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Summary: Online Marketplace Consumer Protection Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/24/2022 Senate Introduced and read first time ([Senate Journal‑page 3](file:///h:\sj\20220324.docx))

3/24/2022 Senate Referred to Committee on **Labor, Commerce and Industry** ([Senate Journal‑page 3](file:///h:\sj\20220324.docx))

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**VERSIONS OF THIS BILL**

[3/24/2022](file:///p:\pprever\2021-22\1199_20220324.docx)

**A** **BILL**

TO AMEND CHAPTER 39, TITLE 40 OF THE 1976 CODE, RELATING TO PAWNBROKERS, BY ADDING ARTICLE 3 ENTITLED THE “ONLINE MARKETPLACE CONSUMER PROTECTION ACT” SO AS TO ESTABLISH THE DUTIES OF ONLINE MARKETPLACES WITH REGARDS TO THE COLLECTION, VERIFICATION, AND DISCLOSURE OF CERTAIN INFORMATION REGARDING HIGH‑VOLUME THIRD‑PARTY SELLERS, AND TO PROVIDE FOR EXCLUSIVE ENFORCEMENT BY THE ATTORNEY GENERAL.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 39, Title 40 of the 1976 Code is amended by adding:

“Article 3

Online Marketplace Consumer Protection Act

Section 40‑39‑310. As used in this chapter:

(1) ‘Consumer product’ means any tangible personal property that is:

(a) distributed in commerce; and

(b) 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.

(2) ‘High‑volume third‑party seller’ means a participant in an online marketplace that is a third‑party seller and 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, with an aggregate total of five thousand dollars or more in gross revenues. For purposes of calculating the number of discrete sales or transactions or the aggregate gross revenues, an online marketplace is only required to count sales 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 or entity that operates a consumer‑directed electronically based or electronically 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 such purposes; 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 platform.

(5) ‘Third‑party seller’ means any seller, independent of an operator, facilitator, or owner of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through an online marketplace. With respect to an online marketplace, ‘third‑party seller’ does not include:

(a) a seller who operates the online marketplace platform; or

(b) a business entity that has:

(i) made available to the general public the business entity’s name, business address, and contact information;

(ii) 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; and

(iii) provided the online marketplace with identifying information that has been verified pursuant to Section 37‑31‑20.

(6) ‘Verify’ means to confirm information provided to an online marketplace pursuant to Section 37‑31‑20, which may include the use of one or more methods that enable the online marketplace to reliably determine that any information and documents provided by a seller or an individual acting on a seller’s behalf are valid, not misappropriated, and not falsified.

Section 40-39-320. (A) An online marketplace must require that any high‑volume third‑party seller on an online marketplace platform provide the online marketplace with the following information no later than ten days after qualifying as a high‑volume third‑party seller on the platform:

(1)(a) A bank account number; 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.

Required bank account information or payee information may be provided by the seller to the online marketplace or to a payment processor or other third party contracted by the online marketplace to maintain the information, provided that the online marketplace ensures that it can obtain the information on demand from the payment processor or other third party;

(2) Contact information for the high‑volume third‑party seller, which must include the following:

(a) if the high‑volume third‑party seller is an individual, the individual’s name;

(b) if the high‑volume third‑party seller is not an individual, one of the following forms of identifying information:

(i) a copy of a valid government‑issued photographic identification for an individual acting on behalf of the high‑volume third‑party seller that includes the individual’s name; or

(ii) 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; and

(c) a current working email address and working telephone number for the high‑volume third‑party seller; and

(3) 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.

(B) An online marketplace must verify the information provided by a high‑volume third‑party seller pursuant to subsection (A) within ten days of receiving the information. If a high‑volume third‑party seller provides a copy of a valid government‑issued tax document, the information contained within the document or identification must be presumed verified as of the date the document or identification was issued.

(C) At least annually, an online marketplace must:

(1) notify each high‑volume third‑party seller operating in the online marketplace that the high‑volume third‑party seller must inform the online marketplace of any changes to information required pursuant to subsection (A) within ten days of receiving the notification; and

(2) as part of the notification, instruct each high‑volume third‑party seller to electronically certify either that the information provided pursuant to subsection (A) is unchanged or that the high‑volume third‑party seller will be providing changes to the information.

(D) In the event that a high‑volume third‑party seller does not provide the information or certification required by this section after the online marketplace has provided the seller with written or electronic notice and an opportunity to provide the information or certification, the online marketplace must, after providing the seller with a second written or electronic notice and an opportunity to provide such information or certification within ten days after the issuance of such notice, suspend any future sales activity of the seller until the seller provides the required information or certification.

