

2022 Regular Session

SENATE BILL NO. 442

BY SENATOR WARD

CONSUMERS/PROTECTION. Provides relative to certain third-party sellers on the online marketplace. (1/1/23)

1 AN ACT

2 To enact Chapter 62 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised

3 of R.S. 51:3221 through 3226, 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; to provide for

8 an effective date; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 62 of Title 51 of the Louisiana Revised Statutes of 1950,
11 comprised of R.S. 51:3221 through 3226, is hereby enacted to read as follows:

12 **CHAPTER 62. ONLINE MARKETPLACE AND THIRD-PARTY SELLERS**

13 **§3221. 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 participant in 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 participant. For purposes of calculating the number of discrete sales or
9 transactions or the aggregate gross revenues, an online marketplace shall be
10 required only to count sales or transactions made through the online
11 marketplace and for which payment was processed by the online marketplace,
12 either directly or through its payment processor.

13 (3) "Online marketplace" means any person or entity that operates a
14 consumer-directed electronically based or accessed platform that meets all of
15 the following criteria:

16 (a) Has features that allow for, facilitate, or enable third-party sellers to
17 engage in the sale, purchase, payment, storage, shipping, or delivery of a
18 consumer product in this state.

19 (b) Is used by one or more third-party sellers for such purposes.

20 (c) Has a contractual or similar relationship with consumers governing
21 their use of the platform to purchase consumer products.

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

24 (5) "Third-party seller" means any seller, independent of an online
25 marketplace, who sells, offers to sell, or contracts to sell a consumer product in
26 this state through an online marketplace. Third-party seller shall not include
27 either of the following:

28 (a) A seller who operates the online marketplace's platform.

29 (b) A business entity that has made available to the general public the

1 entity's name, business address, and working contact information; an ongoing
2 contractual relationship with the online marketplace to provide the online
3 marketplace with the manufacture, distribution, wholesaling, or fulfillment of
4 shipments of consumer products; and provided to the online marketplace
5 identifying information which has been verified in accordance with this
6 Chapter.

7 (6) "Verify" means to confirm information provided to an online
8 marketplace pursuant to this Chapter, which may include the use of one or
9 more methods that enable the online marketplace to reliably determine that any
10 information and documents provided are valid, corresponding to the seller or
11 an individual acting on the sellers behalf, not misappropriated, and not falsified.

12 §3222. Collection and verification of information by online marketplace

13 (A)(1) An online marketplace shall require that any high-volume
14 third-party seller on the online marketplace's platform provide the online
15 marketplace with all of the following information not later than ten days after
16 qualifying as a high-volume third-party seller on the platform:

17 (a) The bank account number of the high-volume third-party seller, or
18 if the high-volume third-party seller does not have a bank account, the name of
19 the payee for payments issued by the online marketplace to the high-volume
20 third-party seller. The high-volume third-party seller shall provide the bank
21 account or payee information directly to the online marketplace or to a
22 third-party contracted by the online marketplace to maintain such information,
23 provided that the online marketplace is able to obtain the information on
24 demand from the other third-party.

25 (b) The high-volume third-party seller's contact information, including
26 but not limited to the following information:

27 (i) If the high-volume third-party seller is an individual, the individual's
28 name.

29 (ii) If the high-volume third-party seller is not an individual, either a

1 copy of a valid government issued identification for an individual acting on
2 behalf of a high-volume third-party seller or a copy of a valid government
3 issued record or tax document that includes the business name and physical
4 address of the high-volume third-party seller.

5 (c) A business tax identification number of the high-volume third-party
6 seller, or if the high-volume third-party seller does not have a business tax
7 identification number, a taxpayer identification number.

8 (d) A current working phone number and electronic mail address for the
9 high-volume third-party seller.

10 (2)(a) Periodically, but not less than annually, an online marketplace
11 shall notify each high-volume third-party seller on the online marketplace's
12 platform of the requirement to update information collected pursuant to this
13 Section.

14 (b) An online market place shall require any high-volume third-party
15 seller to electronically certify whether the high-volume third-party seller has
16 submitted updated information within ten days after receiving an annual notice.

17 (c) If the high-volume third-party seller does not provide the
18 information or certification required by this Subsection, the online marketplace
19 shall, after providing the high-volume third-party seller with written or
20 electronic notice and an opportunity to provide the information or certification
21 within ten days after issuance of the notice, suspend the sales activity of the
22 high-volume third-party seller until the certification is completed by the
23 high-volume third-party seller.

