

Suspend the Rules and Pass the Bill, H.R. 5502, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

117TH CONGRESS
1ST SESSION

H. R. 5502

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.

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

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Integrity, Notification,
3 and Fairness in Online Retail Marketplaces for Con-
4 sumers Act” or the “INFORM Consumers Act”.

5 **SEC. 2. COLLECTION, VERIFICATION, AND DISCLOSURE OF**
6 **INFORMATION BY ONLINE MARKETPLACES**
7 **TO INFORM CONSUMERS.**

8 (a) **COLLECTION AND VERIFICATION OF INFORMA-**
9 **TION.—**

10 (1) **COLLECTION.—**

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

18 (i) **BANK ACCOUNT.—**

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

24 (II) **PROVISION OF INFORMA-**
25 **TION.—**The bank account or payee in-
26 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 within 3 business
12 days from such payment proc-
13 essor or other 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; or

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

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

21 (2) VERIFICATION.—

22 (A) IN GENERAL.—An online marketplace
23 shall—

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

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

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

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

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

1 section from unauthorized use, disclosure, access, de-
2 struction, or modification.

3 (b) DISCLOSURE REQUIRED.—

4 (1) REQUIREMENT.—

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

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

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

17 (I) on the product listing page
18 (including via hyperlink); or

19 (II) in the order confirmation
20 message or other document or com-
21 munication made to the consumer
22 after the purchase is finalized and in
23 the consumer's account transaction
24 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
25 be provided to such seller by the

1 online marketplace), provided
2 that the requirements of this
3 item shall not prevent an online
4 marketplace from monitoring
5 communications between high-
6 volume third party sellers and
7 users of the online marketplace
8 for fraud, abuse, or spam.

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

20 (2) EXCEPTION.—

21 (A) IN GENERAL.—Subject to subpara-
22 graph (B), upon the request of a high-volume
23 third party seller, an online marketplace may
24 provide for partial disclosure of the identity in-

1 formation required under paragraph (1)(B)(i)
2 in the following situations:

3 (i) If such seller certifies to the online
4 marketplace that the seller does not have
5 a business address and only has a residen-
6 tial street address, or has a combined busi-
7 ness and residential address, the online
8 marketplace may—

9 (I) disclose only the country and,
10 if applicable, the State in which such
11 seller resides; and

12 (II) inform consumers that there
13 is no business address available for
14 the seller and that consumer inquiries
15 should be submitted to the seller by
16 phone, email, or other means of elec-
17 tronic messaging provided to such
18 seller by the online marketplace.

19 (ii) If such seller certifies to the online
20 marketplace that the seller is a business
21 that has a physical address for product re-
22 turns, the online marketplace may disclose
23 the seller's physical address for product re-
24 turns.

1 (iii) If such seller certifies to the on-
2 line marketplace that the seller does not
3 have a phone number other than a per-
4 sonal phone number, the online market-
5 place shall inform consumers that there is
6 no phone number available for the seller
7 and that consumer inquiries should be sub-
8 mitted to the seller's email address or
9 other means of electronic messaging pro-
10 vided to such seller by the online market-
11 place.

12 (B) LIMITATION ON EXCEPTION.—If an
13 online marketplace becomes aware that a high-
14 volume third party seller has made a false rep-
15 resentation to the online marketplace in order
16 to justify the provision of a partial disclosure
17 under subparagraph (A) or that a high-volume
18 third party seller who has requested and re-
19 ceived a provision for a partial disclosure under
20 subparagraph (A) has not provided responsive
21 answers within a reasonable time frame to con-
22 sumer inquiries submitted to the seller by
23 phone, email, or other means of electronic mes-
24 saging provided to such seller by the online
25 marketplace, the online marketplace shall, after

1 providing the seller with written or electronic
2 notice and an opportunity to respond not later
3 than 10 days after the issuance of such notice,
4 suspend any future sales activity of such seller
5 unless such seller consents to the disclosure of
6 the identity information required under para-
7 graph (1)(B)(i).

