

File No. 211241

Committee Item No. _____

Board Item No. 36

COMMITTEE/BOARD OF SUPERVISORS

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Date: _____

Board of Supervisors Meeting

Date: December 7, 2021

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Prepared by: Lisa Lew

Date: December 3, 2021

Prepared by: _____

Date: _____

1 [Urging Congress to Pass H.R. 5502 - INFORM Consumers Act]

2
3 **Resolution urging Congress to pass H.R. 5502, the INFORM Consumers Act, requiring**
4 **online marketplaces to collect, verify, and disclose certain information from high-**
5 **volume, third-party sellers, with no further amendments.**
6

7 WHEREAS, In July, Target announced that it will close all San Francisco stores at 6pm
8 due to organized retail theft; and

9 WHEREAS, Last month Walgreens announced it will close five stores in San Francisco
10 due to organized retail theft; and

11 WHEREAS, Safeway recently reduced hours at its formerly 24-hour Market and
12 Church Street location to a 9pm closing time; and

13 WHEREAS, Safeway's most recent 6-month inventory revealed their Market and
14 Church store had the worst rate of theft of any location in the history of the company; and

15 WHEREAS, Organized retail theft is also up nationwide, accounting for approximately
16 \$45 billion in annual losses for retailers, according to the Coalition of Law Enforcement and
17 Retail; and

18 WHEREAS, A significant portion of the merchandise stolen by organized retail theft
19 operations is ultimately sold online, with CVS alone expecting to close approximately 73 e-
20 commerce cases this year involving \$104 million of goods sold on Amazon; and

21 WHEREAS, On March 23, Senator Richard Durbin introduced S. 936, the INFORM
22 Consumers Act; and

23 WHEREAS, The INFORM Consumers Act would require online marketplaces to collect,
24 verify, and disclose certain information from high-volume, third-party sellers; and
25

1 WHEREAS, The INFORM Consumers Act would require online marketplaces to make
2 certain information about high-volume sellers available to consumers through the sellers'
3 product listings and provide consumers with methods to report any suspicious activity; and

4 WHEREAS, In the months since Senator Durbin introduced the INFORM Consumers
5 Act, e-commerce companies lobbied against it, resulting in a compromise bill - H.R. 5502; and

6 WHEREAS, On November 4, Senators Richard Durbin and Bill Cassidy introduced
7 H.R. 5502 as an amendment to the National Defense Authorization Act to expedite its
8 passage; and

9 WHEREAS, Organized retail theft remains the primary concern of most large retailers
10 in San Francisco; and

11 WHEREAS, The closure and reduction in hours of large retail stores disproportionately
12 impacts lower-income San Franciscans who rely on these increasingly rare sources of
13 affordable groceries; and

14 WHEREAS, The INFORM Consumers Act represents the most realistic short-term path
15 toward increased accountability for e-commerce companies; now, therefore, be it

16 RESOLVED, That the Board of Supervisors of the City and County of San Francisco
17 hereby urges Congress to immediately pass H.R. 5502 with no further amendments; and, be it

18 FURTHER RESOLVED, That the Board of Supervisors hereby directs the Clerk of the
19 Board to forward copies of this resolution to the offices of Speaker Pelosi, Senator Feinstein,
20 and Senator Padilla.

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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,*

3 **SECTION 1. COLLECTION, VERIFICATION, AND DISCLO-**
4 **SURE OF INFORMATION BY ONLINE MARKET-**
5 **PLACES TO INFORM CONSUMERS.**

6 (a) COLLECTION AND VERIFICATION OF INFORMA-
7 TION.—

1 (1) COLLECTION.—

2 (A) IN GENERAL.—An online marketplace
3 shall require any high-volume third party seller
4 on such online marketplace’s platform to pro-
5 vide, not later than 10 days after qualifying as
6 a high-volume third party seller on the plat-
7 form, the following information to the online
8 marketplace:

9 (i) BANK ACCOUNT.—

10 (I) IN GENERAL.—A bank ac-
11 count number, or, if such seller does
12 not have a bank account, the name of
13 the payee for payments issued by the
14 online marketplace to such seller.

15 (II) PROVISION OF INFORMA-
16 TION.—The bank account or payee in-
17 formation required under subclause
18 (I) may be provided by the seller in
19 the following ways:

20 (aa) To the online market-
21 place.

22 (bb) To a payment processor
23 or other third party contracted
24 by the online marketplace to
25 maintain such information, pro-

1 vided that the online marketplace
2 ensures that it can obtain such
3 information on demand from
4 such payment processor or other
5 third party.

