

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1594 Session of
2021

INTRODUCED BY TOMLINSON, SANKEY, THOMAS, MILLARD, TOPPER,
SCHROEDER, FARRY, STAATS, POLINCHOCK, KAIL, MOUL, BURNS,
QUINN, DELOZIER, NEILSON, HELM, LABS AND T. DAVIS,
JUNE 10, 2021

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL
LICENSURE, IN SENATE, AS AMENDED, APRIL 13, 2022

AN ACT

1 Amending the act of December 17, 1968 (P.L.1224, No.387),
2 entitled "An act prohibiting unfair methods of competition
3 and unfair or deceptive acts or practices in the conduct of
4 any trade or commerce, giving the Attorney General and
5 District Attorneys certain powers and duties and providing
6 penalties," providing for collection, verification and
7 disclosure of information by online marketplaces to inform
8 consumers.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. The act of December 17, 1968 (P.L.1224, No.387),
12 known as the Unfair Trade Practices and Consumer Protection Law,
13 is amended by adding a section to read:

14 Section 9.4. Collection, Verification and Disclosure of
15 Information by Online Marketplaces to Inform Consumers.--(a) An
16 online marketplace shall require that a high-volume third-party
17 seller on the online marketplace's platform provide the online
18 marketplace with the following information not later than ten
19 days after qualifying as a high-volume third-party seller on the

1 platform:

2 (1) A bank account number or, if the high-volume third-party
3 seller does not have a bank account, the name of the payee for
4 payments issued by the online marketplace to the high-volume
5 third-party seller. The required bank account or payee
6 information ~~may~~ SHALL be provided by the high-volume third-party <--
7 seller to any of the following:

8 (i) The online marketplace.

9 (ii) A payment processor or other third party contracted by
10 the online marketplace to maintain the information if the online
11 marketplace ensures that the online marketplace can obtain the
12 information on demand from the payment processor or other third
13 party.

14 (2) Contact information for the high-volume third-party
15 sellers as follows:

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

18 (ii) If the high-volume third-party seller is not an
19 individual, one of the following forms of contact information:

20 (A) A copy of a valid government-issued identification for
21 an individual acting on behalf of the high-volume third-party
22 seller, including the individual's name.

23 (B) A copy of a valid government-issued record or tax
24 document, including the business name and physical address of
25 the high-volume third-party seller.

26 (iii) A business tax identification number or, if the high-
27 volume third-party seller does not have a business tax
28 identification number, a taxpayer identification number.

29 (iv) A current working telephone number.

30 (v) A current working email address.

1 (b) An online marketplace shall have all of the following
2 duties:

3 (1) Periodically, but not less than annually, notify ISSUE A <--
4 WRITTEN OR ELECTRONIC NOTICE TO a high-volume third-party seller
5 on the online marketplace's platform of the requirement to keep
6 the information collected under subsection (a) current.

7 (2) Require a high volume third party seller on the online <--
8 marketplace's platform to, not later than ten days after
9 receiving the notice under clause (1), electronically certify
10 any of the following:

11 (i) The high volume third party seller has provided a change
12 to the information under subsection (a) to the online
13 marketplace.

14 (ii) There have been no changes to the high volume third
15 party seller's information under subsection (a).

16 (2) REQUIRE A HIGH-VOLUME THIRD-PARTY SELLER ON THE ONLINE <--
17 MARKETPLACE'S PLATFORM TO, NOT LATER THAN TEN DAYS AFTER
18 RECEIVING THE NOTICE UNDER THIS SUBSECTION:

19 (I) SUBMIT ANY CHANGES TO THE INFORMATION UNDER SUBSECTION
20 (A).

21 (II) CERTIFY THERE HAVE BEEN NO CHANGES TO THE INFORMATION
22 REQUIRED UNDER SUBSECTION (A).

23 (c) If IMMEDIATELY FOLLOWING THE TEN DAYS, IF a high-volume <--
24 third-party seller does not comply with subsection (b) (B) (2), <--
25 the online marketplace shall, after providing PROVIDE the high- <--
26 volume third-party seller with a SECOND written or an electronic <--
27 notice and an opportunity to comply with subsection (b) not <--
28 later than (B) (2). <--

29 (D) IF A HIGH-VOLUME THIRD-PARTY SELLER FAILS TO COMPLY
30 WITHIN ten days after the issuance of the second notice, THE <--

1 ONLINE MARKETPLACE SHALL suspend the future sales activity of
2 the high-volume third-party seller until the high-volume third-
3 party seller complies with subsection ~~(b)~~ (B) (2). <--

4 ~~(d)~~ (E) An online marketplace shall verify all of the <--
5 following:

6 (1) The information collected under subsection (a) not later
7 than ten days after the collection.

