

A Bill for an Act Relating to Marketplace Facilitators.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

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

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

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

- (1) Post a conspicuous notice on its forum that informs purchasers intending to purchase tangible personal property, intangible property, or services for delivery to or use at a location in this State that the purchaser is required to pay use tax if the sale is made from an unlicensed seller;
- (2) Provide a written notice to each purchaser at the time of each sale of tangible personal property, intangible property, or services for delivery to or use at a location in this State that the purchaser may be required to remit use tax directly to the department and provide instructions for obtaining additional information from the department on whether and how to remit use tax to the department; and
- (3) No later than the twentieth day of the fourth month following the close of the taxable year, submit a report to the department that includes, with respect to each purchaser of tangible personal property, intangible property, or services delivered to or used at a location in this State, all of the following:
  - (A) The purchaser’s name, billing address, and mailing address;
  - (B) If the sale involved the purchase of tangible personal property, the address in this State to which the tangible personal property was delivered to the purchaser;
  - (C) The aggregate dollar amount of the purchaser’s purchases from the seller; and
  - (D) The name and address of the seller that made the sale to the purchaser;

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

(d) Any person who fails to comply with subsection (c) and has not elected to be deemed the seller of tangible personal property, intangible property, or services unless it is shown that the failure is due to reasonable cause and not due to neglect, shall be assessed a penalty of \$1,000 if the failure is for not more than one month, with an additional \$1,000 for each additional month or fraction thereof during which the failure continues, not exceeding \$12,000 in the aggregate.”

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

1. By adding a new definition to be appropriately inserted and to read: ““Marketplace facilitator” means any person who sells or assists in the sale of tangible personal property, intangible property, or services on behalf of another seller by:

- (1) Providing a forum, whether physical or electronic, in which sellers list or advertise tangible personal property, intangible property, or services for sale; and
- (2) Collecting payment from the purchaser, either directly or indirectly through an agreement with a third party.”

2. By amending the definition of “representative” to read:

““Representative” means any salesperson, commission agent, manufacturer’s representative, broker or other person who is authorized or employed by [an unlicensed] a seller to assist [such] the seller in selling property for use in the State, by procuring orders for [such] the sales or otherwise, and who carries on [such] those activities in the State, it being immaterial whether [such] the activities are regular or intermittent[-; but the]. The term “representative” [does] shall not include [a]:

- (1) A manufacturer’s representative whose functions are wholly promotional and to act as liaison between an unlicensed seller and a seller or sellers, and [which] that do not include the procuring, soliciting or accepting of orders for property or the making of deliveries of property, or the collecting of payment for deliveries of property, or the keeping of books of account concerning property orders, deliveries or collections transpiring between an unlicensed seller and a seller or sellers[-. Any unlicensed seller who in person carries on any such activity in the State shall also be classed as a representative.]; and
- (2) A marketplace facilitator.”

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

1. By adding a new definition to be appropriately inserted and to read: ““Marketplace facilitator” shall have the same meaning as in section 237-1.”

2. By amending the definition of “import” to read:

““Import” (or any nounal, verbal, adverbial, adjective, or other equivalent of the term) includes:

- (1) The importation into the State of property, services, or contracting owned, purchased from an unlicensed seller, or however acquired, from any other part of the United States or its possessions or from any foreign country, whether in interstate or foreign commerce, or both; [and]
- (2) The sale and delivery of property owned, purchased from an unlicensed seller, or however acquired, by a seller who is or should be licensed under the general excise tax law from an out-of-state location to an in-state purchaser, regardless of the free on board point or the place where title to the property transfers to the purchaser[-]; and
- (3) The sale of tangible personal property, intangible property, or services by a marketplace facilitator with a valid license issued pursuant to section 237-9 on behalf of an unlicensed seller for delivery to or use by a purchaser in the State.”

## ACT 2

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

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

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

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

(Approved April 4, 2019.)

### Note

1. Edited pursuant to HRS §23G-16.5.