

New Law Governing Online Platforms And Sellers Takes Effect In June – Are You Ready?

May 12, 2023

On June 27, 2023, “online marketplaces” (i.e., online selling platforms like Amazon and EBay) will have some brand new obligations. So will many of the third party sellers that operate on these platforms.

That’s because, tucked away on pages 2800-2819 of last year’s 4000+ page [Omnibus Appropriations Bill](#) (between provisions addressing furniture tip-overs and Tribal swimming pools), is legislation requiring the marketplaces to collect and verify certain information from “high-volume third party sellers,” suspend sellers that fail to comply, and disclose the sellers’ contact information to purchasers.

The new law (the Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act, or the INFORM Consumers Act) charges the Federal Trade Commission (FTC), the state Attorneys General (AGs), and “other state officials” with enforcement; gives the FTC rulemaking authority; and authorizes substantial civil penalties for violations. The law was the result of a bipartisan effort led by Senators Durbin and Cassidy, as well as Representatives Schakowsky and Bilirakis, who remain invested in its success. (Note that Durbin and Schakowsky both mentioned INFORM at recent Congressional hearings.)

For companies that haven’t heard about this new law – or who just want to learn more – here are the key things to know as we approach the June 27 effective date:

What exactly does the law require?

In brief, INFORM requires online marketplaces (i.e., platforms that enable third parties to engage in sales, purchase, payment, storage, shipping, or delivery of consumer products in the US) to do the following:

- **Collect and Verify Seller Information:** Marketplaces must collect and verify certain identifying, contact, and financial information from high volume third party sellers operating on their platforms. Such sellers are those that (in any 12-month period during the previous 24 months) have entered into 200 or more transactions involving new or unused products, with aggregate gross revenues of \$5000 or more, and for which payment is processed by the marketplace or its payment processor. Marketplaces also must request and obtain information updates, at least annually.
- **Disclose Information to Purchasers:** For high volume sellers with aggregate gross revenues of \$20,000 or more, marketplaces must “clearly and conspicuously” disclose each seller’s

contact information, so that purchasers have recourse if something goes wrong. The disclosures must be made either on the seller's product listing pages or in the purchaser's order confirmation and transaction history.

- **Reporting Mechanism:** Online marketplaces must include a reporting mechanism on each high volume seller's product listing page(s) to allow consumers (and presumably anyone) to report "suspicious marketplace activity" to the marketplace, either by phone or electronically.
- **Suspend Noncompliant Sellers:** Marketplaces must suspend any seller that fails to comply with the above collection, verification, update, and disclosure requirements within specified timeframes.
- **Protect the Information:** Marketplaces may only use the data they collect to comply with the law and must provide reasonable security for this data.

Notably, INFORM's legal obligations all fall on the marketplaces. They are the entities subject to enforcement and civil penalties if INFORM's requirements are not adhered to. They are the ones responsible for ensuring compliance after a seller reaches the "high volume" sales and revenue thresholds. (This is true even for the disclosure requirements, which must appear on *sellers'* landing pages or in their communications with purchasers.) However, the Act will have significant, if indirect, effects on high volume sellers, too, who will risk swift suspension if they fail to furnish accurate and timely information to the marketplaces, or fail to cooperate in providing the required disclosures.

Why was this law passed?

The law is designed to address concerns about the sale of stolen and counterfeit goods online, which, according to the law's sponsors and several influential reports (see [here](#) and [here](#)), harms consumers and costs legitimate businesses billions of dollars a year. These sales often occur through online marketplaces, where criminals exploit the anonymity of the web to sell goods that have been stolen from stores, and/or are counterfeit or unsafe, and where the marketplaces historically have had minimal obligation to verify the identity of sellers.

As press releases heralding passage of the Act explained, requiring marketplaces to verify sellers' identities will "[shine a light](#)" on anonymous online sellers, thus choking off a key avenue for them to sell stolen and harmful goods, while also protecting online purchasers and legitimate competitors.

What happens on the effective date?

On June 27, all of the above requirements kick in, which means that marketplaces must have systems in place to comply with all of them or risk enforcement (with substantial penalties) by the FTC, state AGs, and/or potentially "other state officials." At the same time, high volume sellers must be ready to furnish the information, and cooperate in providing disclosures, or risk suspension by the marketplaces.

Should we expect enforcement immediately? Yes, it's quite possible, though the FTC (and AGs) might start with warning letters or an announcement of a coming "crackdown." Indeed, the Act touches on numerous FTC and state AG priorities – including protecting consumers from fraud and unsafe products; maintaining a fair marketplace; holding platforms accountable, both for their own conduct and as "gatekeepers" in critical markets; and authorizing all-important civil penalties of up to \$50,020 per violation. It's also the product of bipartisan consensus at a very partisan time.

In addition, with so many cops on the beat, action could come from, not just one enforcer, but many,

possibly working in tandem. In recent [budget testimony](#) to Congress, FTC Chair Khan highlighted the Act (at p. 26), including the potential for joint FTC-state action:

Ensuring Honest Online Marketplaces

Our consumer reports data show that online platforms have become fertile ground for fraud and abuse, and we are taking on this problem using all of our tools. The newly enacted INFORM Consumers Act requires online marketplaces to collect and verify information about certain third-party sellers, and to disclose third-party seller contact information to consumers to ensure transparency. The Commission will enforce the law to the fullest extent possible and will collaborate with our state partners as well.

In short, whether you're an online marketplace or a third party seller, it would be wise to bone up on INFORM's requirements before the effective date, and make sure you're ready to implement them when the magic date arrives. Kelley Drye will shortly be announcing a webinar on this topic – stay tuned for more details.