
Consumer Protection & Business Committee

HB 1614

Brief Description: Concerning online marketplace consumer product theft and safety protection.

Sponsors: Representatives Kirby, Ryu, Berry, Johnson, J., Corry and Walen.

Brief Summary of Bill

- Requires online marketplaces to obtain and verify banking, contact, and tax information from high-volume third-party sellers; disclose to consumers certain contact and business information for such sellers; and provides a mechanism for consumers to report suspicious activity.
- Provides for enforcement through the Consumer Protection Act; grants the Attorney General enforcement authority; and authorizes the Attorney General to develop certain implementing regulations.
- Preempts local requirements for online marketplaces to verify or disclose information from high-volume third-party sellers.

Hearing Date: 1/10/22

Staff: Michelle Rusk (786-7153).

Background:

The Consumer Protection Act (CPA) prohibits unfair or deceptive practices in trade or commerce, and the formation of contracts, combinations, and conspiracies in restraint of trade or commerce, and monopolies. Persons injured by violations of the CPA may bring a civil action to enjoin further violations and recover actual damages, costs, and attorney's fees.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

The Attorney General may also bring an action against any person to enjoin violations of the CPA and obtain restitution. The prevailing party may, at the discretion of the court, recover costs and attorney's fees. The Attorney General may also seek civil penalties up to the statutorily authorized maximums against any person who violates the CPA. Civil penalties are paid to the state.

Summary of Bill:

House Bill 1614 establishes several requirements for online marketplaces and high-volume third-party sellers.

An "online marketplace" is any person or entity that operates a consumer-directed electronically based or accessed platform that: (1) allows third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of consumer products in the United States; (2) hosts one or more third-party sellers; and (3) has a contractual relationship with consumers governing their use of the platform to purchase consumer products.

A "third-party seller" is any seller, independent of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through an online marketplace, but does not include:

1. a seller who operates the online marketplace's platform; or
2. a business entity that has: (i) made available to the general public the entity's name, business address, and working contact information; (ii) an ongoing contractual relationship with the online marketplace to provide for the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; and (iii) provided to an online marketplace verified identifying information.

A third-party seller is considered a "high-volume third-party seller" when, in any continuous 12-month period during the previous 24 months, it has entered into 200 or more discrete sales or transactions of new or unused consumer products and an aggregate total of \$5,000 or more in gross revenues.

Information and Verification Requirements.

Online marketplaces are required to obtain certain information from high-volume third-party sellers within ten days of such entities qualifying as high-volume third-party sellers, including bank account or payee information, contact information, and tax identification number.

Online marketplaces are required to: (1) verify within ten days the information obtained from high-volume third-party sellers and any changes to such information; (2) notify each high-volume third-party seller on at least an annual basis of its reporting obligations and obtain a certification from the seller within ten days that its information is unchanged or is being updated; and (3) suspend non-responsive sellers from the marketplace, after providing a seller with written notice and ten days to respond.

Data Security and Limitations.

Online marketplaces must implement reasonable security practices to protect data collected to comply with verification requirements and such data may not be used for any other purpose unless required by law.

Disclosure Requirements.

Online marketplaces must require high-volume third-party sellers with an aggregate total of \$20,000 or more in annual gross revenues on such online marketplace to disclose to consumers the following seller information: full name; physical address; and contact information, including a working phone number and electronic mail (e-mail) address.

Seller information must be shared with consumers in two ways: (i) in a purchaser's order confirmation or other document made after a purchase is finalized; and (ii) in the consumer's account transaction history. A seller must also disclose if it used a different seller to supply a consumer product and, upon request, provide identification information for that seller to the purchaser.

The marketplace may provide for a partial disclosure of a seller's identity information under the following circumstances: (1) the seller demonstrates they do not have a business address and only have a residential address, (2) the seller maintains a physical address for consumer returns, or (3) the seller does not have a phone number other than a personal phone number. The marketplace must require complete disclosure if it becomes aware the seller has made a false representation to justify a partial disclosure or has not provided responsive answers to consumer inquiries within a reasonable time frame.

Reporting Requirement.

Online marketplaces must provide consumers with an electronic and telephonic mechanism for reporting suspicious marketplace activity to the online marketplace.

Enforcement.

A violation of the information, verification, disclosure, or reporting requirements of this act constitutes an unfair or deceptive act or practice and violation of the CPA. The Attorney General has sole enforcement authority, and the Consumer Protection Division of the Office of the Attorney General may issue regulations regarding collecting and verifying required information.

Preemption.

No political subdivision may establish, mandate, or otherwise require online marketplaces to verify or disclose information from high-volume third-party sellers.

Appropriation: None.

Fiscal Note: Requested on January 6, 2022.

Effective Date: The bill contains an emergency clause and takes effect immediately.