

CHAPTER 21

CONSUMER AND COMMERCIAL TRANSACTIONS

HOUSE BILL 22-1099

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AN ACT**CONCERNING MANDATORY DISCLOSURES OF THIRD-PARTY SELLERS SELLING THROUGH ONLINE MARKETPLACES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 14 to article 1 of title 6 as follows:

**PART 14
ONLINE MARKETPLACES**

6-1-1401. Definitions. AS USED IN THIS PART 14, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CONSUMER PRODUCT" MEANS ANY TANGIBLE PERSONAL PROPERTY THAT IS DISTRIBUTED IN COMMERCE AND THAT IS NORMALLY USED FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES, INCLUDING ANY SUCH PROPERTY INTENDED TO BE ATTACHED TO OR INSTALLED IN ANY REAL PROPERTY WITHOUT REGARD TO WHETHER IT IS SO ATTACHED OR INSTALLED.

(2) "HIGH-VOLUME THIRD-PARTY SELLER" MEANS A THIRD-PARTY SELLER THAT, IN ANY CONTINUOUS TWELVE-MONTH PERIOD DURING THE PREVIOUS TWENTY-FOUR MONTHS, HAS ENTERED INTO TWO HUNDRED OR MORE DISCRETE SALES OR TRANSACTIONS OF NEW OR UNUSED CONSUMER PRODUCTS FOR WHICH THE THIRD-PARTY SELLER HAS EARNED AGGREGATE TOTAL GROSS REVENUES OF FIVE THOUSAND DOLLARS OR MORE. FOR PURPOSES OF CALCULATING THE NUMBER OF DISCRETE SALES OR TRANSACTIONS OR THE AGGREGATE GROSS REVENUES UNDER THIS SUBSECTION (2), AN ONLINE MARKETPLACE IS ONLY REQUIRED TO COUNT SALES

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

OR TRANSACTIONS MADE THROUGH THE ONLINE MARKETPLACE AND FOR WHICH PAYMENT WAS PROCESSED BY THE ONLINE MARKETPLACE, EITHER DIRECTLY OR THROUGH ITS PAYMENT PROCESSOR.

(3) "ONLINE MARKETPLACE" MEANS ANY PERSON THAT OPERATES A CONSUMER-DIRECTED ELECTRONICALLY BASED OR ACCESSED PLATFORM THAT:

(a) INCLUDES FEATURES THAT ALLOW FOR, FACILITATE, OR ENABLE THIRD-PARTY SELLERS TO ENGAGE IN THE SALE, PURCHASE, PAYMENT, STORAGE, SHIPPING, OR DELIVERY OF A CONSUMER PRODUCT IN THE UNITED STATES;

(b) IS USED BY ONE OR MORE THIRD-PARTY SELLERS FOR THE SALE, PURCHASE, PAYMENT, STORAGE, SHIPPING, OR DELIVERY OF A CONSUMER PRODUCT; AND

(c) HAS A CONTRACTUAL OR SIMILAR RELATIONSHIP WITH CONSUMERS GOVERNING THEIR USE OF THE PLATFORM TO PURCHASE CONSUMER PRODUCTS.

(4) "SELLER" MEANS A PERSON WHO SELLS, OFFERS TO SELL, OR CONTRACTS TO SELL A CONSUMER PRODUCT THROUGH AN ONLINE MARKETPLACE'S PLATFORM.

(5) (a) "THIRD-PARTY SELLER" MEANS ANY SELLER, INDEPENDENT OF AN OPERATOR, FACILITATOR, OR OWNER OF AN ONLINE MARKETPLACE, THAT SELLS, OFFERS TO SELL, OR CONTRACTS TO SELL A CONSUMER PRODUCT IN THE UNITED STATES THROUGH AN ONLINE MARKETPLACE.

(b) "THIRD-PARTY SELLER" DOES NOT INCLUDE A SELLER THAT:

(I) OPERATES THE ONLINE MARKETPLACE'S PLATFORM;

(II) IS A BUSINESS ENTITY THAT HAS MADE AVAILABLE TO THE GENERAL PUBLIC THE ENTITY'S NAME, BUSINESS ADDRESS, AND WORKING CONTACT INFORMATION;

(III) IS A BUSINESS ENTITY THAT HAS AN ONGOING CONTRACTUAL RELATIONSHIP WITH THE ONLINE MARKETPLACE TO PROVIDE THE ONLINE MARKETPLACE WITH THE MANUFACTURE, DISTRIBUTION, WHOLESALE DISTRIBUTION, OR FULFILLMENT OF SHIPMENTS OF CONSUMER PRODUCTS; OR

(IV) IS A BUSINESS ENTITY THAT HAS PROVIDED TO THE ONLINE MARKETPLACE IDENTIFYING INFORMATION, AS DESCRIBED IN SECTION 6-1-1402(1), THAT HAS BEEN VERIFIED PURSUANT TO THAT SECTION.

