

SENATE BILL NO. 1023

April 28, 2022, Introduced by Senators VICTORY, MCCANN, WOJNO, HERTEL, WOZNIAK, NESBITT, HUIZENGA, BUMSTEAD, LASATA, BRINKS, BULLOCK, SANTANA, CHANG, DALEY, VANDERWALL, LAUWERS, ANANICH, JOHNSON, MACDONALD, HORN, OUTMAN, RUNESTAD, BIZON, MOSS, POLEHANKI, ZORN, THEIS, SCHMIDT and GEISS and referred to the Committee on Regulatory Reform.

A bill to amend 1976 PA 331, entitled
"Michigan consumer protection act,"
(MCL 445.901 to 445.922) by amending the title and by adding
sections 3n and 3o.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to prohibit certain methods, acts, and practices in

1 trade or commerce; to require the disclosure, maintenance, and
2 verification of certain information for consumer protection; to
3 prescribe certain powers and duties; to provide for certain
4 remedies, damages, and penalties; to provide for the promulgation
5 of rules; to provide for certain investigations; and to prescribe
6 penalties.

7 Sec. 3n. As used in section 3o:

8 (a) "Consumer product" means any tangible personal property
9 that is distributed in trade or commerce and that is normally used
10 for personal, family, or household purposes regardless of whether
11 the property is attached to or installed in, or intended to be
12 attached to or installed in, real property.

13 (b) "High-volume third-party seller" means a participant on an
14 online marketplace's platform that is a third-party seller and
15 that, in any continuous 12-month period during the previous 24
16 months, has entered into 200 or more discrete sales or transactions
17 of new or unused consumer products through the online marketplace,
18 and for which payment was processed by the online marketplace,
19 either directly or through its payment processor, with an aggregate
20 total of \$5,000.00 or more in gross revenues.

21 (c) "Online marketplace" means a person that operates a
22 consumer-directed electronically based or accessed platform that
23 meets all of the following criteria:

24 (i) It includes features that allow for, facilitate, or enable
25 third-party sellers to engage in the sale, purchase, payment,
26 storage, shipping, or delivery of a consumer product in this state.

27 (ii) It is used by 1 or more third-party sellers for the
28 purposes in subparagraph (i).

29 (iii) It has a contractual or similar relationship with

1 consumers governing their use of the platform to purchase consumer
2 products.

3 (d) "Political subdivision" means a county, city, village,
4 township, or other political subdivision, public corporation,
5 authority, or district in this state.

6 (e) "Seller" means a person that sells, offers to sell, or
7 contracts to sell a consumer product through an online marketplace
8 platform. Seller does not include a new motor vehicle dealer
9 licensed under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to
10 257.923.

11 (f) "Third-party seller" means a seller that is independent of
12 an online marketplace and that sells, offers to sell, or contracts
13 to sell a consumer product in this state through an online
14 marketplace's platform. Third-party seller does not include either
15 of the following:

16 (i) A seller that operates the online marketplace's platform.

17 (ii) A business entity to which all of the following apply:

18 (A) It has made available to the general public the entity's
19 name, business address, and working contact information.

20 (B) It has an ongoing contractual relationship with the online
21 marketplace to provide the online marketplace with the manufacture,
22 distribution, wholesaling, or fulfillment of shipments of consumer
23 products.

24 (C) It has provided to the online marketplace identifying
25 information, as described in section 3o(1), that has been verified
26 in accordance with section 3o(4).

27 (g) "Verify" means to confirm information provided to an
28 online marketplace under section 3o(1). Verify may include the use
29 of 1 or more methods that enable the online marketplace to reliably

1 determine that any information and documents provided are valid,
2 correspond to the seller or an individual acting on the seller's
3 behalf, are not misappropriated, and are not falsified.

4 Sec. 3o. (1) An online marketplace shall require a high-volume
5 third-party seller on the online marketplace's platform to provide,
6 not later than 10 days after qualifying as a high-volume third-
7 party seller on the platform, all of the following information to
8 the online marketplace:

9 (a) A bank account number, or if the high-volume third-party
10 seller does not have a bank account, the name of the payee for
11 payments issued by the online marketplace to the high-volume third-
12 party seller. The bank account or payee information required under
13 this subdivision may be provided by the high-volume third-party
14 seller in either of the following ways:

15 (i) To the online marketplace.

