

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, as**
17 **defined in R.S. 47:301(16), that is distributed in commerce and used for**

1 personal, family, or household purposes, including any property intended to be
2 attached to or installed in any real property without regard to whether it is
3 attached or installed.

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

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

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

15 (ii) Hosts one or more third-party sellers.

16 (b) The term "online marketplace" shall not include either of the
17 following:

18 (i) Any person who facilitates the furnishing of a rental car by any rental
19 car company.

20 (ii) Any peer-to-peer car sharing program. Notwithstanding any other
21 provision of law to the contrary, "peer-to-peer car sharing program" means
22 any business platform that connects vehicle owners with drivers to enable the
23 sharing of vehicles for financial consideration. "Peer-to-peer car sharing
24 program" shall not mean any lessor, rental company, or similar, as defined in
25 R.S. 22:1523 or 1762.

26 (4) "Seller" means a person who sells, offers to sell, or contracts to sell
27 a consumer product through an online marketplace. "Seller" does not include
28 any shared vehicle owner. Notwithstanding any other provision of law to the
29 contrary, "shared vehicle owner" means the registered owner, or a person or

1 entity designated by the registered owner, of a vehicle made available for
2 sharing to shared vehicle drivers through a peer-to-peer car sharing program.
3 "Shared vehicle owner" shall not mean any lessor, rental company, or similar,
4 as defined in R.S. 22:1523 or 1762.

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

9 §3212. High-volume third-party sellers; identification; requirements

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

13 (a) Verified bank account information.

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

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

18 (d) A tax identification number.

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

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

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

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

29 (iv) The telephone number and email address for the high-volume third-

1 party seller.

2 (b) An online marketplace shall require the disclosure of any other
3 information necessary to prevent the circumvention of the requirements of this
4 Subsection.

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

8 (a) If the high-volume third-party seller demonstrates to the online
9 marketplace that he does not have a business address and has only a personal
10 street address, the online marketplace shall require the high-volume third-party
11 seller to disclose only the country and, if applicable, the state where the high-
12 volume third-party seller resides on the product listing. The online marketplace
13 may inform consumers that there is no business address available for the high-
14 volume third-party seller and that consumer inquiries may be submitted to the
15 high-volume third-party seller's email address.

16 (b) If a high-volume third-party seller demonstrates to the online
17 marketplace that he does not have a phone number other than a personal phone
18 number, the online marketplace shall not require the high-volume third-party
19 seller to disclose his personal phone number. The online marketplace may
20 inform consumers that there is no phone number available for the high-volume
21 third-party seller and the consumer inquiries may be submitted to the high-
22 volume third-party seller's email address.

23 (2) If an online marketplace becomes aware that a high-volume third-
24 party seller has made a false representation to the online marketplace in order
25 to justify partial disclosure of information required by Paragraph (A)(2) of this
26 Section or that a high-volume third-party seller who has requested and was
27 allowed to submit partial disclosure of identifying information has not
28 responded to inquiries submitted to the high-volume third-party seller's email
29 address within a reasonable amount of time, the online marketplace shall

1 require the high-volume third-party seller to submit the identifying information
2 as required by Paragraph (A)(2) of this Section within three business days. If
3 the information is not submitted within three business days, the online
4 marketplace shall remove the high-volume third-party seller from its platform
5 and revoke all access and privileges of the high-volume third-party seller.

6 §3213. Third-party sellers; removal of consumer goods from the online
7 marketplace

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

10 (a) Verification and attestation to the authenticity of any registered
11 trademark product or any consumer product in connection with a registered
12 trademark.

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

16 (2) A third-party seller shall submit the information required by this
17 Subsection simultaneously with the listing of the consumer product on the
18 online marketplace. If the third-party seller fails to submit the information, the
19 online marketplace shall immediately remove the listing.

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

22 B. An online marketplace shall remove any listing advertising an
23 illegitimate consumer product for sale. The consumer product shall be
24 considered illegitimate and shall be removed by the online marketplace only
25 after a person who claims the consumer product is illegitimate submits evidence
26 to the online marketplace sufficient to prove the consumer product is
27 illegitimate. The person shall provide the following information, if applicable,
28 to the online marketplace:

29 (1) Any indicator showing how the consumer product was determined

1 to be counterfeit.

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

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

7 §3214. Unfair or deceptive trade practice or act; online marketplace sellers;
 8 identification; violations

9 Any violation of this Chapter shall be a deceptive and unfair trade
 10 practice and shall subject the online marketplace to any and all actions and
 11 penalties provided for in the Unfair Trade Practices and Consumer Protection
 12 Law, R.S. 51:1401 et seq., excluding private rights of action as provided in R.S.
 13 51:1409 and 1409.1.

The original instrument was prepared by Michelle D. Ridge. The following digest, which does not constitute a part of the legislative instrument, was prepared by Brandi Cannon.

SB 476 Reengrossed

DIGEST
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)(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 or any peer-to-peer car sharing program.

- (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 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.

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.