

2020 Regular Session

SENATE BILL NO. 476

BY SENATOR WARD

CONSUMERS/PROTECTION. Provides relative to third-party sellers on the online marketplace. (8/1/20)

1 AN ACT

2 To enact Chapter 61 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 51:3211 through 3214, relative to an online marketplace; to provide for
4 identification of certain sellers on an online marketplace; to require disclosure of
5 certain information; to provide relative to certain consumer products offered for sale
6 on an online marketplace; to provide for unfair or deceptive trade practices and acts;
7 to provide for certain terms, requirements, conditions, and procedures; and to provide
8 for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 61 of Title 51 of the Louisiana Revised Statutes of 1950,
11 comprised of R.S. 51:3211 through 3214 is hereby enacted to read as follows:

12 **CHAPTER 61. ONLINE MARKETPLACE AND THIRD-PARTY SELLERS**

13 **§3211. Definitions**

14 **As used in this Chapter, the following words and phrases shall have the**
15 **following meanings:**

16 **(1) "Consumer product" means any tangible personal property that is**
17 **distributed in commerce and used for personal, family, or household purposes,**

1 including any property intended to be attached to or installed in any real
2 property without regard to whether it is attached or installed.

3 (2) "High-volume third-party seller" means a user of an online
4 marketplace who is a third-party seller and who has entered into two hundred
5 or more discrete sales or transactions of new or used consumer products in any
6 twelve-month period during the previous twenty-four months, which result in
7 an aggregate total of five thousand dollars or more in total gross revenue for the
8 user.

9 (3) "Online marketplace" means an electronically based or accessed
10 platform that does both of the following:

11 (a) Includes features that allow for, facilitate, or enable third-party
12 sellers to engage in the sale, purchase, payment, storage, shipping, or delivery
13 of a consumer product in the United States.

14 (b) Hosts one or more third-party sellers.

15 (4) "Seller" means a person who sells, offers to sell, or contracts to sell
16 a consumer product through an online marketplace.

17 (5) "Third-party seller" means any seller, independent of an operator,
18 facilitator, or owner of an online marketplace, who sells, offers to sell, or
19 contracts to sell a consumer product in the United States through an online
20 marketplace.

21 §3212. High-volume third-party sellers; identification; requirements

22 A.(1) An online marketplace shall annually verify the identity of each
23 high-volume third-party seller by requiring the high-volume third-party seller
24 to provide all of the following:

25 (a) Verified bank account information.

26 (b) A government-issued identification card for the individual
27 representing the high-volume third-party seller.

28 (c) A government-issued record verifying the contact information of the
29 individual or business.

1 (d) A tax identification number.

2 (2)(a) Except as provided in Subsection B of this Section, an online
3 marketplace shall require a high-volume third-party seller to disclose the
4 identity of the high-volume third-party seller to a consumer by providing, in a
5 conspicuous manner on the consumer product listing or through a
6 conspicuously placed link on the consumer product listing, the following
7 information:

8 (i) The full name of the high-volume third-party seller.

9 (ii) The full business address of the high-volume third-party seller.

10 (iii) Whether the high-volume third-party seller engages in the
11 manufacturing, importing, retail, or reselling of consumer products.

12 (iv) The telephone number and email address for the high-volume third-
13 party seller.

14 (b) An online marketplace shall require the disclosure of any other
15 information necessary to prevent the circumvention of the requirements of this
16 Subsection.

17 B.(1) Upon the written request of a high-volume third-party seller, an
18 online marketplace may allow for partial disclosure of the information required
19 by Paragraph (A)(2) of this Section as follows:

20 (a) If the high-volume third-party seller demonstrates to the online
21 marketplace that he does not have a business address and has only a personal
22 street address, the online marketplace shall require the high-volume third-party
23 seller to disclose only the country and, if applicable, the state where the high-
24 volume third-party seller resides on the product listing. The online marketplace
25 may inform consumers that there is no business address available for the high-
26 volume third-party seller and that consumer inquiries may be submitted to the
27 high-volume third-party seller's email address.

28 (b) If a high-volume third-party seller demonstrates to the online
29 marketplace that he does not have a phone number other than a personal phone

1 number, the online marketplace shall not require the high-volume third-party
2 seller to disclose his personal phone number. The online marketplace may
3 inform consumers that there is no phone number available for the high-volume
4 third-party seller and the consumer inquiries may be submitted to the high-
5 volume third-party seller's email address.

6 (2) If an online marketplace becomes aware that a high-volume third-
7 party seller has made a false representation to the online marketplace in order
8 to justify partial disclosure of information required by Paragraph (A)(2) of this
9 Section or that a high-volume third-party seller who has requested and was
10 allowed to submit partial disclosure of identifying information has not
11 responded to inquiries submitted to the high-volume third-party seller's email
12 address within a reasonable amount of time, the online marketplace shall
13 require the high-volume third-party seller to submit the identifying information
14 as required by Paragraph (A)(2) of this Section within three business days. If
15 the information is not submitted within three business days, the online
16 marketplace shall remove the high-volume third-party seller from its platform
17 and revoke all access and privileges of the high-volume third-party seller.

