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Final Analysis

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Primary Sponsors: Reps. Plummer and Ghanbari

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SUMMARY

- Requires online marketplaces to gather certain information from high-volume third party sellers selling consumer goods on those marketplaces and to provide certain information regarding high-volume third party sellers to consumers.
- Requires online marketplaces to verify information provided by high-volume third party sellers and occasionally require those sellers to verify or update the information.
- Allows the Attorney General to adopt rules to ensure collection, verification, and disclosure of information under the act's provisions.
- Establishes that a violation of the act's provisions is an unfair or deceptive act or practice for purposes of the Consumer Sales Practices Act and grants the Attorney General the same enforcement powers as are available to the Attorney General in Consumer Sales Practices Act cases involving unfair or deceptive practices.
- Prohibits private rights of action for violations of the act's provisions.

DETAILED ANALYSIS

The act requires online marketplaces to collect and verify certain information from high-volume third party sellers operating on their platforms. It also requires an online marketplace to provide certain information about each high-volume third party seller with at least \$20,000 of annual gross revenue on the marketplace to consumers who purchase goods from those sellers.

The act makes a violation of its requirements a violation of the Consumer Sales Practices Act, and allows for enforcement by the Attorney General as in other Consumer Sales Practices Act cases involving unfair or deceptive acts or practices.

Marketplaces and sellers affected

The act defines “**online marketplace**” as a person or entity that operates a consumer-directed electronically based or accessed platform that meets three criteria:

1. It allows for, facilitates, or enables third party sellers to sell, purchase, store, ship, pay for, or deliver a consumer product in Ohio;
2. It is used by third party sellers for the above purpose; and
3. It has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

“**Third party sellers**” are defined as those who sell, offer to sell, or contract to sell consumer products through an online marketplace and who are independent of the marketplace. “**Seller**” does not include a licensed new motor vehicle dealer. A “**high-volume third party seller**” is a third party seller that makes 200 or more discrete sales of or transactions for new or unused consumer products with consumers in Ohio within any 12-month period in the immediately preceding 24 months, provided that those sales or transactions result in an aggregate total of \$5,000 or more in gross revenue. Sellers that meet either of the following criteria are excluded from the definition:

- The seller is a business entity to which all of the following apply:
 - It has made its name, business address, and contact information available to the general public;
 - It has an ongoing contractual relationship with the online marketplace to provide for the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products;
 - It has provided the online marketplace with the identifying information that high-volume third party sellers are required to provide to online marketplaces, and the online marketplace has verified that information (see “**Disclosures to, and verification by, online marketplaces,**” below).
- The seller operates the online marketplace’s platform.¹

A “**consumer product**” is tangible personal property that is distributed in commerce and that is normally used for personal, family, or household purposes.²

¹ R.C. 1349.65.

² R.C. 1349.65(A) and, by reference, 15 United States Code 2301.

Disclosures to, and verification by, online marketplaces

Initial disclosure

The act mandates that an online marketplace require a high-volume third party seller to provide certain information to the marketplace within ten days after qualifying as a high-volume third party seller. The required information is:

- A bank account number or, if the seller does not have a bank account, the name of the payee for payments issued by the marketplace to the seller. This information may be provided to the marketplace or a payment processor or other third party contracted by the marketplace, provided the marketplace can obtain the information on demand from the processor or third party.
- If the seller is an individual, the seller's name;
- Either of the following, if the seller is not an individual:
 - A copy of a government-issued I.D. showing the name of an individual acting on the seller's behalf;
 - A copy of a government-issued record or tax document that includes the seller's business name and physical address;
- A business tax I.D. number or, if the seller does not have one, a taxpayer I.D. number;
- A working email address and phone number.³

Updates and verification

The act requires online marketplaces to notify, at least annually, high-volume third party sellers of the requirement to keep the disclosed information current and to require them to electronically certify, within ten days of receiving that notice, that the information has been updated or remains unchanged.

The act also requires the online marketplace to verify the information provided, either initially or in response to an update notice, within ten days of receiving it, though information contained in government-issued tax documents is presumed verified as of the date the document was issued. As used in the act, "**verify**" means to confirm the provided information, which may include the use of one or more methods that enable the online marketplace to reliably determine that the information or documents provided are valid, corresponding to the seller or an individual acting on the seller's behalf, not misappropriated, and not falsified.⁴

³ R.C. 1349.66(A).

⁴ R.C. 1349.65(F), 1349.66(B), and 1349.67.

Suspension for failure to disclose or update

The act requires online marketplaces to provide high-volume third party sellers that do not provide the required information or certification, described above, notice and an opportunity to do so within ten days of the notice. The marketplaces must suspend sales by sellers that do not meet the deadline until the information or certification is provided.⁵

Disclosure to consumers

General requirements

Under the act, online marketplaces must require high-volume third party sellers with an aggregate of \$20,000 in annual gross revenues on their platforms to provide certain information to the marketplaces. The marketplaces must then disclose that information to consumers, in a clear and conspicuous manner in the order confirmation or other document or communication given to a consumer after a purchase is finalized and in the consumer's account transaction history.