(6) "VERIFY" MEANS TO CONFIRM INFORMATION PROVIDED TO AN ONLINE MARKETPLACE PURSUANT TO THIS PART 14, WHICH MAY INCLUDE THE USE OF ONE OR MORE METHODS THAT ENABLE THE ONLINE MARKETPLACE TO RELIABLY DETERMINE THAT ANY INFORMATION AND DOCUMENTS PROVIDED:

(a) ARE VALID;

(b) CORRESPOND TO THE SELLER OR AN INDIVIDUAL ACTING ON THE SELLER'S BEHALF;

- (c) ARE NOT MISAPPROPRIATED; AND
- (d) ARE NOT FALSIFIED.

6-1-1402. Disclosure of information by online marketplaces to inform consumers. (1) Collection required. AN ONLINE MARKETPLACE SHALL REQUIRE A HIGH-VOLUME THIRD-PARTY SELLER PARTICIPATING IN THE ONLINE MARKETPLACE TO PROVIDE THE ONLINE MARKETPLACE WITH THE FOLLOWING INFORMATION WITHIN TEN DAYS AFTER QUALIFYING AS A HIGH-VOLUME THIRD-PARTY SELLER:

(a) BANK ACCOUNT NUMBER OR, IF THE HIGH-VOLUME THIRD-PARTY SELLER DOES NOT HAVE A BANK ACCOUNT, THE NAME OF THE PAYEE FOR PAYMENTS ISSUED BY THE ONLINE MARKETPLACE TO THE HIGH-VOLUME THIRD-PARTY SELLER. THE BANK ACCOUNT OR PAYEE INFORMATION MAY BE PROVIDED BY THE SELLER EITHER:

(I) TO THE ONLINE MARKETPLACE; OR

(II) TO A PAYMENT PROCESSOR OR OTHER THIRD PARTY CONTRACTED BY THE ONLINE MARKETPLACE TO MAINTAIN THE INFORMATION, IF THE ONLINE MARKETPLACE ENSURES THAT IT CAN OBTAIN SUCH INFORMATION ON DEMAND FROM THE PAYMENT PROCESSOR OR OTHER THIRD PARTY.

(b) CONTACT INFORMATION, INCLUDING:

(I) IF THE HIGH-VOLUME THIRD-PARTY SELLER IS AN INDIVIDUAL, THE INDIVIDUAL'S NAME; OR

(II) IF THE HIGH-VOLUME THIRD-PARTY SELLER IS NOT AN INDIVIDUAL, EITHER:

(A) A COPY OF A VALID GOVERNMENT-ISSUED PHOTO IDENTIFICATION DOCUMENT FOR AN INDIVIDUAL ACTING ON BEHALF OF THE HIGH-VOLUME THIRD-PARTY SELLER THAT INCLUDES THE INDIVIDUAL'S NAME; OR

(B) A COPY OF A VALID GOVERNMENT-ISSUED RECORD OR TAX DOCUMENT THAT INCLUDES THE BUSINESS NAME AND PHYSICAL ADDRESS OF THE HIGH-VOLUME THIRD-PARTY SELLER;

(c) A BUSINESS TAX IDENTIFICATION NUMBER OR, IF THE HIGH-VOLUME THIRD-PARTY SELLER DOES NOT HAVE A BUSINESS TAX IDENTIFICATION NUMBER, AN INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER; AND

(d) A CURRENT WORKING E-MAIL ADDRESS AND PHONE NUMBER FOR THE HIGH-VOLUME THIRD-PARTY SELLER.

