



Insight

INFORM Consumers Act: A Measured Step to Limit Illicit Online Sales

JEFFREY WESTLING | NOVEMBER 16, 2022

Executive Summary

- The House of Representatives is poised to vote on the Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers (INFORM Consumers) Act, a bill that would target the online sale of stolen, counterfeit, and dangerous goods by requiring that “high-volume” sellers provide information to online marketplaces and consumers.
- The bill takes a measured approach to addressing these sales and has bipartisan support thanks to compromises on issues such as the threshold at which sellers must disclose information to consumers.
- With limited time left on the legislative calendar, bills such as the INFORM Consumers Act – which would target specific problems, is largely uncontroversial, and enjoys bipartisan support – are proving easier for Congress to consider than more controversial bills that would drastically alter existing law to regulate big tech.

Introduction

The House of Representatives is poised to vote on the [Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers](#) (INFORM Consumers) Act, a bipartisan bill introduced by Representatives Janice Schakowsky (D-FL) and Gus Bilirakis (R-FL). The bill would attempt to limit the sale of stolen, counterfeit, and dangerous consumer products in online marketplaces, such as Amazon and eBay, by requiring these platforms to collect the information of high-volume sellers. Often, enforcement bodies struggle to limit the online sale of counterfeit and illicit goods because they cannot verify the seller of those goods. The INFORM Consumers Act has bipartisan support largely due the bill’s more measured approach compared to other possible alternatives, such as drastically [amending intellectual property law](#).

The Senate originally introduced a [separate version of the bill](#) with some significant differences to the House version, specifically regarding which sellers must disclose information to consumers and the role of states in developing and enforcing laws on the information requirements. Thanks largely to the compromise approach in the House version, [Senate leadership appears to now support the House version](#).

With limited time left on the legislative calendar, bills such as the INFORM Consumers Act—which would increase consumer protections with little harm to online markets, is largely uncontroversial, and enjoys bipartisan support—is likely a better focus for Congress than more controversial bills that would drastically alter existing law to regulate big tech.

What the Bill Does

The INFORM Consumers Act would require online marketplaces to collect bank account and contact information and a tax identification number on high-volume third-party sellers. The bill defines high-volume sellers as those who have entered into 200 or more discrete sales or transactions, or has an aggregate total of over \$5,000 in gross revenues, over the course of a year.

Further, the bill would require any high-volume third-party seller with an aggregate total of \$20,000 in annual gross revenues to disclose the name, the physical address, and the contact information of the seller to consumers. The bill includes a few exceptions, most notably for businesses that do not have a physical address, to ensure that individuals selling from their homes do not need to disclose their personal address to buyers.

Finally, the bill would require online marketplaces to provide a reporting mechanism to consumers allowing them to report suspicious market activity.

If an online marketplace violates any portion of the bill, the Federal Trade Commission (FTC) can bring an enforcement action against the firm. The FTC would be able to enjoin specific practices that violate the law, as well as seek [civil penalties for violations](#). Further, in the House version of the bill, a state attorney general (AG) can enforce the bill's provisions if the AG believes that a violation of the act affects residents of that state. The state cannot seek to enforce the act while a federal case is pending, but may join the federal case instead.

By requiring sellers to provide this information to both consumers and the online marketplaces, the FTC and state enforcement agencies can better target the bad actors selling stolen or counterfeit goods online without drastically changing the law or holding platforms liable for any potential transaction that slips through the cracks. Further, consumers would better understand who they are buying products from, limiting potential fraud and abuse. This approach would provide a measured balance between targeting illicit sales and allowing online commerce to flourish.

Compromises for Smaller Sellers

The bill doesn't raise significant concerns regarding the functioning of online marketplaces, but could place additional burdens on smaller sellers. Many [small sellers use online marketplaces](#) to reach consumers that they otherwise could not, and often these online transactions are not a primary source of income. By forcing the seller to disclose information to the consumer, the seller may decide that engaging in these online sales will not justify the loss of privacy. Providing data to online marketplaces necessarily places the consumer at risk if the data is leaked or sold by the online platform. When that seller must provide the information to consumers as well, the seller's personal information could get into the hands of mass marketers, scammers, or others the seller does not wish to have their information. When faced with such a choice, the seller may simply forgo selling their goods online, hurting both the seller and the buyer in the process. In the aggregate, this could also eliminate some competitive pressures on larger retailers.

The original Senate version of the bill would have eliminated the \$20,000 requirement for consumer disclosures, meaning that any high-volume third-party seller would be required to trigger the mandatory disclosure requirements. The current compromise language in the House version for disclosing this information to consumers will help ensure smaller sellers aren't effectively pushed offline.

INFORM Consumers in the Lane Duck

With limited time left in this session, Congress is unlikely to pass controversial bills that would drastically

change existing antitrust law, such as the [American Innovation and Choice Online Act](#) and the [Journalism Competitive and Preservation Act](#) favored by the Biden Administration.

Instead, Congress seems to be focused on bills such as the INFORM Consumers Act, which benefits from widespread, bipartisan support and would both target a specific problem and have limited negative impacts on online marketplaces.