24 B.(1) Except as provided in Paragraph (2) of this Subsection, an online
25 marketplace shall verify the information and any changes to the information
26 collected pursuant to this Section within ten days after collecting the data.

27 (2) If a high-volume third-party seller provides a copy of a valid
28 government issued tax document, any information contained in the document
29 shall be presumed to be verified as of the date of issuance of the document.

1 §3223. Data; limitation; security

2 A. Any data that is collected to comply with any requirement of this
3 Chapter shall not be used for any other purpose except as required by law.

4 B. An online marketplace shall implement and maintain reasonable
5 security procedures and practices, including administrative, physical, and
6 technical safeguards, appropriate to the nature of the data and the purposes for
7 which the data will be used, to protect the data collected to comply with the
8 requirements of this Chapter from unauthorized use, disclosure, access,
9 destruction, or modification.

10 §3224. Online marketplace; disclosure requirements of sellers; exceptions

11 A. An online marketplace shall require any high-volume third-party
12 seller that uses the platform of the online marketplace and has an aggregate
13 total of twenty thousand dollars or more in annual gross revenues on the online
14 marketplace to provide the identity of the high-volume third-party seller,
15 including but not limited to the following identifiable information:

16 (1) The full name of the high-volume third-party seller, which may
17 include the high-volume third-party seller's name or company name, or the
18 name by which the high-volume third-party seller or company operates on the
19 online marketplace.

20 (2) The physical address of the high-volume third-party seller.

21 (3) Contact information for the high-volume third-party seller to allow
22 for the direct, unhindered communication with the high-volume third-party
23 seller by users of the online marketplace, including but not limited to any of the
24 following:

25 (a) A current working phone number.

26 (b) A current working electronic mail address.

27 (c) Other means of direct electronic messaging, provided to the
28 high-volume third-party seller by the online marketplace.

29 B. An online marketplace shall disclose the information required in

1 Subsection A of this Section to consumers in a conspicuous manner in an order
2 confirmation message or other document or communication made to the
3 consumer after a purchase is finalized and in the consumer's account history.

4 C. If the high-volume third-party seller uses a different seller to supply
5 the consumer product to the consumer, upon purchase, and upon the request
6 of an authenticated purchaser, the seller that supplies the consumer product to
7 the purchaser shall disclose the information required in Subsection A of this
8 Section to the purchaser.

9 D.(1) Upon written request of a high-volume third-party seller, an online
10 marketplace may provide a partial disclosure of the information required by
11 Subsection A of this Section as follows:

12 (a) If the high-volume third-party seller demonstrates to the online
13 marketplace that he does not have a business address and has only a personal
14 street address, the online marketplace shall require the high-volume third-party
15 seller to disclose only the country and, if applicable, the state where the
16 high-volume third-party seller resides on the product listing. The online
17 marketplace may inform consumers that there is no business address available
18 for the high-volume third-party seller and that consumer inquires may be
19 submitted to the high-volume third-party seller's phone, electronic mail
20 address, or other electronic messaging provided to the seller by the online
21 marketplace.

22 (b) If a high-volume third-party seller certifies to the online marketplace
23 that the high-volume third-party seller is a business that has a physical address
24 for product returns, the online marketplace may disclose the high-volume
25 third-party seller's physical address for product returns.

26 (c) If a high-volume third-party seller certifies to the online marketplace
27 that the high-volume third-party seller does not have a phone number other
28 than a personal phone number, the online marketplace shall inform consumers
29 that there is no phone number available for the seller and that consumer

1 inquiries should be submitted to the seller's electronic mail address or other
2 means of electronic messaging provided to the seller by the online marketplace.

3 (2) If an online marketplace becomes aware that a high-volume
4 third-party seller has made a false representation to the online marketplace in
5 order to justify partial disclosure of information required under this Section or
6 that a high-volume third-party seller who has requested and has allowed to
7 submit partial disclosure of identifying information has not responded to
8 inquiries submitted to the high-volume third-party sellers's contact information
9 within a reasonable amount of time, the online marketplace shall require the
10 high-volume third-party seller to submit the identifying information as required
11 under this Section within ten days after issuance of such notice. If the
12 information is not submitted within ten days, the online marketplace shall
13 remove the high-volume third-party seller from its platform and revoke access
14 and privileges of the high-volume third-party seller.

