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HOUSE BILL NO. 888

Offered January 12, 2022

Prefiled January 12, 2022

A *BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 55, consisting of sections numbered 59.1-589 through 59.1-592, relating to high-volume third-party sellers in an online marketplace; civil penalty.*

Patron—Kilgore

Referred to Committee on Commerce and Energy

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 55, consisting of sections numbered 59.1-589 through 59.1-592, as follows:

CHAPTER 55.**ONLINE MARKETPLACE CONSUMER PROTECTION ACT.****§ 59.1-589. Definitions.**

A. As used in this chapter, unless the context requires a different meaning:

"Consumer product" means any tangible personal property that is (i) distributed in commerce and (ii) normally used for personal, family, or household purposes. "Consumer product" includes property intended to be attached to or installed in any real property without regard to whether it is so attached or installed.

"High-volume third-party seller" means a participant in an online marketplace that is a third-party seller and that, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete sales or transactions of new or unused consumer products resulting in the accumulation of an aggregate total of \$5,000 or more in gross revenues.

"Online marketplace" means any electronically based or electronically accessed platform that (i) 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 and (ii) hosts one or more third-party sellers.

"Third-party seller" means a person or business entity, 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. "Third-party seller" does not include:

1. A business entity that has made available to the general public the business entity's name, business address, and contact information;

2. A seller that has an ongoing contractual relationship with the owner of an online marketplace to provide for the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; or

3. A seller who has provided the online marketplace with identifying information, as described in § 59.1-590, that has been verified in accordance with § 59.1-590.

"Verify" means to confirm information provided to an online marketplace in accordance with § 59.1-590 by using either of the following methods:

1. A third-party proprietary identity verification system that has the capability to confirm a seller's name, email address, physical address, and telephone number; or

2. A combination of two-factor authentication, public records search, and the presentation of government issued identification.

§ 59.1-590. Online marketplace; seller information and verification required.

A. An online marketplace shall require a high-volume third-party seller to provide the online marketplace with the following information within 10 business days of a seller qualifying as a high-volume third-party seller:

1. a. Bank account information, the accuracy of which has been confirmed directly by the online marketplace, a payment processor, or other third party contracted by the online marketplace; or

b. 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.

Such bank account information or payee information may be provided (i) directly to the online marketplace or (ii) to a payment processor or other third party contracted by the online marketplace to maintain the information, provided that the online marketplace may obtain the information on demand from the payment processor or other third party contracted;

2. Contact information for the high-volume third-party seller, which shall include the following:

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59 a. If the high-volume third-party seller is an individual, a copy of a government-issued identification
60 for the individual that includes the individual's name and physical address;

61 b. If the high-volume third-party seller is not an individual, a copy of (i) a valid government-issued
62 photo identification for an individual acting on behalf of the high-volume third-party seller that includes
63 the individual's name and physical address or (ii) a valid government-issued record or tax document
64 that includes the business name and physical address of the high-volume third-party seller; and

65 c. A working email address and working telephone number for the high-volume third-party seller;

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

68 4. Information regarding whether the high-volume third-party seller is (i) exclusively advertising or
69 offering a consumer product on the online marketplace and (ii) currently advertising or offering for sale
70 the same consumer product on any other Internet website other than the online marketplace.

71 B. An online marketplace shall verify the information provided by a high-volume third-party seller
72 pursuant to subsection A within 10 business days of receiving the information. An online marketplace
73 shall verify any changes to the information within three days of receipt of notice of any changes to the
74 information provided by a high-volume third-party seller to the online marketplace. If a high-volume
75 third-party seller provides a copy of a valid government-issued tax document or identification, the
76 information contained within such document or identification shall be presumed verified as of the date
77 the document or identification was issued.

78 C. At least annually, an online marketplace shall (i) notify each high-volume third-party seller
79 operating in the online marketplace that the high-volume third-party seller shall inform the online
80 marketplace of any changes to information required pursuant to subsection A within three days of
81 receiving the notification and (ii) as part of such notification, instruct each high-volume third-party
82 seller to electronically certify either that the information provided pursuant to subsection A is
83 unchanged or that the high-volume third-party seller will be providing changes to the information.

84 If the online marketplace becomes aware that a high-volume third-party seller has not certified that
85 the information required pursuant to subsection A is unchanged or has not provided the changes to the
86 information within three days of receiving the notification, the online marketplace shall suspend the
87 high-volume third-party seller's participation in the online marketplace until the high-volume third-party
88 seller (a) certifies that the information is unchanged or (b) provides changes to the information and the
89 information is verified.