8 (3) REPORTING MECHANISM.—An online mar-
9 ketplace shall disclose to consumers in a clear and
10 conspicuous manner on the product listing of any
11 high-volume third party seller a reporting mecha-
12 nism that allows for electronic and telephonic report-
13 ing of suspicious marketplace activity to the online
14 marketplace.

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

24 (c) ENFORCEMENT BY FEDERAL TRADE COMMIS-
25 SION.—

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

7 (2) POWERS OF THE COMMISSION.—

8 (A) IN GENERAL.—The Commission shall
9 enforce subsections (a) and (b) in the same
10 manner, by the same means, and with the same
11 jurisdiction, powers, and duties as though all
12 applicable terms and provisions of the Federal
13 Trade Commission Act (15 U.S.C. 41 et seq.)
14 were incorporated into and made a part of this
15 section.

16 (B) PRIVILEGES AND IMMUNITIES.—Any
17 person that violates subsection (a) or (b) shall
18 be subject to the penalties, and entitled to the
19 privileges and immunities, provided in the Fed-
20 eral Trade Commission Act (15 U.S.C. 41 et
21 seq.).

22 (3) REGULATIONS.—The Commission may pro-
23 mulgate regulations under section 553 of title 5,
24 United States Code, with respect to the collection,
25 verification, or disclosure of information under this

1 section, provided that such regulations are limited to
2 what is necessary to collect, verify, and disclose such
3 information.

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

7 (d) ENFORCEMENT BY STATE ATTORNEYS GEN-
8 ERAL.—

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

17 (A) enjoin further such violation by the de-
18 fendant;

19 (B) enforce compliance with this section or
20 such regulation;

21 (C) obtain civil penalties in the amount
22 provided for under subsection (c);

23 (D) obtain other remedies permitted under
24 State law; and

1 (E) obtain damages, restitution, or other
2 compensation on behalf of residents of the
3 State.

4 (2) NOTICE.—The attorney general of a State
5 shall provide prior written notice of any action under
6 paragraph (1) to the Commission and provide the
7 Commission with a copy of the complaint in the ac-
8 tion, except in any case in which such prior notice
9 is not feasible, in which case the attorney general
10 shall serve such notice immediately upon instituting
11 such action.

12 (3) INTERVENTION BY THE COMMISSION.—
13 Upon receiving notice under paragraph (2), the
14 Commission shall have the right—

15 (A) to intervene in the action;

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

18 (C) to file petitions for appeal.

19 (4) LIMITATION ON STATE ACTION WHILE FED-
20 ERAL ACTION IS PENDING.—If the Commission has
21 instituted a civil action for violation of this section
22 or a regulation promulgated under this section, no
23 State attorney general, or official or agency of a
24 State, may bring a separate action under paragraph
25 (1) during the pendency of that action against any

1 defendant named in the complaint of the Commis-
2 sion for any violation of this section or a regulation
3 promulgated under this section that is alleged in the
4 complaint. A State attorney general, or official or
5 agency of a State, may join a civil action for a viola-
6 tion of this section or regulation promulgated under
7 this section filed by the Commission.

8 (5) RULE OF CONSTRUCTION.—For purposes of
9 bringing a civil action under paragraph (1), nothing
10 in this section shall be construed to prevent the chief
11 law enforcement officer, or official or agency of a
12 State, from exercising the powers conferred on such
13 chief law enforcement officer, or official or agency of
14 a State, by the laws of the State to conduct inves-
15 tigation, administer oaths or affirmations, or com-
16 pel the attendance of witnesses or the production of
17 documentary and other evidence.

18 (6) ACTIONS BY OTHER STATE OFFICIALS.—

19 (A) IN GENERAL.—In addition to civil ac-
20 tions brought by attorneys general under para-
21 graph (1), any other officer of a State who is
22 authorized by the State to do so, except for any
23 private person on behalf of the State attorney
24 general, may bring a civil action under para-
25 graph (1), subject to the same requirements

1 and limitations that apply under this subsection
2 to civil actions brought by attorneys general.

