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Senate Bills 1023 and 1024 (as introduced 4-28-22)
Sponsor: Senator Roger Victory (S.B. 1023)
Senator Curtis Hertel, Jr. (S.B. 1024)
Committee: Regulatory Reform

Date Completed: 5-9-22

CONTENT

Senate Bill 1023 would amend the Michigan Consumer Protection Act to do the following:

- Require an online marketplace to require a high-volume third-party seller on its platform to provide specified information to the marketplace within 10 days after qualifying as a high-volume third-party seller on the platform.
- Require an online marketplace to suspend a seller's future sales activity if it did not provide the required information until that information was provided.
- Require an online marketplace to implement and maintain reasonable security procedures and practices to protect the collected information from unauthorized use, disclosure, or destruction.
- Require a high-volume third-party seller that used an online marketplace's platform and that had an aggregate total of \$20,000 or more in annual gross revenue on the marketplace to provide additional information.
- Allow the Attorney General to promulgate rules regarding the collection, verification, or disclosure of information under the bill.
- Prohibit a political subdivision from establishing, mandating, or otherwise requiring an online marketplace or seller to undertake measures other than those specified in the bill to verify or disclose the same or similar information as that would be subject to the bill.

Senate Bill 1024 would amend the Act to specify that a violation of Section 3o, which Senate Bill 1023 would create, would constitute an unfair, unconscionable method, act, or practice in the conduct of trade or commerce.

The bills are tie-barred.

Senate Bill 1023

Definitions

"High-volume third-party seller" would mean a participant on an online marketplace's platform that is a third-party seller and that, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete sales or transactions of new or unused consumer products through the online marketplace, and for which payment was processed by the online marketplace, either directly or through its payment processor, with an aggregate total of \$5,000 or more in gross revenue.

"Online marketplace" would mean a person that operates a consumer-directed electronically based or accessed platform that meets all of the following criteria:

- It includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in Michigan.
- It is used by one or more third-party sellers for the purposes or allowing for, facilitating, or enabling third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in Michigan.
- It has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

"Third-party seller" means a seller that is independent of an online marketplace and that sells, offers to sell, or contracts to sell a consumer product in the State through an online marketplace's platform. The term would not include either of the following:

- A seller that operates the online marketplace's platform.
- A business entity that has made available to the general public the entity's name, business address, and working contact information; that has an ongoing contractual relationship with the online marketplace to provide the online marketplace with the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer product; and that has provided to the online marketplace identifying information that has been verified.

"Consumer product" would mean any tangible personal property that is distributed in trade or commerce and that is normally used for personal, family, or household purposes regardless of whether the property is attached to or installed in, or intended to be attached to or installed in, real property.

"Political subdivision" would mean a county, city, village, township, or other political subdivision, public corporation, authority, or district in Michigan.

"Seller" would mean a person that sells, offers to sell, or contracts to sell a consumer product through an online marketplace platform. The term would not include a new motor vehicle dealer licensed under the Michigan Vehicle Code.

High-Volume Third-Party Seller; Provision of Information

The bill would create Section 30 of the Act to require an online marketplace to require a high-volume third-party seller on its platform to provide, within 10 days after qualifying as a high-volume third-party seller on the platform, to the online marketplace a bank account number, or if the high-volume third-party seller did not have a bank account, the name of the payee for payments issued by the online marketplace to the high-volume third-party seller. The bank account or payee information could be provided in either of the following ways:

- To the online marketplace.
- To a payment processor or other third party contracted by the online marketplace to maintain the information, if the online marketplace ensured that it could obtain that information on demand from the payment processor or other third party.

A high-volume third-party seller also would have to provide to the online marketplace contact information for the high-volume third-party seller that included all of the following, as applicable:

- If the high-volume third-party seller were an individual, the individual's name.

- If the high-volume third-party seller were not an individual, a copy of a valid government-issued identification for an individual acting on behalf of the high-volume third-party seller that included the individual's name or a copy of a valid government-issued record or tax document that included the high-volume third-party seller's business name and physical address.
- A business tax identification number, or, if the high-volume third-party seller did not have a business tax identification number, a taxpayer identification number.
- A current working email address and telephone number.

An online marketplace would have to do both of the following:

- Periodically, but at least annually, notify any high-volume third-party seller on the online marketplace's platform of the requirement to keep any information collected under the bill current.
- Require any high-volume third-party seller on the online marketplace's platform, within 10 days after receiving the notice, to certify electronically specific requirements.

A high-volume third-party seller would have to certify either of the following:

- The high-volume third-party seller had provided any changes to the information to the online marketplace, if any changes had occurred.
- There had been no changes to the high-volume third-party seller's information.

If a high-volume third-party seller did not provide the required information or certification, the online marketplace, after providing the high-volume third-party seller with written or electronic notice and an opportunity to provide that information or certification within 10 days after the issuance of the notice, would have to suspend any future sales activity of the high-volume third-party seller until the seller provided the required information or certification.

An online marketplace would have to do both of the following:

- Verify the information collected under the bill within 10 days after it was collected.
- Verify any change to the information within 10 days after being notified of a change in that information by a high-volume third-party seller.

"Verify" would mean to confirm information provided to an online marketplace. The term could include the use of one or more methods that enabled the online marketplace to reliably determine that any information and documents provided were valid, correspond to the seller or an individual acting on the seller's behalf, were not misappropriated, and were not falsified.

If a high-volume third-party seller provided a copy of a valid government-issued tax document, any information contained in that document would be presumed to be verified as of the date the document was issued.

Information collected solely to comply with the bill's requirements could not be used for any other purpose unless required by law.

