



EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

April 4, 2019

**GOV. MSG. NO. 1102**

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Thirtieth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Thirtieth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on April 4, 2019, the following bill was signed into law:

SB396 SD1

RELATING TO MARKETPLACE FACILITATORS.  
**ACT 002 (19)**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

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# A BILL FOR AN ACT

RELATING TO MARKETPLACE FACILITATORS.

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

1 SECTION 1. Chapter 237, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§237- Marketplace facilitators. (a) A marketplace  
5 facilitator shall be deemed the seller of tangible personal  
6 property, intangible property, or services and the seller on  
7 whose behalf the sale is made shall be deemed to be making a  
8 sale at wholesale pursuant to section 237-4.

9 (b) For purposes of section 237-3, a marketplace  
10 facilitator's gross income or gross proceeds of sale include  
11 receipts from sales on behalf of other sellers under subsection  
12 (a).

13 (c) Any person other than a marketplace facilitator who  
14 provides a forum, whether physical or electronic, in which  
15 sellers list or advertise tangible personal property, intangible  
16 property, or services for sale and takes or processes sales  
17 orders shall:



- 1       (1) Post a conspicuous notice on its forum that informs  
2           purchasers intending to purchase tangible personal  
3           property, intangible property, or services for  
4           delivery to or use at a location in this State that  
5           the purchaser is required to pay use tax if the sale  
6           is made from an unlicensed seller;
- 7       (2) Provide a written notice to each purchaser at the time  
8           of each sale of tangible personal property, intangible  
9           property, or services for delivery to or use at a  
10          location in this State that the purchaser may be  
11          required to remit use tax directly to the department  
12          and provide instructions for obtaining additional  
13          information from the department on whether and how to  
14          remit use tax to the department; and
- 15       (3) No later than the twentieth day of the fourth month  
16          following the close of the taxable year, submit a  
17          report to the department that includes, with respect  
18          to each purchaser of tangible personal property,  
19          intangible property, or services delivered to or used  
20          at a location in this State, all of the following:



- 1           (A) The purchaser's name, billing address, and
- 2           mailing address;
- 3           (B) If the sale involved the purchase of tangible
- 4           personal property, the address in this State to
- 5           which the tangible personal property was
- 6           delivered to the purchaser;
- 7           (C) The aggregate dollar amount of the purchaser's
- 8           purchases from the seller; and
- 9           (D) The name and address of the seller that made the
- 10           sale to the purchaser;

11 provided that the person, in lieu of complying with the notice  
 12 and reporting requirements in this subsection, may elect to be  
 13 deemed the seller of tangible personal property, intangible  
 14 property, or services as provided in subsection (a).

15       (d) Any person who fails to comply with subsection (c) and  
 16 has not elected to be deemed the seller of tangible personal  
 17 property, intangible property, or services unless it is shown  
 18 that the failure is due to reasonable cause and not due to  
 19 neglect, shall be assessed a penalty of \$1,000 if the failure is  
 20 for not more than one month, with an additional \$1,000 for each



1 additional month or fraction thereof during which the failure  
2 continues, not exceeding \$12,000 in the aggregate."

3 SECTION 2. Section 237-1, Hawaii Revised Statutes, is  
4 amended as follows:

5 1. By adding a new definition to be appropriately inserted  
6 and to read:

7 "Marketplace facilitator" means any person who sells or  
8 assists in the sale of tangible personal property, intangible  
9 property, or services on behalf of another seller by:

10 (1) Providing a forum, whether physical or electronic, in  
11 which sellers list or advertise tangible personal  
12 property, intangible property, or services for sale;  
13 and

14 (2) Collecting payment from the purchaser, either directly  
15 or indirectly through an agreement with a third  
16 party."

17 2. By amending the definition of "representative" to read:

18 "Representative" means any salesperson, commission agent,  
19 manufacturer's representative, broker or other person who is  
20 authorized or employed by [~~an unlicensed~~] a seller to assist  
21 [~~such~~] the seller in selling property for use in the State, by



1 procuring orders for [~~such~~] the sales or otherwise, and who  
 2 carries on [~~such~~] those activities in the State, it being  
 3 immaterial whether [~~such~~] the activities are regular or  
 4 intermittent[~~, but the~~]. The term "representative" [~~does~~] shall  
 5 not include [~~a~~]:

6       (1) A manufacturer's representative whose functions are  
 7 wholly promotional and to act as liaison between an  
 8 unlicensed seller and a seller or sellers, and [~~which~~]  
 9 that do not include the procuring, soliciting or  
 10 accepting of orders for property or the making of  
 11 deliveries of property, or the collecting of payment  
 12 for deliveries of property, or the keeping of books of  
 13 account concerning property orders, deliveries or  
 14 collections transpiring between an unlicensed seller  
 15 and a seller or sellers[~~. Any unlicensed seller who~~  
 16 ~~in person carries on any such activity in the State~~  
 17 ~~shall also be classed as a representative.~~]; and

18       (2) A marketplace facilitator."

19       SECTION 3. Section 238-1, Hawaii Revised Statutes, is  
 20 amended as follows:



1           1. By adding a new definition to be appropriately inserted  
2 and to read:

3           "Marketplace facilitator" shall have the same meaning as  
4 in section 237-1."

5           2. By amending the definition of "import" to read:

6           "Import" (or any nounal, verbal, adverbial, adjective, or  
7 other equivalent of the term) includes:

8           (1) The importation into the State of property, services,  
9 or contracting owned, purchased from an unlicensed  
10 seller, or however acquired, from any other part of  
11 the United States or its possessions or from any  
12 foreign country, whether in interstate or foreign  
13 commerce, or both; ~~and~~

14           (2) The sale and delivery of property owned, purchased  
15 from an unlicensed seller, or however acquired, by a  
16 seller who is or should be licensed under the general  
17 excise tax law from an out-of-state location to an in-  
18 state purchaser, regardless of the free on board point  
19 or the place where title to the property transfers to  
20 the purchaser[-]; and



1        (3) The sale of tangible personal property, intangible  
 2        property, or services by a marketplace facilitator  
 3        with a valid license issued pursuant to section 237-9  
 4        on behalf of an unlicensed seller for delivery to or  
 5        use by a purchaser in the State."

6        SECTION 4. This Act does not affect rights and duties that  
 7        matured, penalties that were incurred, and proceedings that were  
 8        begun before its effective date.

9        SECTION 5. If any provision of this Act, or the  
 10       application thereof to any person or circumstance, is held  
 11       invalid, the invalidity does not affect other provisions or  
 12       applications of the Act that can be given effect without the  
 13       invalid provision or application, and to this end the provisions  
 14       of this Act are severable.

15       SECTION 6. Statutory material to be repealed is bracketed  
 16       and stricken. New statutory material is underscored.

17       SECTION 7. This Act shall take effect on January 1, 2020.

APPROVED this 04 day of APR, 2019

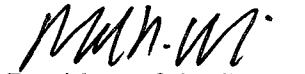
*David Y. Ige*  
 GOVERNOR OF THE STATE OF HAWAII



**THE SENATE OF THE STATE OF HAWAI'I**

Date: February 28, 2019  
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.

  
President of the Senate


  
Clerk of the Senate

**THE HOUSE OF REPRESENTATIVES  
OF THE STATE OF HAWAI'I**

Date: March 19, 2019  
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.

  
Speaker, House of Representatives

  
Clerk, House of Representatives