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S.B. 184
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Passed by the Senate

Primary Sponsors: Sens. Lang and Rulli

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 requirements imposed on high-volume third-party sellers and online marketplaces may necessitate additional budgetary resources depending on the degree to which it would be involved in examining business-to-business transactions.
- Any increase in the annual operating costs of courts of common pleas to adjudicate civil actions is likely to be minimal and more or less absorbed by utilizing existing staff and resources. Revenue in the form of court costs and fees may offset those costs to some degree.

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.
- Subjects a violation of its requirements to 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 Within 24 hours from that point, the seller must provide the marketplace with specific identification information. The marketplace is then required to verify the information within three calendar 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 an annual notice from the marketplace to do so, their participation in the marketplace will be suspended. The seller is also required to disclose certain information to consumers through product listings, including their physical address and specified contact information (the bill allows for partial disclosure in some circumstances). Further, marketplaces that fulfill orders for high-volume third-party sellers are required to disclose the seller’s identity.

The bill allows the Attorney General to adopt rules necessary to collect and verify information required of online marketplaces and high-volume third-party sellers.

Enforcement

The number of enforcement actions stemming from the bill is difficult to estimate for several reasons, but primarily 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, for which two civil remedies are available. First, 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. Second, a person who is injured by such a violation has a cause of action and is entitled to relief.

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, a violator could simply agree to cease their conduct, and assuming they do so, the Attorney General’s Office would stop investigation and enforcement. Similar to the procedures taken in existing CSPA cases, the

¹ The bill defines a “high-volume third-party seller” as 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. Certain sellers are excluded from the definition.

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>.

Attorney General's Office would typically seek court action against a person or entity as a last resort, depending on the nature of the violation and if they perceive the person or entity is receiving a pattern of consumer complaints. Assuming a less formal negotiating strategy does not work, the Attorney General's Office could request that a court of common pleas issue a declaratory judgment, a temporary restraining order, or an injunction in order to persuade the person or entity to cease their offending behavior.

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 that violators could be ordered to pay 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 potential 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.

Local civil justice systems

As noted above, a consumer who believes a seller or marketplace has violated the law may pursue a civil remedy, which means that additional civil suits may be brought in the local trial court of appropriate jurisdiction. This could generate some additional filing fee and court cost revenue for counties and place some additional burdens on the courts that will have to adjudicate these matters. It appears unlikely that many consumers will elect to pursue a civil remedy without the assistance of the Attorney General. Rather, it is more likely that consumers generally will report a complaint to the Attorney General's Office, with the expectation that the Consumer Protection Section will investigate the matter and take the appropriate action.