



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 22-0068	Date:	February 7, 2022
Prime Sponsors:	Rep. Carver; Roberts	Bill Status:	House Business
	Sen. Woodward, Zenzinger	Fiscal Analyst:	Annie Scott 303-866-5851 Annie.Scott@state.co.us

Bill Topic: **ONLINE MARKETPLACES & THIRD-PARTY SELLERS**

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill requires mandatory disclosures by high-volume third-party sellers utilizing online marketplaces, specifies enforcement authority, and clarifies that failure to disclose the required information is a deceptive trade practice. This bill may increase state and local government revenue and workload on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Summary of Legislation

The bill outlines mandatory disclosures by third-party sellers utilizing online marketplaces, specifies enforcement authority, and states that failure to disclose the required information is a deceptive trade practice.

Collection of information. Under the bill, an online marketplace must require that participating high-volume third-party sellers provide:

- a bank account number or, if the seller does not have a bank account, the name of the payee to whom payments from the online marketplace are issued;
- contact information;
- a business or individual tax identification number; and
- a current e-mail address and phone number.

Notification, verification, and compliance. The bill requires that online marketplaces inform participating high-volume third-party sellers that their information must remain current, and requires certification that any changes to information have been provided or that there have been no changes. If the high-volume third-party seller does not provide the information or certification, the online marketplace must offer an opportunity to remedy and then suspend the activity of the seller until a remedy occurs. The online marketplace must verify the information.

Disclosure. A participating high-volume third-party seller with \$20,000 or more in annual gross revenues in the online marketplace must disclose to consumers, except when permitted to provide only partial disclosure:

- the full name of the seller;
- the physical address of the seller;
- contact information for the seller; and
- information regarding whether the high-volume third-party seller used a different seller to supply the product to the consumer, and the information for that seller, if requested.

Reporting mechanism. On the product listing of any high-volume third-party seller, an online marketplace must provide consumers with a method to report suspicious marketplace activity.

Fulfillment or shipment by different party. An online marketplace that fulfills an order must disclose to the consumer the identification of any high-volume third-party seller supplying the consumer product if it is a different party than the seller listed on the product listing page.

Enforcement. The Attorney General and district attorneys have exclusive authority to enforce these requirements. A violation of these requirements is an unfair or deceptive trade practice under the Consumer Protection Act.

State Revenue

The bill potentially increases state revenue from civil penalties and fees, as described below.

Civil penalties. Under the Colorado Consumer Protection Act, a person committing a deceptive trade practice may be subject to a civil penalty of up to \$20,000 for each violation, deposited into the General Fund. Additional penalties may be imposed for subsequent violations of a court order or injunction. This revenue is classified as a damage award and not subject to TABOR. Given the uncertainty about the number of cases that may be pursued by the Attorney General and district attorneys, as well as the wide range in potential penalty amounts, the fiscal note cannot estimate the potential impact of these civil penalties.

Judicial Department. The bill may increase revenue to the Judicial Department from an increase in civil case filings. Revenue from filing fees is subject to TABOR, and any change in revenue is expected to have a minimal impact on any TABOR refunds owed.

State Expenditures

The bill increases state workload in two agencies on an ongoing basis.

Department of Law. Workload in the Department of Law will increase to the extent that deceptive trade practice complaints are filed. The department will review complaints under the bill and prioritize investigations as necessary within the overall number of deceptive trade practice complaints and available resources.

Judicial Department. The trial courts in the Judicial Department may have an increase in cases filed under the Colorado Consumer Protection Act from the addition of a new deceptive trade practice. It is assumed that online marketplaces will abide by the law and that any violation of the legislation will result in minimal number of new cases. The fiscal note assumes that this can be accomplished within existing resources and that no change in appropriations is required.

Local Government

Similar to the state, to the extent district attorneys receive deceptive trade practice complaints related to the new deceptive trade practice under the bill, workload will increase to investigate complaints and seek relief when appropriate. It is assumed most such cases will be handled at the state level by the Attorney General.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed. It applies to conduct occurring on or after this effective date.

State and Local Government Contacts

District Attorneys
Law

Information Technology
Regulatory Agencies

Judicial