8 (2) A change to the information under subsection (a) not
9 later than ten days after being notified of the change by a
10 high-volume third party seller under subsection (b) (2) (i).

11 ~~(e)~~ (F) If a high-volume third-party seller provides a copy <--
12 of a valid government-issued record or tax document under
13 subsection (a) (2) (ii) (B), the information contained in the
14 record or tax document shall be presumed to be verified as of
15 the date of issuance of the record or tax document.

16 ~~(f)~~ (G) Data collected solely to comply with the <--
17 requirements of this section may not be used for any other
18 purpose unless required by Federal or State law. An online
19 marketplace shall implement and maintain reasonable security
20 procedures and practices, including administrative, physical and
21 technical safeguards, appropriate to the nature of the data
22 collected under this section and the purposes for which the data
23 will be used, to protect the data from unauthorized use,
24 disclosure, access, destruction or modification.

25 ~~(g)~~ (H) An online marketplace shall require a high-volume <--
26 third-party seller that has an aggregate total of twenty
27 thousand dollars (\$20,000) or more in annual gross revenues on
28 the online marketplace and uses the online marketplace's
29 platform to do all of the following:

30 (1) Provide the information specified under subsection ~~(h)~~ <--

1 (I) to the online marketplace. <--

2 (2) Disclose the information specified under subsection ~~(h)~~ <--

3 (I) to a consumer in a conspicuous manner in all of the <--

4 following:

5 (i) The order confirmation message or other document or

6 communication made to the consumer after a purchase is

7 finalized.

8 (ii) The consumer's account transaction history.

9 ~~(h)~~ (I) Except as provided under subsection ~~(i)~~ (J), a high- <--

10 volume third-party SELLER specified under subsection ~~(g)~~ (H) <--

11 shall provide and disclose all of the following information in

12 accordance with subsection ~~(g)~~ (H): <--

13 (1) The identity of the high-volume third-party seller,

14 including the full name of the high-volume third-party seller,

15 which may include the high-volume third-party seller's name or

16 company name or the name by which the high-volume third-party

17 seller or company operates on the online marketplace.

18 (2) The physical address of the high-volume third-party

19 seller.

20 (3) The contact information for the high-volume third-party

21 seller to allow for the direct, unhindered communication with

22 the high-volume third-party ~~sellers~~ SELLER by a ~~user of~~ CONSUMER <--

23 ON the online marketplace; ~~provided, the requirements of this~~ <--

24 ~~subsection shall not prevent an online marketplace from~~

25 ~~preventing fraud, abuse or spam through such communication,~~

26 including any of the following:

27 (i) A current working telephone number.

28 (ii) A current working email address.

29 (iii) Any other means of direct electronic messaging,

30 including messaging provided by the online marketplace.

1 (4) Whether the high-volume third-party seller used a
2 different seller than listed on the product listing, prior to
3 purchase, to supply a consumer product to a consumer and, upon
4 the request of an authenticated purchaser, the information <--
5 specified under clauses (1), (2) and (3) relating to the
6 different seller.

7 ~~(i)~~ (J) Subject to the limitations under subsection (j), <--
8 upon the request of a high-volume third-party seller, an online
9 marketplace may provide for the partial disclosure of the
10 information specified under subsection ~~(h)(1)~~ (I) (1), (2) and <--
11 (3) to a consumer in accordance with the following:

12 (1) If the high-volume third-party seller certifies to the
13 online marketplace that the high-volume third-party seller does
14 not have a business address and only has a residential street
15 address, or has a combined business and residential address, the
16 online marketplace may do any of the following:

17 (i) Disclose to the consumer only the country and, if
18 applicable, the state where the high-volume third-party seller
19 resides.

20 (ii) Inform the consumer that there is no business address
21 available for the high-volume third-party seller and that
22 consumer inquiries should be submitted to the high-volume third-
23 party seller by telephone, email or any other means of
24 electronic messaging provided to the high-volume third-party
25 seller by the online marketplace.

