

By: Raney

H.B. No. 3852

A BILL TO BE ENTITLED

AN ACT

relating to requiring the disclosure of information by certain third-party sellers of consumer goods sold through an online marketplace.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 10, Business & Commerce Code, is amended by adding Chapter 328 to read as follows:

CHAPTER 328. DISCLOSURES BY THIRD-PARTY SELLERS SELLING GOODS  
THROUGH ONLINE MARKETPLACES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 328.001. DEFINITIONS. In this chapter:

(1) "Consumer goods" means goods used or bought for use primarily for personal, family, or household purposes. The term includes goods intended to become attached to or installed in any real property, regardless of whether the goods are actually attached to or installed in the real property.

(2) "High-volume third-party seller" means a third-party seller who, in a continuous 12-month period during the preceding 24 months, has entered into 200 or more discrete sale transactions of new or unused consumer goods resulting in an aggregate total of \$5,000 or more in gross revenue.

(3) "Online marketplace" means an electronically based or accessed platform that:

(A) includes features that allow for,

1 facilitate, or enable third-party sellers to engage in the sale,  
2 purchase, storage, shipping, or delivery of or processing payments  
3 for consumer goods in the United States; and

4 (B) hosts one or more third-party sellers.

5 (4) "Seller" means a person who sells, offers to sell,  
6 or contracts to sell consumer goods in the United States through an  
7 online marketplace.

8 (5) "Third-party seller" means a seller that is  
9 independent of a facilitator, owner, or operator of an online  
10 marketplace through which the seller sells consumer goods.

11 Sec. 328.002. INAPPLICABILITY OF CHAPTER. This chapter  
12 does not apply to a third-party seller that:

13 (1) is a business entity that has made the entity's  
14 name, business address, and working contact information available  
15 to the public;

16 (2) has an ongoing contractual relationship with the  
17 owner of an online marketplace to provide for the manufacture,  
18 distribution, wholesaling, or fulfillment of a shipment of consumer  
19 goods on the online marketplace; and

20 (3) has provided to the online marketplace identifying  
21 information, as described by Section 328.051, that has been  
22 verified under that section.

23 Sec. 328.003. The attorney general shall adopt rules as  
24 necessary to collect and verify information under this chapter.

25 SUBCHAPTER B. DISCLOSURE OF INFORMATION BY THIRD-PARTY SELLERS

26 Sec. 328.051. DISCLOSURE OF INFORMATION TO ONLINE  
27 MARKETPLACE. (a) An online marketplace shall require a

1 high-volume third-party seller participating in the online  
2 marketplace to disclose the following information to the online  
3 marketplace not later than 24 hours after becoming a high-volume  
4 third-party seller:

5 (1) subject to Subsection (b), bank account  
6 information, the accuracy of which has been confirmed directly by  
7 the online marketplace or by a person described by Subsection (c);

8 (2) if the high-volume third-party seller does not  
9 have a bank account and subject to Subsection (b), the name of the  
10 payee for payments issued by the online marketplace to the  
11 high-volume third-party seller;

12 (3) contact information, including:

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

17 (B) if the high-volume third-party seller is not  
18 an individual:

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

23 (ii) a copy of a government-issued record  
24 or tax document that includes the business name and physical  
25 address of the high-volume third-party seller; and

26 (C) a working e-mail address and working phone  
27 number for the high-volume third-party seller;

1           (4) a business tax identification number or, if the  
2 high-volume third-party seller does not have a business tax  
3 identification number, a taxpayer identification number; and

4           (5) whether the high-volume third-party seller is  
5 exclusively advertising or offering the consumer goods on the  
6 hosting online marketplace, or if the high-volume third-party  
7 seller is currently advertising or offering for sale the same  
8 consumer goods on any other Internet websites or online  
9 marketplaces other than the hosting online marketplace.

10          (b) If the online marketplace uses a payment processor or  
11 contracts with another third party to process payment information  
12 for customers, the high-volume third-party seller shall provide the  
13 information required by Subsection (a)(1) or (2) to the online  
14 marketplace or to the payment processor or other third-party  
15 contractor, provided that the online marketplace may obtain, on  
16 demand, any information provided by the seller to a payment  
17 processor or other third party under this subsection.

18          (c) An online marketplace, payment processor, or other  
19 third party contracting with the online marketplace to process  
20 payments shall confirm the accuracy of any information provided by  
21 a seller to the person under this section.

22          Sec. 328.052. ONGOING VERIFICATION REQUIRED. (a) The  
23 online marketplace shall verify information provided by the  
24 high-volume third-party seller under Section 328.051 not later than  
25 the third day after the date of receipt of the information. The  
26 online marketplace shall verify any changes to the information  
27 provided under Section 328.051 not later than the third day after

1 the date of receiving notification of the change. If a high-volume  
2 third-party seller provides a copy of a valid government-issued tax  
3 document, information contained in the tax document is presumed to  
4 be verified as of the date the record or document was issued.

5 (b) On at least an annual basis, an online marketplace shall  
6 notify each high-volume third-party seller participating in the  
7 online marketplace that the seller must inform the online  
8 marketplace of any changes to the information required to be  
9 provided by the seller under Section 328.051 not later than the  
10 third day after the date on which the seller receives the  
11 notification. As part of the notification required under this  
12 subsection, the online marketplace shall instruct each high-volume  
13 third-party seller to electronically certify that:

14 (1) the seller's information is unchanged; or  
15 (2) the seller is providing changes to the  
16 information.

