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S. 936

To require online marketplaces to collect, verify, and disclose certain information regarding high-volume third party sellers of consumer products to inform consumers.

IN THE SENATE OF THE UNITED STATES

MARCH 23, 2021

Mr. DURBIN (for himself, Mr. CASSIDY, Mr. GRASSLEY, Ms. HIRONO, Mr. COONS, and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require online marketplaces to collect, verify, and disclose certain information regarding high-volume third party sellers of consumer products to inform consumers.

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. SHORT TITLE.**

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

1 **SEC. 2. COLLECTION, VERIFICATION, AND DISCLOSURE OF**
2 **INFORMATION BY ONLINE MARKETPLACES**
3 **TO INFORM CONSUMERS.**

4 (a) COLLECTION AND VERIFICATION OF INFORMA-
5 TION.—

6 (1) COLLECTION.—

7 (A) IN GENERAL.—An online marketplace
8 shall require any high-volume third party seller
9 on such online marketplace’s platform to pro-
10 vide, not later than 2 business days after quali-
11 fying as a high-volume third party seller on the
12 platform, the following information to the on-
13 line marketplace:

14 (i) BANK ACCOUNT.—

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

20 (II) PROVISION OF INFORMA-
21 TION.—The bank account or payee in-
22 formation required under subclause
23 (I) may be provided by the seller in
24 the following ways:

25 (aa) To the online market-
26 place.

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

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

12 (I) With respect to a high-volume
13 third party seller that is an individual,
14 a copy of a valid government-issued
15 identification for the individual that
16 includes the individual's name and
17 physical address.

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

22 (aa) A copy of a valid gov-
23 ernment-issued identification for
24 an individual acting on behalf of
25 such seller that includes the indi-

1 vidual's name and physical ad-
2 dress.

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.—

17 (i) IN GENERAL.—An online market-
18 place shall require any high-volume third
19 party seller on such online marketplace's
20 platform to promptly notify the online
21 marketplace of any change to the informa-
22 tion collected under subparagraph (A).

23 (ii) ANNUAL CERTIFICATION.—Not
24 later than 1 year after the date of enact-

1 ment of this Act and annually thereafter,
2 an online marketplace shall—

3 (I) inform any high-volume third
4 party seller on such online market-
5 place’s platform of the notification re-
6 quirement described in clause (i); and

7 (II) instruct any such seller to
8 electronically certify, not later than 3
9 business days after receiving such in-
10 struction, that—

11 (aa) there have been no
12 changes to such seller’s informa-
13 tion; or

14 (bb) such seller has provided
15 any changes to such information
16 to the online marketplace.

17 (iii) SUSPENSION.—In the event that
18 an online marketplace does not receive the
19 annual certification from a high-volume
20 third party seller required under clause
21 (ii), the online marketplace shall suspend
22 any future sales activity of such seller or
23 any payments to such seller for prior sales
24 activity until such seller provides such cer-
25 tification.

1 (2) VERIFICATION.—

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

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

7 (ii) verify any change to such informa-
8 tion not later than 3 business days after
9 being notified of such change by a high-
10 volume third party seller under paragraph
11 (1)(B).

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

18 (b) DISCLOSURE REQUIRED.—

19 (1) REQUIREMENT.—

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

22 (i) require any high-volume third
23 party seller on such online marketplace's
24 platform to provide the information de-

1 scribed in subparagraph (B) to the online
2 marketplace; and

3 (ii) disclose the information described
4 in subparagraph (B) to consumers in a
5 clear and conspicuous manner on the prod-
6 uct listing or (for information other than
7 such seller's identification) through a clear
8 and conspicuously placed link on the prod-
9 uct listing or in close proximity to the
10 physical product.

11 (B) INFORMATION DESCRIBED.—The in-
12 formation described in this subparagraph is the
13 following:

14 (i) Subject to paragraph (2), the iden-
15 tity of the high-volume third party seller,
16 including—

17 (I) the full name of the seller;

18 (II) the physical address of the
19 seller;

20 (III) whether the seller also en-
21 gages in the manufacturing, import-
22 ing, or reselling of consumer products;
23 and

24 (IV) contact information for the
25 seller, including—

1 (aa) a current working
2 phone number; and

3 (bb) a current working email
4 address or other means of elec-
5 tronic messaging (which may be
6 provided to such seller by the on-
7 line marketplace).

