

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 418 By: Daniels of the Senate  
3 and  
4 Martinez of the House  
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7 An Act relating to the Notice of Opportunity to  
8 Repair Act; amending 15 O.S. 2011, Section 765.6, as  
9 amended by Section 1, Chapter 111, O.S.L. 2012 (15  
10 O.S. Supp. 2020, Section 765.6), which relates to  
11 notice and offer to repair provisions in construction  
12 contracts; modifying consequence of inclusion of  
13 certain provisions in construction contracts; and  
14 providing an effective date.

15 AUTHORS: Add the following House Coauthors: McDugle, Manger,  
16 Worthen, and Hill

17 AMENDMENT NO. 1. Strike the title, enacting clause, and entire bill  
18 and insert:

19 "[ consumer protection - Oklahoma INFORM Act - online  
20 marketplaces - high-volume third-party sellers -  
21 effective date ]

22  
23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:  
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1 SECTION 1. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 799A.1 of Title 15, unless there  
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Oklahoma INFORM  
5 Act".

6 SECTION 2. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 799A.2 of Title 15, unless there  
8 is created a duplication in numbering, reads as follows:

9 As used in the Online Marketplace Consumer Protection Act:

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

15 2. "High-volume third-party seller" means a participant in an  
16 online marketplace who is a third-party seller and who, in any  
17 continuous twelve-month period during the previous twenty-four (24)  
18 months, has entered into two hundred or more discrete sales or  
19 transactions of new or unused consumer products and an aggregate  
20 total of Five Thousand Dollars (\$5,000.00) or more in gross  
21 revenues. For purposes of calculating the number of discrete sales  
22 or transactions or the aggregate gross revenues, an online  
23 marketplace shall only be required to count sales or transactions  
24 made through the online marketplace and for which payment was

1 processed by the online marketplace, either directly or through its  
2 payment processor;

3 3. "Online marketplace" means any person or entity that  
4 operates a consumer-directed electronically based or accessed  
5 platform that:

6 a. includes features that allow for, facilitate, or  
7 enable third-party sellers to engage in the sale,  
8 purchase, payment, storage, shipping, or delivery of a  
9 consumer product in this state,

10 b. is used by one or more third-party sellers for such  
11 purposes, and

12 c. has a contractual or similar relationship with  
13 consumers governing their use of the platform to  
14 purchase consumer products;

15 4. "Seller" means a person who sells, offers to sell, or  
16 contracts to sell a consumer product through an online marketplace's  
17 platform;

18 5. "Third-party seller" means any seller, independent of an  
19 online marketplace, who sells, offers to sell, or contracts to sell  
20 a consumer product in this state through an online marketplace. The  
21 term third-party seller does not include:

22 a. a seller who operates the online marketplace's  
23 platform, or

24 b. a business entity that has:

- 1 (1) made available to the general public the entity's  
2 name, business address, and working contact  
3 information,
- 4 (2) an ongoing contractual relationship with the  
5 online marketplace to provide the online  
6 marketplace with the manufacture, distribution,  
7 wholesaling, or fulfillment of shipments of  
8 consumer products, and
- 9 (3) provided to the online marketplace identifying  
10 information, as described in Section 3 of this  
11 act, that has been verified in accordance with  
12 that section; and

13 6. "Verify" means to confirm information provided to an online  
14 marketplace pursuant to this act, and may include the use of one or  
15 more methods that enable the online marketplace to reliably  
16 determine that any information and documents provided are valid,  
17 corresponding to the seller or an individual acting on the seller's  
18 behalf, not misappropriated, and not falsified.

