



Bethany Boyd

Bill Analysis
Legislative Service Commission

S.B. 201

123rd General Assembly
(As Introduced)

Sen. Blessing

BILL SUMMARY

- Requires any licensed delivery vendor who makes retail sales to Ohio purchasers via the Internet to display the license number on the home page and order form.
- Prohibits noncomplying vendors from bringing collection, replevin, conversion of property, or theft actions against Ohio purchasers.
- Provides that a sale of tangible personal property or services to an Ohio purchaser via the Internet is subject to the Consumer Sales Practices Act.

CONTENT AND OPERATION

Display of delivery vendor's license on the Internet

(secs. 5739.17(F)(2) and 5739.99(F)(2))

Under Ohio's sales tax law, a delivery vendor is required to apply to the Tax Commissioner for a delivery vendor's license. A "delivery vendor" is a vendor who maintains no store, showroom, or similar fixed place of business or other location where merchandise regularly is offered for sale or displayed or shown in catalogs for selection or pick-up by consumers, or where consumers bring goods for repairs or other service, and who engages in one or more of the following activities:

- (1) The vendor makes retail sales of tangible personal property;
- (2) The vendor rents or leases, at retail, tangible personal property, except titled motor vehicles, titled watercraft, or titled outboard motors;
- (3) The vendor provides a service, at retail, that falls into the category of the repair or installation of tangible personal property, motor vehicle detailing, or industrial laundry cleaning services;

(4) The vendor makes retail sales of warranty, maintenance or service contracts, or similar agreements by which the vendor agrees to repair or maintain the tangible personal property of the consumer.

The delivery vendor's license costs \$25 and authorizes retail sales to be made throughout the state. All sales of the vendor must be reported under the license. The Tax Commissioner may require a vendor to be licensed as a delivery vendor if, in the opinion of the Commissioner, such licensing is necessary for the efficient administration of the sales tax.

The bill requires any delivery vendor who is issued a license and makes retail sales via the Internet to display the license number, in a form prescribed by the Tax Commissioner, on the home page of the delivery vendor's web site and on any order or purchase form displayed on the Internet. Violation of this requirement is a minor misdemeanor (a fine of not more than \$100).

Certain Internet sales are subject to the Consumer Sales Practices Act

(sec. 1345.35(A) and (B))

The bill provides that a sale of tangible personal property or services by any person to an "Ohio purchaser" via the Internet is a "consumer transaction under the Ohio Consumer Sales Practices Act." An "Ohio purchaser" is a person who is a resident of Ohio and uses a computer in Ohio to purchase tangible personal property or services via the Internet. Under existing law (sec. 1345.01), a "consumer transaction" is a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things. A "consumer transaction" does not include transactions between public utilities, financial institutions, insurance companies, including domestic and foreign, and intangible dealers and their customers; between certified public accountants or public accountants and their clients; between attorneys, physicians, or dentists and their clients or patients; and between veterinarians and their patients that pertain to medical treatments but not ancillary services.

Under the bill, except for limitations on certain actions (see "**Limitation on court actions**," below), a person who sells tangible personal property or services to an Ohio purchaser via the Internet agrees that the person's rights and duties under the sales contract or agreement are to be governed by the bill's provisions and the Consumer Sales Practices Act (secs. 1345.01 to 1345.13, not in the bill), and

agrees to submit to the jurisdiction of Ohio's courts in accordance with the bill.¹ Under the Act, it is unlawful for a supplier (seller, lessor, assignor, or franchiser in a consumer transaction) to commit an unfair or deceptive act or practice or an unconscionable act or practice in connection with a consumer transaction. Existing law lists actions that are unfair or deceptive (sec. 1345.02) or unconscionable (sec. 1345.03). Both the Attorney General and an aggrieved consumer may bring an action for a violation of the Act (see **COMMENT** for a discussion of remedies under the Act).

Jurisdiction of Ohio courts

(secs. 1301.05 and 1345.35(C))

The bill provides that Ohio courts of common pleas, and municipal or county courts within their respective monetary jurisdiction, have jurisdiction with respect to any claim arising from an Internet sale of tangible personal property to an Ohio purchaser, notwithstanding any contractual provision to the contrary or the law that permits parties to agree whether the law of Ohio or another state or nation governs their rights and duties for a transaction.²

Limitation on court actions

(secs. 1345.35(D) and 2307.39)

Under the bill, no collection, replevin (take repossession of goods), conversion of property, or theft action may be brought against an Ohio purchaser by any person who sold to the Ohio purchaser tangible personal property or service via the Internet and did not display a delivery vendor's license in accordance with the bill, or a similar vendor's license issued by another state. The statute granting parties the right to choose the law or court forum that applies to their contract, agreement, or undertaking does not apply to such an Internet sale.

COMMENT

¹ *Internet sales currently may be covered by the Act, but such sales are so new that no Ohio case law has challenged the Act's applicability to Internet sales, and those sales were not contemplated at the time of the Act's enactment nor evidenced by subsequent amendments to it.*

² *It is not clear whether this law, sec. 1301.05, should be in the bill. Although the provision seems to apply to all "transactions," that term is not defined. Language in that provision and statutes preceding it, such as secs. 1301.02 and 1301.04, imply that the provision applies only to transactions under R.C. Chapters 1301., 1302., 1303., 1304., 1305., 1307., 1308., 1309., and 1310., not consumer transactions in Chapter 1345.*

Remedies under the Consumer Sales Practices Act

An aggrieved consumer may bring an action under the Consumer Sales Practices Act alleging that a consumer transaction constituted an unfair or deceptive, or unconscionable, consumer trade practice. The consumer either may rescind the transaction or recover damages, or, if the violation was an act or practice declared by rule of the Attorney General to be deceptive or unconscionable, or an act or practice determined by an Ohio court to violate the Act, may sue for the greater of \$200 or three times the amount of actual damages or recover damages in a class action. The consumer also may be awarded reasonable attorney's fees if the consumer prevails and the supplier has knowingly committed an act or practice that violates the Act. Conversely, the court may award reasonable attorney's fees to the supplier if the supplier prevails in the action and the consumer has brought or maintained an action that is groundless and in bad faith. (Sec. 1345.09.)

The Attorney General is permitted to bring an action for a declaratory judgment or a class action, and an action for a temporary restraining order, preliminary injunction, or permanent injunction to restrain the violation, if by inquiries or as a result of complaints it is determined that reasonable cause exists to believe that a supplier has engaged in a violation of the Act. If the supplier receives notice to restrain an act or practice, a court may impose a civil penalty of not more than \$5,000 for each day of violation of a temporary restraining order, or preliminary or permanent injunction. In addition to all other remedies, the Attorney General may request and the court may impose a civil penalty of up to \$25,000 against the supplier for certain unfair, deceptive, or unconscionable acts or practices the supplier commits. The Attorney General is permitted in any case to use all or any combination of the remedies available under the Act. (Sec. 1345.07.)

HISTORY

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