90 **§ 59.1-591. Disclosures to consumers required.**

91 A. An online marketplace shall require a high-volume third-party seller to provide and disclose to
92 consumers in a conspicuous manner and in bold print on the product listing page or, for information
93 other than the high-volume third-party seller's full name, through a conspicuously placed link on the
94 product listing page, the following information:

95 1. The identity of the high-volume third-party seller, including:

96 a. The full name of the high-volume third-party seller;

97 b. The full physical address of the high-volume third-party seller;

98 c. Whether the high-volume third-party seller also engages in the manufacturing, importing, or
99 reselling of consumer products; and

100 d. Contact information for the high-volume third-party seller, including a working telephone number
101 and email address. The email address required to be disclosed by this subdivision may be an email
102 address provided and assigned to the high-volume third-party seller through the online marketplace; and

103 2. Any other information that the Attorney General or his duly authorized representative deems
104 necessary to address circumvention or evasion of the requirements of this section.

105 B. Upon the request of a high-volume third-party seller, an online marketplace may provide for
106 partial disclosure of the identifying information required by this section under the following
107 circumstances:

108 1. If the high-volume third-party seller demonstrates to the online marketplace that the high-volume
109 third-party seller does not have a business address and only has a residential street address, then the
110 online marketplace may (i) direct the high-volume third-party seller to disclose only the country and, if
111 applicable, the state in which the high-volume third-party seller resides on the listing of the consumer
112 product; (ii) inform consumers that there is no business address available for the high-volume
113 third-party seller; or (iii) inform consumers that consumer inquiries should be submitted to the
114 high-volume third-party seller by telephone or email.

115 2. If the high-volume third-party seller demonstrates to the online marketplace that the high-volume
116 third-party seller is a business that has a physical address for consumer product returns, the online
117 marketplace may direct the high-volume third-party seller to disclose the physical address for consumer
118 product returns.

119 3. If a high-volume third-party seller demonstrates to the online marketplace that the high-volume
120 third-party seller only has a personal telephone number, the online marketplace may inform consumers

that there is no telephone number available for the high-volume third-party seller and that consumer inquiries should be submitted to the high-volume third-party seller by email.

C. If an online marketplace becomes aware that a high-volume third-party seller has (i) made a false representation to the online marketplace in order to justify the provision of a partial disclosure under subsection B or (ii) requested and received a provision for partial disclosure under subsection B but has not provided responsive answers within a reasonable time frame to consumer inquiries submitted to the high-volume third-party seller by telephone or email, the online marketplace shall withdraw its provision for partial disclosure and require full disclosure of the high-volume third-party seller's identifying information required by subsection A within three business days' notice to the high-volume third-party seller.

D. An online marketplace shall disclose to consumers, in a conspicuous manner and in bold print on the consumer product listing page of any high-volume third-party seller, a reporting mechanism that allows consumers to report suspicious marketplace activity electronically or by phone and a message encouraging consumers to report suspicious activity to the online marketplace.

E. An online marketplace that warehouses, distributes, or otherwise fulfills a consumer product order shall disclose to the consumer the identifying information of any high-volume third-party seller supplying the consumer product if different from the seller listed on the product listing page.

§ 59.1-592. Enforcement; penalties.

A. The Attorney General shall have exclusive authority to enforce the provisions of this chapter.

B. Prior to initiating any action under this chapter, the Attorney General shall provide an online marketplace or high-volume third party seller with 30 days' written notice identifying the specific provisions of this chapter that the Attorney General alleges have been or are being violated. If within this 30-day period, the online marketplace or high-volume third party seller cures the noticed violation and provides the Attorney General with an express written statement that the alleged violations have been cured and that no further violations shall occur, no action shall be initiated against the online marketplace or high-volume third party seller.

C. If an online marketplace or high-volume third party seller continues to violate the provisions of this chapter following the 30-day cure period in subsection B or breaches an express written statement provided to the Attorney General under subsection B, the Attorney General may initiate an action in the name of the Commonwealth and may seek an injunction to restrain any violations of this chapter and civil penalties of up to \$7,500 for each violation under this chapter.

D. The Attorney General may recover reasonable expenses incurred in investigating and preparing the case, including attorney fees, in any action initiated under this chapter.

E. Nothing in this chapter shall be construed as providing the basis for, or be subject to, a private right of action for violations of this chapter or under any other law.