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H.B. 272
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the Senate

Primary Sponsors: Reps. Plummer and Ghanbari

Local Impact Statement Procedure Required: No

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Highlights

- The costs for the Office of the Attorney General's Consumer Protection Section to investigate and enforce civil violations of the bill's information collection, disclosure, and verification requirements imposed on high-volume third party sellers and online marketplaces may necessitate additional budgetary resources depending on the degree to which it would involve examining business-to-business transactions.

Detailed Analysis

The bill:

- Requires online marketplaces to verify certain information regarding high-volume third party sellers of consumer products and to disclose certain related information to consumers; and
- Grants the Attorney General the same enforcement authority the Attorney General has under the Consumer Sales Practices Act.

Information requirements

The bill's disclosure requirements are triggered when a third party seller operating on an online marketplace (such as Amazon, eBay, Etsy, and Walmart) meets the bill's definition of "high-volume third party seller."¹ Not later than ten days after qualifying as a high-volume third

¹ The bill defines a "high-volume third party seller" as a participant in an online marketplace that, in any continuous 12-month period in the previous 24 months, has entered into at least 200 discrete sales for consumer products, resulting in at least \$5,000 of gross revenue.

party seller, the seller is required to provide specified banking account and contact information to the online marketplace. The marketplace is then required to verify the information within ten days of its submission.

In addition to initial disclosure, there are ongoing requirements to ensure the accuracy of the information. Under the bill, if the seller fails to update the information or certify that it is unchanged after receiving notice from the marketplace to do so, their participation in the marketplace will be suspended ten days after the notice was issued. The online marketplace is also required to collect certain information on high-volume third party sellers with \$20,000 or more in annual gross revenues on the marketplace, including their physical address and specified contact information (the bill allows for partial disclosure in some circumstances). The information must be disclosed to consumers on order confirmations and transaction histories. In addition, upon request, the same information must be disclosed for those sellers that use a different seller to supply the consumer product.

The bill allows the Attorney General to adopt rules with respect to the collection, verification, and disclosure of information.

Enforcement

The number of enforcement actions stemming from the bill is difficult to estimate for several reasons, perhaps most notably because of the issue of detection. It seems likely that the discovery of violations would rely largely upon consumer reporting. While the bill requires marketplaces to provide a reporting mechanism on each high-volume third party seller product listing, the frequency at which suspicious seller activity would be detected and subsequently reported is unknown, as is whether the reports would relate to violations of the bill specifically or unlawful conduct generally. Given the prevalence of online sales and the fact that nearly two million sellers are actively selling on Amazon marketplace,² in all likelihood there will be additional alleged violations of Ohio's Consumer Sales Practices Act (CSPA) related to the bill's requirements (depending on how reliably a seller can determine whether a consumer is an Ohio consumer) or otherwise.

A violation of the bill's requirements is considered an unfair or deceptive act or practice in violation of the CSPA. To enforce, the Attorney General's Office can investigate violations, seek a declaratory judgment, an injunction or other equitable relief, or organize and bring a class action. There is no private cause of action available under the bill. In other words, a consumer injured by a violation of the bill cannot sue a seller or marketplace for relief under the CSPA.

Attorney General

Presumably, the Attorney General's Office would try to settle the issues surrounding violations prior to initiating any formal legal action. For example, the violators could simply agree to cease their conduct, and assuming they do so, the Attorney General's Office would stop investigation and enforcement. The Attorney General's Office typically initiates court action as a last resort. The Attorney General's Office could request that a court of common pleas issue a

² Amazon is the largest e-commerce platform, accounting for nearly 40% of U.S. online sales and 5% of total sales: <https://www.wsj.com/articles/amazon-scooped-up-data-from-its-own-sellers-to-launch-competing-products-11587650015>.

declaratory judgment, a temporary restraining order, or an injunction in order to persuade the person or entity to cease their conduct.

If the Attorney General's Office successfully pursues a civil remedy, the court adjudicating the matter can award the Attorney General all costs and expenses associated with its investigation, in addition to reasonable attorney's fees. The court may also order civil penalties of up to \$25,000. Three-quarters, or 75%, of this civil penalty (as much as \$18,750 if the maximum \$25,000 possible fine is assessed), as well as the investigation costs and attorney's fees, would be credited to the state's Consumer Protection Enforcement Fund (Fund 6310). The remaining one-quarter, or 25%, of the civil penalty would go to the treasury of the county where the Attorney General's action is brought (as much as \$6,250 if the \$25,000 maximum possible fine is assessed). The timing and magnitude of the revenue stream is variable and unpredictable.

The magnitude of work involved for the Attorney General's Consumer Protection Section would depend on the number of complaints filed/reported, investigations performed, and enforcement actions taken. The bill will create one-time and ongoing operating costs for the Consumer Protection Section; however, the amount of those costs have yet to be determined. It is also uncertain the degree to which any additional operating costs would be offset by additional penalty money credited to Fund 6310. This is because investigation and enforcement of certain provisions (specifically related to the submission of information by a seller to a marketplace, and the verification and certification of that information) would require the Consumer Protection Section to broaden its scope of normal duties to investigate business-to-business transactions. The workload increase may necessitate additional budgetary resources to hire and support the necessary staff.