

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2908

BY DELEGATE FOSTER

[Introduced March 04, 2021; referred to the Committee on Political
Subdivisions then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §46A-9-1, relating to requiring high-volume third-party sellers to provide
3 information to online marketplaces; requiring ongoing verification of information; requiring
4 high-volume third-party sellers to disclose certain information to consumers; providing for
5 Attorney General enforcement of act; authorizing rulemaking by Attorney General;
6 establishing preemption of municipal requirements; defining terms; and providing effective
7 date.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 9. DISCLOSURE OF INFORMATION BY ONLINE MARKETPLACES TO
INFORM CONSUMERS.**

**§46A-9-1. High volume third party sellers to provide and disclose information to online
marketplaces and to inform consumers; enforcement; rulemaking; preemption;
defining terms; and effective date.**

1 (a) Verification Required. —

2 (1) Online marketplaces shall require that any high-volume third-party seller on the online
3 marketplace provide the online marketplace with the following information within 24 hours of
4 becoming a high-volume third-party seller:

5 (A) Bank account information, the accuracy of which has been confirmed directly by the
6 online marketplace or by a payment processor or other third-party contracted by the online
7 marketplace, or, if the high-volume third-party seller does not have a bank account, the name of
8 the payee for payments issued by the online marketplace to the high-volume third-party seller.

9 Such bank account or payee information may be provided by the seller either:

10 (i) To the online marketplace; or

11 (ii) To a payment processor or other third-party contracted by the online marketplace to
12 maintain such information, provided that the online marketplace may obtain such information on
13 demand from such payment processor or other third-party.

14 (B) Contact information, including:

15 (i) If the high-volume third-party seller is an individual, a copy of a government-issued
16 photo identification for the individual that includes the individual's name and physical address; or

17 (ii) If the high-volume third-party seller is not an individual, either:

18 (I) A copy of a government-issued photo identification for an individual acting on behalf of
19 the high-volume third-party seller that includes the individual's name and physical address; or

20 (II) A copy of a government-issued record or tax document that includes the business
21 name and physical address of the high-volume third-party seller; and

22 (iii) A working email address and working phone number for the high-volume third-party
23 seller.

24 (C) A business tax identification number or, if the high-volume third-party seller does not
25 have a business tax identification number, a taxpayer identification number.

26 (D) Whether the high-volume third-party seller is exclusively advertising or offering the
27 consumer product or products on the online marketplace, or if the high-volume third-party seller
28 is currently advertising or offering for sale the same consumer product or products on any other
29 internet websites other than the online marketplace.

30 (2) Ongoing Verification Required. —

31 (A) The online marketplace shall verify the information provided in paragraph (1) within
32 three days, and shall verify within three days any changes to such information that is provided to
33 the marketplace by a high-volume third-party seller. If a high-volume third-party seller provides a
34 copy of a valid government-issued tax document, information contained within such tax document
35 shall be presumed to be verified as of the date of issuance of such record or document.

36 (B) The online marketplace shall, on at least an annual basis, notify each high-volume
37 third-party seller on the online marketplace that the seller must inform the online marketplace of
38 any changes to the information provided by the seller pursuant to paragraph (1) within three days
39 of receiving the notification and shall instruct each high-volume third-party seller, as part of the
40 notification, to electronically certify either that the seller's information is unchanged or that the
41 seller is providing changes to the information. If the online marketplace becomes aware that a
42 high-volume third-party seller has neither certified that the seller's information is unchanged nor
43 provided such changed information within three days of receiving such notification, the online
44 marketplace shall suspend the high-volume third-party seller's participation on the marketplace
45 until the seller has either certified that the seller's information is unchanged or has provided such
46 changed information and the information has been verified.

47 (b) Disclosure Required. —

48 (1) Any online marketplace shall require a high-volume third-party seller in such online
49 marketplace to provide, and shall disclose to consumers in a conspicuous manner either on the
50 product listing or, for information other than the seller's full name, through a conspicuously placed
51 link on the product listing, the following information:

52 (A) Subject to paragraph (2), the identity of the high-volume third-party seller which shall
53 include:

54 (i) The full name of the seller;

55 (ii) The full physical address of the seller;

56 (iii) Whether the seller also engages in the manufacturing, importing, or reselling of
57 consumer products; and

58 (iv) Contact information for the seller, including a working phone number and working
59 email address. Such working email address may be provided to the high-volume third-party seller
60 by the online marketplace.

61 (B) Any other information determined to be necessary to address circumvention or evasion
62 of the requirements of this paragraph, provided that the additional information is limited to what is
63 necessary to address such circumvention or evasion.

64 (2) Exceptions. —

65 (A) Subject to subparagraph (B), upon the request of a high-volume third-party seller, an
66 online marketplace may provide for partial disclosure of the identity information required under
67 paragraph (1)(A) in the following situations:

68 (i) If the high-volume third-party seller demonstrates to the online marketplace that the
69 seller does not have a business address and only has a residential street address, the online
70 marketplace may direct the high-volume third-party seller to disclose only the country and, if
71 applicable, the state in which the high-volume third-party seller resides on the product listing, and
72 may inform consumers that there is no business address available for the seller and that
73 consumer inquiries should be submitted to the seller by phone or email.