All of the following information is required:

- The high-volume third party seller's full name, which may include the seller's name or seller's company name, or the name by which the seller or company operates on the online marketplace;
- The seller's physical address;
- The seller's contact information, including any of the following:
 - A working phone number;
 - A working email address;
 - Other means of direct electronic messaging, which the marketplace may provide.
- Whether the seller used a different seller to supply the consumer product to the consumer upon purchase, and, upon the request of an authenticated purchaser, the same information about the other seller that the marketplace must disclose regarding the high-volume third party seller listed on the product listing.⁶

Online marketplaces must suspend high-volume third party sellers who are required to provide the above information for disclosure to consumers but fail to do so following notice and ten days to provide the information. The suspension may be lifted upon subsequent provision of the information.⁷

⁵ R.C. 1349.66(C).

⁶ R.C. 1349.70.

⁷ R.C. 1349.73.

Exceptions

The act establishes both mandatory and permissive exceptions to the disclosures online marketplaces must make to consumers.

Mandatory exceptions

There are two mandatory exceptions to the disclosures online marketplaces must normally make to consumers. First, if a high-volume third party seller certifies to an online marketplace that they do not have a separate business phone number, but only a personal phone number, the marketplace must inform consumers that there is no phone number available for the seller and that inquiries should be submitted to the seller by email or other means of electronic messaging provided by the marketplace.

Second, marketplaces must limit disclosures for high-volume third party sellers who are participants in the Ohio Secretary of State's Safe at Home Program for survivors of domestic violence, menacing by stalking, human trafficking, trafficking in persons, rape, or sexual battery. If a high-volume third party seller is a participant in that program, an online marketplace may only disclose the address for that seller designated by the Secretary of State under the program.⁸

Permissive exceptions

The act's optional exceptions permit online marketplaces to provide for the partial disclosure of the high-volume third party seller identity information they must disclose in two circumstances.

The first circumstance involves sellers who certify they do not have a business address that is separate from their residential address. In those cases, the online marketplace may disclose the country and, if applicable, state where the seller resides, and that inquiries should be submitted by telephone, email, or other means of electronic messaging provided by the marketplace.

The second circumstance applies to high-volume third party sellers that certify to the online marketplace that they have a physical address for product returns. In those cases, the marketplace may disclose the physical address for product returns instead of the seller's full physical address.⁹

Revocation of exception

Provision for limited disclosure, aside from limited disclosure for Safe at Home Program participants, may be revoked. If an online marketplace that has allowed partial disclosure becomes aware that the seller made a false representation to justify the partial disclosure or has not provided responsive answers to consumer inquiries in a reasonable timeframe, the marketplace must provide the seller written or electronic notice and an opportunity to respond

⁸ R.C. 1349.71(A)(3) and (C) and, by reference, R.C. 111.41 to 111.48, not in the act.

⁹ R.C. 1349.71(A)(1) and (2).

within ten days of the notice. If the seller does not then consent to full disclosure under the act's standard provisions, the marketplace must suspend the seller's sales. The act is silent about the effects of a seller falsely representing their status as a Safe at Home Program participant.¹⁰

Reporting mechanisms

The act requires online marketplaces to disclose, in a clear and conspicuous manner, a reporting mechanism on each high-volume third party seller product listing. The reporting mechanism must allow consumers to report to the marketplaces suspicious seller activity by phone or electronic means.¹¹

Use of information and data security

The act provides that data collected solely to comply with its provisions must not be used for any other purpose, unless required by law. It also requires online marketplaces to implement and maintain reasonable security procedures and practices to protect the data from unauthorized use, disclosure, access, destruction, or modification.¹²

Attorney General rulemaking

The act grants the Attorney General the authority to adopt rules necessary to collect, verify, and disclose information under the provisions described above.¹³

Consumer Sales Practices Act violations

A violation of the act's requirements is considered an unfair or deceptive act or practice in violation of Ohio's Consumer Sales Practices Act. The Attorney General has the same powers and remedies available to enforce the act's provision as are available to the Attorney General under the Consumer Sales Practices Act, which include suing for injunctive relief and civil penalties. Individual consumers, however, do not have a private right of action for a violation of the act's provisions.¹⁴

Statement of intent and prohibition on local regulation

The act states that the General Assembly's intent in enacting it is to establish a statewide, comprehensive enactment that applies to all parts of the state, operates uniformly throughout the state, and sets forth police regulations. The act also prohibits local governments from establishing, mandating, or otherwise requiring online marketplaces or sellers to

¹⁰ R.C. 1349.71(B).

¹¹ R.C. 1349.72.

¹² R.C. 1349.68 and 1349.69.

¹³ R.C. 1349.74(C).

¹⁴ R.C. 1349.74(A) and (B) and R.C. 1345.02 and 1345.09, not in the act.

undertake different or additional measures to verify or disclose the same or similar information covered by the act.¹⁵

HISTORY

Action	Date
Introduced	04-22-21
Reported, H. Commerce and Labor	12-08-21
Passed House (75-20)	12-08-21
Reported, S. Financial Institutions and Technology	03-20-22
Passed Senate (33-0)	03-20-22

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¹⁵ R.C. 1349.76.