

SB 355-FN - AS AMENDED BY THE SENATE

02/16/2022 0654s

2022 SESSION

22-2948

05/04

SENATE BILL **355-FN**

AN ACT requiring online marketplaces to disclose certain information to consumers.

SPONSORS: Sen. Birdsell, Dist 19; Sen. Watters, Dist 4; Sen. Gannon, Dist 23; Rep. Potucek, Rock. 6; Rep. Bartlett, Merr. 19; Sen. Cavanaugh, Dist 16

COMMITTEE: Commerce

ANALYSIS

This bill requires third-party sellers to provide certain information to online marketplaces and to consumers. The bill makes the failure to do so a violation of the consumer protection act.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT requiring online marketplaces to disclose certain information to consumers.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Regulation of Online Marketplaces. Amend RSA by inserting after chapter 358-
2 S the following new chapter:

3 CHAPTER 358-T

4 REGULATION OF ONLINE MARKETPLACES

5 358-T:1 Definition. In this chapter:

6 I. "Consumer product" means any tangible personal property which is distributed in
7 commerce and which is normally used for personal, family, or household purposes, including any
8 such property intended to be attached to or installed in any real property without regard to whether
9 it is so attached or installed.

10 II. "High-volume third-party seller" means a participant in an online marketplace who is a
11 third-party seller and who, in any continuous 12-month period during the previous 24 months, has
12 entered into 200 or more discrete sales or transactions of new or unused consumer products and an
13 aggregate total of \$5,000 or more in gross revenues. For purposes of calculating the number of
14 discrete sales or transactions or the aggregate gross revenues, an online marketplace shall only be
15 required to count sales or transactions made through the online marketplace and for which payment
16 was processed by the online marketplace, either directly or through its payment processor.

17 III. "Online marketplace" means any person or entity that operates a consumer-directed
18 electronically based or accessed platform that:

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

22 (b) Is used by one or more third-party sellers for such purposes; and

23 (c) Has a contractual or similar relationship with consumers governing their use of the
24 platform to purchase consumer products.

25 IV. "Seller" means a person who sells, offers to sell, or contracts to sell a consumer product
26 through an online marketplace's platform.

27 V. "Third-party seller" means any seller, independent of an online marketplace, who sells,
28 offers to sell, or contracts to sell a consumer product in the United States through an online
29 marketplace. The term "third-party seller" shall not include, with respect to an online marketplace:

30 (a) A seller who operates the online marketplace's platform; or

31 (b) A business entity that has:

1 (1) Made available to the general public the entity's name, business address, and
2 working contact information;

3 (2) An ongoing contractual relationship with the online marketplace to provide the
4 online marketplace with the manufacture, distribution, wholesaling, or fulfillment of shipments of
5 consumer products; and

6 (3) Provided to the online marketplace identifying information, as described in RSA
7 358-T:2, that has been verified in accordance with that section.

8 VI. "Verify" means to confirm information provided to an online marketplace pursuant to
9 this chapter, which may include the use of one or more methods that enable the online marketplace
10 to reliably determine that any information and documents provided are valid, correspond to the
11 seller or an individual acting on the seller's behalf, not misappropriated, and not falsified.

12 358-T:2 Collection and Verification of Information by Online Marketplaces.

13 I. In general, online marketplaces shall require that any high-volume third-party seller on
14 the online marketplace's platform provide the online marketplace with the following information no
15 later than 10 days after qualifying as a high-volume third-party seller on the platform:

16 (a) A bank account number, or, if the high-volume third-party seller does not have a
17 bank account, the name of the payee for payments issued by the online marketplace to the high-
18 volume third-party seller. The bank account or payee information required may be provided by the
19 seller in the following ways:

20 (1) To the online marketplace; or

21 (2) To a payment processor or other third-party contracted by the online marketplace
22 to maintain such information; provided that the online marketplace ensures that it can obtain such
23 information on demand from such payment processor or other third-party.

24 (b) Contact information for high-volume third-party sellers as follows:

25 (1) If the high-volume third-party seller is an individual, the individual's name; or

26 (2) If the high-volume third-party seller is not an individual, one of the following
27 forms of contact information:

28 (A) A copy of a valid government-issued identification for an individual acting on
29 behalf of such seller that includes the individual's name; or

30 (B) A copy of a valid government-issued record or tax document that includes the
31 business name and physical address of such seller.

32 (c) A business tax identification number or, if the high-volume third-party seller does not
33 have a business tax identification number, a taxpayer identification number.

