

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 295
Economic Matters

(Delegate Qi, *et al.*)

Commercial Law - Consumer Protection - Online Marketplace Disclosure
Requirements (INFORM Consumers Act of 2022)

This bill requires an “online marketplace” to collect, verify, and require the disclosure of certain information from a “high-volume third-party seller.” Online marketplaces must acquire a seller’s (1) bank account information; (2) contact information; and (3) tax identification number. The seller must also provide information regarding whether it is exclusively advertising (or offering) the product on the online marketplace or advertising (or offering) the same product on any other websites. Online marketplaces must verify the required information; sellers must annually certify its accuracy or provide updated information. Additionally, online marketplaces must make certain information (*e.g.*, sellers’ names and contact information) available to consumers through the online marketplace and provide consumers with methods to report electronically and by telephone any suspicious activity. The Office of the Attorney General (OAG) must adopt regulations to implement the bill’s requirements. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill’s imposition of existing penalty provisions does not have a material impact on State finances or operations. OAG can handle the bill’s requirements with existing resources.

Local Effect: The bill’s imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Definitions

The bill defines a “high-volume third-party seller” as an online marketplace participant that conducts 200 or more discrete sales or transactions of new or unused consumer products resulting in total revenues of \$5,000 or more in a continuous 12-month period during the immediately preceding 24 months.

An “online marketplace” is an electronically based or accessed platform that (1) hosts high-volume third-party sellers and (2) includes features that allow for, facilitate, or enable high-volume third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of consumer products in the United States.

Required Disclosures and Verification

Bank account information (or an acceptable alternative) may be maintained by an online marketplace, a payment processor, or another third party contracted by the online marketplace. An online marketplace may obtain the required information on demand from a payment processor or other third party.

An online marketplace must verify the required information within three business days after receiving the information. However, if a high-volume third-party seller provides a copy of a valid government-issued tax document, the information contained in the document must be presumed to be verified as of the date of issuance of the document.

On at least an annual basis, an online marketplace must notify each high-volume third-party seller that the seller must inform the online marketplace of any changes to the required information. The notice must instruct the seller to electronically certify that the seller’s information is either unchanged or that the seller will provide a change to the information within three business days after receiving the notice. If an online marketplace becomes aware that a seller has not complied with this requirement, the marketplace must suspend the seller until it complies.

Except in certain circumstances (*i.e.*, if a high-volume third-party seller does not have a business address), an online marketplace must require a high-volume third-party seller to disclose specified information (*e.g.*, the seller’s full name, contact information, etc.) to consumers on the online marketplace.

Upon request by a high-volume third-party seller, an online marketplace may allow the seller to *partially* disclose the required identity information to a consumer. However, an online marketplace must require the *full* disclosure of such information if the online marketplace becomes aware that the seller has (1) made a false representation in regard to the partial information or (2) has not provided responsive answers within a reasonable time period to consumer inquiries submitted to the seller by telephone or email. A high-volume third-party seller must fully disclose the seller's identity information to consumers on the online marketplace within three business days after being notified by the online marketplace of the seller's noncompliance.

In addition to the above disclosure requirements, if a high-volume third-party seller that supplies a consumer product is different than the seller listed on the product listing page, an online marketplace must disclose the identity of the seller to the consumer. However, this requirement only applies to an online marketplace that warehouses, distributes, or otherwise fulfills consumer product orders.

The bill prohibits a political subdivision from requiring an online marketplace to verify information from a high-volume third-party seller or disclose any information to a consumer.

Current Law: An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division within OAG is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Association of Counties; Maryland Municipal League; Office of the Attorney General (Consumer Protection Division); Comptroller's Office; Department of Legislative Services

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