(2) **Notification.** AN ONLINE MARKETPLACE SHALL:

(a) PERIODICALLY, BUT NOT LESS THAN ANNUALLY, NOTIFY ANY HIGH-VOLUME THIRD-PARTY SELLER ON THE ONLINE MARKETPLACE'S PLATFORM OF THE REQUIREMENT TO KEEP ANY INFORMATION COLLECTED UNDER SUBSECTION (1) OF THIS SECTION CURRENT;

(b) REQUIRE ANY HIGH-VOLUME THIRD-PARTY SELLER ON SUCH ONLINE MARKETPLACE'S PLATFORM, NOT LATER THAN TEN DAYS AFTER RECEIVING THE NOTICE UNDER SUBSECTION (2)(a) OF THIS SECTION, TO ELECTRONICALLY CERTIFY THAT:

(I) THE HIGH-VOLUME THIRD-PARTY SELLER HAS PROVIDED ANY CHANGES TO SUCH INFORMATION TO THE ONLINE MARKETPLACE, IF SUCH CHANGES HAVE OCCURRED; OR

(II) THERE HAVE BEEN NO CHANGES TO THE HIGH-VOLUME THIRD-PARTY SELLER'S INFORMATION; AND

(c) IF A HIGH-VOLUME THIRD-PARTY SELLER DOES NOT PROVIDE THE INFORMATION OR CERTIFICATION REQUIRED UNDER SUBSECTION (1) OF THIS SECTION, AND AFTER THE ONLINE MARKETPLACE PROVIDES THE SELLER WITH WRITTEN OR ELECTRONIC NOTICE AND AN OPPORTUNITY TO PROVIDE SUCH INFORMATION OR CERTIFICATION NOT LATER THAN TEN DAYS AFTER THE ISSUANCE OF SUCH NOTICE, SUSPEND ANY FUTURE SALES ACTIVITY OF THE SELLER ON THE ONLINE MARKETPLACE UNTIL THE SELLER PROVIDES THE INFORMATION OR CERTIFICATION.

(3) **Verification required.** (a) THE ONLINE MARKETPLACE SHALL:

(I) VERIFY THE INFORMATION COLLECTED UNDER SUBSECTION (1) OF THIS SECTION NOT LATER THAN TEN DAYS AFTER THE COLLECTION; AND

(II) VERIFY ANY CHANGE TO SUCH INFORMATION NOT LATER THAN TEN DAYS AFTER BEING NOTIFIED OF THE CHANGE BY A HIGH-VOLUME THIRD-PARTY SELLER IN RESPONSE TO THE NOTICE REQUIRED BY SUBSECTION (2)(a) OF THIS SECTION.

(b) IN THE CASE OF A HIGH-VOLUME THIRD-PARTY SELLER THAT PROVIDES A COPY OF A VALID GOVERNMENT-ISSUED TAX DOCUMENT, ANY INFORMATION CONTAINED IN SUCH DOCUMENT SHALL BE PRESUMED TO BE VERIFIED AS OF THE DATE OF ISSUANCE OF THE DOCUMENT.

(c) DATA COLLECTED SOLELY TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION MAY NOT BE USED FOR ANY OTHER PURPOSE UNLESS REQUIRED BY LAW.

(d) TO PROTECT DATA THAT HAS BEEN COLLECTED IN COMPLIANCE WITH THIS SECTION FROM UNAUTHORIZED USE, DISCLOSURE, ACCESS, DESTRUCTION, OR MODIFICATION, AN ONLINE MARKETPLACE SHALL IMPLEMENT AND MAINTAIN REASONABLE SECURITY PROCEDURES AND PRACTICES, INCLUDING ADMINISTRATIVE, PHYSICAL, AND TECHNICAL SAFEGUARDS, APPROPRIATE TO THE NATURE OF THE DATA AND THE PURPOSES FOR WHICH THE DATA WILL BE USED.

(4) **Disclosure required.** (a) AN ONLINE MARKETPLACE SHALL REQUIRE A HIGH-VOLUME THIRD-PARTY SELLER WITH AN AGGREGATE TOTAL OF TWENTY THOUSAND DOLLARS OR MORE IN ANNUAL GROSS REVENUES ON THE ONLINE MARKETPLACE, AND THAT USES THE ONLINE MARKETPLACE'S PLATFORM, TO PROVIDE, AND, EXCEPT AS PROVIDED IN SUBSECTION (4)(b) OF THIS SECTION, DISCLOSE TO CONSUMERS IN A CONSPICUOUS MANNER IN THE ORDER CONFIRMATION MESSAGE OR OTHER DOCUMENT OR COMMUNICATION MADE TO A CONSUMER AFTER

A PURCHASE IS FINALIZED AND IN THE CONSUMER'S ACCOUNT TRANSACTION HISTORY:

(I) THE FULL NAME OF THE SELLER, WHICH MAY INCLUDE THE SELLER'S NAME OR THE SELLER'S COMPANY NAME, OR THE NAME BY WHICH THE SELLER OR COMPANY OPERATES ON THE ONLINE MARKETPLACE;