34 (d) A current working email address and phone number for the high-volume third-party
35 seller.

36 II. An online marketplace shall:

1 (a) Periodically, but not less than annually, notify any high-volume third-party seller on
2 such online marketplace's platform of the requirement to keep any information collected under
3 paragraph I current; and

4 (b) Require any high-volume third-party seller on such online marketplace's platform to,
5 not later than 10 days after receiving the notice under subparagraph (a), electronically certify that:

6 (1) The high-volume third-party seller has provided any changes to such information
7 to the online marketplace, if such changes have occurred;

8 (2) There have been no changes to the high-volume third-party seller's information;

9 or

10 (3) The high-volume third-party seller has provided any changes to such information
11 to the online marketplace.

12 III. In the event that a high-volume third-party seller does not provide the information or
13 certification required, the online marketplace shall, after providing the seller with written or
14 electronic notice and an opportunity to provide such information or certification not later than 10
15 days after the issuance of such notice, suspend any future sales activity of such seller until such
16 seller provides such information or certification.

17 IV. In general, online marketplaces shall:

18 (a) Verify the information collected under paragraph I not later than 10 days after such
19 collection; and

20 (b) Verify any changes to such information not later than 10 days after being notified of
21 such change by a high-volume third-party seller under paragraph II.

22 V. In the case of a high-volume third-party seller that provides a copy of a valid government-
23 issued tax document, any information contained in such document shall be presumed to be verified
24 as of the date of issuance of such record or document.

25 VI. Data collected solely to comply with the requirements of this chapter may not be used for
26 any other purpose unless required by law.

27 VII. An online marketplace shall implement and maintain reasonable security procedures
28 and practices, including administrative, physical, and technical safeguards, appropriate to the
29 nature of the data and the purposes for which the data will be used, to protect the data collected to
30 comply with the requirements of this chapter from unauthorized use, disclosure, access, destruction,
31 or modification.

32 358-T:3 Disclosure of Information by Online Marketplaces to Inform Consumers.

33 I. An online marketplace shall:

34 (a) Require any high-volume third-party seller with an aggregate total of \$20,000 or
35 more in annual gross revenues on such online marketplace, and that uses such online marketplace's
36 platform, to provide the information described in paragraph II to the online marketplace; and

1 (b) Disclose the information described in paragraph II to consumers in a conspicuous
2 manner:

3 (1) In the order confirmation message or other document or communication made to
4 a consumer after a purchase is finalized; and

5 (2) In the consumer's account transaction history.

6 II. The information described in this paragraph is the following:

7 (a) Subject to paragraph III, the identity of the high-volume third-party seller, including:

8 (1) The full name of the seller, which may include the seller name or seller's
9 company name, or the name by which the seller or company operates on the online marketplace;

10 (2) The physical address of the seller; and

11 (3) Contact information for the seller, to allow for the direct, unhindered
12 communication with high-volume third-party sellers by users of the online marketplace, including:

13 (A) A current working phone number;

14 (B) A current working email address; or

15 (C) Other means of direct electronic messaging, which may be provided to the
16 high-volume third-party seller by the online marketplace.

17 (b) Whether the high-volume third party seller used a different seller to supply the
18 consumer product to the consumer upon purchase, and, upon the request of an authenticated
19 purchaser, the information described in subparagraph (a) relating to any such seller that supplied
20 the consumer product to the purchaser, if such seller is different than the high-volume third party
21 seller listed on the product listing prior to purchase.

22 III.(a) Subject to subparagraph (b), upon the request of a high-volume third-party seller, an
23 online marketplace may provide for partial disclosure of the identity information required under
24 subparagraph II(a) in the following situations:

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

28 (A) Disclose only the country and, if applicable, the state in which the high-
29 volume third-party seller resides; and

30 (B) Inform consumers that there is no business address available for the seller
31 and that consumer inquiries should be submitted to the seller by phone, email, or other means of
32 electronic messaging provided to such seller by the online marketplace.

33 (2) If the high-volume third-party seller certifies to the online marketplace that the
34 seller is a business that has a physical address for product returns, the online marketplace may
35 disclose the seller's physical address for product returns.

36 (3) If a high-volume third-party seller certifies to the online marketplace that the
37 seller does not have a phone number other than a personal phone number, the online marketplace

1 shall inform consumers that there is no phone number available for the seller and that consumer
2 inquiries should be submitted to the seller's email address or other means of electronic messaging
3 provided to such seller by the online marketplace.