26 ~~(iii)~~ (2) If the high-volume third-party seller certifies to <--
27 the online marketplace that the high-volume third-party seller
28 is a business that has a physical address for product returns,
29 the online marketplace may disclose the high-volume third-party
30 seller's physical address for product returns.

1 ~~(iv)~~ (3) If the high-volume third-party seller certifies to <--
2 the online marketplace that the high-volume third-party seller
3 does not have a telephone number other than a personal telephone
4 number, the online marketplace shall inform the consumer that
5 there is no telephone number available for the high-volume
6 third-party seller and consumer inquiries should be submitted to
7 the high-volume third-party seller's email address or other
8 means of electronic messaging provided to such seller by the
9 online marketplace.

10 ~~(2)~~ (Reserved). <--

11 ~~(j)~~ (K) If an online marketplace becomes aware that a high- <--
12 volume third-party seller has made a false representation to the
13 online marketplace to justify a partial disclosure under
14 subsection ~~(i)~~ (J) or the high-volume third-party seller has <--
15 requested and received an authorization for a partial disclosure
16 under subsection ~~(i)~~ (J) and has not provided responsive answers <--
17 within a reasonable time frame to a consumer inquiry submitted
18 to the high-volume third-party in accordance with subsection ~~(i)~~ <--
19 (J), the online marketplace shall, after providing the high- <--
20 volume third-party seller with a written or an electronic notice
21 and an opportunity to respond not later than ten days after the
22 issuance of the notice, suspend the future sales activity of the
23 high-volume third-party seller unless the high-volume third-
24 party seller consents to the disclosure of the identity
25 information required under subsection ~~(h)~~ ~~(1)~~ (I) (1), (2) and <--
26 (3).

27 ~~(k)~~ (L) An online marketplace shall, in a clear and <--
28 conspicuous manner, disclose to a consumer on EACH product <--
29 listing of a high-volume third-party seller a reporting
30 mechanism that allows for electronic and telephonic reporting of

1 suspicious marketplace activity to the online marketplace.

2 ~~(1) (M) If a high-volume third party seller does not comply <--~~
3 ~~with the requirements to provide and disclose information ON THE <--~~
4 ~~PLATFORM under this section, the online marketplace shall, after~~
5 ~~providing the HIGH-VOLUME THIRD-PARTY seller with a written or <--~~
6 ~~an electronic notice and an opportunity to provide or disclose~~
7 ~~the information not later than ten days after the issuance of~~
8 ~~the notice, suspend the future sales activity of the high-volume~~
9 ~~third-party seller until the high-volume third-party seller~~
10 ~~complies with the requirements under this section.~~

11 ~~(m) The following shall apply: <--~~

12 ~~(1) If the Attorney General has a reason to believe that an~~
13 ~~online marketplace has violated or is violating this section or~~
14 ~~regulations promulgated under clause (3) that affect a resident~~
15 ~~of this Commonwealth, the Attorney General may bring a civil~~
16 ~~action to do any of the following:~~

17 ~~(i) Enjoin an additional violation by the defendant.~~

18 ~~(ii) Enforce compliance with this section or regulations~~
19 ~~promulgated under clause (3).~~

20 ~~(iii) Obtain civil penalties in an amount specified in the~~
21 ~~regulations promulgated under clause (3).~~

22 ~~(iv) Obtain other damages, restitution, compensation or~~
23 ~~other remedies as authorized under the laws of this~~
24 ~~Commonwealth.~~

25 ~~(2) Nothing in clause (1) shall be construed to prevent the~~
26 ~~Attorney General from exercising the powers conferred by the~~
27 ~~laws of this Commonwealth to conduct investigations, administer~~
28 ~~oaths or affirmations or compel the attendance of witnesses or~~
29 ~~the production of documentary and other evidence.~~

30 ~~(3) The Attorney General shall promulgate regulations as~~

1 ~~necessary to enforce the provisions of this section.~~

2 ~~(N) THIS SECTION SHALL NOT BE CONSTRUED TO PREVENT AN ONLINE <--~~
3 ~~MARKETPLACE FROM PREVENTING FRAUD, ABUSE OR SPAM THROUGH ANY~~
4 ~~LEGAL CAPACITY ON THE ONLINE MARKETPLACE.~~

