

THIRD-PARTY ONLINE SERVICES

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House Bill 4015 (H-3) as reported from committee
Sponsor: Rep. Sarah L. Lightner
Committee: Regulatory Reform
Complete to 2-23-21

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

BRIEF SUMMARY: House Bill 4015 would amend the Michigan Consumer Protection Act to impose notification requirements on certain nonstate entities that offer online services that are performed by the state and to provide that failure to comply with those requirements is an unfair trade practice in violation of the act.

FISCAL IMPACT: The bill would not have a direct fiscal impact on the state or on local units of government.

THE APPARENT PROBLEM:

Many services can be conducted online, and many state and local governmental transactions are offered free to consumers. However, consumers have reported conducting transactions, such as renewing a vehicle registration from what they believed was the Department of State (SOS) website, only to discover when the credit card bill arrived that they had not done business with the SOS but with a private company and that a transaction fee had been imposed in addition to the cost of the requested service. Reportedly, some of the transaction fees were close to or exceeded the cost of the service.

It has been suggested that allowing consumers and the attorney general to seek relief under the Consumer Protection Act may deter businesses from creating websites that fail to clearly disclose that they are not a governmental agency and whether a fee will be charged to conduct a transaction or access otherwise publicly accessible information.

THE CONTENT OF THE BILL:

The bill would add section 3m to the act to provide that if a **third party** offers **online services** that are performed by an agency, department, or division of the state and that third party is not affiliated or under contract to perform those online services for an agency, department, or division of the state, the third party must do all of the following:

- Have a **conspicuous notification** on its website stating:
 - That it is not an agency, department, or division of the state.
 - That its services are not endorsed or approved by an agency, department, or division of the state.
 - That it is not affiliated or under contract to perform online services for an agency, department, or division of the state.
- Provide a link on its website to the website of the state agency, department, or division where a person can use the online service.

- Before a transaction for an online service is completed, ensure that there is a conspicuous notification of any fee it will charge for the online service.

Third party would mean a person that is not an agency, department, or division of the state.

Online services would not include the sharing of public information that is otherwise accessible and does not require consumers to provide payment or personal information to access it.

Conspicuous notification would mean, at a minimum, for a notification that is on a website, a notification that is on the opening page of that website, is in a type size that is the same as or larger than the largest type size on that website, and is in boldface, capital letters.

Failure to comply with the above requirements would be a violation of section 3m.

The Consumer Protection Act states that unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful, and it lists activities that constitute those methods, acts, or practices.

The bill would add a violation of the new section 3m to that list.

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.

The bill would take effect 90 days after its enactment.

MCL 445.903 and proposed MCL 445.903m

BACKGROUND:

House Bill 4015 is similar to HB 6173 of the 2019-20 legislative session. That bill was referred from the House Committee on Regulatory Reform to the House Committee on Ways and Means.

ARGUMENTS:

For:

The bill would address a concern brought by constituents who believed they were conducting business transactions on a government website for free, such as paying a bill or renewing a driver license or vehicle registration, only to find out later when a credit card bill arrived that they were instead on the website of a commercial company that imposed a transaction fee for the service. It is not unlawful for a commercial business to offer similar services or information for a fee to consumers, but House Bill 4015 would make it clear that to do so without clearly disclosing any transaction fees, or to design a website that looks similar to a governmental site without distinguishing it as a private business, would constitute unfair and deceptive practices under the Michigan Consumer Protection Act. There may be a reason a consumer chooses to use a commercial fee-for-service website, for example if he or she finds it easier or less time-consuming to navigate than a free governmental site. However, that choice should be an informed choice.

Further, the committee-reported version of the bill addresses an issue raised by tech industry members regarding the impact a vague reference to “online service” in the introduced bill could have had on start-ups, nonprofits, and businesses that are under contract with the state or that offer ancillary services and information drawn from public websites. The H-3 substitute would make clearer that a website that shares public information otherwise accessible without charging a fee or requiring a person to share personal information would not constitute an unfair or deceptive practice under the Consumer Protection Act.

POSITIONS:

The following entities indicated support for the bill:

- Department of the Attorney General (2-9-21)
- TechNet (2-23-21)
- RELX, Inc. (2-23-21)

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