8 (ii) The identification of any seller
9 that supplies the consumer product to the
10 consumer upon purchase, 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, the online marketplace
25 may—

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

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

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

17 (iii) If such seller certifies to the on-
18 line marketplace that the seller does not
19 have a phone number other than a per-
20 sonal phone number, the online market-
21 place shall inform consumers that there is
22 no phone number available for the seller
23 and that consumer inquiries should be sub-
24 mitted to the seller's email address or
25 other means of electronic messaging pro-

1 vided to such seller by the online market-
2 place.

3 (B) LIMITATION ON EXCEPTION.—If an
4 online marketplace becomes aware that a high-
5 volume third party seller has made a false rep-
6 resentation to the online marketplace in order
7 to justify the provision of a partial disclosure
8 under subparagraph (A) or that a high-volume
9 third party seller who has requested and re-
10 ceived a provision for a partial disclosure under
11 subparagraph (A) has not provided responsive
12 answers within a reasonable time frame to con-
13 sumer inquiries submitted to the seller by
14 phone, email, or other means of electronic mes-
15 saging provided to such seller by the online
16 marketplace, the online marketplace shall sus-
17 pend the selling privileges of such seller unless
18 such seller consents to the disclosure of the
19 identity information required under paragraph
20 (1)(B)(i).

21 (3) REPORTING MECHANISM.—An online mar-
22 ketplace shall disclose to consumers in a clear and
23 conspicuous manner on the product listing of any
24 high-volume third party seller—

1 (A) a reporting mechanism that allows for
2 electronic and telephonic reporting of suspicious
3 marketplace activity to the online marketplace;
4 and

5 (B) a message encouraging consumers
6 seeking goods for purchase to report suspicious
7 marketplace activity to the online 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 suspend any future
12 sales activity of such seller or any payments to such
13 seller for prior sales activity until such seller com-
14 plies with such requirements.

15 (c) ENFORCEMENT.—

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

22 (2) POWERS OF THE COMMISSION.—

23 (A) IN GENERAL.—The Commission shall
24 enforce this Act in the same manner, by the
25 same means, and with the same jurisdiction,

1 powers, and duties as though all applicable
2 terms and provisions of the Federal Trade
3 Commission Act (15 U.S.C. 41 et seq.) were in-
4 corporated into and made a part of this Act.

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

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

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

21 (d) SEVERABILITY.—If any provision of this section,
22 or the application thereof to any person or circumstance,
23 is held invalid, the remainder of this section and the appli-
24 cation of such provision to other persons not similarly situ-

1 ated or to other circumstances shall not be affected by
2 the invalidation.

3 (e) DEFINITIONS.—In this Act:

4 (1) COMMISSION.—The term “Commission”
5 means the Federal Trade Commission.

6 (2) CONSUMER PRODUCT.—The term “con-
7 sumer product” has the meaning given such term in
8 section 101 of the Magnuson-Moss Warranty—Fed-
9 eral Trade Commission Improvement Act (15 U.S.C.
10 2301 note) and section 700.1 of title 16, Code of
11 Federal Regulations.

12 (3) HIGH-VOLUME THIRD PARTY SELLER.—The
13 term “high-volume third party seller” means a par-
14 ticipant on an online marketplace’s platform who is
15 a third party seller and who, in any continuous 12-
16 month period during the previous 24 months, has
17 entered into 200 or more discrete sales or trans-
18 actions of new or unused consumer products result-
19 ing in the accumulation of an aggregate total of
20 \$5,000 or more in gross revenues.

21 (4) ONLINE MARKETPLACE.—The term “online
22 marketplace” means any person or entity that oper-
23 ates an electronically based or accessed platform
24 that—

1 (A) includes features that allow for, facili-
2 tate, or enable third party sellers to engage in
3 the sale, purchase, payment, storage, shipping,
4 or delivery of a consumer product in the United
5 States; and

6 (B) is used by one or more third party sell-
7 ers for such purposes.

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, a seller—

22 (i) who operates the online market-
23 place’s platform; or

24 (ii) who—

1 (I) is a business entity that has
2 made available to the general public
3 the entity's name, business address,
4 and working contact information;

5 (II) has an ongoing contractual
6 relationship with the online market-
7 place to provide for the manufacture,
8 distribution, wholesaling, or fulfill-
9 ment of shipments of consumer prod-
10 ucts; and

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

16 (7) VERIFY.—The term “verify” means to con-
17 firm information provided to an online marketplace
18 pursuant to this section by the use of one or more
19 methods that enable the online marketplace to reli-
20 ably determine that any information and documents
21 provided are valid, corresponding to the seller or an
22 individual acting on the seller's behalf, not mis-
23 appropriated, and not falsified.

1 **SEC. 3. EFFECTIVE DATE.**

2 This Act shall take effect 180 days after the date of
3 the enactment of this Act.

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