

THIRD-PARTY ONLINE SERVICES

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House Bill 5294 as reported from committee
Sponsor: Rep. Sarah L. Lightner
Committee: Regulatory Reform
Complete to 11-9-21

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

SUMMARY:

House Bill 5294 would amend the Michigan Consumer Protection Act to revise newly enacted consumer protection provisions that require third-party entities to include certain notifications to consumers if they offer online services similar to ones provided by state agencies. Among other things, the bill would additionally apply the notification requirements to online services similar to those provided by local governmental agencies.

The act provides 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. 2021 PA 46 (Enrolled HB 4015)¹ added section 3m to the act to impose notification requirements on certain nonstate entities that offer online services that are performed by the state and provided that failure to comply with those requirements is an unfair trade practice in violation of the act. The bill would make several changes to section 3m.

Currently, 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 with or under contract to perform those online services for an agency, department, or division of the state, the third party must provide certain conspicuous notifications, including a notification before the transaction occurs of any fee it will charge for the online service.

The bill would replace the phrase *agency, department, or division of the state* with the term ***governmental agency*** and replace the phrase *online services* with the phrase ***online services performed by a governmental agency in this state***. The bill also would require the notifications provided by the entity to be on the website offering the online services.

Governmental agency would mean this state or a political subdivision of this state.

Online services performed by a governmental agency in this state would mean any service that a governmental agency in this state offers to members of the public on a website, including processes for booking appointments, completing or filing forms, downloading documents, and making payments.

¹ See <https://www.legislature.mi.gov/documents/2021-2022/billanalysis/House/pdf/2021-HLA-4015-D61CDF3D.pdf>

Prohibited conduct by a third party

A person that is not part of or associated with a governmental entity would be prohibited from doing any of the following:

- Simulating a summons, complaint, jury notice, or other court, judicial, or administrative process of any kind.
- Representing, implying, or otherwise engaging in an action that may reasonably cause confusion that the person using or employing the action is a part of or associated with a governmental entity.
- Representing, implying, or otherwise reasonably causing confusion that goods, services, an advertisement, or an offer was disseminated by or been approved, authorized, or endorsed, in whole or in part, by a governmental entity, when that is not true.
- Using or employing language, symbols, logos, representations, statement, titles, names, seals, emblems, insignia, trade or brand names, business or control tracking numbers, website or email addresses, or any other term, symbol, or other content that represents or implies or otherwise reasonably causes confusion that goods, services, an advertisement, or an offer is from a governmental entity, when that is not true.

Additional provisions

Currently, the act provides that failure to comply with the notification requirements is a violation of section 3m. The bill would delete this provision.

The bill would take effect 91 days after the date the legislature adjourns sine die to end its 2021 regular legislative session. (This is the date that 2021 PA 46 will take effect.)

MCL 445.903m

BACKGROUND:

Generally speaking, a person who suffers loss as a result of a violation of the Michigan Consumer Protection 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.

BRIEF DISCUSSION:

House Bill 5294 would expand the protections afforded consumers by 2021 PA 46 to require third-party entities that offer online services similar to services provided by local

governmental agencies (in addition to state agencies) to provide certain notifications to consumers. Reportedly, the attorney general favored expanding the new law to include third-party services that are similar to services offered by courts and to include administrative processes. Apparently, there have been issues with nongovernmental entities operating websites that can be difficult to distinguish from local government and court websites. The bill would not prohibit such businesses from offering their services or products, but would require more conspicuous notification to the public that visitors are on a private-sponsored website, not a public-sponsored one, and whether a fee will be imposed. An entity violating the bill's provisions would be subject to the penalties and remedies afforded an aggrieved consumer under the Consumer Protection Act.

FISCAL IMPACT:

The bill would have no fiscal impact on the state or local units of government.

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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.