19 SECTION 3. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 799A.3 of Title 15, unless there  
21 is created a duplication in numbering, reads as follows:

22 A. Online marketplaces shall require that any high-volume  
23 third-party seller on the online marketplace's platform provide the  
24 online marketplace with the following information no later than ten

1 (10) days after qualifying as a high-volume third-party seller on  
2 the platform:

3 1. A bank account number, or, if the high-volume third-party  
4 seller does not have a bank account, the name of the payee for  
5 payments issued by the online marketplace to the high-volume third-  
6 party seller. Such bank account or payee information may be  
7 provided by the seller either:

- 8 a. to the online marketplace, or
- 9 b. other third parties contracted by the online  
10 marketplace to maintain such information, provided  
11 that the online marketplace ensures that it can obtain  
12 such information on demand from such other third  
13 parties;

14 2. Contact information, including:

- 15 a. if the high-volume third-party seller is an  
16 individual, the individual's name, or
- 17 b. if the high-volume third-party seller is not an  
18 individual, one of the following forms of contact  
19 information:

- 20 (1) a copy of a valid government-issued  
21 identification for an individual acting on behalf  
22 of such seller that includes the individual's  
23 name, or

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1 (2) a copy of a valid government-issued record or tax  
2 document that includes the business name and  
3 physical address of such seller;

4 3. A business tax identification number or, if the high-volume  
5 third-party seller does not have a business tax identification  
6 number, a taxpayer identification number; and

7 4. A current working email address and phone number for the  
8 high-volume third-party seller.

9 B. An online marketplace shall:

10 1. Periodically, but not less than annually, notify any high-  
11 volume third-party seller on such online marketplace's platform of  
12 the requirement to keep any information collected under subsection A  
13 of this section current; and

14 2. Require any high-volume third-party seller on such online  
15 marketplace's platform to, not later than ten (10) days after  
16 receiving the notice under paragraph 1 of this subsection,  
17 electronically certify that:

18 a. the high-volume third-party seller has provided any  
19 changes to such information to the online marketplace,  
20 if such changes have occurred,

21 b. there have been no changes to the high-volume third-  
22 party seller's information, or

23 c. the high-volume third-party seller has provided any  
24 changes to such information to the online marketplace.

1 C. In the event that a high-volume third-party seller does not  
2 provide the information or certification required under this  
3 paragraph, the online marketplace shall, after providing the seller  
4 with written or electronic notice and an opportunity to provide such  
5 information or certification not later than ten (10) days after the  
6 issuance of such notice, suspend any future sales activity of such  
7 seller until such seller provides such information or certification.

8 D. 1. The online marketplace shall:

9 a. verify the information collected under subsection A of  
10 this section not later than ten (10) days after such  
11 collection, and

12 b. verify any change to such information not later than  
13 ten (10) days after being notified of such change by a  
14 high-volume third-party seller under subsection B of  
15 this section.

16 2. In the case of a high-volume third-party seller that  
17 provides a copy of a valid government-issued tax document, any  
18 information contained in such document shall be presumed to be  
19 verified as of the date of issuance of such document.

20 E. Data collected solely to comply with the requirements of  
21 this section may not be used for any other purpose unless required  
22 by law.

23 F. An online marketplace shall implement and maintain  
24 reasonable security procedures and practices, including

1 administrative, physical, and technical safeguards, appropriate to  
2 the nature of the data and the purposes for which the data will be  
3 used, to protect the data collected to comply with the requirements  
4 of this section from unauthorized use, disclosure, access,  
5 destruction, or modification.

6 SECTION 4. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 799A.4 of Title 15, unless there  
8 is created a duplication in numbering, reads as follows:

9 A. An online marketplace shall:

10 1. Require any high-volume third-party seller with an aggregate  
11 total of Twenty Thousand Dollars (\$20,000.00) or more in annual  
12 gross revenues on such online marketplace, and that uses such online  
13 marketplace's platform, to provide the information described in  
14 subsection B of this section to the online marketplace; and

15 2. Disclose the information described in subsection B of this  
16 section to consumers in a conspicuous manner:

17 a. in the order confirmation message or other document or  
18 communication made to a consumer after a purchase is  
19 finalized, and

20 b. in the consumer's account transaction history.