(II) THE PHYSICAL ADDRESS OF THE SELLER;

(III) CONTACT INFORMATION FOR THE SELLER, TO ALLOW USERS OF THE ONLINE MARKETPLACE TO ENGAGE IN DIRECT, UNHINDERED COMMUNICATION WITH THE HIGH-VOLUME THIRD-PARTY SELLER, INCLUDING A CURRENT WORKING PHONE NUMBER, A CURRENT WORKING E-MAIL ADDRESS, OR OTHER MEANS OF DIRECT ELECTRONIC MESSAGING THAT THE ONLINE MARKETPLACE MAY PROVIDE FOR THE HIGH-VOLUME THIRD-PARTY SELLER;

(IV) WHETHER THE HIGH-VOLUME THIRD-PARTY SELLER USED A DIFFERENT SELLER TO SUPPLY THE CONSUMER PRODUCT TO THE CONSUMER UPON PURCHASE, AND, UPON THE REQUEST OF AN AUTHENTICATED PURCHASER, THE INFORMATION DESCRIBED IN SUBSECTIONS (4)(a)(I) TO (4)(a)(III) OF THIS SECTION RELATING TO ANY SUCH SELLER THAT SUPPLIED THE CONSUMER PRODUCT TO THE PURCHASER, IF THE SELLER IS DIFFERENT THAN THE HIGH-VOLUME THIRD-PARTY SELLER LISTED ON THE PRODUCT LISTING PRIOR TO PURCHASE.

(b) (I) SUBJECT TO SUBSECTION (4)(b)(II) OF THIS SECTION, UPON THE REQUEST OF A HIGH-VOLUME THIRD-PARTY SELLER, AN ONLINE MARKETPLACE MAY ALLOW FOR THE SELLER TO PROVIDE PARTIAL DISCLOSURE OF THE IDENTITY INFORMATION REQUIRED PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION IN THE FOLLOWING SITUATIONS:

(A) IF THE HIGH-VOLUME THIRD-PARTY SELLER CERTIFIES TO THE ONLINE MARKETPLACE THAT THE SELLER DOES NOT HAVE A BUSINESS ADDRESS AND ONLY HAS A RESIDENTIAL STREET ADDRESS, OR HAS A COMBINED BUSINESS AND RESIDENTIAL ADDRESS, THE ONLINE MARKETPLACE MAY DISCLOSE ONLY THE COUNTRY AND, IF APPLICABLE, THE STATE IN WHICH THE HIGH-VOLUME THIRD-PARTY SELLER RESIDES AND MAY INFORM CONSUMERS THAT THERE IS NO BUSINESS ADDRESS AVAILABLE FOR THE HIGH-VOLUME THIRD-PARTY SELLER AND THAT CONSUMER INQUIRIES SHOULD BE SUBMITTED TO THE HIGH-VOLUME THIRD-PARTY SELLER BY TELEPHONE, E-MAIL ADDRESS, OR OTHER MEANS OF ELECTRONIC MESSAGING THAT THE ONLINE MARKETPLACE PROVIDES THE SELLER.

(B) IF THE HIGH-VOLUME THIRD-PARTY SELLER CERTIFIES TO THE ONLINE MARKETPLACE THAT THE SELLER IS A BUSINESS THAT HAS A SEPARATE PHYSICAL ADDRESS FOR PRODUCT RETURNS, THE ONLINE MARKETPLACE MAY DISCLOSE ONLY THE SELLER'S PHYSICAL ADDRESS FOR PRODUCT RETURNS.

(C) IF A HIGH-VOLUME THIRD-PARTY SELLER CERTIFIES TO THE ONLINE MARKETPLACE THAT THE SELLER DOES NOT HAVE A TELEPHONE NUMBER OTHER THAN A PERSONAL TELEPHONE NUMBER, THE ONLINE MARKETPLACE SHALL INFORM CONSUMERS THAT THERE IS NO TELEPHONE NUMBER AVAILABLE FOR THE SELLER AND THAT CONSUMER INQUIRIES SHOULD BE SUBMITTED TO THE SELLER'S E-MAIL

ADDRESS, OR OTHER MEANS OF ELECTRONIC MESSAGING THAT THE ONLINE MARKETPLACE PROVIDES THE SELLER.