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

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

11 (II) With respect to a high-vol-
12 ume third party seller that is not an
13 individual, one of the following forms
14 of contact information:

15 (aa) A copy of a valid gov-
16 ernment-issued identification for
17 an individual acting on behalf of
18 such seller that includes the indi-
19 vidual's name.

20 (bb) A copy of a valid gov-
21 ernment-issued record or tax doc-
22 ument that includes the business
23 name and physical address of
24 such seller.

1 (iii) TAX ID.—A business tax identi-
2 fication number, or, if such seller does not
3 have a business tax identification number,
4 a taxpayer identification number.

5 (iv) WORKING EMAIL AND PHONE
6 NUMBER.—A current working email ad-
7 dress and phone number for such seller.

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

11 (i) periodically, but not less than an-
12 nually, notify any high-volume third party
13 seller on such online marketplace’s plat-
14 form of the requirement to keep any infor-
15 mation collected under subparagraph (A)
16 current; and

17 (ii) require any high-volume third
18 party seller on such online marketplace’s
19 platform to, not later than 10 days after
20 receiving the notice under clause (i), elec-
21 tronically certify that—

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

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

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

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

17 (2) VERIFICATION.—

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

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

23 (ii) verify any change to such informa-
24 tion not later than 10 days after being no-

1 tified of such change by a high-volume
2 third party seller under paragraph (1)(B).

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

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

13 (4) DATA SECURITY REQUIREMENT.—An online
14 marketplace shall implement and maintain reason-
15 able security procedures and practices, including ad-
16 ministrative, physical, and technical safeguards, ap-
17 propriate to the nature of the data and the purposes
18 for which the data will be used, to protect the data
19 collected to comply with the requirements of this
20 section from unauthorized use, disclosure, access, de-
21 struction, or modification.

22 (b) DISCLOSURE REQUIRED.—

23 (1) REQUIREMENT.—

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

1 (i) require any high-volume third
2 party seller with an aggregate total of
3 \$20,000 or more in annual gross revenues
4 on such online marketplace, and that uses
5 such online marketplace's platform, to pro-
6 vide the information described in subpara-
7 graph (B) to the online marketplace; and

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

11 (I) in the order confirmation
12 message or other document or com-
13 munication made to a consumer after
14 a purchase is finalized; and

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

17 (B) INFORMATION DESCRIBED.—The in-
18 formation described in this subparagraph is the
19 following:

20 (i) Subject to paragraph (2), the iden-
21 tity of the high-volume third party seller,
22 including—

23 (I) the full name of the seller,
24 which may include the seller name or
25 seller's company name, or the name

1 by which the seller or company oper-
2 ates on the online marketplace;

3 (II) the physical address of the
4 seller; and

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

10 (aa) a current working
11 phone number;

12 (bb) a current working email
13 address; or

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

18 (ii) Whether the high-volume third
19 party seller used a different seller to sup-
20 ply the consumer product to the consumer
21 upon purchase, and, upon the request of
22 an authenticated purchaser, the informa-
23 tion described in clause (i) relating to any
24 such seller that supplied the consumer
25 product to the purchaser, if such seller is

1 different than the high-volume third party
2 seller listed on the product listing prior to
3 purchase.

4 (2) EXCEPTION.—

5 (A) IN GENERAL.—Subject to subpara-
6 graph (B), upon the request of a high-volume
7 third party seller, an online marketplace may
8 provide for partial disclosure of the identity in-
9 formation required under paragraph (1)(B)(i)
10 in the following situations:

11 (i) If such seller certifies to the online
12 marketplace that the seller does not have
13 a business address and only has a residen-
14 tial street address, or has a combined busi-
15 ness and residential address, the online
16 marketplace may—

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

20 (II) inform consumers that there
21 is no business address available for
22 the seller and that consumer inquiries
23 should be submitted to the seller by
24 phone, email, or other means of elec-

1 tronic messaging provided to such
2 seller by the online marketplace.

3 (ii) If such seller certifies to the online
4 marketplace that the seller is a business
5 that has a physical address for product re-
6 turns, the online marketplace may disclose
7 the seller's physical address for product re-
8 turns.

9 (iii) If such seller certifies to the on-
10 line marketplace that the seller does not
11 have a phone number other than a per-
12 sonal phone number, the online market-
13 place shall inform consumers that there is
14 no phone number available for the seller
15 and that consumer inquiries should be sub-
16 mitted to the seller's email address or
17 other means of electronic messaging pro-
18 vided to such seller by the online market-
19 place.