3 (B) SAVINGS PROVISION.—Nothing in this
4 subsection may be construed to prohibit an au-
5 thorized official of a State from initiating or
6 continuing any proceeding in a court of the
7 State for a violation of any civil or criminal law
8 of the State.

9 (e) SEVERABILITY.—If any provision of this section,
10 or the application thereof to any person or circumstance,
11 is held invalid, the remainder of this section and the appli-
12 cation of such provision to other persons not similarly situ-
13 ated or to other circumstances shall not be affected by
14 the invalidation.

15 (f) DEFINITIONS.—In this section:

16 (1) COMMISSION.—The term “Commission”
17 means the Federal Trade Commission.

18 (2) CONSUMER PRODUCT.—The term “con-
19 sumer product” has the meaning given such term in
20 section 101 of the Magnuson-Moss Warranty—Fed-
21 eral Trade Commission Improvement Act (15 U.S.C.
22 2301) and section 700.1 of title 16, Code of Federal
23 Regulations.

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

1 (A) IN GENERAL.—The term “high-volume
2 third party seller” means a participant on an
3 online marketplace’s platform who is a third
4 party seller and, in any continuous 12-month
5 period during the previous 24 months, has en-
6 tered into 200 or more discrete sales or trans-
7 actions of new or unused consumer products
8 and an aggregate total of \$5,000 or more in
9 gross revenues.

10 (B) CLARIFICATION.—For purposes of cal-
11 culating the number of discrete sales or trans-
12 actions or the aggregate gross revenues under
13 subparagraph (A), an online marketplace shall
14 only be required to count sales or transactions
15 made through the online marketplace and for
16 which payment was processed by the online
17 marketplace, either directly or through its pay-
18 ment processor.

19 (4) ONLINE MARKETPLACE.—The term “online
20 marketplace” means any person or entity that oper-
21 ates a consumer-directed electronically based or
22 accessed platform that—

23 (A) includes features that allow for, facili-
24 tate, or enable third party sellers to engage in
25 the sale, purchase, payment, storage, shipping,

1 or delivery of a consumer product in the United
2 States;

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

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

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

12 (6) THIRD PARTY SELLER.—

13 (A) IN GENERAL.—The term “third party
14 seller” means any seller, independent of an on-
15 line marketplace, who sells, offers to sell, or
16 contracts to sell a consumer product in the
17 United States through such online market-
18 place’s platform.

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

22 (i) a seller who operates the online
23 marketplace’s platform; or

24 (ii) a business entity that has—

1 (I) made available to the general
2 public the entity's name, business ad-
3 dress, and working contact informa-
4 tion;

5 (II) an ongoing contractual rela-
6 tionship with the online marketplace
7 to provide the online marketplace with
8 the manufacture, distribution, whole-
9 saling, or fulfillment of shipments of
10 consumer products; and

11 (III) provided to the online mar-
12 ketplace identifying information, as
13 described in subsection (a), that has
14 been verified in accordance with that
15 subsection.

16 (7) VERIFY.—The term “verify” means to con-
17 firm information provided to an online marketplace
18 pursuant to this section, which may include the use
19 of one or more methods that enable the online mar-
20 ketplace to reliably determine that any information
21 and documents provided are valid, corresponding to
22 the seller or an individual acting on the seller's be-
23 half, not misappropriated, and not falsified.

24 (g) RELATIONSHIP TO STATE LAWS.—No State or
25 political subdivision of a State, or territory of the United

1 States, may establish or continue in effect any law, regula-
2 tion, rule, requirement, or standard that conflicts with the
3 requirements of this section.

4 (h) EFFECTIVE DATE.—This section shall take effect
5 180 days after the date of the enactment of this Act.