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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**Memo published:** January 28, 2022

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**2021 Assembly Bill 743**

**Assembly  
Amendment 1 to Assembly  
Substitute Amendment 1**

### 2021 ASSEMBLY BILL 743

2021 Assembly Bill 743 regulates high-volume third-party sellers, which are certain sellers that sell, offer for sale, or contract to sell a consumer product<sup>1</sup> in Wisconsin through an online marketplace. Very generally, high-volume third-party sellers must disclose certain information to the online marketplace, and an online marketplace must verify that information and disclose certain information to consumers. A violation of these provisions is declared to be an unfair trade practice enforced by the Department of Agriculture, Trade, and Consumer Protection (DATCP).

To qualify as a high-volume third-party seller, a seller must have engaged in at least 200 discrete sales or transactions of new or unused consumer products that have resulted in a total of at least \$20,000 in gross revenue over a continuous 12-month period during the immediately preceding 24 months. However, the term does not include sellers that meet certain requirements, such as those that have certain ongoing contractual relationships with an online marketplace.

#### Disclosures by High-Volume Third-Party Seller

The bill requires a high-volume third-party seller to disclose the following information within **24 hours** of becoming a high-volume third-party seller:

- If the seller is an individual, a copy of a government-issued photo identification card, and if the seller is not an individual, a copy of either a government-issued identification card for a person who acts on the seller's behalf or a copy of a government-issued record or tax document that includes the seller's business name and physical address.
- A working email address and telephone number.
- A business tax identification number or taxpayer identification number.
- Whether the seller exclusively offers or advertises its consumer products on the online marketplace.
- Whether the seller also engages in manufacturing, importing, or reselling consumer products.
- The seller's bank account information.

#### Verification by Online Marketplace

The online marketplace must verify the information provided within 10 days of receipt, by using at least: (1) an identity verification system that has the capability of confirming a third-party seller's name,

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<sup>1</sup> Consumer product means a product that is used primarily for personal, family, or household purposes.

email address, physical address, and telephone number or (2) a combination of two-factor authentication, public records search, and presentation of government-issued identification.

The online marketplace is required to request, at least annually, that each high-volume seller on its platform inform the online marketplace of any changes to the information that must be disclosed. Within 10 days of receiving a request, a seller must certify that the previously provided information is unchanged or provide an update and or be suspended by the online marketplace.

## **Disclosures to Consumers by Online Marketplace**

The online marketplace must disclose certain information regarding consumer products offered for sale by a high-volume third-party seller, such as the seller's full name and physical address and any other information that DATCP determines is necessary to prevent evasion of the requirements of providing information to consumers.

However, if a high-volume third-party seller has only a residential address or personal telephone number and requests that such contact information not be published, the online marketplace **may not** provide the address or telephone number, and may only provide more general information.

If the seller makes a false representation to the online marketplace related to the partial disclosure or fails to provide a responsive answer to a consumer inquiry within a reasonable time, the marketplace must **disclose** all of the required information.

## **Reporting Suspicious Marketplace Activity**

The bill requires an online marketplace to make available in a conspicuous manner a mechanism for reporting suspicious activity by a high-volume third-party seller and to conspicuously display a message encouraging consumers to report suspicious activity to the marketplace.

## **ASSEMBLY SUBSTITUTE AMENDMENT 1**

Assembly Substitute Amendment 1 largely retains the structure of the bill, but makes changes to definitions, the required disclosures by high-volume third-party sellers, the verification of those disclosures by an online marketplace, the disclosure of information to consumers, and the manner of reporting suspicious online activity. The amendment retains provisions of the bill that preempt certain municipal ordinances and declare a violation of the bill to be an unfair trade practice, and allows DATCP to promulgate rules that are necessary to implement the bill.

The amendment reorganizes the definition of "third-party seller" and modifies the definition of "online marketplace." Under the amendment, an online marketplace means a person or entity that operates a consumer-directed, electronically based or accessed platform that:

- Includes features that allow third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of consumer products in Wisconsin.
- Is used by one or more third-party sellers for such purposes.
- Has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

## **Disclosures by High-Volume Third-Party Seller**

The amendment requires a high-volume third-party seller to disclose the following information within **10 days** of becoming a high-volume third-party seller:

- The seller's bank account information.
- If the seller is an individual, the individual's name, and if the seller is not an individual, any of the following: (1) a copy of a government-issued identification for an individual acting on behalf of the seller; (2) a copy of a valid government-issued record or tax document that includes the seller's business name and physical address; (3) a business tax identification number or taxpayer identification number; or (4) a current working electronic mail address and telephone number.

