

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

SB 476 Reengrossed

2020 Regular Session

Ward

Present law provides remedies that the attorney general may seek for violations of present law. Proposed law retains present law and expands the remedies to include reasonable costs, investigative expenses, and attorney fees.

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. The term does not include any digital items.
- (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 \$20,000 or more, per marketplace, in total gross revenue for the user.
- (3)(a) "Online marketplace" means any electronically based or accessed platform that does both of the following:
 - (I) 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.
 - (ii) Hosts one or more third-party sellers.
- (b) "Online marketplace" shall not include any person who facilitates the furnishing of a rental car by a rental car company, any peer-to-peer car sharing program, or a used motor vehicle dealer whose primary business is automobile auctions.
- (4) "Peer-to-peer car sharing program" means any business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration. "Peer-to-peer car sharing program" shall not include any lessor, rental company, or similar, as defined in the La. Collision Damage Waiver Law or present law relative to motor vehicle rental insurers.
- (5) "Seller" means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace. "Seller" shall not include any shared vehicle owner.
- (6) "Shared vehicle owner" means the registered owner, or a person or entity designated by the registered owner, of a vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car sharing program. "Shared vehicle owner" shall not include any lessor, rental company, or similar, as defined in the La. Collision Damage Waiver Law or present law relative to motor vehicle rental insurers.
- (7) "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 biennially 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 allows for a government-issued identification card, which contains additional information required by proposed law, to satisfy that requirement of proposed law.

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 a verification and attestation to the authenticity of any registered trademark product or any consumer product in connection with a registered trademark.

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 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.

Any 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, excluding private rights of action.

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.

Senate Floor Amendments to engrossed bill

1. Makes technical changes.
2. Provides exclusions from the term "online marketplace".
3. Adds and defines the term "peer-to-peer car sharing program".
4. Provides exclusions from the term "seller".
5. Adds and defines the term "shared vehicle owner".
6. Provides that violations are not subject to private rights of action pursuant to the Unfair Trade Practices and Consumer Protection Law.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the reengrossed bill:

1. Expand the remedies an attorney general can seek for a violation of present law to include reasonable costs, investigative expenses, and attorney fees.
2. Exempt a used motor vehicle dealer whose primary business is automobile auctions from the definition of "online marketplace".
3. Specify that a "consumer product" does not include digital items
4. Remove the requirement that a third-party seller submit an 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.
5. Remove the requirement that an online marketplace immediately remove a listing containing a copyrighted image.
6. Raise the threshold for what is considered a high-volume third-party seller from \$5,000 or more in total gross revenue to \$20,000 or more, per marketplace, in total gross revenue.
7. Change the requirement that the online marketplace verify the identity of each high-volume third party seller from an annual requirement to a biennial requirement.
8. Allow a government-issued identification card to satisfy requirements of proposed law, if it contains the required information.
9. Make technical changes.