

2022 Regular Session

SENATE BILL NO. 442

BY SENATORS WARD, ABRAHAM, CONNICK, HARRIS, HENRY AND MORRIS

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 Statues 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 on an online
4 marketplace's platform who is a third-party seller and who has entered into two
5 hundred or more discrete sales or transactions of new or unused consumer
6 products in any twelve-month period during the previous twenty-four months,
7 which result in an aggregate total of five thousand dollars or more in total gross
8 revenue. 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 seller's behalf, not misappropriated, and not
12 falsified.

13 §3222. Collection and verification of information by online marketplace

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

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

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

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

1 (ii) If the high-volume third-party seller is not an individual, either a
2 copy of a valid government issued identification for an individual acting on
3 behalf of a high-volume third-party seller or a copy of a valid government
4 issued record or tax document that includes the business name and physical
5 address of the high-volume third-party seller.

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

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

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

15 (b) An online market place shall require any high-volume third-party
16 seller to electronically certify whether the high-volume third-party seller has
17 submitted updated information not later than ten days after receiving an annual
18 notice.

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

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

29 (2) If a high-volume third-party seller provides a copy of a valid

1 government issued tax document, any information contained in the document
2 shall be presumed to be verified as of the date of issuance of the document.

3 §3223. Data; limitation; security

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

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

12 §3224. Online marketplace; disclosure requirements of sellers; exceptions

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

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

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

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

27 (a) A current working phone number.

28 (b) A current working electronic mail address.

29 (c) Other means of direct electronic messaging, provided to the

1 high-volume third-party seller by the online marketplace, provided this
2 requirement shall not prevent an online marketplace from monitoring
3 communications between high-volume third-party sellers and users of the online
4 marketplace for fraud, abuse, or spam.

5 B. An online marketplace shall disclose the information required in
6 Subsection A of this Section to consumers in a conspicuous manner in an order
7 confirmation message or other document or communication made to the
8 consumer after a purchase is finalized and in the consumer's account
9 transaction history.

10 C. If the high-volume third-party seller uses a different seller to supply
11 the consumer product to the consumer, upon purchase, and upon the request
12 of an authenticated purchaser, the seller that supplies the consumer product to
13 the purchaser shall disclose the information required in Subsection A of this
14 Section to the purchaser.

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

18 (a) If the high-volume third-party seller demonstrates to the online
19 marketplace that the seller does not have a business address and has only a
20 residential street address, or as a combined business and residential address, the
21 online marketplace may disclose only the country and, if applicable, the state
22 where the high-volume third-party seller resides. The online marketplace may
23 inform consumers that there is no business address available for the high-
24 volume third-party seller and that consumer inquires may be submitted to the
25 high-volume third-party seller's phone, electronic mail address, or other
26 electronic messaging provided to the seller by the online marketplace.

27 (b) If a high-volume third-party seller certifies to the online marketplace
28 that the high-volume third-party seller is a business that has a physical address
29 for product returns, the online marketplace may disclose the high-volume

1 third-party seller's physical address for product returns.

2 (c) If a high-volume third-party seller certifies to the online marketplace
3 that the high-volume third-party seller does not have a phone number other
4 than a personal phone number, the online marketplace shall inform consumers
5 that there is no phone number available for the seller and that consumer
6 inquiries should be submitted to the seller's electronic mail address or other
7 means of electronic messaging provided to the seller by the online marketplace.

8 (2) If an online marketplace becomes aware that a high-volume
9 third-party seller has made a false representation to the online marketplace in
10 order to justify partial disclosure of information required under this Section or
11 that a high-volume third-party seller who has requested and has received a
12 provision for a partial disclosure has not provided responsive answers within
13 a reasonable time to consumer inquiries submitted to the high-volume third-
14 party seller's contact information, the online marketplace shall, after providing
15 the seller with written or electronic notice and an opportunity to respond not
16 later than ten days after the issuance of such notice, suspend any future sales of
17 the seller unless the seller consents to the disclosure of the identity information
18 required under this Chapter.

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

23 §3225. Unfair or deceptive trade practice or act; online marketplace sellers;
24 identification; violations

25 Any violation of this Chapter shall be a deceptive and unfair trade
26 practice and shall subject the online marketplace to any and all actions and
27 penalties provided for in the Unfair Trade Practices and Consumer Protection
28 Law, R.S. 51:1401 et seq., excluding private rights of action as provided in R.S.
29 51:1409 and 1409.1.

§3226. Preemption

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

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

The original instrument was prepared by Xavier Alexander. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cheryl Serrett.

DIGEST

SB 442 Reengrossed

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's platform who is a third-party seller and who has entered into 200 or more discrete sales or transactions of new or unused 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 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 no later than 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 no later than 10 days after 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 authorizes an online marketplace to suspend any future sales of the seller, if the seller has made a false representation to justify partial disclosure of identifying information, unless the seller consents to the disclosure of the identity required by proposed law.

Proposed law provides relative to violations for deceptive and unfair trade practice.

Effective January 1, 2023.

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

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Makes technical corrections.
2. Clarifies definition of "high-volume third-party seller".
3. Provides relative to the information collected and how the information may be used.
4. Provides relative to actions against high-volume third-party sellers who make false representations to justify partial disclosure.