The amendment eliminates the requirement that the seller disclose information such as whether the seller exclusively offers or advertises its consumer products on the online marketplace.

## **Verification by Online Marketplace**

As under the bill, an online marketplace must verify the information provided by a high-volume third-party seller within 10 days after collecting the information or being notified of a change in information.

The amendment replaces the verification process under the bill with a new definition for the term "verify," which means to confirm the information provided to an online marketplace, which may include the use of one or more methods that enable an online marketplace to reliably determine that any information and documents are valid, corresponding to the seller or an individual acting on the seller's behalf, not misappropriated, and not falsified.

Additionally, as under the bill, an online marketplace must notify any high-volume third-party seller on its marketplace, at least annually, of the requirement to keep the provided information current. Under the amendment, the high-volume third-party seller must electronically certify one of the following within 10 days of receiving such a notification:

- The seller has provided any changes to the information to the online marketplace, if any such changes have occurred.
- There have been no changes to such seller's information.
- Such seller has provided any changes to such information to the online marketplace.

Also as under the bill, if a high-volume third-party seller does not provide the information or certification required, the online marketplace must suspend the seller from making sales on the platform until the information or certification is provided. However, the amendment specifies that the online marketplace must first provide the seller with notice and an opportunity to provide such information or certification not later than 10 days after the issuance of the notice before suspending the seller.

## **Disclosures to Consumers by Online Marketplace**

Under the amendment, an online marketplace must require that a high-volume third-party seller with an aggregate total of \$20,000 or more in annual gross revenues on an online marketplace to provide the following information:

- The identity of the high-volume third-party seller, including the seller's full name, physical address, and certain contact information.
- Whether the seller used a different seller to supply the consumer product to the consumer upon purchase, and upon the request of an authenticated purchase, the identity of the seller that fulfilled the sale.

The amendment eliminates the requirement that an online marketplace disclose whether the seller engages in manufacturing, importing, or reselling consumer products and any information that DATCP determines is necessary to prevent evasion of the disclosure requirements.

This information must be provided to consumers in a clear and conspicuous manner in the **order confirmation message** or other communication made to the consumer after a purchase is finalized and in the **consumer's account transaction history**.

Upon the request of a high-volume third-party seller, an online marketplace **may** provide for the partial disclosure of identifying information. If a seller certifies that the seller does not have separate business and residential addresses, the online marketplace may both disclose only the country (and if applicable, state) and inform consumers that there is no business address available for the seller, and that inquiries should be submitted by telephone, electronic mail, or other means of electronic messaging provided to the seller by the online marketplace.

Similarly, if the seller certifies that the seller does not have a telephone number other than a personal telephone number, the online marketplace must inform consumers that there is no telephone number available for the seller and that consumer inquiries should be submitted to the seller's electronic mail address or other means of electronic messaging provided to the seller by the online marketplace. If the seller certifies to the online marketplace that the seller is a business and has a physical address for product returns, the online marketplace **may** disclose the seller's physical address for product returns.

Under the amendment, an online marketplace that becomes aware that a high-volume third-party seller made a false representation to justify a partial disclosure of information or has received a provision for partial disclosure but has not provided responsive answers to consumer inquiries within a reasonable time, must **suspend** the seller, rather than provide the information. The online marketplace must first provide the seller with notice and an opportunity to respond to the notice not later than 10 days after the issuance of the notice before suspending the seller.

## **Reporting Suspicious Marketplace Activity**

The amendment specifies that an online marketplace's conspicuous mechanism for reporting suspicious marketplace activity must be on the **product listing** of any high-volume third-party seller.

## **ASSEMBLY AMENDMENT 1 TO ASSEMBLY SUBSTITUTE AMENDMENT 1**

Assembly Amendment 1 to Assembly Substitute Amendment 1 changes the effective date so that the bill takes effect on January 1, 2023, rather than the first day of the seventh month beginning after publication.

## **BILL HISTORY**

Representative Dallman introduced Assembly Substitute Amendment 1 on January 18, 2022. Also, on January 18, 2022, the Assembly Committee on Criminal Justice and Public Safety recommended adoption of the amendment on a vote of Ayes, 11; Noes, 0; and recommended adoption of the bill, as amended, on a vote of Ayes, 13; Noes, 0.

Representative Dallman introduced Assembly Amendment 1 to Assembly Substitute Amendment 1 on January 20, 2022. On January 25, 2022, the Assembly adopted Assembly Amendment 1 to Assembly Substitute Amendment 1 by voice vote. The Assembly then adopted the substitute amendment, as amended, and passed the bill, as amended, by voice votes.