

## Union Calendar No.

117<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 5502

[Report No. 117-]

To require online marketplaces to verify certain information regarding high-volume third party sellers of consumer products on such online marketplaces and to disclose to consumers certain contact and other information regarding such high-volume third party sellers.

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### IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 2021

Ms. SCHAKOWSKY (for herself and Mr. BILIRAKIS) introduced the following bill; which was referred to the Committee on Energy and Commerce

NOVEMBER --, 2021

Committed to the Committee of the Whole House on the State of the Union,  
and ordered to be printed

# **A BILL**

To require online marketplaces to verify certain information regarding high-volume third party sellers of consumer products on such online marketplaces and to disclose to consumers certain contact and other information regarding such high-volume third party sellers.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. COLLECTION, VERIFICATION, AND DISCLO-**  
4 **SURE OF INFORMATION BY ONLINE MARKET-**  
5 **PLACES TO INFORM CONSUMERS.**

6       (a) COLLECTION AND VERIFICATION OF INFORMA-  
7 TION.—

8           (1) COLLECTION.—

9               (A) IN GENERAL.—An online marketplace  
10 shall require any high-volume third party seller  
11 on such online marketplace’s platform to pro-  
12 vide, not later than 10 days after qualifying as  
13 a high-volume third party seller on the plat-  
14 form, the following information to the online  
15 marketplace:

16                   (i) BANK ACCOUNT.—

17                       (I) IN GENERAL.—A bank ac-  
18 count number, or, if such seller does  
19 not have a bank account, the name of  
20 the payee for payments issued by the  
21 online marketplace to such seller.

22                       (II) PROVISION OF INFORMA-  
23 TION.—The bank account or payee in-  
24 formation required under subclause

1 (I) may be provided by the seller in  
2 the following ways:

3 (aa) To the online market-  
4 place.

5 (bb) To a payment processor  
6 or other third party contracted  
7 by the online marketplace to  
8 maintain such information, pro-  
9 vided that the online marketplace  
10 ensures that it can obtain such  
11 information on demand from  
12 such payment processor or other  
13 third party.

14 (ii) CONTACT INFORMATION.—Contact  
15 information for such seller as follows:

16 (I) With respect to a high-volume  
17 third party seller that is an individual,  
18 the individual's name.

19 (II) With respect to a high-vol-  
20 ume third party seller that is not an  
21 individual, one of the following forms  
22 of contact information:

23 (aa) A copy of a valid gov-  
24 ernment-issued identification for  
25 an individual acting on behalf of

1 such seller that includes the indi-  
2 vidual's name.

3 (bb) A copy of a valid gov-  
4 ernment-issued record or tax doc-  
5 ument that includes the business  
6 name and physical address of  
7 such seller.

8 (iii) TAX ID.—A business tax identi-  
9 fication number, or, if such seller does not  
10 have a business tax identification number,  
11 a taxpayer identification number.

12 (iv) WORKING EMAIL AND PHONE  
13 NUMBER.—A current working email ad-  
14 dress and phone number for such seller.

15 (B) NOTIFICATION OF CHANGE; ANNUAL  
16 CERTIFICATION.—An online marketplace  
17 shall—

18 (i) periodically, but not less than an-  
19 nually, notify any high-volume third party  
20 seller on such online marketplace's plat-  
21 form of the requirement to keep any infor-  
22 mation collected under subparagraph (A)  
23 current; and

24 (ii) require any high-volume third  
25 party seller on such online marketplace's

1 platform to, not later than 10 days after  
2 receiving the notice under clause (i), elec-  
3 tronically certify that—

4 (I) the seller has provided any  
5 changes to such information to the  
6 online marketplace, if any such  
7 changes have occurred;

8 (II) there have been no changes  
9 to such seller's information; or

10 (III) such seller has provided any  
11 changes to such information to the  
12 online marketplace.

