with the provisions described in this paragraph.

This bill would require an online marketplace to comply with specified recordkeeping and security procedures with regard to the information required to comply with these provisions. The bill would subject a person or entity who violates the bill's provisions to a civil penalty not to exceed \$10,000 for each violation, which may be assessed and recovered only in a civil action brought in the name of the people of the State of California by the Attorney General.

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

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

**SECTION 1.** Title 1.4D (commencing with Section 1749.8) is added to Part 4 of Division 3 of the Civil Code, to read:

**TITLE 1.4D. Online Marketplaces**

**1749.8.** For purposes of this chapter:

(a) "Consumer product" means tangible personal property that is distributed in commerce and normally used for personal, family, or household purposes, including property intended to be attached to or installed in real property regardless of whether it is actually attached or installed.

(b) (1) "High-volume third-party seller" means a third-party seller who, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete transactions through an online marketplace for the sale of new or unused consumer products to buyers located in California resulting in the accumulation of an aggregate total of five thousand dollars (\$5,000) or more in gross revenues.

(2) The number of discrete transactions referenced in paragraph (1) includes only those transactions through the online marketplace for which payment is processed by the online marketplace directly or through its payment processor.

(c) "Online marketplace" means a consumer-directed, electronically accessed platform for which all of the following are true:

(1) The platform 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.

(2) The features described in paragraph (1) are used by third-party sellers.

(3) The platform has a contractual relationship with consumers governing their use of the platform to purchase consumer products.

(d) "Third-party seller" means a person or entity, independent of an online marketplace, who sells, offers to sell, or contracts with an online marketplace to sell a consumer product in the state by or through an online marketplace.

(e) "Verify" means to confirm that information provided to an online marketplace pursuant to this section is accurate. Methods of confirmation include the use of one or more methods that enable the online marketplace to reliably determine that the information and documents are valid, correspond to the seller or an individual acting on the seller's behalf, are not misappropriated, and are not falsified.

**1749.8.1.** (a) An online marketplace shall require each high-volume third-party seller on the online marketplace to provide, not later than 10 days after qualifying as a high-volume third-party seller, all of the following information to the online marketplace:

(1) (A) 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 seller.

(B) The high-volume third-party seller shall provide the information required by this paragraph to one of the following as specified by the online marketplace:

(i) The online marketplace.

(ii) A payment processor or other third party designated by the online marketplace that is required, pursuant to a contract with the online marketplace, to maintain the information in a confidential manner and disclose the information only in response to a court order or to the online marketplace upon its request.

(2) If the high-volume third-party seller is an individual, the individual's name.

(3) If the high-volume third-party seller is not an individual, one of the following:

(A) A copy of a valid government-issued identification for an individual who has the legal authority to act on behalf of the high-volume third-party seller that includes the individual's name.

(B) A copy of a valid government record or tax document dated within the past 24 months that includes the business name and physical address of the high-volume third-party seller.

(4) 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.

(5) A valid email address and telephone number for the high-volume third-party seller.

(b) An online marketplace shall verify the information provided pursuant to subdivision (a) within 10 days and shall verify within 10 days any changes to the information that is provided to the marketplace by a high-volume third-party seller. If a high-volume third-party seller provides a copy of a valid government-issued tax document, information contained within the tax document shall be presumed to be verified as of the date of issuance of the record or document.

(c) (1) The online marketplace shall, on at least an annual basis, notify each high-volume third-party seller operating on the online marketplace of the requirement to inform the online marketplace of any changes to the information provided by the seller pursuant to subdivision (a) within 10 days of receiving the notification and shall instruct each high-volume third-party seller, as part of the notification, to electronically certify that the information is accurate and that either that the seller's information is unchanged or that the seller is providing updated information.

(2) If a high-volume third-party seller does not provide the information or certification required under this section,, the online marketplace shall, after providing the seller with written or electronic notice and opportunity to provide the information or certification not later than 10 days after the issuance of the notice, suspend any future sales activity of the seller until the seller provides the information or certification.

