IB

Union Calendar No. 399

117TH CONGRESS
2D SESSION

H. R. 5502

[Report No. 117–555]

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

NOVEMBER 14, 2022

Additional sponsors: Ms. CASTOR of Florida, Mr. CÁRDENAS, Miss RICE of New York, Mr. HUDSON, Mr. BANKS, Mr. FITZPATRICK, Mr. PHILLIPS, Mr. DOGGETT, Ms. ESHOO, Mr. BURGESS, Mr. PENCE, Mr. FERGUSON, Mr. RUSH, Mr. MCNERNEY, Mr. SOTO, Mr. CARTER of Georgia, Mr. TIMMONS, Mr. MCKINLEY, Mrs. MCBATH, Mrs. MILLER-MEEKS, Mr. PANETTA, Mrs. STEEL, Ms. SÁNCHEZ, Mr. DAVID SCOTT of Georgia, Ms. FOXX, Mr. GUEST, Mrs. DINGELL, Mr. KRISHNAMOORTHI, Mrs. KIM of California, Ms. TENNEY, Ms. BASS, Mr. STEUBE, Ms. BLUNT ROCHESTER, Mr. COMER, Mr. JONES, Mr. STEIL, Mr. ALLRED, Mr. LEVIN of Michigan, Mr. WENSTRUP, Mr. ALLEN, Ms. BONAMICI, Mr. SHERMAN, Mr. RUTHERFORD, Mr. GARBARINO, Mr. MRVAN, Mr. EVANS, Mrs. WALORSKI, Mr. DUNN, Mr. O'HALLERAN, Mr. ARMSTRONG, Mr. HARDER of California, Mr. MOORE of Utah, Ms. LOFGREN, Mrs. CAMMACK, Ms. HOULAHAN, Mr. AGUILAR, Mr. MEIJER, Mr. LATURNER, Mr. THOMPSON of California, Mr. VALADAO, Ms. WILD, Mr. GOTTHEIMER, Mr. TRONE, Ms. BOURDEAUX, Mr. MORELLE, Mr. HUFFMAN, Mr. STAUBER, and Mr. FINSTAD

NOVEMBER 14, 2022

Reported from the Committee on Energy and Commerce; 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.

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

SECTION 1. COLLECTION, VERIFICATION, AND DISCLOSURE OF INFORMATION BY ONLINE MARKETPLACES TO INFORM CONSUMERS.

(a) COLLECTION AND VERIFICATION OF INFORMATION.—

(1) COLLECTION.—

(A) IN GENERAL.—An online marketplace shall require any high-volume third party seller on such online marketplace's platform to provide, not later than 10 days after qualifying as a high-volume third party seller on the platform, the following information to the online marketplace:

(i) BANK ACCOUNT.—

(I) IN GENERAL.—A bank account number, or, if such seller does not have a bank account, the name of the payee for payments issued by the online marketplace to such seller.

(II) PROVISION OF INFORMATION.—The bank account or payee information required under subclause

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

(aa) To the online marketplace.

(bb) To a payment processor or other third party contracted by the online marketplace to maintain such information, provided that the online marketplace ensures that it can obtain such information on demand from such payment processor or other third party.

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

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

(II) With respect to a high-volume third party seller that is not an individual, one of the following forms of contact information:

(aa) A copy of a valid government-issued identification for an individual acting on behalf of such seller that includes the individual's name.

(bb) A copy of a valid government-issued record or tax document that includes the business name and physical address of such seller.

(iii) TAX ID.—A business tax identification number, or, if such seller does not have a business tax identification number, a taxpayer identification number.

(iv) WORKING EMAIL AND PHONE NUMBER.—A current working email address and phone number for such seller.

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

(i) periodically, but not less than annually, notify any high-volume third party seller on such online marketplace's platform of the requirement to keep any information collected under subparagraph (A) current; and

(ii) require any high-volume third party seller on such online marketplace's platform to, not later than 10 days after receiving the notice under clause (i), electronically certify that—

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

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

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

(C) SUSPENSION.—In the event that a high-volume third party seller does not provide the information or certification required under this paragraph, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to provide such information or certification not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller until such seller provides such information or certification.