13 (C) SUSPENSION.—In the event that a  
14 high-volume third party seller does not provide  
15 the information or certification required under  
16 this paragraph, the online marketplace shall,  
17 after providing the seller with written or elec-  
18 tronic notice and an opportunity to provide  
19 such information or certification not later than  
20 10 days after the issuance of such notice, sus-  
21 pend any future sales activity of such seller  
22 until such seller provides such information or  
23 certification.

24 (2) VERIFICATION.—

1 (A) IN GENERAL.—An online marketplace  
2 shall—

3 (i) verify the information collected  
4 under paragraph (1)(A) not later than 10  
5 days after such collection; and

6 (ii) verify any change to such informa-  
7 tion not later than 10 days after being no-  
8 tified of such change by a high-volume  
9 third party seller under paragraph (1)(B).

10 (B) PRESUMPTION OF VERIFICATION.—In  
11 the case of a high-volume third party seller that  
12 provides a copy of a valid government-issued  
13 tax document, any information contained in  
14 such document shall be presumed to be verified  
15 as of the date of issuance of such document.

16 (3) DATA USE LIMITATION.—Data collected  
17 solely to comply with the requirements of this sec-  
18 tion may not be used for any other purpose unless  
19 required by law.

20 (4) DATA SECURITY REQUIREMENT.—An online  
21 marketplace shall implement and maintain reason-  
22 able security procedures and practices, including ad-  
23 ministrative, physical, and technical safeguards, ap-  
24 propriate to the nature of the data and the purposes  
25 for which the data will be used, to protect the data

1 collected to comply with the requirements of this  
2 section from unauthorized use, disclosure, access, de-  
3 struction, or modification.

4 (b) DISCLOSURE REQUIRED.—

5 (1) REQUIREMENT.—

6 (A) IN GENERAL.—An online marketplace  
7 shall—

8 (i) require any high-volume third  
9 party seller with an aggregate total of  
10 \$20,000 or more in annual gross revenues  
11 on such online marketplace, and that uses  
12 such online marketplace's platform, to pro-  
13 vide the information described in subpara-  
14 graph (B) to the online marketplace; and

15 (ii) disclose the information described  
16 in subparagraph (B) to consumers in a  
17 clear and conspicuous manner—

18 (I) in the order confirmation  
19 message or other document or com-  
20 munication made to a consumer after  
21 a purchase is finalized; and

22 (II) in the consumer's account  
23 transaction history.

1 (B) INFORMATION DESCRIBED.—The in-  
2 formation described in this subparagraph is the  
3 following:

4 (i) Subject to paragraph (2), the iden-  
5 tity of the high-volume third party seller,  
6 including—

7 (I) the full name of the seller,  
8 which may include the seller name or  
9 seller's company name, or the name  
10 by which the seller or company oper-  
11 ates on the online marketplace;

12 (II) the physical address of the  
13 seller; and

14 (III) contact information for the  
15 seller, to allow for the direct,  
16 unhindered communication with high-  
17 volume third party sellers by users of  
18 the online marketplace, including—

19 (aa) a current working  
20 phone number;

21 (bb) a current working email  
22 address; or

23 (cc) other means of direct  
24 electronic messaging (which may

1 be provided to such seller by the  
2 online marketplace).

3 (ii) Whether the high-volume third  
4 party seller used a different seller to sup-  
5 ply the consumer product to the consumer  
6 upon purchase, and, upon the request of  
7 an authenticated purchaser, the informa-  
8 tion described in clause (i) relating to any  
9 such seller that supplied the consumer  
10 product to the purchaser, if such seller is  
11 different than the high-volume third party  
12 seller listed on the product listing prior to  
13 purchase.

14 (2) EXCEPTION.—

15 (A) IN GENERAL.—Subject to subpara-  
16 graph (B), upon the request of a high-volume  
17 third party seller, an online marketplace may  
18 provide for partial disclosure of the identity in-  
19 formation required under paragraph (1)(B)(i)  
20 in the following situations:

21 (i) If such seller certifies to the online  
22 marketplace that the seller does not have  
23 a business address and only has a residen-  
24 tial street address, or has a combined busi-

1                   ness and residential address, the online  
2                   marketplace may—

3                               (I) disclose only the country and,  
4                               if applicable, the State in which such  
5                               seller resides; and

6                               (II) inform consumers that there  
7                               is no business address available for  
8                               the seller and that consumer inquiries  
9                               should be submitted to the seller by  
10                              phone, email, or other means of elec-  
11                              tronic messaging provided to such  
12                              seller by the online marketplace.