20 (B) LIMITATION ON EXCEPTION.—If an
21 online marketplace becomes aware that a high-
22 volume third party seller has made a false rep-
23 resentation to the online marketplace in order
24 to justify the provision of a partial disclosure
25 under subparagraph (A) or that a high-volume

1 third party seller who has requested and re-
2 ceived a provision for a partial disclosure under
3 subparagraph (A) has not provided responsive
4 answers within a reasonable time frame to con-
5 sumer inquiries submitted to the seller by
6 phone, email, or other means of electronic mes-
7 saging provided to such seller by the online
8 marketplace, the online marketplace shall, after
9 providing the seller with written or electronic
10 notice and an opportunity to respond not later
11 than 10 days after the issuance of such notice,
12 suspend any future sales activity of such seller
13 unless such seller consents to the disclosure of
14 the identity information required under para-
15 graph (1)(B)(i).

16 (3) REPORTING MECHANISM.—An online mar-
17 ketplace shall disclose to consumers in a clear and
18 conspicuous manner on the product listing of any
19 high-volume third party seller a reporting mecha-
20 nism that allows for electronic and telephonic report-
21 ing of suspicious marketplace activity to the online
22 marketplace.

23 (4) COMPLIANCE.—If a high-volume third party
24 seller does not comply with the requirements to pro-
25 vide and disclose information under this subsection,

1 the online marketplace shall, after providing the sell-
2 er with written or electronic notice and an oppor-
3 tunity to provide or disclose such information not
4 later than 10 days after the issuance of such notice,
5 suspend any future sales activity of such seller until
6 the seller complies with such requirements.

7 (c) ENFORCEMENT BY FEDERAL TRADE COMMIS-
8 SION.—

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

15 (2) POWERS OF THE COMMISSION.—

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

24 (B) PRIVILEGES AND IMMUNITIES.—Any
25 person that violates subsection (a) or (b) shall

1 be subject to the penalties, and entitled to the
2 privileges and immunities, provided in the Fed-
3 eral Trade Commission Act (15 U.S.C. 41 et
4 seq.).

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

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

15 (d) ENFORCEMENT BY STATE ATTORNEYS GEN-
16 ERAL.—

17 (1) IN GENERAL.—If the attorney general of a
18 State has reason to believe that any online market-
19 place has violated or is violating this section or a
20 regulation promulgated under this section that af-
21 fects one or more residents of that State, the attor-
22 ney general of the State may bring a civil action in
23 any appropriate district court of the United States,
24 to—

1 (A) enjoin further such violation by the de-
2 fendant;

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

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

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

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

12 (2) NOTICE.—The attorney general of a State
13 shall provide prior written notice of any action under
14 paragraph (1) to the Commission and provide the
15 Commission with a copy of the complaint in the ac-
16 tion, except in any case in which such prior notice
17 is not feasible, in which case the attorney general
18 shall serve such notice immediately upon instituting
19 such action.

20 (3) INTERVENTION BY THE FTC.—Upon receiv-
21 ing notice under paragraph (2), the Commission
22 shall have the right—

23 (A) to intervene in the action;

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

1 (C) to file petitions for appeal.

2 (4) LIMITATION ON STATE ACTION WHILE FED-
3 ERAL ACTION IS PENDING.—If the Commission has
4 instituted a civil action for violation of this section
5 or a regulation promulgated under this section, no
6 State attorney general, or official or agency of a
7 State, may bring a separate action under paragraph
8 (1) during the pendency of that action against any
9 defendant named in the complaint of the Commis-
10 sion for any violation of this section or a regulation
11 promulgated under this section that is alleged in the
12 complaint. A State attorney general, or official or
13 agency of a State, may join a civil action for a viola-
14 tion of this section or regulation promulgated under
15 this section filed by the Commission.

16 (5) RULE OF CONSTRUCTION.—For purposes of
17 bringing a civil action under paragraph (1), nothing
18 in this section shall be construed to prevent the chief
19 law enforcement officer, or official or agency of a
20 State, from exercising the powers conferred on such
21 chief law enforcement officer, official or agency of a
22 State, by the laws of the State to conduct investiga-
23 tions, administer oaths or affirmations, or compel
24 the attendance of witnesses or the production of doc-
25 umentary and other evidence.