**1749.8.2.** (a) An online marketplace shall require a high-volume third-party seller with at least twenty thousand dollars (\$20,000) of gross annual revenues from transactions with buyers in California through the online marketplace in either of the two prior calendar years to provide, in addition to the information required by 1749.8.1, the following information to the online marketplace and to disclose the information about the high-volume third-party seller to consumers in a clear and conspicuous manner in the order confirmation message, or other communication made to a consumer after a purchase is finalized, and in the consumer's account transaction history:

(1) (A) Except as provided in subparagraph (B), the high-volume third-party seller shall provide all of the following identifying information:

(i) The full name of the high-volume third-party seller, which may include the seller's name or company name, or the name by which the seller or company operates on the online marketplace.

(ii) The high-volume third-party seller's physical address.

(iii) Contact information for the high-volume third-party seller, including a current working telephone number, email address, or any other means of direct electronic messaging, to allow users of the online marketplace to have direct and unhindered communication with the seller.

(B) A high-volume third-party seller may request that the online marketplace accept the following partial disclosures of information in lieu of the disclosures required pursuant to subparagraph (A):

(i) If the high-volume third-party seller certifies to the online marketplace that they do not have a physical address other than a residential physical address, or a combined business and residential physical address, the online marketplace may disclose only the country and state, if applicable, in which the seller resides and inform consumers that inquiries should be submitted to the seller by telephone, email, or electronic means provided by the online marketplace.

(ii) If the high-volume third-party seller certifies to the online marketplace that they do not have a telephone number other than a personal telephone number, the online marketplace shall inform consumers that no telephone number is available for the seller, and inquiries should be submitted to the seller's email address or electronic means provided by the online marketplace.

(2) (A) Whether or not another party is responsible for supplying the product to the consumer upon purchase.

(B) If requested by an authenticated purchaser, the contact information described in paragraph (1) for the party who is responsible for supplying the product to the consumer upon purchase.

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

(c) (1) (A) An online marketplace shall suspend future sales activity of a high-volume third-party seller that meets any of the following criteria:

(i) The high-volume third-party seller is not in compliance with the requirements of this section.

(ii) The high-volume third-party seller made a false representation to the online marketplace about the applicability of subparagraph (B) of paragraph (1) of subdivision (a).

(iii) The high-volume third-party seller made a false representation to consumers.

(B) An online marketplace may suspend future sales activity of a high-volume third-party seller that has not answered consumer inquiries within a reasonable timeframe.

(2) (A) An online marketplace shall provide notice of an impending suspension pursuant to clause (i) of subparagraph (A) of paragraph (1) and shall not suspend the high-volume third-party seller if the seller becomes in compliance with this section within 10 days of the date on which the notice was issued.

(B) If the high-volume third-party seller provides the information required by subdivision (a) more than 10 days after the date of the notice, the online marketplace shall restore the ability of the seller to have transactions facilitated by or through the online marketplace within 10 days of receiving all of the information.

**1749.8.3.** (a) (1) An online marketplace shall keep the information provided to comply with the requirements of this title for no less than two years.

(2) Information provided solely to comply with the requirements of this title shall not be used for any other purpose unless required by law.

(3) An online marketplace shall implement and maintain reasonable security procedures and practices, including administrative, physical, and technical safeguards, appropriate to the nature of the information and the purposes for which the information will be used, to protect the information provided to comply with the requirements of this title from unauthorized use, disclosure, access, destruction, and modification.

(b) A high-volume third-party seller may redact from a document provided solely to comply with a requirement of this title any information that is not necessary for either of the following:

(1) To comply with a requirement of this title.

(2) To verify the authenticity of the document as a copy of a valid government-issued identification, government record, or tax document, as applicable.

**1749.8.4.** (a) A person or entity who violates any provision of this title shall be liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation, which may be assessed and recovered only in a civil action brought in the name of the people of the State of California by the Attorney General.

(b) In addition to the civil penalty provided by subdivision (a), the Attorney General who prevails in an action to enforce this title shall be entitled to the following relief:

(1) Reasonable attorney's fees and costs, including expert witness fees and other litigation expenses.

(2) Preventive relief, including a permanent or temporary injunction, restraining order, or other order against any person responsible for the conduct.

**1749.8.5.** (a) This title does not apply to or affect the liability of an entity, including an entity that meets the definition of a high-volume third-party seller under this title, for damages caused by a consumer product that is sold online.

(b) This title shall become operative July 1, 2023.