13                             (ii) If such seller certifies to the online  
14                             marketplace that the seller is a business  
15                             that has a physical address for product re-  
16                             turns, the online marketplace may disclose  
17                             the seller's physical address for product re-  
18                             turns.

19                             (iii) If such seller certifies to the on-  
20                             line marketplace that the seller does not  
21                             have a phone number other than a per-  
22                             sonal phone number, the online market-  
23                             place shall inform consumers that there is  
24                             no phone number available for the seller  
25                             and that consumer inquiries should be sub-

1           mitted to the seller's email address or  
2           other means of electronic messaging pro-  
3           vided to such seller by the online market-  
4           place.

5           (B) LIMITATION ON EXCEPTION.—If an  
6           online marketplace becomes aware that a high-  
7           volume third party seller has made a false rep-  
8           resentation to the online marketplace in order  
9           to justify the provision of a partial disclosure  
10          under subparagraph (A) or that a high-volume  
11          third party seller who has requested and re-  
12          ceived a provision for a partial disclosure under  
13          subparagraph (A) has not provided responsive  
14          answers within a reasonable time frame to con-  
15          sumer inquiries submitted to the seller by  
16          phone, email, or other means of electronic mes-  
17          saging provided to such seller by the online  
18          marketplace, the online marketplace shall, after  
19          providing the seller with written or electronic  
20          notice and an opportunity to respond not later  
21          than 10 days after the issuance of such notice,  
22          suspend any future sales activity of such seller  
23          unless such seller consents to the disclosure of  
24          the identity information required under para-  
25          graph (1)(B)(i).

1           (3) REPORTING MECHANISM.—An online mar-  
2           ketplace shall disclose to consumers in a clear and  
3           conspicuous manner on the product listing of any  
4           high-volume third party seller a reporting mecha-  
5           nism that allows for electronic and telephonic report-  
6           ing of suspicious marketplace activity to the online  
7           marketplace.

8           (4) COMPLIANCE.—If a high-volume third party  
9           seller does not comply with the requirements to pro-  
10          vide and disclose information under this subsection,  
11          the online marketplace shall, after providing the sell-  
12          er with written or electronic notice and an oppor-  
13          tunity to provide or disclose such information not  
14          later than 10 days after the issuance of such notice,  
15          suspend any future sales activity of such seller until  
16          the seller complies with such requirements.

17          (c) ENFORCEMENT BY FEDERAL TRADE COMMIS-  
18          SION.—

19               (1) UNFAIR AND DECEPTIVE ACTS OR PRAC-  
20               TICES.—A violation of subsection (a) or (b) by an  
21               online marketplace shall be treated as a violation of  
22               a rule defining an unfair or deceptive act or practice  
23               prescribed under section 18(a)(1)(B) of the Federal  
24               Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

25               (2) POWERS OF THE COMMISSION.—

1 (A) IN GENERAL.—The Commission shall  
2 enforce subsections (a) and (b) in the same  
3 manner, by the same means, and with the same  
4 jurisdiction, powers, and duties as though all  
5 applicable terms and provisions of the Federal  
6 Trade Commission Act (15 U.S.C. 41 et seq.)  
7 were incorporated into and made a part of this  
8 section.

9 (B) PRIVILEGES AND IMMUNITIES.—Any  
10 person that violates subsection (a) or (b) shall  
11 be subject to the penalties, and entitled to the  
12 privileges and immunities, provided in the Fed-  
13 eral Trade Commission Act (15 U.S.C. 41 et  
14 seq.).