(II) IF AN ONLINE MARKETPLACE BECOMES AWARE THAT A HIGH-VOLUME THIRD-PARTY SELLER HAS MADE A FALSE REPRESENTATION TO THE ONLINE MARKETPLACE IN ORDER TO JUSTIFY THE PROVISION OF A PARTIAL DISCLOSURE PURSUANT TO SUBSECTION (4)(b)(I) OF THIS SECTION OR THAT A HIGH-VOLUME THIRD-PARTY SELLER THAT HAS REQUESTED AND RECEIVED AN ALLOWANCE FOR A PARTIAL DISCLOSURE PURSUANT TO SUBSECTION (4)(b)(I) OF THIS SECTION HAS NOT PROVIDED RESPONSIVE ANSWERS WITHIN A REASONABLE TIME FRAME TO CONSUMER INQUIRIES SUBMITTED TO THE SELLER BY TELEPHONE, E-MAIL ADDRESS, OR OTHER MEANS OF ELECTRONIC MESSAGING THAT THE ONLINE MARKETPLACE PROVIDES THE SELLER, THE ONLINE MARKETPLACE SHALL, AFTER PROVIDING THE SELLER WITH WRITTEN OR ELECTRONIC NOTICE AND AN OPPORTUNITY TO RESPOND NOT LATER THAN TEN DAYS AFTER THE ISSUANCE OF THE NOTICE, SUSPEND ANY FUTURE SALES ACTIVITY OF THE SELLER UNLESS THE SELLER CONSENTS TO THE DISCLOSURE OF THE IDENTITY INFORMATION REQUIRED UNDER SUBSECTION (4)(b)(I)(A) OF THIS SECTION.

(5) **Reporting mechanism.** AN ONLINE MARKETPLACE SHALL DISCLOSE TO CONSUMERS, IN A CLEAR AND CONSPICUOUS MANNER ON THE PRODUCT LISTING OF ANY HIGH-VOLUME THIRD-PARTY SELLER, A REPORTING MECHANISM THAT ALLOWS FOR ELECTRONIC AND TELEPHONIC REPORTING OF SUSPICIOUS MARKETPLACE ACTIVITY TO THE ONLINE MARKETPLACE.

(6) **Compliance.** IF A HIGH-VOLUME THIRD-PARTY SELLER DOES NOT COMPLY WITH THE REQUIREMENTS TO PROVIDE AND DISCLOSE INFORMATION UNDER THIS SECTION, THE ONLINE MARKETPLACE SHALL, AFTER PROVIDING THE SELLER WITH WRITTEN OR ELECTRONIC NOTICE AND AN OPPORTUNITY TO PROVIDE OR DISCLOSE SUCH INFORMATION NOT LATER THAN TEN DAYS AFTER THE ISSUANCE OF SUCH NOTICE, SUSPEND ANY FUTURE SALES ACTIVITY OF SUCH SELLER UNTIL THE SELLER COMPLIES WITH THE REQUIREMENTS.

6-1-1403. Enforcement. (1) (a) THE ATTORNEY GENERAL AND DISTRICT ATTORNEYS HAVE EXCLUSIVE AUTHORITY TO ENFORCE THIS PART 14 BY BRINGING AN ACTION IN THE NAME OF THE STATE OR AS PARENS PATRIAE ON BEHALF OF PERSONS RESIDING IN THE STATE TO ENFORCE THIS PART 14 AS PROVIDED IN PART 1 OF THIS ARTICLE 1.

(b) NOTHING IN THIS PART 14 SHALL BE CONSTRUED AS PROVIDING THE BASIS FOR, OR SUBJECTING A PARTY TO, A PRIVATE RIGHT OF ACTION FOR VIOLATIONS OF THIS PART 14 OR ANY OTHER LAW.

(2) **Unfair and deceptive acts or practices.** A VIOLATION OF THIS PART 14 IS AN UNFAIR OR DECEPTIVE TRADE PRACTICE PURSUANT TO SECTION 6-1-105 (1)(ooo).

6-1-1404. Preemption. (1) A POLITICAL SUBDIVISION SHALL NOT ESTABLISH, MANDATE, OR OTHERWISE REQUIRE ONLINE MARKETPLACES TO:

(a) VERIFY INFORMATION FROM HIGH-VOLUME THIRD-PARTY SELLERS ON A ONE-TIME OR ONGOING BASIS; OR

(b) DISCLOSE OR REQUIRE THE DISCLOSURE OF INFORMATION TO CONSUMERS.

SECTION 2. In Colorado Revised Statutes, 6-1-105, **add** (1)(ooo) as follows:

6-1-105. Unfair or deceptive trade practices. (1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:

(ooo) VIOLATES PART 14 OF THIS ARTICLE 1.

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2023; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect January 1, 2023, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

Approved: March 17, 2022