

116TH CONGRESS  
1ST SESSION

# S. 128

To regulate certain State impositions on interstate commerce.

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IN THE SENATE OF THE UNITED STATES

JANUARY 15, 2019

Mr. TESTER (for himself, Mr. WYDEN, Mrs. SHAHEEN, Ms. HASSAN, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To regulate certain State impositions on interstate commerce.

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 “Stop Taxing Our Po-  
5       tential Act of 2019”.

6       **SEC. 2. MINIMUM JURISDICTIONAL STANDARDS FOR STATE**

7                       **AND LOCAL SALES AND USE TAX COLLEC-**

8                       **TION.**

9       (a) IN GENERAL.—A State may not—

10               (1) impose an obligation on a person for—

1 (A) the collection of a sales tax, use tax,  
2 or any similar tax; or

3 (B) the reporting of any information with  
4 respect to a tax described in subparagraph (A);

5 (2) assess any tax described in paragraph  
6 (1)(A) on a person; or

7 (3) treat a person as doing business in a State  
8 for purposes of any tax described in paragraph

9 (1)(A),

10 unless such person had a physical presence in the State  
11 during the calendar quarter with respect to which such  
12 obligation or assessment is imposed.

13 (b) REQUIREMENTS FOR PHYSICAL PRESENCE.—

14 (1) IN GENERAL.—For purposes of subsection  
15 (a), a person has a physical presence in a State only  
16 if such person’s business activities in the State in-  
17 clude any of the following during the calendar quar-  
18 ter:

19 (A) Maintains its commercial or legal  
20 domicile in the State.

21 (B) Owns, holds a leasehold interest in, or  
22 maintains real property such as a retail store,  
23 warehouse, distribution center, manufacturing  
24 operation, or assembly facility in the State.

1 (C) Leases or owns tangible personal prop-  
2 erty (other than computer software) of more  
3 than de minimis value in the State.

4 (D) Has one or more employees, agents, or  
5 independent contractors present in the State  
6 who provide on-site design, installation, or re-  
7 pair services on behalf of the remote seller.

8 (E) Has one or more employees, exclusive  
9 agents or exclusive independent contractors  
10 present in the State who engage in activities  
11 that substantially assist the person to establish  
12 or maintain a market in the State.

13 (F) Maintains an office in the State at  
14 which it regularly employs three or more em-  
15 ployees for any purpose.

16 (2) DE MINIMIS PHYSICAL PRESENCE.—For  
17 purposes of this section, the term “physical pres-  
18 ence” shall not include—

19 (A) entering into an agreement under  
20 which a person, for a commission or other con-  
21 sideration, directly or indirectly refers potential  
22 purchasers to a person outside the State,  
23 whether by an internet-based link or platform,  
24 internet website or otherwise;

1           (B) any presence in a State, as described  
2           in section 2(b)(1), for less than 15 days in a  
3           taxable year (or a greater number of days if  
4           provided by State law);

5           (C) product placement, setup, or other  
6           services offered in connection with delivery of  
7           products by an interstate or in-State carrier or  
8           other service provider;

9           (D) internet advertising services provided  
10          by in-State residents which are not exclusively  
11          directed towards, or do not solicit exclusively,  
12          in-State customers;

13          (E) ownership by a person outside the  
14          State of an interest in a limited liability com-  
15          pany or similar entity organized or with a phys-  
16          ical presence in the State;

17          (F) the furnishing of information to cus-  
18          tomers or affiliates in such State, or the cov-  
19          erage of events or other gathering of informa-  
20          tion in such State by such person, or his rep-  
21          resentative, which information is used or dis-  
22          seminated from a point outside the State; or

23          (G) business activities directly relating to  
24          such person's potential or actual purchase of

1 goods or services within the State if the final  
2 decision to purchase is made outside the State.

3 (c) PROTECTION OF NON-SELLERS.—A State may  
4 not impose or assess a sales, use, or similar tax on a per-  
5 son or impose an obligation to collect or report any infor-  
6 mation with respect thereto, unless such person is either  
7 a purchaser or a seller having a physical presence in the  
8 State.

9 **SEC. 3. DISPUTE RESOLUTION.**

10 The district courts of the United States shall have  
11 original jurisdiction over civil actions to enforce the provi-  
12 sions of this Act, including authority to issue declaratory  
13 judgments pursuant to section 2201 of title 28, United  
14 States Code, and, notwithstanding the provisions of sec-  
15 tion 1341 of such title, injunctive relief, as necessary to  
16 carry out any provision of this Act.

17 **SEC. 4. DEFINITIONS AND EFFECTIVE DATE.**

18 (a) DEFINITIONS.—For purposes of this Act:

19 (1) MARKETPLACE PROVIDER.—The term  
20 “marketplace provider” includes any person, other  
21 than a seller, who facilitates a sale. For purposes of  
22 this subsection, a person facilitates a sale when the  
23 person both—

1 (A) lists or advertises products for sale in  
2 any forum, including a catalog or internet  
3 website; and

4 (B) either directly or indirectly through  
5 agreements or arrangements with third parties,  
6 collects gross receipts from the customer and  
7 transmits those receipts to the marketplace sell-  
8 er, whether or not such person deducts any fees  
9 or other amounts from those receipts prior to  
10 transferring them to the marketplace seller.

11 (2) MARKETPLACE SELLER.—The term “mar-  
12 ketplace seller” means a person that has any sales  
13 facilitated by a marketplace provider.

14 (3) PERSON.—The term “person” has the  
15 meaning given such term by section 1 of title 1,  
16 United States Code. Each corporation that is a  
17 member of a group of affiliated corporations, wheth-  
18 er unitary or not, is itself a separate person.

19 (4) PRODUCT.—The term “product” includes  
20 any good or service, tangible or intangible.

21 (5) REFERRER.—The term “referrer” shall  
22 mean every person who—

23 (A) contracts or otherwise agrees with a  
24 seller to list multiple products for sale and the

1 sales prices thereof in any forum, including a  
2 catalog or internet website;

3 (B) receives a fee, commission, or other  
4 consideration from a seller for the listing;

5 (C) transfers, via telephone, internet link,  
6 or otherwise, a customer to the seller or the  
7 seller's website to complete a purchase; and

8 (D) does not collect receipts from the cus-  
9 tomer for the transaction.

10 (6) SELLER.—The term “seller” does not in-  
11 clude—

12 (A) any marketplace provider (except with  
13 respect to the sale through the marketplace of  
14 products owned by the marketplace provider);

15 (B) any referrer;

16 (C) any carrier, in which the seller does  
17 not have an ownership interest, providing trans-  
18 portation or delivery services with respect to  
19 tangible personal property; and

20 (D) any credit card issuer, transaction or  
21 billing processor, or other financial inter-  
22 mediary.

23 (7) SIMILAR TAX.—The term “similar tax”  
24 means a tax that is imposed with respect to the sale  
25 or use of a product, regardless of whether the tax

1 is imposed on the person making the sale or the pur-  
2 chaser, with the right or obligation of the person  
3 making the sale to obtain reimbursement for the  
4 amount of the tax from the purchaser at the time  
5 of the transaction.

6 (8) STATE.—The term “State” means the sev-  
7 eral States, the District of Columbia, the Common-  
8 wealth of Puerto Rico, Guam, American Samoa, the  
9 United States Virgin Islands, the Commonwealth of  
10 the Northern Mariana Islands, and any other terri-  
11 tory or possession of the United States and includes  
12 any political subdivision thereof.

13 (b) EFFECTIVE DATE.—This Act shall apply with re-  
14 spect to calendar quarters beginning on or after August  
15 1, 2019.

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