15 (3) REGULATIONS.—The Commission may pro-  
16 mulgate regulations under section 553 of title 5,  
17 United States Code, with respect to the collection,  
18 verification, or disclosure of information under this  
19 section, provided that such regulations are limited to  
20 what is necessary to collect, verify, and disclose such  
21 information.

22 (4) AUTHORITY PRESERVED.—Nothing in this  
23 section shall be construed to limit the authority of  
24 the Commission under any other provision of law.

1 (d) ENFORCEMENT BY STATE ATTORNEYS GEN-  
2 ERAL.—

3 (1) IN GENERAL.—If the attorney general of a  
4 State has reason to believe that any online market-  
5 place has violated or is violating this section or a  
6 regulation promulgated under this section that af-  
7 fects one or more residents of that State, the attor-  
8 ney general of the State may bring a civil action in  
9 any appropriate district court of the United States,  
10 to—

11 (A) enjoin further such violation by the de-  
12 fendant;

13 (B) enforce compliance with this section or  
14 such regulation;

15 (C) obtain civil penalties in the amount  
16 provided for under subsection (c);

17 (D) obtain other remedies permitted under  
18 State law; and

19 (E) obtain damages, restitution, or other  
20 compensation on behalf of residents of the  
21 State.

22 (2) NOTICE.—The attorney general of a State  
23 shall provide prior written notice of any action under  
24 paragraph (1) to the Commission and provide the  
25 Commission with a copy of the complaint in the ac-

1       tion, except in any case in which such prior notice  
2       is not feasible, in which case the attorney general  
3       shall serve such notice immediately upon instituting  
4       such action.

5           (3) INTERVENTION BY THE FTC.—Upon receiv-  
6       ing notice under paragraph (2), the Commission  
7       shall have the right—

8                   (A) to intervene in the action;

9                   (B) upon so intervening, to be heard on all  
10       matters arising therein; and

11                   (C) to file petitions for appeal.

12           (4) LIMITATION ON STATE ACTION WHILE FED-  
13       ERAL ACTION IS PENDING.—If the Commission has  
14       instituted a civil action for violation of this section  
15       or a regulation promulgated under this section, no  
16       State attorney general, or official or agency of a  
17       State, may bring a separate action under paragraph  
18       (1) during the pendency of that action against any  
19       defendant named in the complaint of the Commis-  
20       sion for any violation of this section or a regulation  
21       promulgated under this section that is alleged in the  
22       complaint. A State attorney general, or official or  
23       agency of a State, may join a civil action for a viola-  
24       tion of this section or regulation promulgated under  
25       this section filed by the Commission.

1           (5) RULE OF CONSTRUCTION.—For purposes of  
2 bringing a civil action under paragraph (1), nothing  
3 in this section shall be construed to prevent the chief  
4 law enforcement officer, or official or agency of a  
5 State, from exercising the powers conferred on such  
6 chief law enforcement officer, official or agency of a  
7 State, by the laws of the State to conduct investiga-  
8 tions, administer oaths or affirmations, or compel  
9 the attendance of witnesses or the production of doc-  
10 umentary and other evidence.

11           (6) ACTIONS BY OTHER STATE OFFICIALS.—

12           (A) IN GENERAL.—In addition to civil ac-  
13 tions brought by attorneys general under para-  
14 graph (1), any other officer of a State who is  
15 authorized by the State to do so, except for any  
16 private person on behalf of the State attorney  
17 general, may bring a civil action under para-  
18 graph (1), subject to the same requirements  
19 and limitations that apply under this subsection  
20 to civil actions brought by attorneys general.

21           (B) SAVINGS PROVISION.—Nothing in this  
22 subsection may be construed to prohibit an au-  
23 thorized official of a State from initiating or  
24 continuing any proceeding in a court of the

1 State for a violation of any civil or criminal law  
2 of the State.

3 (e) SEVERABILITY.—If any provision of this section,  
4 or the application thereof to any person or circumstance,  
5 is held invalid, the remainder of this section and the appli-  
6 cation of such provision to other persons not similarly situ-  
7 ated or to other circumstances shall not be affected by  
8 the invalidation.

