

OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

May 12, 2022

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB 418

By: Daniels of the Senate and Martinez, McDugle, Manger, Worthen, and Hill of the House

Title: Consumer protection; creating the Oklahoma INFORM Act; requiring certain disclosures from high-volume third party sellers to online marketplaces. Effective date.

_____ together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

SENATE CONFEREES:



Daniels




Coleman

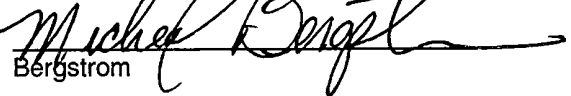


Pugh

Young



Leewright



Bergstrom

Brooks

HOUSE CONFEREES:

Conference Committee on Judiciary - Criminal

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 CONFERENCE COMMITTEE SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 418

By: Daniels of the Senate

and

6 Martinez, McDugle, Manger,
7 Worthen, and Hill of the
8 House

9
10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to consumer protection; creating the
12 Oklahoma INFORM Act; providing short title; defining
13 terms; requiring certain sellers to disclose
14 specified information to online marketplace;
15 requiring certain notice by online marketplace;
16 requiring certain electronic certification by certain
17 sellers; requiring online marketplace to suspend
18 sales activity under certain circumstances; providing
19 for verification of certain information; requiring
20 implementation of security procedures; requiring
21 disclosure of certain information to consumers;
22 requiring disclosure of identity of certain sellers;
23 providing exceptions; requiring suspension of certain
24 sales activity upon false representation of certain
information; requiring disclosure of certain
reporting mechanism; requiring suspension of certain
sales activity upon certain noncompliance;
authorizing Attorney General to bring civil action
for certain violations; construing provisions;
authorizing promulgation of rules under certain
circumstances; prohibiting political subdivisions
from imposing certain requirements on online
marketplaces; providing for codification; and
providing an effective date.

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

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

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

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

10 As used in the Oklahoma INFORM Act:

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

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

1 made through the online marketplace and for which payment was
2 processed by the online marketplace, either directly or through its
3 payment processor;

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

- 7 a. includes features that allow for, facilitate, or
8 enable third-party sellers to engage in the sale,
9 purchase, payment, storage, shipping, or delivery of a
10 consumer product in this state,
- 11 b. is used by one or more third-party sellers for such
12 purposes, and
- 13 c. has a contractual or similar relationship with
14 consumers governing their use of the platform to
15 purchase consumer products;

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

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

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

1 b. a business entity that has:

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

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

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

23 A. Online marketplaces shall require that any high-volume
24 third-party seller on the online marketplace's platform provide the

1 online marketplace with the following information no later than ten
2 (10) calendar days after qualifying as a high-volume third-party
3 seller on the platform:

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

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

15 2. Contact information including:

- 16 a. if the high-volume third-party seller is an
17 individual, the individual's name, or
- 18 b. if the high-volume third-party seller is not an
19 individual, one of the following forms of contact
20 information:
 - 21 (1) a copy of a valid government-issued
22 identification for an individual acting on behalf
23 of such seller that includes the individual's
24 name, or

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) calendar days
16 after 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) calendar days
6 after the issuance of such notice, suspend any future sales activity
7 of such seller until such seller provides such information or
8 certification.

9 D. 1. The online marketplace shall:

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

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

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

24

1 F. An online marketplace shall implement and maintain
2 reasonable security procedures and practices including
3 administrative, physical, and technical safeguards, appropriate to
4 the nature of the data and the purposes for which the data will be
5 used, to protect the data collected to comply with the requirements
6 of this section from unauthorized use, disclosure, access,
7 destruction, or modification.

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

11 A. An online marketplace shall:

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

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

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

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

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

1 a. the full name of the seller, which may include the
2 seller's name or seller's company name, or the name by
3 which the seller or company operates on the online
4 marketplace,

5 b. the physical address of the seller, and

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

10 (1) a current working phone number,

11 (2) a current working email address, or

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

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

22 C. Subject to subsection D of this section, upon the request of
23 a high-volume third-party seller, an online marketplace may provide
24 for partial disclosure of the identity information required under

1 paragraph 1 of subsection B of this section in the following
2 situations:

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

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

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

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

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

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

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

21 An online marketplace shall disclose to consumers in a clear and
22 conspicuous manner on the product listing of any high-volume third-
23 party seller a reporting mechanism that allows for electronic and
24

1 telephonic reporting of suspicious marketplace activity to the
2 online marketplace.

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

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

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

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

- 21 1. Enjoin further violation by the defendant;
- 22 2. Enforce compliance with this act or such regulation;
- 23 3. Obtain civil penalties in the amount set under regulations
24 promulgated under this act;

1 4. Obtain other remedies permitted under state law; or
2 5. Obtain damages, restitution, or other compensation on behalf
3 of residents of this state.

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

11 C. If no federal law that requires online marketplaces to
12 verify and disclose information as described in this act goes into
13 effect prior to January 1, 2023, the Attorney General may promulgate
14 rules necessary to implement and enforce this act.

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

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

22 SECTION 9. This act shall become effective January 1, 2023.
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