16 (ii) To a payment processor or other third party contracted by
17 the online marketplace to maintain the bank account or payee
18 information, if the online marketplace ensures that it can obtain
19 that information on demand from the payment processor or other
20 third party.

21 (b) Contact information for the high-volume third-party seller
22 that includes all of the following, as applicable:

23 (i) If the high-volume third-party seller is an individual, the
24 individual's name.

25 (ii) If the high-volume third-party seller is not an
26 individual, 1 of the following:

27 (A) A copy of a valid government-issued identification for an
28 individual acting on behalf of the high-volume third-party seller
29 that includes the individual's name.

1 (B) A copy of a valid government-issued record or tax document
2 that includes the business name and physical address of the high-
3 volume third-party seller.

4 (iii) A business tax identification number, or, if the high-
5 volume third-party seller does not have a business tax
6 identification number, a taxpayer identification number.

7 (iv) A current working email address and telephone number of
8 the high-volume third-party seller.

9 (2) An online marketplace shall do both of the following:

10 (a) Periodically, but not less than annually, notify any high-
11 volume third-party seller on the online marketplace's platform of
12 the requirement to keep any information collected under subsection
13 (1) current.

14 (b) Require any high-volume third-party seller on the online
15 marketplace's platform to, not later than 10 days after receiving
16 the notice under subdivision (a), electronically certify 1 of the
17 following:

18 (i) The high-volume third-party seller has provided any changes
19 to the information in subsection (1) to the online marketplace, if
20 any changes have occurred.

21 (ii) There have been no changes to the high-volume third-party
22 seller's information.

23 (3) If a high-volume third-party seller does not provide the
24 information under subsection (1) or certification required under
25 subsection (2), the online marketplace shall, after providing the
26 high-volume third-party seller with written or electronic notice
27 and an opportunity to provide that information or certification not
28 later than 10 days after the issuance of the notice described in
29 this subsection, suspend any future sales activity of the high-

1 volume third-party seller until the high-volume third-party seller
2 provides the required information or certification.

3 (4) An online marketplace shall do both of the following:

4 (a) Verify the information collected under subsection (1) not
5 later than 10 days after the information was collected.

6 (b) Verify any change to the information under subsection (1)
7 not later than 10 days after being notified of a change in that
8 information by a high-volume third-party seller under subsection
9 (2).

10 (5) If a high-volume third-party seller provides a copy of a
11 valid government-issued tax document under this section, any
12 information contained in that document is presumed to be verified
13 as of the date of issuance of that document.

14 (6) Information collected solely to comply with the
15 requirements of this section must not be used for any other purpose
16 unless required by law.

17 (7) An online marketplace shall implement and maintain
18 reasonable security procedures and practices, including
19 administrative, physical, and technical safeguards that are
20 appropriate to the nature of the information and the purposes for
21 which the information will be used, to protect the information
22 collected to comply with the requirements of this section from
23 unauthorized use, disclosure, access, destruction, or modification.

24 (8) An online marketplace shall do both of the following:

25 (a) Require any high-volume third-party seller described in
26 subsection (9) to provide the information described in subsection
27 (9) to the online marketplace.

28 (b) Disclose the information described in subsection (9) to
29 consumers in a clear and conspicuous manner in the order

1 confirmation message or other document or communication made to a
2 consumer after a purchase is finalized and in the consumer's
3 account transaction history.

4 (9) A high-volume third-party seller that uses an online
5 marketplace's platform and that has an aggregate total of
6 \$20,000.00 or more in annual gross revenues on the online
7 marketplace shall provide and disclose both of the following to the
8 online marketplace:

9 (a) Except as provided in subsection (10), the identity of the
10 high-volume third-party seller, including all of the following:

11 (i) The full name of the high-volume third-party seller that
12 may include the high-volume third-party seller name or company
13 name, or the name by which the high-volume third-party seller or
14 company operates on the online marketplace.

15 (ii) The physical address of the high-volume third-party
16 seller.

17 (iii) The contact information of the high-volume third-party
18 seller, to allow for the direct, unhindered communication with the
19 high-volume third-party seller by users of the online marketplace,
20 including any of the following:

21 (A) A current working telephone number.

