



The Coalition to Protect America's Small Sellers

June 2, 2022

The Honorable Maria Cantwell
Chair
Senate Commerce Science and
Transportation Committee
Washington, DC 20510

The Honorable Eddie Bernice Johnson
Chair
House Science, Space, and Technology
Committee
Washington DC 20515

The Honorable Roger Wicker
Ranking Member
Senate Commerce Science and
Transportation Committee
Washington, DC 20510

The Honorable Frank Lucas
Ranking Member
House Science, Space, and Technology
Committee
Washington DC 20515

Dear Chair Cantwell, Chair Johnson, Ranking Member Wicker, and Ranking Member Lucas:

The undersigned companies write on behalf of millions of American consumers, individual sellers, and micro, small, and medium-sized businesses who depend on our companies to buy and sell products and services, create and consume content, and live their daily lives. We are concerned that a final bill based on the America Creating Opportunities for Manufacturing, Pre-Eminence in Technology, and Economic Strength (COMPETES) Act and the United States Innovation and Competition Act (USICA) will include legislation that would harm consumers, disadvantage medium and smaller-sized businesses, and disrupt thousands of legitimate websites.

We are the Coalition to Protect America's Small Sellers (PASS), and our member companies enable individuals and casual sellers, entrepreneurs, creators, makers, and small businesses of all types to sell goods to buyers from all over the world. Our model of Internet-powered commerce has led to one of the greatest expansions of creative expression and entrepreneurial growth in human history. We are committed to providing a safe, secure, and convenient location for eCommerce, economic activity, and the empowerment of American micro, small, and medium-sized businesses.

A final bill to promote America's position in the global economy cannot at the same time harm millions of your constituents who use our platforms, as casual sellers, entrepreneurs, or small businesses. We can achieve both consumer protection and a vibrant eCommerce ecosystem, and to do so respectfully recommend that you address the following:

- 1) The removal of the SHOP SAFE Act - Section 80103 (COMPETES)
- 2) The inclusion of the INFORM Consumers Act - Section 20213 (COMPETES)
- 3) The removal of Section 2511 (USICA) on the Country of Origin Labeling Act

The PASS Coalition Opposes the SHOP SAFE Act.

Before listing the reasons why SHOP SAFE is harmful to the millions of American small businesses and individual sellers who use our online platforms, we want to be clear: While INFORM and SHOP SAFE *seem similar* they both are **very different pieces of legislation**, and most importantly, **have conflicting disclosure and verification requirements for sellers**. The **INFORM Act** must be used as a model for

clarifying definitions and requirements so the entire ecosystem of brands, platforms, consumers, and sellers can work together to improve safety. The INFORM Act also creates a reasonable standard for determining which small sellers should be subject to the law via the creation of a defined “high volume seller.” Without these important changes, SHOP SAFE will create conflicting sets of requirements for marketplaces and honest sellers that would reduce competition, harm consumers, and raise prices for goods sold online.

INFORM is the product of negotiated compromise among all stakeholders; SHOP SAFE is a one-sided bill designed to help the largest global brand holders stifle competition under a false pretense of protecting “health and safety.” Here are five more reasons why SHOP SAFE should not become law:

1. **There are serious privacy concerns:** The bill requires millions of Americans including casual sellers of used goods to upload their personal information including government issued IDs to engage online. This raises serious privacy concerns forcing Americans to choose between protecting their identity and making a living.
2. **It creates pre-screening requirements that don’t work for used, handmade, or custom items, or any site with content created by users:** The bill treats casual sellers of used goods and local artisans the same as global manufacturers. Vague pre-screening requirements for items marketplaces never physically possess or handle will not work without requiring brands to share information and work in “good faith” with marketplaces. Nor will filtering and prescreening requirements scale to the thousands of websites that host consumer-generated content – it would be impossible to screen millions of individual pieces of content. The direct result would be censorship of millions of consumers, our most creative makers, and the repression of their businesses and livelihoods.
3. **The bill will punish honest small sellers, limit consumer choice, and raise prices:** While consumer protection and safety is a goal we all share, we are concerned that the SHOP SAFE Act, as currently drafted, misses the mark on protecting consumers, and instead will punish small businesses, stifle competition, limit artistic expression and cause economic disruption at a time when consumers need certainty more than ever. With so many American small businesses still struggling as a result of the COVID pandemic and ongoing supply chain issues, now is not the time to make it even harder to run a business.
4. **The legislative process was flawed and is incomplete:** While many of these concerns were raised by members on both sides of the aisle during the Judiciary Committee markup of the SHOP SAFE Act, no changes have been made to the bill. Unlike other pieces of legislation that are committed to protecting consumers from the risk of unsafe counterfeits, SHOP SAFE has been rushed through a legislative process that has not adequately addressed the many concerns that have been raised by the practitioners of the online community responsible for implementing the bill.

The PASS Coalition is not alone. A group of [38 civil society and industry organizations](#) have raised significant policy and process concerns about SHOP SAFE. Several leading intellectual property [academics](#) have said SHOP SAFE represents a massive unvetted policy change “where it likely hurts every stakeholder and benefits none of them.” Public interest groups across the ideological spectrum have also raised issues with SHOP SAFE including [Public Knowledge](#), the [Cato Institute](#), and [Electronic Frontier Foundation](#). These groups have shown that SHOP SAFE would be bad for competition, bad for honest sellers, and bad for consumers.

The PASS Coalition Supports the INFORM Act.

Members of the PASS Coalition are responsible companies that take proactive measures to protect the health and safety of our community, both our buyers and sellers. We invest heavily in our trust and safety teams and use technology to ensure the safety of our marketplaces and the enforcement of our terms of

service. We also work closely with rights holders to stop bad actors. From collaboratively working to strengthen automated filters, to addressing individualized complaints, PASS's member companies are proud of their work to limit counterfeit and stolen products from their platforms. Our commitment to our communities is also why the PASS Coalition supports the INFORM Act. **The Inform Act protects consumers against counterfeits and makes online shopping safer, all without harming honest individual sellers and small businesses.** It does this by creating strong seller vetting and disclosure requirements while also empowering federal and state consumer protection authorities to go after bad actors online.

Additionally, this legislation enjoys wide industry support. The PASS Coalition spent over a year working with a wide array of rights holders, retailers, law enforcement, and consumer advocate groups to arrive at a legislative solution the entire ecosystem could endorse and support. Many of these groups have weighed in with [letters of support](#) for this bill. INFORM is a smart policy that went through a thorough legislative process to strike a balanced approach to making eCommerce better for both consumers and sellers.

We support the removal of or considerable amendments made to Section 2511, the Country-of-Origin Labeling Act

Section 2511 of USICA was added during the Senate Commerce Committee markup of USICA. We strongly believe that a lack of debate and analysis on this legislation has prevented adequate awareness of how it will impact millions of American small businesses and individuals. We fully support the objective of providing transparency for purchases made online, but the COOL amendment's wide application would make it virtually impossible to sell products online for millions of American small and microbusinesses, and individuals looking to earn extra income.

As such, we are recommending a number of changes to the legislation, including; 1) allowing for accommodation for the sale of non-new, used, pre-owned, resold, or handmade goods; 2) creating an exemption for small sellers; 3) allowing for a process where the seller may not be able to identify the origin, and 4) limiting the liability marketplaces which never possess or fulfill the items available on their sites.

Thank you for your consideration of our priorities for the Conference. We stand ready to work with you on all of these important matters.

Sincerely,

Chris Lamond

Chris Lamond, Executive Director - PASS Coalition

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cc: All members of the Conference Committee for COMPETES/USCIA