



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5770 (Substitute H-3 as passed by the House)
Sponsor: Representative Mike Mueller
House Committee: Commerce and Tourism
Ways and Means
Senate Committee: Regulatory Reform

Date Completed: 11-12-20

CONTENT

The bill would amend the Michigan Consumer Protection Act to do the following:

- **Prohibit a third-party delivery service from using a likeness, trademark, or other intellectual property belonging to a merchant without obtaining written consent from the merchant.**
- **Require a third-party delivery service to be registered to do business in Michigan in order to enter into an agreement to use a merchant's likeness, trademark, or other intellectual property.**
- **Prescribe a maximum civil fine of \$1,000 per violation.**
- **Allow a person who suffered a loss of a violation of the bill to bring an action to recover actual damages or \$5,000, whichever was greater, in addition to reasonable attorney fees, and allow a court to award punitive damages.**

Definitions

The bill would define "business entity" as a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

"Customer" would mean a person that places an order for a merchant's product through a marketplace.

"Likeness" would mean an identifiable symbol attributed and easily identified as belonging to a specific merchant.

"Marketplace" would mean a third-party delivery service's proprietary online communication platform where customers can view and search the menus of merchants or place an order for merchants' products, or both, via the third-party delivery service's website or mobile application for delivery by the third-party delivery service to the customer.

"Merchant" would mean a restaurant or other retailer.

"Restaurant" would mean a food service establishment defined and licensed under the food law: a fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, nightclub, drive-in, industrial feeding establishment, private organization serving the public, rental hall, catering kitchen, delicatessen, theater, commissary, food concession, or similar place in which food or drink is prepared for direct consumption through service on the premises or elsewhere, and

any other eating or drinking establishment or operation where food is served or provided for the public.

"Third-party delivery service" would mean a business entity, other than a merchant, that provides limited delivery services to customers.

Use of Likeness

Under the bill, a third-party delivery service could not use a likeness, trademark, or other intellectual property belonging to a merchant without obtaining written consent from the merchant to use the likeness, trademark, or other intellectual property. Written consent would have to be reflected in a valid agreement.

To enter into a valid agreement to use the merchant's likeness, trademark, or other intellectual property, the third-party delivery service would have to be registered to do business in the State.

An agreement could not require the merchant to indemnify the third-party delivery service, an independent contractor acting on behalf of the third-party delivery service, or a registered agent of the third-party delivery service for damages or harm that could occur after a product left the merchant's place of business. A provision of an agreement that was contrary to the bill would be void and unenforceable. The bill would apply only to an agreement that took effect or was extended, renewed, or modified after the bill's effective date.

Violations & Penalties

For a violation of the bill, the court could assess the defendant a maximum civil fine of \$1,000 per violation. Each day a violation occurred would count as a separate violation.

Under the bill, except in a class action, a person who suffered a loss as a result of a violation of the bill could bring an action to recover actual damages or \$5,000, whichever was greater, together with reasonable attorney fees. In an action brought under the bill, the court could, in its discretion, award punitive damages.

MCL 445.903 et al.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill could have an indeterminate fiscal impact on State and local government. Whether the bill would result in an increase in court case filings and hearings is indeterminate. Fine revenue prescribed in the bill is typically used to help fund local libraries; however, the Michigan Consumer Protection Act allows the Attorney General to petition for recovery of the civil fine revenue to reimburse its costs. The amount of additional revenue that could be generated is indeterminate and would depend on the number of violations that resulted.

Fiscal Analyst: Joe Carrasco
Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.