15 E. An online marketplace shall disclose to consumers in a clear and
16 conspicuous manner on the product listing of any high-volume third-party seller
17 a reporting mechanism that allows for electronic and telephonic reporting of
18 suspicious marketplace activity to the online marketplace.

19 §3225. 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.

25 §3226. Preemption

26 No political subdivision may establish, mandate, or otherwise require an
27 online marketplace to collect or verify information from a high-volume
28 third-party seller or disclose information to a consumer on a one-time or
29 ongoing basis.

1 Section 2. This Act shall become effective on January 1, 2023; if vetoed by the
 2 governor and subsequently approved by the legislature, this Act shall become effective on
 3 the day following such approval by the legislature or January 1, 2023, whichever is later.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Xavier I. Alexander.

DIGEST

SB 442 Original

2022 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 participant in 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 results in an aggregate total of \$5,000 or more in total gross revenue for the participant. For purpose of calculating the number of discrete sales or transactions or the aggregate gross revenues, an online marketplace shall only be required to count sales or transactions made through the online marketplace and for which payment was processed by the online marketplace, either directly or through its payment processor.
- (3) "Online marketplace" means any person or entity that operates a consumer-directed electronically based or accessed platform that:
 - (a) Has 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 this state;
 - (b) Is used by one or more third-party sellers for such purposes; and
 - (c) Has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.
- (4) "Seller" means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace platform.
- (5) "Third-party seller" means any seller, independent of an online marketplace, who sells or contracts to sell a consumer product in Louisiana through an online marketplace. Third-party seller does not include the following:
 - (a) A seller who operates the online marketplace's platform; or
 - (b) A business entity that has:
 - (i) Made available to the general public the entity's name, business address, and working contact information;
 - (ii) An ongoing contractual relationship with the online marketplace to provide the online marketplace with the manufacture, distribution,

wholesaling, or fulfillment of shipments of consumer products; and

- (iii) Provided to the online marketplace identifying information which has been verified in accordance with proposed law.
- (6) "Verify" means to confirm information provided to an online marketplace pursuant to proposed law, which may include the use of one or more methods that enable the online marketplace to reliably determine that any information and documents provided are valid, corresponding to the seller or an individual acting on the seller's behalf, not misappropriated, and not falsified.

Proposed law provides that an online market place shall require a high-volume third-party seller to provide the following information within 10 days:

- (1) A bank account number, in the absence of a bank account, the name of payee for payments issued by the online marketplace. The bank account or payee information may be provided directly to the online marketplace or to a third-party contracted by the online marketplace.
- (2) Contact information for high-volume third-party sellers, including the following:
 - (a) The individual's name if the high-volume third-party seller is an individual.
 - (b) If the individual is not a high-volume third-party seller, the following shall be provided:
 - (i) Copy of a valid government issued identification; or
 - (ii) A copy of a valid government issued record or tax document.
- (3) A current working phone number and email address.

Proposed law provides that periodically, but not less than annually, an online marketplace shall notify a high-volume third-party seller on its platform to keep all required information current.

Proposed law provides that an online market place shall require a high-volume third-party seller to electronically certify whether the high-volume third-party seller has changed information within 10 days of receiving an annual notice.

Proposed law provides that if the high-volume third-party seller does not provide the information or certification required, the online marketplace shall, after first providing the seller with written notice, suspend any further sales activity of the seller.

Proposed law provides that within 10 days of receiving the information from sellers the marketplace shall verify the information collected.

Proposed law provides for data security requirements and limitations.

Proposed law provides that an online marketplace shall require a high-volume third-party seller with an aggregate total of \$20,000 or more in annual revenue to provide the following information in the consumer's order confirmation message and account history:

- (1) The name and physical address of the seller; and
- (2) Phone number, email address, or direct electronic messaging contact information of the seller.

Proposed law provides that if a high-volume third-party seller uses a different seller to supply the consumer product to the consumer that seller must disclose information required by proposed law to the purchaser, if requested by the purchaser to do so.

Proposed law allows a high-volume third-party seller to request a partial disclosure of identifying information if the seller demonstrates he does not have a physical address or a business phone number. Proposed law provides that 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. Proposed law provides that failure to disclose the information requested by the online marketplace within 10 days of notification 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 violations for deceptive and unfair trade practice.

Effective January 1, 2023.

(Adds R.S. 51:3221-3226)