S. 128

To regulate certain State impositions on interstate commerce.

IN THE SENATE OF THE UNITED STATES

JANUARY 15, 2019

Mr. Tester (for himself, Mr. Wyden, Mrs. Shaheen, Ms. Hassan, and Mr. Merkley) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To regulate certain State impositions on interstate commerce.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Stop Taxing Our Po-
tential Act of 2019”.

SEC. 2. MINIMUM JURISDICTIONAL STANDARDS FOR STATE
AND LOCAL SALES AND USE TAX COLLEC-
TION.

(a) IN GENERAL.—A State may not—

(1) impose an obligation on a person for—
(A) the collection of a sales tax, use tax, or any similar tax; or

(B) the reporting of any information with respect to a tax described in subparagraph (A);

(2) assess any tax described in paragraph (1)(A) on a person; or

(3) treat a person as doing business in a State for purposes of any tax described in paragraph (1)(A), unless such person had a physical presence in the State during the calendar quarter with respect to which such obligation or assessment is imposed.

(b) REQUIREMENTS FOR PHYSICAL PRESENCE.—

(1) IN GENERAL.—For purposes of subsection (a), a person has a physical presence in a State only if such person’s business activities in the State include any of the following during the calendar quarter:

(A) Maintains its commercial or legal domicile in the State.

(B) Owns, holds a leasehold interest in, or maintains real property such as a retail store, warehouse, distribution center, manufacturing operation, or assembly facility in the State.
(C) Leases or owns tangible personal property (other than computer software) of more than de minimis value in the State.

(D) Has one or more employees, agents, or independent contractors present in the State who provide on-site design, installation, or repair services on behalf of the remote seller.

(E) Has one or more employees, exclusive agents or exclusive independent contractors present in the State who engage in activities that substantially assist the person to establish or maintain a market in the State.

(F) Maintains an office in the State at which it regularly employs three or more employees for any purpose.

(2) DE MINIMIS PHYSICAL PRESENCE.—For purposes of this section, the term “physical presence” shall not include—

(A) entering into an agreement under which a person, for a commission or other consideration, directly or indirectly refers potential purchasers to a person outside the State, whether by an internet-based link or platform, internet website or otherwise;
(B) any presence in a State, as described in section 2(b)(1), for less than 15 days in a taxable year (or a greater number of days if provided by State law);

(C) product placement, setup, or other services offered in connection with delivery of products by an interstate or in-State carrier or other service provider;

(D) internet advertising services provided by in-State residents which are not exclusively directed towards, or do not solicit exclusively, in-State customers;

(E) ownership by a person outside the State of an interest in a limited liability company or similar entity organized or with a physical presence in the State;

(F) the furnishing of information to customers or affiliates in such State, or the coverage of events or other gathering of information in such State by such person, or his representative, which information is used or disseminated from a point outside the State; or

(G) business activities directly relating to such person’s potential or actual purchase of
goods or services within the State if the final decision to purchase is made outside the State.

(c) Protection of Non-Sellers.—A State may not impose or assess a sales, use, or similar tax on a person or impose an obligation to collect or report any information with respect thereto, unless such person is either a purchaser or a seller having a physical presence in the State.

**SEC. 3. DISPUTE RESOLUTION.**

The district courts of the United States shall have original jurisdiction over civil actions to enforce the provisions of this Act, including authority to issue declaratory judgments pursuant to section 2201 of title 28, United States Code, and, notwithstanding the provisions of section 1341 of such title, injunctive relief, as necessary to carry out any provision of this Act.

**SEC. 4. DEFINITIONS AND EFFECTIVE DATE.**

(a) Definitions.—For purposes of this Act:

(1) Marketplace Provider.—The term “marketplace provider” includes any person, other than a seller, who facilitates a sale. For purposes of this subsection, a person facilitates a sale when the person both—
(A) lists or advertises products for sale in any forum, including a catalog or internet website; and

(B) either directly or indirectly through agreements or arrangements with third parties, collects gross receipts from the customer and transmits those receipts to the marketplace seller, whether or not such person deducts any fees or other amounts from those receipts prior to transferring them to the marketplace seller.

(2) MARKETPLACE SELLER.—The term “marketplace seller” means a person that has any sales facilitated by a marketplace provider.

(3) PERSON.—The term “person” has the meaning given such term by section 1 of title 1, United States Code. Each corporation that is a member of a group of affiliated corporations, whether unitary or not, is itself a separate person.

(4) PRODUCT.—The term “product” includes any good or service, tangible or intangible.

(5) REFEREE.—The term “referrer” shall mean every person who—

(A) contracts or otherwise agrees with a seller to list multiple products for sale and the
sales prices thereof in any forum, including a
catalog or internet website;

(B) receives a fee, commission, or other
consideration from a seller for the listing;

(C) transfers, via telephone, internet link,
or otherwise, a customer to the seller or the
seller’s website to complete a purchase; and

(D) does not collect receipts from the cus-
tomer for the transaction.

(6) SELLER.—The term “seller” does not in-
clude—

(A) any marketplace provider (except with
respect to the sale through the marketplace of
products owned by the marketplace provider);

(B) any referrer;

(C) any carrier, in which the seller does
not have an ownership interest, providing trans-
portation or delivery services with respect to
tangible personal property; and

(D) any credit card issuer, transaction or
billing processor, or other financial inter-
mediary.

(7) SIMILAR TAX.—The term “similar tax”
means a tax that is imposed with respect to the sale
or use of a product, regardless of whether the tax
is imposed on the person making the sale or the purchaser, with the right or obligation of the person making the sale to obtain reimbursement for the amount of the tax from the purchaser at the time of the transaction.

(8) STATE.—The term “State” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States and includes any political subdivision thereof.

(b) EFFECTIVE DATE.—This Act shall apply with respect to calendar quarters beginning on or after August 1, 2019.