(2) VERIFICATION.—

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

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

(ii) verify any change to such information not later than 10 days after being notified of such change by a high-volume third party seller under paragraph (1)(B).

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

(3) DATA USE LIMITATION.—Data collected solely to comply with the requirements of this section may not be used for any other purpose unless required by law.

(4) DATA SECURITY REQUIREMENT.—An online marketplace shall implement and maintain reasonable security procedures and practices, including administrative, physical, and technical safeguards, appropriate to the nature of the data and the purposes for which the data will be used, to protect the data

collected to comply with the requirements of this section from unauthorized use, disclosure, access, destruction, or modification.

(b) DISCLOSURE REQUIRED.—

(1) REQUIREMENT.—

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

(i) require any high-volume third party seller with an aggregate total of $20,000 or more in annual gross revenues on such online marketplace, and that uses such online marketplace's platform, to provide the information described in subparagraph (B) to the online marketplace; and

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

(I) in the order confirmation message or other document or communication made to a consumer after a purchase is finalized; and

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

(B) INFORMATION DESCRIBED.—The information described in this subparagraph is the following:

(i) Subject to paragraph (2), the identity of the high-volume third party seller, including—

(I) the full name of the seller, which may include the seller name or seller's company name, or the name by which the seller or company operates on the online marketplace;

(II) the physical address of the seller; and

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

(aa) a current working phone number;

(bb) a current working email address; or

(cc) other means of direct electronic messaging (which may be provided to such seller by the online marketplace).

(ii) Whether the high-volume third party seller used a different seller to supply the consumer product to the consumer upon purchase, and, upon the request of an authenticated purchaser, the information described in clause (i) relating to any such seller that supplied the consumer product to the purchaser, if such seller is different than the high-volume third party seller listed on the product listing prior to purchase.

(2) EXCEPTION.—

(A) IN GENERAL.—Subject to subparagraph (B), upon the request of a high-volume third party seller, an online marketplace may provide for partial disclosure of the identity information required under paragraph (1)(B)(i) in the following situations:

(i) If such seller certifies to the online marketplace that the seller does not have a business address and only has a residential street address, or has a combined business and residential address, the online marketplace may—

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

(II) inform consumers that there is no business address available for the seller and that consumer inquiries should be submitted to the seller by phone, email, or other means of electronic messaging provided to such seller by the online marketplace.

(ii) If such seller certifies to the online marketplace that the seller is a business that has a physical address for product returns, the online marketplace may disclose the seller's physical address for product returns.

(iii) If such seller certifies to the online marketplace that the seller does not have a phone number other than a personal phone number, the online marketplace shall inform consumers that there is no phone number available for the seller and that consumer inquiries should be submitted to the seller's email address or other means of electronic messaging provided to such seller by the online marketplace.

(B) LIMITATION ON EXCEPTION.—If an online marketplace becomes aware that a high-volume third party seller has made a false representation to the online marketplace in order to justify the provision of a partial disclosure under subparagraph (A) or that a high-volume third party seller who has requested and received a provision for a partial disclosure under subparagraph (A) has not provided responsive answers within a reasonable time frame to consumer inquiries submitted to the seller by phone, email, or other means of electronic messaging provided to such seller by the online marketplace, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to respond not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller unless such seller consents to the disclosure of the identity information required under paragraph (1)(B)(i).

(3) REPORTING MECHANISM.—An online marketplace shall disclose to consumers in a clear and conspicuous manner on the product listing of any high-volume third party seller a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace.

(4) COMPLIANCE.—If a high-volume third party seller does not comply with the requirements to provide and disclose information under this subsection, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to provide or disclose such information not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller until the seller complies with such requirements.

(c) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

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

(2) POWERS OF THE COMMISSION.—

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

(B) PRIVILEGES AND IMMUNITIES.—Any person that violates subsection (a) or (b) shall be subject to the penalties, and entitled to the privileges and immunities, provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(3) REGULATIONS.—The Commission may promulgate regulations under section 553 of title 5, United States Code, with respect to the collection, verification, or disclosure of information under this section, provided that such regulations are limited to what is necessary to collect, verify, and disclose such information.

