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## **OLR Bill Analysis**

### **sSB 257**

#### ***AN ACT CONCERNING HIGH VOLUME THIRD-PARTY SELLERS ON ONLINE MARKETPLACES.***

#### **SUMMARY**

This bill requires online marketplaces to collect and verify identifying information from high volume third-party sellers using their platforms. Among other things, the bill requires these high volume third-party sellers (generally vendors who made at least 200 discrete sales and earned at least \$5,000 on the marketplace in a 12-month period) to report their names, contact information, and bank account numbers or payee information to the marketplaces. It also requires the marketplaces to subsequently verify the information they collect.

The bill also requires online marketplaces to (1) direct high volume third-party sellers that earned at least \$20,000 on the marketplace to disclose their names and contact information to consumers, with certain exceptions, and (2) provide a reporting mechanism for consumers to report suspicious marketplace activity.

The bill deems violations of the bill's requirements by online marketplaces an unfair trade practice under the Connecticut Unfair Trade Practices Act (CUTPA, see BACKGROUND).

Lastly, the bill prohibits political subdivisions from imposing similar requirements on online marketplaces.

EFFECTIVE DATE: January 1, 2023

#### **DEFINITIONS**

##### ***Online Marketplaces***

Under the bill, an "online marketplace" is a person or entity operating a consumer-directed electronically based or accessed platform that:

1. allows or facilitates third-party sellers to engage in the sale, purchase, payments, storage, shipping, and delivery of consumer products in Connecticut;
2. one or more third-party sellers uses for these purposes; and
3. has a contractual or similar relationship with consumers on their use of the platform to purchase consumer products.

A “consumer product” is any commercially distributed tangible personal property typically used for personal, family, or household purposes. It includes property that is intended to be attached to, or installed in, real property, regardless of whether it is attached or installed.

### ***Third-Party Sellers***

The bill defines a “third-party seller” as a seller that (1) is independent of an online marketplace and (2) sells, or offers or contracts to sell, a consumer product in Connecticut through an online marketplace. With respect to online marketplaces, it excludes any seller operating the marketplace’s platform or any business that has done the following:

1. made its business name, address, and working contact information available to the general public;
2. entered into an ongoing contractual relationship with the marketplace for consumer product manufacturing, distribution, wholesaling, or shipment fulfillment; and
3. provided the marketplace with the identifying information described below that the marketplace has verified in accordance with the bill.

### ***High Volume Third-Party Sellers***

A “high volume third-party seller” is a third-party seller participating in an online marketplace that entered into at least 200 discrete sales and had aggregate gross revenues of at least \$5,000 in any

continuous 12-month period during the prior 24 months. Discrete sales include only those made through the online marketplace for which payment was processed by the marketplace, either directly or through its payment processor.

## **REPORTING REQUIREMENTS**

### ***Identifying Information***

Under the bill, online marketplaces must require the high-volume third-party sellers using their platforms to provide certain identifying information within 10 days after qualifying as a high-volume seller. Specifically, each seller must provide the following:

1. a bank account number or, if does not have one, the name of its payee for payments issued by the marketplace;
2. the individual's name, if the seller is an individual, or a copy of a valid government-issued (a) identification for an individual acting on the seller's behalf that includes this individual's name or (b) record or tax document that includes the seller's business name and physical address;
3. a business tax identification number, if it has one, or taxpayer identification number; and
4. a current working email address and telephone number.

The bill allows the sellers to provide the required bank account or payee information to (1) the online marketplace or (2) other third parties contracted by the marketplace to maintain this information, so long as the marketplace ensures that it can get this information on demand from these third parties.

### ***Notice to Sellers***

The bill requires each online marketplace to, at least annually, notify each high volume third-party seller on its platform that it must keep the identifying information described above current. Within 10 days of receiving this notice, each seller must electronically certify that (1) the information has not changed or (2) it has provided the marketplace with

any changes.

The online marketplace must provide written or electronic notice to each seller that fails to keep the information current or provide the certification. If the seller does not provide the information or certification within 10 days after the notice's issuance, the marketplace must suspend the seller's future sales until it does so.