21 B. 1. Subject to paragraph 2 of this subsection, the identity  
22 of the high-volume third-party seller shall be disclosed including:

23 a. the full name of the seller, which may include the  
24 seller's name or seller's company name, or the name by



1           which the seller or company operates on the online  
2           marketplace,

3           b.    the physical address of the seller, and

4           c.    contact information for the seller, to allow for the  
5           direct, unhindered communication with high-volume  
6           third-party sellers by users of the online  
7           marketplace, including:

8                   (1)  a current working phone number,

9                   (2)  a current working email address, or

10                   (3)  other means of direct electronic messaging which  
11                   may be provided to the high-volume third-party  
12                   seller by the online marketplace; and

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

20           C.    Subject to subsection D of this section, upon the request of  
21           a high-volume third-party seller, an online marketplace may provide  
22           for partial disclosure of the identity information required under  
23           paragraph 1 of subsection B of this section in the following  
24           situations:

1 1. If the high-volume third-party seller certifies to the  
2 online marketplace that the seller does not have a business address  
3 and only has a residential street address, or has a combined  
4 business and residential address, the online marketplace may:

5 a. disclose only the country and, if applicable, the  
6 state in which the high-volume third-party seller  
7 resides, and

8 b. inform consumers that there is no business address  
9 available for the seller and that consumer inquiries  
10 should be submitted to the seller by phone, email, or  
11 other means of electronic messaging provided to such  
12 seller by the online marketplace;

13 2. If the high-volume third-party seller certifies to the  
14 online marketplace that the seller is a business that has a physical  
15 address for product returns, the online marketplace may disclose the  
16 seller's physical address for product returns; and

17 3. If a high-volume third-party seller certifies to the online  
18 marketplace that the seller does not have a phone number other than  
19 a personal phone number, the online marketplace shall inform  
20 consumers that there is no phone number available for the seller and  
21 that consumer inquiries should be submitted to the seller's email  
22 address or other means of electronic messaging provided to such  
23 seller by the online marketplace.

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

16 SECTION 5. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 799A.5 of Title 15, unless there  
18 is created a duplication in numbering, reads as follows:

19 An online marketplace shall disclose to consumers in a clear and  
20 conspicuous manner on the product listing of any high-volume third-  
21 party seller a reporting mechanism that allows for electronic and  
22 telephonic reporting of suspicious marketplace activity to the  
23 online marketplace.

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1 SECTION 6. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 799A.6 of Title 15, unless there  
3 is created a duplication in numbering, reads as follows:

4 If a high-volume third-party seller does not comply with the  
5 requirements to provide and disclose information under this act, the  
6 online marketplace shall, after providing the seller with written or  
7 electronic notice and an opportunity to provide or disclose such  
8 information not later than ten (10) days after the issuance of such  
9 notice, suspend any future sales activity of such seller until the  
10 seller complies with such requirements.

11 SECTION 7. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 799A.7 of Title 15, unless there  
13 is created a duplication in numbering, reads as follows:

14 A. If the Attorney General has reason to believe that any  
15 online marketplace has violated or is violating this act or a  
16 regulation promulgated under this act that affects one or more  
17 residents of this state, the Attorney General may bring a civil  
18 action in district court to:

- 19 1. Enjoin further violation by the defendant;
- 20 2. Enforce compliance with this act or such regulation;
- 21 3. Obtain civil penalties in the amount set under regulations  
22 promulgated under this act;
- 23 4. Obtain other remedies permitted under state law; or

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1           5. Obtain damages, restitution, or other compensation on behalf  
2 of residents of this state.

3           B. For purposes of bringing a civil action under subsection A  
4 of this section, nothing in this act shall be construed to prevent  
5 the Attorney General from exercising the powers conferred on the  
6 Attorney General by the laws of this state to conduct  
7 investigations, administer oaths or affirmations, or compel the  
8 attendance of witnesses or the production of documentary and other  
9 evidence.