17 (c) If a high-volume third-party seller fails to respond  
18 within the period prescribed by Subsection (b), the online  
19 marketplace shall suspend the high-volume third-party seller's  
20 participation in the online marketplace until the seller has made  
21 the electronic certification required by Subsection (b) or the  
22 change in information contained in the response has been verified.

23 (d) An online marketplace shall verify information provided  
24 to the online marketplace under this section by the use of:

25 (1) a third-party or proprietary identity  
26 verification system that has the capability to confirm a seller's  
27 name, physical address, e-mail address, and phone number; or

1           (2) a combination of two-factor authentication, a  
2 public records search, and the presentation of a government-issued  
3 identification.

4           Sec. 328.053. DISCLOSURE OF HIGH-VOLUME THIRD-PARTY  
5 SELLER'S IDENTITY AND CONTACT INFORMATION REQUIRED. (a) Except as  
6 provided by Section 328.054, an online marketplace shall require a  
7 high-volume third-party seller participating in the online  
8 marketplace to disclose the following information to consumers in a  
9 conspicuous manner, subject to Subsection (b):

10           (1) the seller's identity, including:

11                   (A) the seller's full name;

12                   (B) the seller's full physical address;

13                   (C) whether the seller also engages in the  
14 manufacturing, importing, or reselling of consumer goods; and

15                   (D) the seller's contact information, including:

16                           (i) a working phone number; and

17                           (ii) a working e-mail address, which may be  
18 an e-mail address provided to the high-volume third-party seller by  
19 the online marketplace; and

20           (2) any other information the online marketplace  
21 determines to be necessary to address circumvention or evasion of  
22 the requirements of this section, provided that the additional  
23 information is limited to what is necessary to address such  
24 circumvention or evasion.

25           (b) An online marketplace shall provide a feature to allow  
26 the high-volume third-party seller to disclose the seller's full  
27 name on the product listing and, for information required under

1 Subsection (a) other than the seller's full name, a feature for a  
2 conspicuously placed link on the product listing.

3 Sec. 328.054. EXCEPTION TO FULL DISCLOSURE OF IDENTITY  
4 INFORMATION. (a) On the request of a high-volume third-party  
5 seller, an online marketplace may allow partial disclosure of the  
6 information required under Section 328.051, as provided by this  
7 section.

8 (b) If the high-volume third-party seller demonstrates to  
9 the online marketplace that the seller does not have a business  
10 address and has only a residential street address, the online  
11 marketplace may:

12 (1) require the seller to disclose, on the product  
13 listing, only the country and, if applicable, the state in which the  
14 seller resides; and

15 (2) inform consumers that there is no business address  
16 available for the seller and that consumer inquiries should be  
17 submitted to the seller by phone or e-mail.

18 (c) If the high-volume third-party seller demonstrates to  
19 the online marketplace that the seller is a business that has a  
20 physical address for product returns, the online marketplace may  
21 require the high-volume third-party seller to disclose the seller's  
22 physical address for product returns.

23 (d) If a high-volume third-party seller demonstrates to the  
24 online marketplace that the seller does not have a phone number  
25 other than a personal phone number, the online marketplace shall  
26 inform consumers that there is no phone number available for the  
27 seller and that consumer inquiries should be submitted to the

1 seller's e-mail address.

2 (e) Notwithstanding Subsection (a), an online marketplace  
3 shall withdraw its prior approval for a request for partial  
4 disclosure of information under this section and shall require the  
5 seller to fully disclose the information required under Section  
6 328.051 not later than the third business day after the date the  
7 seller receives notice from the online marketplace under this  
8 subsection if:

9 (1) the online marketplace becomes aware that the  
10 seller made a false representation to the online marketplace to  
11 receive an exception under this section; or

12 (2) the seller, after having received approval for a  
13 request for an exception under Subsection (a), has not provided  
14 responsive answers to consumer inquiries made by phone or e-mail  
15 address within a reasonable time.

16 SUBCHAPTER C. DUTIES OF ONLINE MARKETPLACE

17 Sec. 328.101. REPORTING MECHANISM. An online marketplace  
18 shall disclose to consumers, in a conspicuous manner on the product  
19 listing of a high-volume third-party seller:

20 (1) a reporting mechanism that allows the reporting of  
21 suspicious online marketplace activity to the online marketplace by  
22 phone or online; and

23 (2) a message encouraging individuals seeking goods  
24 for purchase on the online marketplace to report any suspicious  
25 activity to the online marketplace.

26 Sec. 328.102. FULFILLMENT OR SHIPMENT BY PARTY OTHER THAN  
27 SELLER. An online marketplace that warehouses, distributes, or

1 otherwise fulfills an order for consumer goods shall disclose to  
2 the consumer the identity of any high-volume third-party seller  
3 supplying the consumer goods if that seller is different from the  
4 seller listed on the product listing page.

5 SUBCHAPTER D. ENFORCEMENT

6 Sec. 328.151. DECEPTIVE TRADE PRACTICE. A violation of  
7 this chapter is a deceptive trade practice under Subchapter E,  
8 Chapter 17, and is actionable under that chapter.

9 Sec. 328.152. PREEMPTION. No political subdivision may  
10 establish, mandate, or otherwise require an online marketplace to  
11 verify information from a high-volume third-party seller or to  
12 disclose information to consumers.

13 SECTION 2. This Act takes effect January 1, 2022.