STATE OF NEW YORK

6437

2023-2024 Regular Sessions

IN SENATE

April 19, 2023

Introduced by Sen. HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to the liability of electronic marketplaces for compensation for damages for defective goods

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general obligations law is amended by adding a new section 11-108 to read as follows:

§ 11-108. Liability of electronic marketplaces for compensation for damages for defective goods. 1. As used in this section:

(a) "Electronic marketplace provider" means a person who, pursuant to an agreement with a marketplace seller, sells or facilitates sales of tangible personal property by such marketplace seller or sellers via an internet website, online catalog, mobile application, or similar forum. "Electronic marketplace provider" includes any subsidiaries or related party companies. A person "facilitates sales of tangible personal property" for purposes of this paragraph when the person meets both the following conditions:

(i) such person provides the forum in which, or by means of which, the sale takes place or the offer of sale is accepted, including an internet shop, store, booth, application, website, catalog, or similar forum; and

(ii) such person or an affiliate of such person collects the receipts paid by a customer to a marketplace seller for a sale of tangible personal property, or contracts with a third party to collect such receipts.

(b) "Handmade" means a product that conforms to all applicable state and federal consumer health and safety laws and is made by the marketplace seller in the primary residence of the marketplace seller, so long as the marketplace seller's sales of handmade products generate less than fifty thousand dollars per year in revenues.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD10447-01-3

(c) "Marketplace seller" means any person who has an agreement with an electronic marketplace provider under which the electronic marketplace provider will facilitate sales of tangible personal property by such person within the meaning of paragraph (a) of this subdivision.

(d) "Product" means a tangible good that is subject to strict product liability law.

2. An electronic marketplace provider shall be deemed to be a retailer for purposes of New York strict liability law and shall be strictly liable for all damages caused by defective products placed into the stream of commerce to the same extent that a retailer of that defective product would be liable. The liability of an electronic marketplace provider shall be equal to, but not greater than, the liability of a retailer, and all defenses to strict liability that are available under New York law, except as modified by this section, shall be preserved for electronic marketplace providers.

3. This section shall apply:

(a) without regard to fault;

(b) regardless of whether the electronic marketplace provider or marketplace seller has a physical presence in the state; and

(c) regardless of whether the electronic marketplace provider ever took physical possession of, or title to, the product.

4. An electronic marketplace provider shall not be liable as described in subdivision two of this section if any of the following conditions are met:

(a) The product that caused the damage was one of the following:

(i) preowned or used and prominently described or prominently advertised in the electronic marketplace provider as preowned or used at the time it was purchased by the consumer; or

(ii) handmade; or

(iii) custom-made.

(b) The electronic marketplace provider did not receive a direct or indirect financial benefit from the sale of the defective product that caused the injury. A fee that is exclusively for an advertisement is not a "financial benefit from the sale of the defective product."

5. Notwithstanding the provisions of subdivision four of this section, an electronic marketplace provider shall be strictly liable for the sale of preowned, used, handmade, or custom-made defective products if the application of strict liability to the electronic marketplace provider is consistent with the policy considerations underlying strict product liability.

6. This section shall not be deemed to limit or impair any cause of action authorized pursuant to any other provision of law available to a person injured as a result of a product. The provisions of this section shall be in addition to any other right of action or recovery otherwise available under the law.

§ 2. This act shall take effect immediately.