10           C. The Attorney General is authorized to adopt and promulgate  
11 regulations that are necessary to enforce this act.

12           SECTION 8.        NEW LAW        A new section of law to be codified  
13 in the Oklahoma Statutes as Section 799A.8 of Title 15, unless there  
14 is created a duplication in numbering, reads as follows:

15           No political subdivision may establish, mandate, or otherwise  
16 require online marketplaces to collect or verify information from  
17 high-volume third-party sellers on a one-time or ongoing basis or  
18 disclose information to consumers.

19           SECTION 9. This act shall become effective November 1, 2022."  
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1 ENGROSSED SENATE  
2 BILL NO. 418

By: Daniels of the Senate

3 and

4 Martinez of the House  
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7 An Act relating to the Notice of Opportunity to  
8 Repair Act; amending 15 O.S. 2011, Section 765.6, as  
9 amended by Section 1, Chapter 111, O.S.L. 2012 (15  
10 O.S. Supp. 2020, Section 765.6), which relates to  
11 notice and offer to repair provisions in construction  
12 contracts; modifying consequence of inclusion of  
13 certain provisions in construction contracts; and  
14 providing an effective date.

15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 10. AMENDATORY 15 O.S. 2011, Section 765.6, as  
17 amended by Section 1, Chapter 111, O.S.L. 2012 (15 O.S. Supp. 2020,  
18 Section 765.6), is amended to read as follows:

19 Section 765.6. A. For the purposes of this section:

20 1. "Construction defect" means a deficiency in or a deficiency  
21 arising out of the design, specifications, surveying, planning,  
22 supervision or observation of construction or construction of  
23 residential improvements that results from any of the following:

- 24 a. defective material, products or components used in the  
construction of residential improvements,

- 1           b.   violation of the applicable codes in effect at the  
2                   time of construction of residential improvements,  
3           c.   failure of the design of residential improvements to  
4                   meet the applicable professional standards of care at  
5                   the time of governmental approval of the design of  
6                   residential improvements, or  
7           d.   failure to construct residential improvements in  
8                   accordance with accepted trade standards for good and  
9                   workmanlike construction at the time of construction;

10           2.   "Contractor" means a person or entity providing labor,  
11 services or materials in the construction of a new residence or  
12 alteration of, repair of, or addition to an existing residence; and

13           3.   "Residence" means any structure designed and used only for  
14 residential purposes, together with all attached and unattached  
15 structures, constructed by the contractor, regardless of whether the  
16 real property upon which the residence is located was purchased from  
17 the contractor. Such term also includes a residence upon which  
18 alterations or repairs were performed by the contractor at the  
19 direction of the homeowner.

20           B.   A contract for the construction of a new residence or for an  
21 alteration of, repair of, or addition to an existing residence may  
22 include provisions which:  
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1        1. Require a homeowner, prior to filing a lawsuit for  
2 construction defects, to present to the contractor a written notice  
3 of construction defects; and

4        2. Allow the contractor to inspect any construction defects and  
5 present to the homeowner a written response which shall include the  
6 contractor's offer to repair defects or compensate homeowner for  
7 such defects within thirty (30) days after receipt of the notice of  
8 defects.

9        ~~If~~ Regardless of whether such provisions are included in a  
10 contract, the homeowner shall not file a lawsuit against the  
11 contractor until the conditions precedent as set forth in paragraphs  
12 1 and 2 of this subsection have been fulfilled. In the event the  
13 homeowner files a lawsuit against the contractor without fulfilling  
14 the conditions precedent, the contractor shall be entitled to a stay  
15 of proceedings until such conditions have been fulfilled. If the  
16 conditions precedent have been fulfilled, the homeowner may seek  
17 remedies against the contractor as provided by law.

18        SECTION 11. This act shall become effective November 1, 2021.

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