### ***Verification Requirement***

Online marketplaces must, within 10 days after receiving this identifying information, verify the information and any changes sellers made to it. Under the bill, "verify" means to confirm the information provided, including using one or more methods that allow the marketplace to reliably determine that the information and documents provided (1) are valid, (2) correspond to the seller or an individual acting on the seller's behalf, and (3) are not misappropriated or falsified.

The bill provides that any information contained in a copy of a valid government-issued tax document is presumed to be verified as of its issuance date.

### ***Data Restrictions and Security***

the bill prohibits the data collected under the bill's requirements from being used for any purpose other than those the bill provides, unless required by law. It also requires online marketplaces to implement and maintain reasonable security procedures and practices to protect the data from unauthorized use, disclosure, access, destruction, or modification. This must include administrative, physical, and technical safeguards appropriate for the nature of the data collected and the purposes for which it will be used.

## **CONSUMER DISCLOSURE REQUIREMENTS**

### ***Identity Disclosure***

Under the bill, online marketplaces must require their high volume third-party sellers with aggregate annual gross revenues of \$20,000 or more to disclose certain identifying information to the marketplace and consumers. This consumer disclosure must be conspicuous and appear

in the (1) order confirmation message or other document or communication made to a consumer after a purchase is finalized and (2) consumer's account transaction history.

With certain exceptions, each of these high volume third-party sellers must disclose its identity, including its:

1. full name (or company's name) or the name by which it operates on the marketplace;
2. physical address; and
3. contact information that allows for the direct, unhindered communication with the seller by marketplace users, including a current working phone number, email address, or other direct electronic messaging method.

The sellers must also identify whether they used a different seller to supply the consumer product to the consumer. If a consumer who is an authenticated purchaser requests it, the seller must also provide, prior to purchase, the different seller's name or company name, or the name by which it operates on the marketplace.

### ***Disclosure Limitations***

The online marketplace may limit the disclosure of the seller's identity, under the following specified conditions, if certified by the seller:

1. If the seller does not have a business address and only has a residential street address or combined business and residential address, the marketplace may (a) disclose only the country and, if applicable, state in which the seller resides and (b) inform consumers that there is no business address available for the seller and that they should submit their inquiries to the seller by phone, email, or other electronic messaging method the marketplace provides to the seller.
2. If the seller is a business with a physical address for product

returns, the marketplace may disclose that address.

3. If the seller does not have a phone number other than a personal one, the marketplace must inform consumers that there is no phone number available for the seller and that they should submit their inquiries to the seller's email address or other electronic messaging means the marketplace provides to the seller.

### ***Penalty for False Representations***

If an online marketplace becomes aware that a high volume third-party seller (1) made a false representation to justify a disclosure limitation or (2) has not been responsive to consumer inquiries within a reasonable timeframe, it must provide the seller a notice regarding this false representation or unresponsiveness. The marketplace must provide this notice electronically or in writing and give the seller the opportunity to respond within 10 days. After this 10-day period, if the seller does not justify the continued disclosure limitation or consent to the required information disclosures, the marketplace must suspend the seller's future sales activity until the seller consents.

### ***Noncompliance Notice***

If a high volume third-party seller does not comply with the bill's consumer disclosure requirements, the marketplace must provide the seller with a written or electronic noncompliance notice. If the seller does not comply within 10 days after the notice's issuance, the marketplace must suspend its future sales activity until it does so.

### **REPORTING SUSPICIOUS MARKETPLACE ACTIVITY**

The bill requires online marketplaces to disclose to consumers a reporting mechanism that allows them to report suspicious marketplace activity to the marketplace by email or phone. It must provide this disclosure, in a clear and conspicuous manner, on any high volume third-party seller's product listing.

### **LIMITATIONS ON LOCAL REGULATION OF HIGH VOLUME THIRD-PARTY SELLERS**

The bill prohibits political subdivisions from establishing, mandating, or otherwise requiring online marketplaces to collect or verify information from high volume third-party sellers or disclose information to consumers.

## **BACKGROUND**

### ***CUTPA***

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

## **COMMITTEE ACTION**

Public Safety and Security Committee

Joint Favorable Substitute

Yea 14 Nay 9 (03/22/2022)