

Legislative Analysis



HIGH-VOLUME THIRD-PARTY SELLERS OF ONLINE MARKETPLACES

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<http://www.house.mi.gov/hfa>

House Bill 5485 as introduced
Sponsor: Rep. Ben Frederick

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5486 as introduced
Sponsor: Rep. Samantha Steckloff

House Bill 5487 as introduced
Sponsor: Rep. Mark A. Tisdell

Committee: Judiciary
Complete to 3-21-22

SUMMARY:

House Bills 5485, 5486, and 5487 would amend the Michigan Consumer Protection Act to regulate online marketplaces and high-volume third-party sellers on those marketplaces. Among other things, the bills would require high-volume third-party sellers to provide certain information to online marketplaces and require the marketplace to verify specified information and disclose specified information to consumers.

House Bill 5485 would add section 3p to the act to require an *online marketplace* to require *high-volume third-party sellers* to provide certain identifying information and also to require the online marketplace to disclose that information to consumers.

Online marketplace would mean any electronically based or accessed platform that does both of the following:

- Includes features that allow for, facilitate, or enable *third-party sellers* to engage in the sale, purchase, payment, storage, shipping, or delivery of a *consumer product* in Michigan.
- Hosts one or more third-party sellers.

High-volume third-party seller would mean a third-party seller that, in any continuous 12-month period during the previous 24 months, has entered into either of the following:

- 200 or more or more separate sales or transactions of new or unused consumer products in Michigan.
- More than five separate sales or transactions of new or unused consumer products into Michigan resulting in the accumulation of an aggregate total of \$5,000 or more in gross revenues.

Consumer product would mean any tangible personal property that is distributed in trade or commerce and that is normally used for personal, family, or household purposes regardless of whether the property is attached to or installed in, or intended to be attached or installed in, real property.

Third-party seller would mean any *seller*, independent of an operator, facilitator, or owner of an online marketplace, who sells, offers to sell, or contracts to sell a consumer

product in Michigan through an online marketplace. It would *not* include a seller that meets all of the following:

- It is a business entity that has made available to the general public its name, business address, and working contact information.
- It has an ongoing contractual relationship with the owner of the online marketplace to provide for the manufacture, distribution, wholesaling, or fulfilment of shipments of consumer products.
- It has provided to the online marketplace the required information described in HB 5457 that has been verified in accordance with HB 5457. (See below.)

Seller would mean a ***person*** who sells, offers to sell, or contracts to sell a consumer product through an online marketplace.

Person means an individual, corporation, limited liability company, trust, partnership, incorporated or unincorporated association, or other legal entity.

Identifying information

Under the bill, an online marketplace would have to require a high-volume third-party seller on its marketplace to provide all of the following information:

- The identity of the high-volume third-party seller, which would have to include all of the following:
 - The name of the seller.
 - The full physical address of the seller.
 - Whether the seller also engages in the manufacturing, importing, or reselling of ***consumer products***.
 - Contact information for the seller, including a working telephone number and working email address. The email address could be provided to the seller by the online marketplace.
- Any other information required by the Department of the Attorney General under rules promulgated under this new section to prevent the circumvention or evasion of these provisions.

Disclosure of identity information to consumers

The online marketplace would have to disclose the above information to consumers in a conspicuous manner either on the product listing or, for information other than the high-volume third-party seller's full name, through a link conspicuously placed on the product listing.

Upon the request of a high-volume third-party seller, an online marketplace could allow the partial disclosure of the identity information required above as follows:

- If the high-volume third-party seller indicates to the online marketplace that the seller has only a residential address and does not have a business address, the marketplace could permit the disclosure of only the seller's country and, if applicable, state of residence. If a partial disclosure were made, the marketplace would have to inform consumers that there is no business address available for the seller and that consumer inquiries should be submitted to the seller by telephone or email.
- If the high-volume third-party seller indicates to the online marketplace that the seller is a business that has a physical address for product returns, the marketplace would

have to allow the seller's physical address for product returns to be disclosed as the seller's physical address.

However, if an online marketplace became aware that a high-volume third-party seller had made a false representation when requesting partial disclosure of identifying information or that, after requesting and receiving permission for partial disclosure, the seller had not provided responsive answers within a reasonable time to consumer inquiries, the marketplace would have to withdraw its permission for partial disclosure and require the full disclosure of the identity information required above upon three business days' notice to the seller.

Additionally, an online marketplace that warehouses, distributes, or otherwise fulfills a consumer product order would have to disclose to the consumer the identification of a high-volume third-party seller supplying the consumer product if different from the seller listed on the product listing page.

Suspicious marketplace activity

An online marketplace would have to include, in a conspicuous manner on the product listing page of any high-volume third-party seller, a reporting mechanism allowing for electronic and telephonic reporting of suspicious marketplace activity to the marketplace and a message encouraging consumers to report suspicious activity to the marketplace.

Other provisions

The attorney general could promulgate rules regarding additional information that would have to be provided and disclosed under the above provisions, but the additional information would have to be limited to that which is necessary to prevent the circumvention or evasion of the above provisions.