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

(d) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—

(1) IN GENERAL.—If the attorney general of a State has reason to believe that any online marketplace has violated or is violating this section or a regulation promulgated under this section that affects one or more residents of that State, the attorney general of the State may bring a civil action in any appropriate district court of the United States, to—

(A) enjoin further such violation by the defendant;

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

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

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

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

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

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

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

(A) to intervene in the action;

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

(C) to file petitions for appeal.

(4) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission has instituted a civil action for violation of this section or a regulation promulgated under this section, no State attorney general, or official or agency of a State, may bring a separate action under paragraph (1) during the pendency of that action against any defendant named in the complaint of the Commission for any violation of this section or a regulation promulgated under this section that is alleged in the complaint. A State attorney general, or official or agency of a State, may join a civil action for a violation of this section or regulation promulgated under this section filed by the Commission.

(5) RULE OF CONSTRUCTION.—For purposes of bringing a civil action under paragraph (1), nothing in this section shall be construed to prevent the chief law enforcement officer, or official or agency of a State, from exercising the powers conferred on such chief law enforcement officer, official or agency of a State, by the laws of the State to conduct investigations, administer oaths or affirmations, or compel the attendance of witnesses or the production of documentary and other evidence.

(6) ACTIONS BY OTHER STATE OFFICIALS.—

(A) IN GENERAL.—In addition to civil actions brought by attorneys general under paragraph (1), any other officer of a State who is authorized by the State to do so, except for any private person on behalf of the State attorney general, may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

(B) SAVINGS PROVISION.—Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the

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

(e) SEVERABILITY.—If any provision of this section, or the application thereof to any person or circumstance, is held invalid, the remainder of this section and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation.

(f) DEFINITIONS.—In this section:

(1) COMMISSION.—The term "Commission" means the Federal Trade Commission.

(2) CONSUMER PRODUCT.—The term "consumer product" has the meaning given such term in section 101 of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (15 U.S.C. 2301) and section 700.1 of title 16, Code of Federal Regulations.

(3) HIGH-VOLUME THIRD PARTY SELLER.—

(A) IN GENERAL.—The term "high-volume third party seller" means a participant on an online marketplace's platform who is a third party seller and who, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete sales or transactions of new or unused consumer products and an aggregate total of $5,000 or more in gross revenues.

(B) CLARIFICATION.—For purposes of calculating the number of discrete sales or transactions or the aggregate gross revenues under subparagraph (A), an online marketplace shall only be required to count sales or transactions made through the online marketplace and for which payment was processed by the online marketplace, either directly or through its payment processor.

(4) ONLINE MARKETPLACE.—The term "online marketplace" means any person or entity that operates a consumer-directed electronically based or accessed platform that—

(A) 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;

(B) is used by one or more third party sellers for such purposes; and

(C) has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

(5) SELLER.—The term ''seller'' means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace's platform.

(6) THIRD PARTY SELLER.—

(A) IN GENERAL.—The term ''third party seller'' means any seller, independent of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through such online marketplace's platform.

(B) EXCLUSIONS.—The term ''third party seller'' does not include, with respect to an online marketplace—

(i) a seller who operates the online marketplace's platform; or

(ii) a business entity that has—

(I) made available to the general public the entity's name, business address, and working contact information;

(II) an ongoing contractual relationship with the online marketplace to provide the online marketplace with the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; and

(III) provided to the online marketplace identifying information, as described in subsection (a), that has been verified in accordance with that subsection.

(7) VERIFY.—The term ''verify'' means to confirm information provided to an online marketplace pursuant to this section, which may include the use of one or more methods that enable the online marketplace to reliably determine that any information and documents provided are valid, corresponding to the seller or an individual acting on the seller's behalf, not misappropriated, and not falsified.

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

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

Union Calendar No. 399

117TH CONGRESS
2D SESSION

H. R. 5502

[Report No. 117–555]

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.

NOVEMBER 14, 2022

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