18 §3213. Third-party sellers; removal of consumer goods from the online
19 marketplace

20 A.(1) An online marketplace shall require a third-party seller to submit
21 the following information to the online marketplace:

22 (a) Verification and attestation to the authenticity of any registered
23 trademark product or any consumer product in connection with a registered
24 trademark.

25 (b) Agreement not to use counterfeit marks or copyrighted images in
26 connection with the sale, offering for sale, distribution, or advertising of any
27 consumer product listed on the online marketplace.

28 (2) A third-party seller shall submit the information required by this
29 Subsection simultaneously with the listing of the consumer product on the

1 online marketplace. If the third-party seller fails to submit the information, the
2 online marketplace shall immediately remove the listing.

3 (3) An online marketplace shall immediately remove a listing containing
4 a copyrighted image.

5 B. An online marketplace shall remove any listing advertising an
6 illegitimate consumer product for sale. The consumer product shall be
7 considered illegitimate and shall be removed by the online marketplace only
8 after a person who claims the consumer product is illegitimate submits evidence
9 to the online marketplace sufficient to prove the consumer product is
10 illegitimate. The person shall provide the following information, if applicable,
11 to the online marketplace:

12 (1) Any indicator showing how the consumer product was determined
13 to be counterfeit.

14 (2) A copy of the recall notice for the consumer product from the
15 manufacturer issuing the recall.

16 (3) A copy of the police report and any identifying information of the
17 stolen consumer product, including but not limited to the serial number,
18 product description, and pictures of the consumer product.

19 §3214. Unfair or deceptive trade practice or act; online marketplace sellers;
20 identification; violations

21 Any violation of this Chapter shall be a deceptive and unfair trade
22 practice and shall subject the online marketplace to any and all actions and
23 penalties provided for in the Unfair Trade Practices and Consumer Protection
24 Law, R.S. 51:1401 et seq.

The original instrument was prepared by Michelle Ridge. The following digest, which does not constitute a part of the legislative instrument, was prepared by Beth O'Quin.

DIGEST

SB 476 Engrossed 2020 Regular Session Ward

Proposed law defines the following terms:

- (1) "Consumer product" means any tangible personal property that is distributed in commerce and used for personal, family, or household purposes, including any property intended to be attached to or installed in any real property without regard to whether it is attached or installed.
- (2) "High-volume third-party seller" means a user of an online marketplace who is a third-party seller and who has entered into 200 or more discrete sales or transactions of new or used consumer products in any 12-month period during the previous 24 months, which result in an aggregate total of \$5,000 or more in total gross revenue for the user.
- (3) "Online marketplace" means any electronically based or accessed platform that does both of the following:
 - (a) Includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in the United States.
 - (b) Hosts one or more third-party sellers.
- (4) "Seller" means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace.
- (5) "Third-party seller" means any seller, independent of an operator, facilitator, or owner of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through an online marketplace.

Proposed law requires an online marketplace to annually verify the identity of each high-volume third-party seller by requiring the high-volume third-party seller to provide the following:

- (1) Verified bank account information.
- (2) A government-issued identification card for the individual representing the high-volume third-party seller.
- (3) A government-issued record verifying the contact information of the individual or business.
- (4) A tax id number.

Proposed law requires a third-party high-volume seller to provide and disclose its identity to a consumer by providing, in a conspicuous manner on the consumer product listing or through a conspicuously placed link on the consumer product listing, certain identifying information.

Proposed law allows a high-volume third-party seller to request partial disclosure of identifying information if the seller demonstrates he does not have a business address or

business phone number. An online marketplace can require full disclosure of identifying information if the seller has made a false representation to justify partial disclosure of identifying information or the high-volume third-party seller has not responded to inquiries submitted to his email address within a reasonable amount of time. Failure to disclose the information requested by the online marketplace will result in the seller being removed from the online marketplace's platform and the revocation of the seller's access and privileges.

Proposed law provides relative to certain consumer goods and requires a third-party seller to submit the following information to the online marketplace:

- (1) Verification and attestation to the authenticity of any registered trademark product or any consumer product in connection with a registered trademark.
- (2) Agreement not to use counterfeit marks or copyrighted images in connection with the sale, offering for sale, distribution, or advertising of any consumer product listed on the online marketplace.

Proposed law requires this information to be submitted simultaneously with the listing of the consumer product on the online marketplace and failure to do so results in removal of the listing on the online marketplace.

Proposed law requires an online marketplace to immediately remove a listing containing a copyrighted image.

Proposed law provides that an online marketplace shall remove any listing advertising an illegitimate consumer product for sale. Provides that the consumer product shall be considered illegitimate and shall be removed by the online marketplace only after a person who claims the consumer product is illegitimate submits evidence to the online marketplace sufficient to prove the consumer product is illegitimate. Proposed law requires the person to provide the following information, if applicable, to the online marketplace:

- (1) Any indicator showing how the consumer product was determined to be counterfeit.
- (2) A copy of the recall notice.
- (3) A copy of the police report and any identifying information of the stolen consumer product, including but not limited to the serial number, product description, and pictures of the consumer product.

A violation of proposed law shall be a deceptive and unfair trade practice and shall subject the online marketplace to any and all actions and penalties provided for in the Unfair Trade Practices and Consumer Protection Law.

Effective August 1, 2020.

(Adds R.S. 51:3211-3214)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. A technical revision was made changing the word identify to identity.