74 (ii) If the high-volume third-party seller demonstrates to the online marketplace that the
75 seller is a business that has a physical address for product returns, the online marketplace may
76 direct the high-volume third-party seller to disclose the seller's physical address for product
77 returns.

78 (iii) If a high-volume third-party seller demonstrates to the online marketplace that the
79 seller does not have a phone number other than a personal phone number, the online marketplace
80 shall inform consumers that there is no phone number available for the seller and that consumer
81 inquiries should be submitted to the seller's email address.

82 (B) Limitations to Exceptions—If an online marketplace becomes aware that a high-
83 volume third-party seller has made a false representation to the online marketplace in order to
84 justify the provision of a partial disclosure under subparagraph (A) or that a high-volume third-
85 party seller who has requested and received a provision for a partial disclosure under
86 subparagraph (A) has not provided responsive answers within a reasonable timeframe to

87 consumer inquiries submitted to the seller by phone or email address, the online marketplace
88 shall withdraw its provision for partial disclosure and require the full disclosure of the high-volume
89 third-party seller's identity information required under paragraph (1)(A) upon three business days'
90 notice to the high-volume third-party seller.

91 (3) Reporting Mechanism. — An online marketplace shall disclose to consumers, in a
92 conspicuous manner on the product listing of any high-volume third-party seller, a reporting
93 mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity
94 to the online marketplace and a message encouraging individuals seeking goods for purchase to
95 report suspicious activity to the online marketplace.

96 (c) Fulfillment Or Shipment By Different Party Than Seller. — In addition to the
97 requirements of subsection (b), an online marketplace that warehouses, distributes, or otherwise
98 fulfills a consumer product order shall disclose to the consumer the identification of any high-
99 volume third-party seller supplying the consumer product if different than the seller listed on the
100 product listing page.

101 (d) Enforcement. —

102 (1) Unfair and Deceptive Acts or Practices. — A violation of subsection (a), (b), or (c) shall
103 be treated as a violation of the Consumer Credit and Protection Act.

104 (2) Powers of the Attorney General. — The Attorney General shall enforce this Act.

105 (3) Rules. — The Attorney General may propose rules for legislative approval in
106 accordance with the provisions of §29A-3-1 et seq. of this code with respect to collecting and
107 verifying information under this section, provided that such rules are limited to what is necessary
108 to collect and verify such information.

109 (e) Preemption. — No political subdivision may establish, mandate, or otherwise require
110 online marketplaces to verify information from high-volume third-party sellers on a one-time or
111 ongoing basis or disclose information to consumers.

112 (f) Definitions. — In this Act:

113 (1) Consumer Product. — The term “consumer product” means any tangible personal
114 property which is distributed in commerce and which is normally used for personal, family, or
115 household purposes (including any such property intended to be attached to or installed in any
116 real property without regard to whether it is so attached or installed).

117 (2) High-Volume Third-Party Seller. — The term “high-volume third-party seller” means a
118 participant in an online marketplace who is a third-party seller and who, in any continuous 12-
119 month period during the previous 24 months, has entered into 200 or more discrete sales or
120 transactions of new or unused consumer products resulting in the accumulation of an aggregate
121 total of \$5,000 or more in gross revenues.

122 (3) Online Marketplace. — The term “online marketplace” means any electronically based
123 or accessed platform that:

124 (A) Includes features that allow for, facilitate, or enable third-party sellers to engage in the
125 sale, purchase, payment, storage, shipping, or delivery of a consumer product in the United
126 States; and

127 (B) Hosts one or more third-party sellers.

128 (4) Seller. — The term “seller” means a person who sells, offers to sell, or contracts to sell
129 a consumer product through an online marketplace.

130 (5) Third-Party Seller. —

131 (A) The term “third-party seller” means any seller, independent of an operator, facilitator,
132 or owner of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product
133 in the United States through an online marketplace.

134 (B) Exclusion. — The term “third-party seller” does not include a seller who:

135 (i) Is a business entity that has made available to the general public the entity’s name,
136 business address, and working contact information;

137 (ii) Has an ongoing contractual relationship with the owner of the online marketplace to
138 provide for the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer
139 products; and

140 (iii) Has provided to the online marketplace identifying information, as described in
141 subsection (a), that has been verified pursuant to that subsection.

142 (6) Verify. — The term “verify” means to confirm information provided to an online
143 marketplace pursuant to this section by the use of:

144 (A) A third-party or proprietary identity verification system that has the capability to confirm
145 a seller’s name, email address, physical address, and phone number; or

146 (B) A combination of two-factor authentication, public records search, and the presentation
147 of a government-issued identification.

148 (g) This Act shall take effect 90 days after the date of the enactment.

NOTE: The purpose of this bill is to require high volume third party sellers to provide information to online marketplaces; require ongoing verification of information; require high-volume third-party sellers to disclose certain information to consumers; provide for Attorney General enforcement of act; authorize rulemaking by Attorney General; establish preemption of municipal requirements; define terms; and provide effective date.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.