(E) Data collected solely to comply with the requirements of this section may not be used for any other purpose unless so required by law. An online marketplace must implement and maintain reasonable security procedures and practices, including appropriate administrative, physical, and technological safeguards relative to the nature and purposes of the data collected to comply with the requirements of this section, in order to protect the data from unauthorized use, disclosure, access, destruction, or modification.

Section 40-39‑330. (A) An online marketplace must require each high‑volume third‑party seller with an aggregate total of twenty thousand dollars or more in annual gross revenues through the online marketplace platform to provide and disclose certain identifying information set forth in subsection (B) in:

(1) any order confirmation message or other document or communication made to a consumer once a purchase is finalized; and

(2) the consumer’s account transaction history.

(B) The identifying information required to be disclosed pursuant to subsection (A) includes the following information:

(1) the full name of the high‑volume third‑party seller, which may include the seller’s name, the seller’s company name, or the name by which the seller or company operates in the online marketplace;

(2) the physical address of the high‑volume third‑party seller;

(3) contact information for the high‑volume third‑party seller, for the purpose of allowing direct and unhindered communication between high‑volume third‑party sellers and users of the online marketplace, provided the requirements of this subsection may not be construed so as to prevent an online marketplace from preventing fraud, abuse, or spam through such communications, including a current working telephone number, a current working email address, or other means of electronic messaging that may be provided to the high‑volume third‑party seller by the online marketplace; and

(4) whether the high‑volume third‑party seller uses a different seller to fulfill purchase orders to customers placed through the online marketplace. Upon the request of an authenticated purchaser, if a high‑volume third-party seller uses a different seller to fulfill purchase orders to consumers, the online marketplace must require the high‑volume third‑party seller to provide identifying information for the different seller.

(C) Upon the request of a high‑volume third‑party seller, an online marketplace may provide for partial disclosure of the identifying information required by this section under the following circumstances:

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

(a) disclose only the country and, if applicable, the state in which the high‑volume third‑party seller resides; and

(b) 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, email, or other means of electronic messaging provided to the seller by the online marketplace.

(2) If the high‑volume third‑party seller certifies to the online marketplace that the high‑volume third‑party seller is a business that has a physical address for product returns, the online marketplace may disclose the physical address for consumer product returns.

(3) If a high‑volume third‑party seller certifies to the online marketplace that the high‑volume third‑party seller does not have a phone number other than 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 or other means of electronic messaging provided to such seller by the online marketplace.

(D) If an online marketplace becomes aware that a high‑volume third‑party seller has:

(1) made a false representation to the online marketplace in order to justify the provision of a partial disclosure under subsection (B); or

(2) 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, email, or other means of electronic messaging provided to the seller by the online marketplace, then the online marketplace must, after providing the seller with a written or electronic notice and an opportunity to respond no 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 identifying information required by subsection (A).

(E) An online marketplace must 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 telephone reporting of suspicious marketplace activity to the online marketplace.

(F) If a high‑volume third‑party seller does not comply with the requirements to provide and disclose information under this section, the online marketplace must, after providing the seller with written or electronic notice and an opportunity to provide or disclose the information no later than ten days after the issuance of the notice, suspend any future sales activity of such seller until the seller complies with the requirements.

Section 40-39‑340. (A) The Attorney General has exclusive authority to enforce the provisions of this chapter.

(B) Prior to initiating any action under this chapter, the Attorney General must provide an online marketplace or high‑volume third‑party seller with thirty days’ written notice identifying the specific provision or provisions of this chapter that the Attorney General alleges have been or are being violated. If within this thirty‑day period the online marketplace or high‑volume third‑party seller cures the noticed violation or violations and provides the Attorney General with an express written statement that the alleged violation or violations have been cured and that no further violations will occur, no action may 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 thirty‑day cure period under subsection (B) or breaches an express written statement provided to the Attorney General under subsection (B), the Attorney General may initiate an action in circuit court and may seek an injunction to restrain any violations of this chapter and civil penalties of up to seven thousand five hundred dollars for each violation under this chapter.

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

(E) Nothing in this chapter may 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.”

SECTION 2. The title of Chapter 39, Title 40 is changed from ‘Pawnbrokers’ to ‘Pawnbrokers and Online Marketplaces.’ The Code Commission is directed to make all necessary and conforming changes to the 1976 Code.

SECTION 3. Section 4-39-10 through Section 4-39-155 are designated as ‘Article 1’ in Chapter 39, Title 40. The article shall be designated as ‘Pawnbrokers’. The Code Commissioner is directed to make all necessary and conforming changes to the 1976 Code.

SECTION 4. This act takes effect upon approval by the Governor.

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