5 ~~(O) THE ATTORNEY GENERAL SHALL ENFORCE THE PROVISIONS OF~~
6 ~~THIS SECTION. IN ADDITION TO THE RELIEF UNDER THIS ACT PURSUANT~~
7 ~~TO SECTIONS 4 AND 4.1, A CIVIL PENALTY OF UP TO ONE THOUSAND~~
8 ~~DOLLARS (\$1,000) MAY BE LEVIED AGAINST ANY PERSON OR ENTITY THAT~~
9 ~~VIOLATES THIS SECTION. A PENALTY MAY BE LEVIED FOR EACH~~
10 ~~VIOLATION.~~

11 ~~(n) (P) A political subdivision may not establish, mandate <--~~
12 ~~or otherwise require an online marketplace to collect or verify~~
13 ~~information from a high-volume third-party seller or disclose~~
14 ~~information to a consumer.~~

15 ~~(o) (Q) As used in this section: <--~~

16 ~~"Consumer product" means tangible personal property that is <--~~
17 ~~distributed in commerce and is normally used for personal,~~
18 ~~family or household purposes, including a personal property~~
19 ~~intended to be attached to or installed in a real property~~
20 ~~without regard to whether the personal property is attached or~~
21 ~~installed. AS DEFINED UNDER SECTION 101(1) OF THE MAGNUSON-MOSS <--~~
22 ~~WARRANTY-FEDERAL TRADE COMMISSION IMPROVEMENT ACT (PUBLIC LAW~~
23 ~~93-637, 15 U.S.C. § 2301(1)).~~

24 ~~"High-volume third-party seller" means a participant in an~~
25 ~~online marketplace who is a third-party seller and who, for a~~
26 ~~continuous period of twelve months during the previous twenty-~~
27 ~~four months, has entered into at least two hundred discrete~~
28 ~~sales or transactions of new or unused consumer products and an <--~~
29 ~~aggregate total of at least five thousand dollars (\$5,000) gross~~
30 ~~revenues. For purposes of calculating the number of discrete~~

1 ~~sales or transactions~~ or the aggregate gross revenues under this <--
2 ~~definition, an online marketplace shall only count sales or~~ <--
3 ~~transactions made through the online marketplace and for which~~
4 ~~payment was processed by the online marketplace directly or~~
5 ~~through the online marketplace's payment processor.~~

6 "Online marketplace" means any person or entity that operates
7 a consumer-directed, electronically based or accessed platform
8 that meets all of the following criteria: <--

9 ~~(1) The platform includes features that allow for,~~
10 ~~facilitate or enable a third-party seller to engage in the sale,~~
11 ~~purchase, payment, storage, shipping or delivery of a consumer~~
12 ~~product in the United States.~~ <--

13 ~~(2) The platform is used by a third party seller for~~
14 ~~purposes specified under clause (1).~~

15 ~~(3) The platform; IS USED BY A THIRD-PARTY SELLER AND has a~~ <--
16 ~~contractual or similar relationship with a consumer to govern~~
17 ~~the consumer's use of the platform to purchase a consumer~~
18 ~~product.~~

19 "Seller" means a person who sells, offers to sell or
20 contracts to sell a consumer product through an online
21 marketplace's platform.

22 "Third-party seller" means a seller, independent of an online
23 marketplace, who sells, offers to sell or contracts to sell a
24 consumer product in the United States through an online
25 marketplace. The term does not include any of the following:

26 (1) A seller who operates an online marketplace's platform.

27 (2) A business entity that meets all of the following
28 criteria:

29 (i) The business entity has made the business entity's name,
30 business address and contact information available to the

1 public.

2 (ii) The business entity has an ongoing contractual
3 relationship with an online marketplace to provide the online
4 marketplace with the manufacturing, distribution, wholesaling or
5 fulfillment of the shipment of a consumer product.

6 (iii) The business entity had provided the information
7 described under subsection (a) to an online marketplace, which
8 has been verified in accordance with this section.

9 "Verify" means to confirm information provided to an online
10 marketplace under this section, including the use of a method
11 that enables the online marketplace to reliably determine the
12 validity of the information corresponding to a HIGH-VOLUME <--
13 THIRD-PARTY seller or an individual acting on the HIGH-VOLUME <--
14 THIRD-PARTY seller's behalf and confirm the information is not
15 misappropriated or falsified.

16 Section 2. This act shall take effect in 180 days.