Finally, the bill would prohibit a *political subdivision* from establishing, mandating, or otherwise requiring an online marketplace to disclose information to consumers regarding high-volume third-party sellers.

Political subdivision would mean a county, city, village, township, or other political subdivision, public corporation, authority, or district in Michigan.

Proposed MCL 445.903p

House Bill 5487 would add section 3o to the act to provide requirements for the collection and verification of certain information of high-volume third-party sellers by an online marketplace.

Required information

Under the bill, an online marketplace would have to require a high-volume third-party seller on the marketplace to provide the marketplace with all of the following information within three business days of its becoming a high-volume third-party seller:

- **Bank account information.** The accuracy of this information would have to be confirmed directly by the marketplace or a payment processor or other third party contracted by the marketplace or, if the high-volume third-party seller does not have a bank account, the name of the payee for payments issued by the marketplace to the high-volume third-party seller. An online marketplace could direct a high-volume

third-party seller to provide the bank account or payee information to a payment processor or other third party, instead of the marketplace, if the marketplace has contracted with the processor or third party to maintain the information and can obtain the information on demand from the processor or third party.

- Contact information, including all of the following:
 - If the high-volume third-party seller is an individual, a copy of a government-issued photo identification for the individual with the individual's name and physical address.
 - If the high-volume third-party seller is not an individual, either of the following:
 - A copy of a government-issued photo identification for an individual acting on behalf of the high-volume third-party seller with the individual's name and physical address.
 - A copy of a government-issued record or tax document with the business name and physical address of the high-volume third-party seller.
 - A working email address and telephone number for the high-volume third-party seller.
- A business tax identification number or, if the high-volume third-party seller does not have one, a taxpayer identification number.
- Whether the high-volume third-party seller is exclusively advertising or offering the consumer product or products on the marketplace or is currently advertising or offering for sale the same product or products on an internet website other than the marketplace.

Updating required information

A high-volume [third-party] seller would have to notify the online marketplace of any changes to the above information, and, at least once a year, the online marketplace would have to notify each high-volume third-party seller on its marketplace of this requirement and instruct the seller to do one of the following within three business days of receiving the notice:

- Electronically certify that the seller's information provided above is unchanged.
- Electronically certify that the seller's information provided above has changed and provide updated information.

Failure to provide or update required information

If a high-volume third-party seller did not provide the required information within three business days of its becoming a high-volume third-party seller or respond to a notice described above within three business days of its receipt, the online marketplace would have to suspend the high-volume third-party seller's participation on the marketplace until the seller complied with the applicable requirements.

Verifying required information

Within three business days of receiving information as described above, the online marketplace would have to *verify* the information. If a high-volume third-party seller provided a copy of a valid government-issued tax document, information in that document would be considered verified as of the date the document was issued.

Verify would mean to confirm information provided to an online marketplace as described above by the use of one or both of the following:

- A third-party or proprietary identity verification system that has the capability to confirm a seller's name, email address, physical address, and telephone number.
- A combination of two-factor authentication, public records search, and the presentation of a government-issued identification or documentation of taxpayer identification number issued by the Social Security Administration or Internal Revenue Service.

Other provisions

The attorney general could promulgate rules regarding the collection and verification of information under the bill. Rules promulgated under this provision would have to be limited to what is necessary to collect and verify the information.

Finally, the bill would prohibit a political subdivision from establishing, mandating, or otherwise requiring an online marketplace to verify information from high-volume third-party sellers on a one-time or ongoing basis.

Proposed MCL 445.903o

House Bill 5486 would add section 3n to provide definitions for terms used in House Bills 5485 and 5487 (as described in context above). The bill also would provide that violation of section 3o or 3p (which would be added by House Bills 5485 and 5487, respectively) is an unfair, unconscionable, or deceptive method, act, or practice in the conduct of trade or commerce that is unlawful under the act.

Generally speaking, a person who suffers loss as a result of a violation of the act regarding an unfair, unconscionable, or deceptive method, act, or practice in the conduct of trade or commerce may bring a civil action to recover actual damages or \$250, whichever is greater, along with reasonable attorney fees. A person may also bring an action to obtain a declaratory judgment that a method, act, or practice is unlawful under the act or an injunction against a person who is engaging or is about to engage in a method, act, or practice that is unlawful under the act. The act also provides for a class action to be brought under certain circumstances. In addition, the act authorizes the attorney general to bring an action to permanently enjoin a defendant from engaging in a method, act, or practice that is unlawful under the act, and a court may assess a fine of up to \$25,000 if the method, act, or conduct is found to be unlawful.

MCL 445.903 and proposed MCL 445.903n

Enactment provisions

Each bill would take effect 180 days after being enacted.

The bills are all tie-barred to one other, which means that none of them could take effect unless all of them were enacted.

FISCAL IMPACT:

House Bills 5485, 5486, and 5487 would have no fiscal impact on the state or local units of government. The bills would authorize the Department of the Attorney General to promulgate rules regarding what information high-volume third-party sellers are required to provide and the collection and verification of that information. Any additional responsibilities that the department chooses to assume would likely be done with existing staff and ongoing appropriations.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.