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Bill Analysis

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Primary Sponsors: Sens. Lang and Rulli

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SUMMARY

- Requires high-volume third-party sellers selling consumer goods on online marketplaces to provide certain information to the marketplaces and disclose certain information to consumers on product listings.
- 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 information submitted is accurate.
- Establishes that a violation of the bill's provisions is an unfair or deceptive act or practice for purposes of the Consumer Sales Practices Act and grants consumers relief and allows for enforcement as in other Consumer Sales Practices Act cases involving unfair or deceptive practices.

DETAILED ANALYSIS

The bill requires high-volume third-party sellers operating on online marketplaces to provide certain information to the marketplaces and consumers and requires marketplaces to verify that information.

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

Marketplaces and sellers affected

The bill defines “**online marketplace**” as an internet-based or accessed platform that both:

- Allows for, facilitates, or enables third-party sellers to sell, purchase, store, ship, pay for, or deliver a consumer product in Ohio;

- Hosts a third-party seller.

“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 operator, facilitator, or owner of that marketplace. 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 all of the following criteria are excluded from the definition:

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

Disclosures to, and verification by, online marketplaces

Initial disclosure

The bill mandates that online marketplaces require high-volume third-party sellers to provide certain information to the marketplace within 24 hours of becoming high-volume third-party sellers. The required information is:

- Bank account information or, if the seller lacks a bank account, the name of the payee for payments issued by the marketplace to the seller;
- Contact information that includes:
 - A working email address and telephone number.
- A copy of a government-issued photo I.D. showing name and physical address, if the seller is an individual;
- Either of the following, if the seller is not an individual:
 - A copy of a government-issued photo I.D. showing the name and physical address of an individual acting on the seller’s behalf;

¹ R.C. 1349.65.

- 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, if the seller has one, or a taxpayer I.D. number.
- Whether the seller is exclusively advertising or offering the consumer product on the online marketplace, or if the seller advertises or offers the same consumer product on any other website.²

Verification and updates

Online marketplaces must verify the information provided by high-volume third-party sellers. Under the bill, “**verify**” means to confirm information through one of two means:

- A third-party or proprietary identity verification system with the capability to confirm a seller's name, email address, physical address, and phone number;
- A combination of two-factor authentication, public records search, and presentation of a government-issued I.D.

Submitted information must be verified within three calendar days of its submission. The online marketplace is required to verify most of the information itself, but payment information may be verified by a payment processor or other party that the marketplace has contracted with. If the marketplace contracts with a processor or other third party, the marketplace must be permitted to obtain the information on demand.

At least annually, online marketplaces must contact high-volume sellers and notify them to either update the submitted information or certify that it is unchanged. If an online marketplace becomes aware that a high-volume third-party seller has not certified or updated its information within three calendar days of the notice, the marketplace is required to suspend the seller's participation in the marketplace until the information is certified or updated.³ (See **COMMENT.**)

Third-party seller disclosures on product listings

Under the bill, online marketplaces must require high-volume third-party sellers to provide certain information to Ohio consumers through product listings. Specifically, product listings must conspicuously display the high-volume third-party seller's name and the following information or a link to it:

- The seller's full physical address;
- Whether the seller also manufactures, imports, or resells consumer products;
- The seller's contact information, including a working phone number and email address;

² R.C. 1349.66(A).

³ R.C. 1349.65(F) and 1349.66(B).

- Any other information the Attorney General determines necessary to prevent circumvention or evasion of these disclosure requirements.⁴ (See “**Attorney General rulemaking authority**,” below.)

In three circumstances, and upon a high-volume third-party seller’s request, the bill permits online marketplaces to allow partial disclosure of the information generally required with product listings. The first circumstance involves sellers who demonstrate they do not have a business address, only a residential street address. In those cases, the online marketplace may direct the seller to disclose the country and, if applicable, state of residence with the product listing. In that circumstance, the seller may also inform Ohio consumers, that it does not have a business address available and inquiries should be submitted by phone or email.

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

The third circumstance applies to high-volume third-party sellers that demonstrate to an online marketplace that they do not have a separate business phone number, but only a personal phone number. The bill requires online marketplaces, in that circumstance, to inform Ohio consumers that there is no phone number available for the seller and that inquiries should be submitted to the seller by email.⁵

Provision for limited disclosure may be revoked under the bill. 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 withdraw the approval for partial disclosure and require full disclosure upon three business days’ notice to the seller.⁶ (See **COMMENT.**)

Online marketplace disclosure and reporting mechanisms

In addition to requiring high-volume third-party sellers to disclose certain information on their online marketplace product listings, the bill requires online marketplaces that fulfill orders for high-volume third-party sellers to disclose the seller’s identity. Specifically, if the online marketplace warehouses, distributes, or otherwise fulfills a consumer product order for a consumer in Ohio, and the product is supplied by a high-volume third-party seller other than the seller listed on the product page, the online marketplace must identify the high-volume third-party seller supplying the product.

Online marketplaces must also provide a reporting mechanism for Ohio consumers on each high-volume third-party seller product listing. The reporting mechanism must allow Ohio

⁴ R.C. 1349.67(A).

⁵ R.C. 1349.67(B)(1).

⁶ R.C. 1349.67(B)(2).

consumers to report suspicious seller activity by phone or electronic means. The mechanism, and a message encouraging Ohio consumers to report suspicious seller activity, must be conspicuously displayed on high-volume third-party seller product listings.⁷

Attorney General rulemaking authority

The bill grants the Attorney General the authority to adopt rules necessary to collect and verify information under the provisions described above.⁸

Consumer Sales Practices Act violations

A violation of the bill's requirements is considered an unfair or deceptive act or practice in violation of Ohio's existing Consumer Sales Practices Act. A person who is injured by such a violation has a cause of action, and is entitled to the same relief, as consumers are under the Consumer Sales Practices Act. Additionally, the Attorney General has the same powers and remedies available to enforce the bill's provision as are available to the Attorney General under the Consumer Sales Practices Act.⁹

Statement of intent and prohibition on local regulation

The bill 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 bill also prohibits political local governments from establishing, mandating, or otherwise requiring online marketplaces or sellers to undertake different or additional measures to verify or disclose the same or similar information covered by the bill.¹⁰

COMMENT

The bill requires that online marketplaces suspend high-volume third-party sellers that do not update or certify as unchanged the information they are required to submit upon becoming high-volume third-party sellers within three calendar days after receiving an annual notice to do so. It does not, however, require suspension if high-volume third-party sellers do not submit the information within 24 hours of initially becoming third-party sellers.

The bill does not specify what, if any, consequence applies to a seller whose approval to disclose only partial information is revoked but does not subsequently provide full disclosure.

⁷ R.C. 1349.67(C) and (D).

⁸ R.C. 1349.68(B).

⁹ R.C. 1349.68(A).

¹⁰ R.C. 1349.68(C).

HISTORY

Action	Date
Introduced	05-19-21
