

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 284

Introduced by McCollister, 20.

Read first time January 15, 2019

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to adopt the Remote
- 2 Seller and Marketplace Facilitator Act; to provide an operative
- 3 date; to provide severability; and to declare an emergency.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 6 of this act shall be known and may be
2 cited as the Remote Seller and Marketplace Facilitator Act.

3 Sec. 2. For purposes of the Remote Seller and Marketplace
4 Facilitator Act:

5 (1) Affiliated person means a person who, with respect to another
6 person:

7 (a) Has an ownership interest of more than five percent, whether
8 direct or indirect, in the other person; or

9 (b) Is related to the other person because a third party holds an
10 ownership interest of more than five percent, whether direct or indirect,
11 in both such persons;

12 (2) Department means the Department of Revenue;

13 (3) Marketplace facilitator means a person who:

14 (a) Contracts with sellers to facilitate for consideration,
15 regardless of whether the consideration is deducted as fees from the
16 transaction, the sale of the seller's products through a physical or
17 electronic marketplace operated by the person;

18 (b) Engages directly or indirectly through one or more affiliated
19 persons in any of the following:

20 (i) Transmitting or otherwise communicating the offer or acceptance
21 between the buyer and seller;

22 (ii) Owning or operating the infrastructure, whether electronic or
23 physical, or technology that brings buyers and sellers together;

24 (iii) Providing a virtual currency that buyers are allowed or
25 required to use to purchase products from the seller; or

26 (iv) Software development or research and development activities
27 related to any of the activities described in subdivision (3)(c) of this
28 section if such activities are directly related to a physical or
29 electronic marketplace operated by the person or an affiliated person;
30 and

31 (c) Engages in any of the following activities with respect to the

1 seller's products:

2 (i) Payment processing services;

3 (ii) Fulfillment or storage services;

4 (iii) Listing products for sale;

5 (iv) Setting prices;

6 (v) Branding sales as those of the marketplace facilitator;

7 (vi) Order taking;

8 (vii) Advertising or promotion; or

9 (viii) Providing customer service or accepting or assisting with
10 returns or exchanges;

11 (4) Marketplace seller means a person who makes retail sales of
12 property through any physical or electronic marketplace operated by a
13 marketplace facilitator;

14 (5) Nebraska sale means a sale of property for delivery into this
15 state;

16 (6) Property has the same meaning as in section 77-2701.27; and

17 (7) Remote seller means a person who:

18 (a) Does not have a physical presence in this state; and

19 (b) Makes Nebraska sales.

20 Sec. 3. Notwithstanding any other provision of law, a remote seller
21 shall be subject to the Nebraska Revenue Act of 1967, the Local Option
22 Revenue Act, and sections 13-319 and 13-2813, shall collect and remit the
23 sales tax due under such acts and sections, and shall follow all
24 applicable procedures and requirements of law as if the remote seller had
25 a physical presence in this state if:

26 (1) The remote seller's gross revenue from Nebraska sales exceeds
27 one hundred thousand dollars in the previous or current calendar year; or

28 (2) The remote seller makes two hundred or more separate Nebraska
29 sales in the previous or current calendar year.

30 Sec. 4. (1) Notwithstanding any other provision of law, a
31 marketplace facilitator shall be subject to the Nebraska Revenue Act of

1 1967, the Local Option Revenue Act, and sections 13-319 and 13-2813,
2 shall collect and remit the sales tax due under such acts and sections,
3 and shall follow all applicable procedures and requirements of law if:

4 (a) The total gross revenue of all Nebraska sales made or
5 facilitated by the marketplace facilitator exceeds one hundred thousand
6 dollars in the previous or current calendar year; or

7 (b) The marketplace facilitator makes or facilitates two hundred or
8 more separate Nebraska sales in the previous or current calendar year.

9 (2) A marketplace facilitator shall collect and remit the sales tax
10 required under this section on each Nebraska sale made directly by the
11 marketplace facilitator and on each Nebraska sale facilitated for a
12 marketplace seller.

13 (3) A marketplace facilitator is relieved of liability for failure
14 to collect and remit the correct amount of sales tax due under this
15 section to the extent the marketplace facilitator can demonstrate that
16 the error was due to incorrect information given to the marketplace
17 facilitator by the marketplace seller, except that this subsection shall
18 not apply if the marketplace facilitator and marketplace seller are
19 affiliated persons.

20 (4)(a) A marketplace facilitator shall separately report the
21 following information when it submits its sales tax return to the
22 department:

23 (i) The sales tax collected on Nebraska sales facilitated for a
24 marketplace seller; and

25 (ii) The sales tax collected on Nebraska sales made directly by the
26 marketplace facilitator.

27 (b) The department shall prescribe a sales tax return that may be
28 used by marketplace facilitators for purposes of this section.

29 (5) A marketplace facilitator shall be subject to audit by the
30 department with respect to Nebraska sales made directly by the
31 marketplace facilitator and with respect to Nebraska sales facilitated

1 for a marketplace seller. Nothing in this subsection shall preclude the
2 department from auditing marketplace sellers with respect to Nebraska
3 sales facilitated by a marketplace facilitator.

4 Sec. 5. No remote seller or marketplace facilitator shall be
5 required to collect or remit sales tax pursuant to the Remote Seller and
6 Marketplace Facilitator Act with respect to any Nebraska sale made prior
7 to July 1, 2019.

8 Sec. 6. The department may adopt and promulgate rules and
9 regulations to carry out the Remote Seller and Marketplace Facilitator
10 Act.

11 Sec. 7. This act becomes operative on July 1, 2019.

12 Sec. 8. If any section in this act or any part of any section is
13 declared invalid or unconstitutional, the declaration shall not affect
14 the validity or constitutionality of the remaining portions.

15 Sec. 9. Since an emergency exists, this act takes effect when
16 passed and approved according to law.