22 (B) A current working email address.

23 (C) Other means of direct electronic messaging that may be
24 provided to the high-volume third-party seller by the online
25 marketplace.

26 (b) Whether the high-volume third-party seller used a
27 different seller to supply the consumer product to the consumer
28 upon purchase, and, upon the request of an authenticated purchaser,
29 the information described in subdivision (a) relating to any seller

1 that supplied the consumer product to the purchaser, if that seller
2 is different from the high-volume third-party seller listed on the
3 product listing prior to purchase.

4 (10) Subject to subsection (11), on the request of a high-
5 volume third-party seller described in subsection (9), an online
6 marketplace may provide for partial disclosure of the identity
7 information required under subsection (9) (a) in the following
8 situations:

9 (a) If the high-volume third-party seller certifies to the
10 online marketplace that it does not have a business address and has
11 only a residential street address, or has a combined business and
12 residential address, the online marketplace may do both of the
13 following:

14 (i) Disclose only the country, and if applicable, the state in
15 which the high-volume third-party seller resides.

16 (ii) Inform consumers that there is no business address
17 available for the high-volume third-party seller and that consumer
18 inquiries should be submitted to the high-volume third-party seller
19 by telephone, email, or other means of electronic messaging
20 provided to the high-volume third-party seller by the online
21 marketplace.

22 (b) If the high-volume third-party seller certifies to the
23 online marketplace that it is a business that has a physical
24 address for product returns, the online marketplace may disclose
25 the high-volume third-party seller's physical address for product
26 returns.

27 (c) If the high-volume third-party seller certifies to the
28 online marketplace that it does not have a telephone number other
29 than a personal telephone number, the online marketplace shall

1 inform consumers that there is no telephone number available for
2 the high-volume third-party seller and that consumer inquiries
3 should be submitted to the high-volume third-party seller by email
4 or other means of electronic messaging provided to the high-volume
5 third-party seller by the online marketplace.

6 (11) If an online marketplace becomes aware that a high-volume
7 third-party seller described in subsection (9) has made a false
8 representation to the online marketplace to justify the provision
9 for partial disclosure under subsection (10) or that a high-volume
10 third-party seller that has requested and received a provision for
11 partial disclosure under subsection (10) has not provided
12 responsive answers within a reasonable time frame to consumer
13 inquiries submitted to the high-volume third-party seller by
14 telephone, email, or other means of electronic messaging provided
15 to the high-volume third-party seller by the online marketplace,
16 the online marketplace shall, after providing the high-volume
17 third-party seller with written or electronic notice and an
18 opportunity to respond not later than 10 days after the issuance of
19 the notice described in this subsection, suspend any future sales
20 activity of the high-volume third-party seller unless the high-
21 volume third-party seller consents to the disclosure of the
22 identity information required under subsection (9) (a).

23 (12) An online marketplace shall disclose to consumers in a
24 clear and conspicuous manner on the product listing of a high-
25 volume third-party seller a reporting mechanism that allows for
26 electronic and telephone reporting of suspicious marketplace
27 activity to the online marketplace.

28 (13) If a high-volume third-party seller does not comply with
29 the requirements to provide and disclose information under

1 subsections (9) and (10), the online marketplace shall, after
2 providing the high-volume third-party seller with written or
3 electronic notice and an opportunity to provide or disclose that
4 information not later than 10 days after the issuance of the notice
5 described in this subsection, suspend any future sales activity of
6 the high-volume third-party seller until the seller complies with
7 the requirements under subsections (9) and (10).

8 (14) The attorney general may promulgate rules pursuant to the
9 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
10 24.328, regarding the collection, verification, or disclosure of
11 information under this section. Rules promulgated under this
12 subsection must be limited to what is necessary to collect, verify,
13 and disclose information under this section.

14 (15) A political subdivision shall not establish, mandate, or
15 otherwise require an online marketplace or seller to undertake
16 different or additional measures to verify or disclose the same
17 information or information that is similar to the information that
18 is subject to this section.

19 Enacting section 1. This amendatory act does not take effect
20 unless Senate Bill No. 1024 of the 101st Legislature is enacted
21 into law.