1 (6) ACTIONS BY OTHER STATE OFFICIALS.—

2 (A) IN GENERAL.—In addition to civil ac-
3 tions brought by attorneys general under para-
4 graph (1), any other officer of a State who is
5 authorized by the State to do so, except for any
6 private person on behalf of the State attorney
7 general, may bring a civil action under para-
8 graph (1), subject to the same requirements
9 and limitations that apply under this subsection
10 to civil actions brought by attorneys general.

11 (B) SAVINGS PROVISION.—Nothing in this
12 subsection may be construed to prohibit an au-
13 thorized official of a State from initiating or
14 continuing any proceeding in a court of the
15 State for a violation of any civil or criminal law
16 of the State.

17 (e) SEVERABILITY.—If any provision of this section,
18 or the application thereof to any person or circumstance,
19 is held invalid, the remainder of this section and the appli-
20 cation of such provision to other persons not similarly situ-
21 ated or to other circumstances shall not be affected by
22 the invalidation.

23 (f) DEFINITIONS.—In this section:

24 (1) COMMISSION.—The term “Commission”
25 means the Federal Trade Commission.

1 (2) CONSUMER PRODUCT.—The term “con-
2 sumer product” has the meaning given such term in
3 section 101 of the Magnuson-Moss Warranty—Fed-
4 eral Trade Commission Improvement Act (15 U.S.C.
5 2301) and section 700.1 of title 16, Code of Federal
6 Regulations.

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

8 (A) IN GENERAL.—The term “high-volume
9 third party seller” means a participant on an
10 online marketplace’s platform who is a third
11 party seller and who, in any continuous 12-
12 month period during the previous 24 months,
13 has entered into 200 or more discrete sales or
14 transactions of new or unused consumer prod-
15 ucts and an aggregate total of \$5,000 or more
16 in gross revenues.

17 (B) CLARIFICATION.—For purposes of cal-
18 culating the number of discrete sales or trans-
19 actions or the aggregate gross revenues under
20 subparagraph (A), an online marketplace shall
21 only be required to count sales or transactions
22 made through the online marketplace and for
23 which payment was processed by the online
24 marketplace, either directly or through its pay-
25 ment processor.

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

5 (A) includes features that allow for, facili-
6 tate, or enable third party sellers to engage in
7 the sale, purchase, payment, storage, shipping,
8 or delivery of a consumer product in the United
9 States;

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

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

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

19 (6) THIRD PARTY SELLER.—

20 (A) IN GENERAL.—The term “third party
21 seller” means any seller, independent of an on-
22 line marketplace, who sells, offers to sell, or
23 contracts to sell a consumer product in the
24 United States through such online market-
25 place’s platform.

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

4 (i) a seller who operates the online
5 marketplace’s platform; or

6 (ii) a business entity that has—

7 (I) made available to the general
8 public the entity’s name, business ad-
9 dress, and working contact informa-
10 tion;

11 (II) an ongoing contractual rela-
12 tionship with the online marketplace
13 to provide the online marketplace with
14 the manufacture, distribution, whole-
15 saling, or fulfillment of shipments of
16 consumer products; and

17 (III) provided to the online mar-
18 ketplace identifying information, as
19 described in subsection (a), that has
20 been verified in accordance with that
21 subsection.

22 (7) VERIFY.—The term “verify” means to con-
23 firm information provided to an online marketplace
24 pursuant to this section, which may include the use
25 of one or more methods that enable the online mar-

1 ketplace to reliably determine that any information
2 and documents provided are valid, corresponding to
3 the seller or an individual acting on the seller's be-
4 half, not misappropriated, and not falsified.

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

10 (h) EFFECTIVE DATE.—This section shall take effect
11 180 days after the date of the enactment of this Act.

○

From: Thornhill, Jackie (BOS)
Sent: Tuesday, November 30, 2021 2:53 PM
To: BOS Legislation, (BOS); Mandelman, Rafael (BOS)
Subject: Re: Resolution for Introduction - Urging Congress to Pass H.R. 5502
Attachments: INFORM Act Resolution Final PDF.pdf; INFORM Act Resolution Final.doc

Categories: 211241

Thanks Jocelyn - updated resolution and PDF attached. As far as I can find, the National League of Cities has not taken a position on this bill. It is routine, not contentious in nature, and of no special interest.

Best,

Jackie Thornhill (she/her/hers)
Legislative Aide
Office of Supervisor Rafael Mandelman, District 8
Jackie.Thornhill@sfgov.org | (415) 554-4488

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only