

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas      *As Engrossed: H1/31/17 H2/3/17 S2/23/17*  
91st General Assembly      **A Bill**  
Regular Session, 2017

HOUSE BILL 1388

By: Representative D. Douglas

*By: Senator Files*

### **For An Act To Be Entitled**

AN ACT TO REQUIRE OUT-OF-STATE SELLERS AND FACILITATORS TO PROVIDE NOTICE TO ARKANSAS PURCHASERS REGARDING TAX DUE ON CERTAIN PURCHASES; TO REQUIRE OUT-OF-STATE SELLERS AND FACILITATORS TO REPORT SALES MADE TO ARKANSAS PURCHASERS; AND FOR OTHER PURPOSES.

### **Subtitle**

TO REQUIRE OUT-OF-STATE SELLERS AND FACILITATORS TO PROVIDE NOTICE TO ARKANSAS PURCHASERS REGARDING TAX DUE ON CERTAIN PURCHASES AND TO REPORT SALES MADE TO ARKANSAS PURCHASERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 26-52-110(f), concerning referral agreements between sellers and affiliated persons and the notice required, is amended to read as follows:

(f) A seller that does not have a physical presence in this state and does not collect Arkansas sales or use tax on sales made to Arkansas purchasers shall:

(1)(A) Notify Arkansas purchasers at the time of purchase that sales or use tax is due on certain purchases made from the seller and that the State of Arkansas requires the purchaser to file a sales or use tax return.

(B) A seller that fails to provide the notice required



under this subdivision (f)(1) is subject to a penalty of five dollars (\$5.00) for each failure to provide notice, unless the seller shows reasonable cause for the failure to provide notice;

(2)(A) If a seller does not collect Arkansas sales or use tax, send notice to all Arkansas purchasers by January 31 of each year showing the total amount paid by the purchaser for Arkansas purchases made from the seller in the previous calendar year.

(B) The notice required under this subdivision (f)(2) shall:

(i) Include, if available, the date of each purchase, the amount of each purchase, and the category of each purchase, including without limitation whether the purchase is exempt from taxation;

(ii) State that the State of Arkansas requires a sales or use tax return to be filed and sales or use tax paid on certain Arkansas purchases made by the purchaser from the seller;

(iii) Be sent separately to each Arkansas purchaser through communication by electronic means or first-class mail;

(iv) Not be included with any other shipment or electronic communication; and

(v) Include the words "important tax document enclosed" and the name of the seller on the exterior of the mailing or within the electronic communication.

(C) A seller that fails to provide the notice required under this subdivision (f)(2) is subject to a penalty of ten dollars (\$10.00) for each failure to provide notice, unless the seller shows reasonable cause for the failure to provide notice; and

(3)(A) By March 1 of each year, file an annual report of sales to each Arkansas purchaser with the Director of the Department of Finance and Administration.

(B) The report required under this subdivision (f)(3) shall include:

(i) The name of the purchaser;

(ii) The total amount paid by each purchaser to the seller during the immediately preceding calendar year; and

(iii) Each delivery or shipping address provided by the purchaser to the seller.

(C) A seller that fails to provide the annual report required under this subdivision (f)(3) is subject to a penalty of ten dollars (\$10.00) for each purchaser that should have been included in the annual report, unless the seller shows reasonable cause for the failure to provide the report.

(g) A seller or facilitator that does not have a physical presence in this state but collects and remits Arkansas sales and use tax on sales made to Arkansas purchasers is not required to comply with the requirements of subsection (f) of this section.

(h) A seller is presumed to be engaged in the business of selling tangible personal property or taxable services for use in this state if the seller enters into an agreement with a facilitator to directly aid or assist the seller in making remote sales.

(i) A facilitator that does not have a physical presence in this state and does not collect Arkansas sales Arkansas sales or use tax on sales made to Arkansas purchasers shall:

(1)(A) Notify:

(i) Arkansas purchasers at the time of purchase that sales or use tax is due on certain purchases made from sellers and that the State of Arkansas requires the purchaser to file a sales or use tax return; and

(ii) Sellers to Arkansas purchasers that sales or use tax is imposed on sales made to Arkansas purchasers.

(B) A facilitator that fails to provide the notices required under this subdivision (h)(1) is subject to a penalty of five dollars (\$5.00) for each failure to provide notice, unless the facilitator shows reasonable cause for the failure to provide notice.

(2)(A) By March 1 each year, file an annual report of each seller to the director showing the total amount paid by Arkansas purchasers to the seller during the preceding calendar year.

(B) A facilitator that fails to provide the annual report required under this subdivision (h)(2) is subject to a penalty of ten dollars (\$10.00) for each seller that should have been included in the annual report, unless the facilitator shows reasonable cause for the failure to provide the report.

(j) The Director of the Department of Finance and Administration shall

promulgate rules to implement this section.

SECTION 2. EFFECTIVE DATE. Section 1 of this act is effective on and after January 1, 2018.

*/s/D. Douglas*