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

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

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

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

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

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

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

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

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

SUBCHAPTER B. DISCLOSURE OF INFORMATION BY THIRD-PARTY SELLERS

Sec. 328.051.  DISCLOSURE OF INFORMATION TO ONLINE MARKETPLACE. (a) An online marketplace shall require a high-volume third-party seller participating in the online marketplace to disclose the following information to the online marketplace not later than 24 hours after becoming a high-volume third-party seller:

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

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

(3)  contact information, including:

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

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

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

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

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

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

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

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

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

Sec. 328.052.  ONGOING VERIFICATION REQUIRED. (a) The online marketplace shall verify information provided by the high-volume third-party seller under Section 328.051 not later than the third day after the date of receipt of the information. The online marketplace shall verify any changes to the information provided under Section 328.051 not later than the third day after the date of receiving notification of the change. If a high-volume third-party seller provides a copy of a valid government-issued tax document, information contained in the tax document is presumed to be verified as of the date the record or document was issued.

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

(1)  the seller's information is unchanged; or

(2)  the seller is providing changes to the information.

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

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

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

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

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

(1)  the seller's identity, including:

(A)  the seller's full name;

(B)  the seller's full physical address;

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

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

(i)  a working phone number; and

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

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

(b)  An online marketplace shall provide a feature to allow the high-volume third-party seller to disclose the seller's full name on the product listing and, for information required under Subsection (a) other than the seller's full name, a feature for a conspicuously placed link on the product listing.

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

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

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

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

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

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

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

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

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

SUBCHAPTER C. DUTIES OF ONLINE MARKETPLACE

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

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

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

Sec. 328.102.  FULFILLMENT OR SHIPMENT BY PARTY OTHER THAN SELLER. An online marketplace that warehouses, distributes, or otherwise fulfills an order for consumer goods shall disclose to the consumer the identity of any high-volume third-party seller supplying the consumer goods if that seller is different from the seller listed on the product listing page.

SUBCHAPTER D. ENFORCEMENT

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

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

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