An online marketplace would have to implement and maintain reasonable security procedures and practices, including administrative, physical, and technical safeguards that were appropriate to the nature of the information and the purposes for which the information would be used, to protect the information collected to comply with the bill's requirements from unauthorized use, disclosure, access, destruction, or modification.

An online marketplace would have to do both of the following:

- Require any high-volume third-party seller that used an online marketplace's platform and that had an aggregate total of \$20,000 or more in annual gross revenue on the online marketplace to provide the information described below to the online marketplace.
- Disclose the information described below to consumers in a clear and conspicuous manner in the order confirmation message or other document or communication made to a consumer after a purchase is finalized and in the consumer's account transaction history.

A high-volume third-party seller that used an online marketplace's platform and that had an aggregate total of \$20,000 or more in annual gross revenues on the online marketplace would have to provide and disclose to the online marketplace, except as otherwise provided, the identity of the high-volume third-party seller, including all of the following:

- The full name of the high-volume third-party seller including the seller's name or company name, or the name by which the high-volume third-party seller or company operated on the online marketplace.
- The high-volume third-party seller's physical address.
- The high-volume third-party seller's contact information, to allow for the direct, unhindered communication with the high-volume third-party seller by users of the online marketplace, including a current working telephone number, a current working email address, or other means of direct electronic messaging.

Third-Party Sellers with \$20,000 in Aggregate Annual Sales; Information

A high-volume third-party seller that used an online marketplace's platform and that had an aggregate total of \$20,000 or more in annual gross revenues on the online marketplace also would have to provide and disclose to the online marketplace whether the high-volume third-party seller used a different seller to supply the consumer product to the consumer after purchase, and, upon the request of an authenticated purchaser, the information described above relating to any seller that supplied the consumer product to the purchaser, if that seller were different from the high-volume third-party seller listed on the product listing before purchase.

On the request of a high-volume third-party seller that used an online marketplace's platform and that had an aggregate total of \$20,000 or more in annual gross revenues on the online marketplace, an online marketplace could provide for partial disclosure of the identity information required under the bill in the following situations:

- If the high-volume third-party seller certified to the online marketplace that it did not have a business address and only had a residential street address, or had a combined business and residential address, the online marketplace could disclose only the country, and if applicable, the state in which the high-volume third-party seller resided and could inform consumers that there was no business address available for the high-volume third-party seller and that consumer inquiries should be submitted to the high-volume third-party seller by telephone, email, or other means of electronic messaging provided to the high-volume third-party seller by the online marketplace.
- If the high-volume third-party seller certified to the online marketplace that it was a business that had a physical address for product returns, the online marketplace could disclose the high-volume third-party seller's physical address for product returns.
- If the high-volume third-party seller certified to the online marketplace that it did not have a telephone number other than a personal telephone number, the online marketplace would have to inform consumers that there was no telephone number available for the high-volume third-party seller and that consumer inquiries should be submitted to the seller by email or other means of electronic messaging provided to the seller by the online marketplace.

Violations & Other Provisions

If an online marketplace became aware that a high-volume third-party seller that used an online marketplace's platform and that had an aggregate total of \$20,000 or more in annual gross revenue on the online marketplace had made a false representation to the online marketplace to justify the provision for partial disclosure or that a high-volume third-party seller that had requested and received a provision for partial disclosure had not provided responsive answers within a reasonable time frame to consumer inquiries submitted to the high-volume third-party seller by telephone, email, or other means of electronic messaging, the online marketplace, after providing the high-volume third-party seller with written or electronic notice and an opportunity to respond within 10 days after the issuance of the notice, would have to suspend any future sales activity of the seller unless the it consented to the disclosure of the information required under the bill.

An online marketplace would have to disclose to consumers in a clear and conspicuous manner on a high-volume third-party seller's product listing a reporting mechanism that allowed for electronic and telephone reporting of suspicious marketplace activity to the online marketplace.

If a high-volume third-party seller did not comply with the requirements to provide and disclose information, the online marketplace, after providing the high-volume third-party seller with written or electronic notice and an opportunity to provide or disclose that information within 10 days after the issuance of the notice, would have to suspend any future sales activity of the high-volume third-party seller until it complied with those requirements.

The Attorney General could promulgate rules pursuant to the Administrative Procedures Act regarding the collection, verification, or disclosure of information under the bill. The rules would have to be limited to those needed to collect, verify, and disclose information.

A political subdivision could not establish, mandate, or otherwise require an online marketplace or seller to undertake different or additional measures to verify or disclose the same information or information that was similar to the information that was subject to the bill.

Senate Bill 1024

The Act states that unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and are defined as specified in the Act. The bill specifies that a violation of proposed Section 3o, would constitute an unfair, unconscionable, or deceptive method, act, or practice in the conduct of trade or commerce.

(Generally, the Attorney General may bring an action to enjoin, temporarily or permanently, a person engaging, or about to engage, in prohibited conduct, as well as a class action for individuals harmed by a violation. For persistent and knowing violations, a court may assess a civil fine of up to \$25,000 and costs for the prevailing party. In addition, a person also may bring an action to obtain a declaratory judgment that a method, act, or practice is unlawful and/or to enjoin the unlawful conduct, and also may bring an action to recover actual damages or \$250, whichever is greater, and attorney fees.)

Proposed MCL 445.903n & 445.903o (S.B. 1023)
MCL 445.903 (S.B. 1024)

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on the Attorney General and no fiscal impact on local units of government. The Attorney General would experience additional administrative costs in the Business Support Services unit to support the collection, verification, or disclosure of information. It is unknown if the administrative costs would be greater than current appropriations.

Fiscal Analyst: Cory Savino, PhD

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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.