4 (b) If an online marketplace becomes aware that a high volume third-party seller has
5 made a false representation to the online marketplace in order to justify the provision of a partial
6 disclosure under subparagraph (a) or that a high-volume third-party seller who has requested and
7 received a provision for a partial disclosure under subparagraph (a) has not provided responsive
8 answers within a reasonable timeframe to consumer inquiries submitted to the seller by phone,
9 email, or other means of electronic messaging provided to such seller by the online marketplace, the
10 online marketplace shall, after providing the seller with written or electronic notice and an
11 opportunity to respond not later than 10 days after the issuance of such notice, suspend any future
12 sales activity of such seller unless such seller consents to the disclosure of the identity information
13 required under subparagraph II(a).

14 III. An online marketplace shall disclose to consumers in a clear and conspicuous manner on
15 the product listing of any high-volume third-party seller, a reporting mechanism that allows for
16 electronic and telephonic reporting of suspicious marketplace activity to the online marketplace.

17 IV. If a high-volume third-party seller does not comply with the requirements to provide and
18 disclose information under this subsection, the online marketplace shall, after providing the seller
19 with written or electronic notice and an opportunity to provide or disclose such information not later
20 than 10 days after the issuance of such notice, suspend any future sales activity of such seller until
21 the seller complies with such requirements.

22 358-T:4 Enforcement. Any violation of the provisions of this chapter is an unfair or deceptive
23 act or practice within the meaning of RSA 358-A:2. Any right, remedy, or power given to the
24 attorney general in RSA 358-A may be used to enforce the provisions of this chapter.

25 358-T:5 Rulemaking. The attorney general may adopt rules under RSA 541-A relative to the
26 collection and verification of information under this chapter, provided that such regulations are
27 limited to what is necessary to collect and verify such information.

28 358-T:6 Preemption. No political subdivision shall establish, mandate, or otherwise require
29 online marketplaces to verify information from high-volume third-party sellers on a one-time or
30 ongoing basis or disclose information to consumers.

31 2 Contingency. If the attorney general certifies to the director of the office of legislative services
32 that H.R. 5502 (117th Congress (2021-2022)) or similar federal legislation requiring online
33 marketplaces to verify and disclose certain information has become law prior to January 1, 2023,
34 section 1 of this act shall not take effect. If H.R. 5502 or similar federal legislation requiring online
35 marketplaces to verify and disclose certain information does not become law, section 1 of this act
36 shall take effect January 1, 2023.

37 3 Effective Date.

SB 355-FN - AS AMENDED BY THE SENATE

- Page 6 -

- 1 I. Section 1 of this act shall take effect as provided in section 2 of this act.
- 2 II. The remainder of this act shall take effect upon its passage.

SB 355-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2022-0654s)

AN ACT requiring online marketplaces to disclose certain information to consumers.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill requires third-party sellers to provide certain information to online marketplaces and to consumers. The bill makes the failure to do so a violation of the consumer protection act.

This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Council	FY 2022	FY 2023
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys		

(14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake to new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.		
Department of Corrections	FY 2022	FY 2023
FY 2021 Average Cost of Incarcerating an Individual	\$54,386	\$54,386
FY 2021 Annual Marginal Cost of a General Population Inmate	\$5,715	\$5,715
FY 2021 Average Cost of Supervising an Individual on Parole/Probation	\$603	\$603
NH Association of Counties	FY 2022	FY 2023
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

This bill contains penalties that will have an indeterminable impact on the Judicial Branch system. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. In the past the Judicial Branch has used averaged caseload data based on time studies to estimate the fiscal impact of proposed legislation. The per case data on costs for routine criminal cases currently available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times for processing average routine criminal cases that are more than fifteen years old so the data does not have current validity. A new case study is being conducted and updated estimates will be available in the future.

The Department of Justice (DOJ) states this bill would allow it to investigate and pursue civil and criminal actions under the Consumer Protection Act for violations of this proposed statute. The bill would require third-party sellers to provide banking and contact information to be verified by online marketplaces. It further requires these marketplace annually to request updates to the information from the sellers and to certify if the information remains unchanged. The bill allows the DOJ to adopt rules related to the collection and verification of the information. The DOJ indicates the fiscal impact of the enforcement provision is indeterminable because it is not possible to predict how many enforcement actions the DOJ would bring. Depending on the number of actions, the DOJ may need additional resources to fulfill its obligations.

AGENCIES CONTACTED:

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire
Association of Counties