9 (f) DEFINITIONS.—In this section:

10 (1) COMMISSION.—The term “Commission”  
11 means the Federal Trade Commission.

12 (2) CONSUMER PRODUCT.—The term “con-  
13 sumer product” has the meaning given such term in  
14 section 101 of the Magnuson-Moss Warranty—Fed-  
15 eral Trade Commission Improvement Act (15 U.S.C.  
16 2301) and section 700.1 of title 16, Code of Federal  
17 Regulations.

18 (3) HIGH-VOLUME THIRD PARTY SELLER.—

19 (A) IN GENERAL.—The term “high-volume  
20 third party seller” means a participant on an  
21 online marketplace’s platform who is a third  
22 party seller and who, in any continuous 12-  
23 month period during the previous 24 months,  
24 has entered into 200 or more discrete sales or  
25 transactions of new or unused consumer prod-

1           ucts and an aggregate total of \$5,000 or more  
2           in gross revenues.

3           (B) CLARIFICATION.—For purposes of cal-  
4           culating the number of discrete sales or trans-  
5           actions or the aggregate gross revenues under  
6           subparagraph (A), an online marketplace shall  
7           only be required to count sales or transactions  
8           made through the online marketplace and for  
9           which payment was processed by the online  
10          marketplace, either directly or through its pay-  
11          ment processor.

12          (4) ONLINE MARKETPLACE.—The term “online  
13          marketplace” means any person or entity that oper-  
14          ates a consumer-directed electronically based or  
15          accessed platform that—

16                (A) includes features that allow for, facili-  
17                tate, or enable third party sellers to engage in  
18                the sale, purchase, payment, storage, shipping,  
19                or delivery of a consumer product in the United  
20                States;

21                (B) is used by one or more third party sell-  
22                ers for such purposes; and

23                (C) has a contractual or similar relation-  
24                ship with consumers governing their use of the  
25                platform to purchase consumer products.

1           (5) SELLER.—The term “seller” means a per-  
2           son who sells, offers to sell, or contracts to sell a  
3           consumer product through an online marketplace’s  
4           platform.

5           (6) THIRD PARTY SELLER.—

6           (A) IN GENERAL.—The term “third party  
7           seller” means any seller, independent of an on-  
8           line marketplace, who sells, offers to sell, or  
9           contracts to sell a consumer product in the  
10          United States through such online market-  
11          place’s platform.

12          (B) EXCLUSIONS.—The term “third party  
13          seller” does not include, with respect to an on-  
14          line marketplace—

15                 (i) a seller who operates the online  
16                 marketplace’s platform; or

17                 (ii) a business entity that has—

18                         (I) made available to the general  
19                         public the entity’s name, business ad-  
20                         dress, and working contact informa-  
21                         tion;

22                         (II) an ongoing contractual rela-  
23                         tionship with the online marketplace  
24                         to provide the online marketplace with  
25                         the manufacture, distribution, whole-

1                   saling, or fulfillment of shipments of  
2                   consumer products; and

3                   (III) provided to the online mar-  
4                   ketplace identifying information, as  
5                   described in subsection (a), that has  
6                   been verified in accordance with that  
7                   subsection.

8                   (7) VERIFY.—The term “verify” means to con-  
9                   firm information provided to an online marketplace  
10                  pursuant to this section, which may include the use  
11                  of one or more methods that enable the online mar-  
12                  ketplace to reliably determine that any information  
13                  and documents provided are valid, corresponding to  
14                  the seller or an individual acting on the seller’s be-  
15                  half, not misappropriated, and not falsified.

16                  (g) RELATIONSHIP TO STATE LAWS.—No State or  
17                  political subdivision of a State, or territory of the United  
18                  States, may establish or continue in effect any law, regula-  
19                  tion, rule, requirement, or standard that conflicts with the  
20                  requirements of this section.

21                  (h) EFFECTIVE DATE.—This section shall take effect  
22                  180 days after the date of the enactment of this Act.