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(Original Signature of Member)

114TH CONGRESS  
2D SESSION

# H. R. \_\_\_\_\_

To regulate certain State impositions on interstate commerce.

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IN THE HOUSE OF REPRESENTATIVES

Mr. SENSENBRENNER introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

## 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 “No Regulation Without  
5 Representation Act of 2016”.

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—

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

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

3 (B) the reporting of any information with  
4 respect thereto, on a person,

5 (2) assess a sales, use or similar tax on a per-  
6 son, or

7 (3) treat a person as doing business in a state  
8 for purposes of such a tax,

9 only if such person had a physical presence in the State  
10 during the calendar quarter with respect to which the obli-  
11 gation or assessment is imposed.

12 (b) REQUIREMENTS FOR PHYSICAL PRESENCE.—

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

18 (A) owns, holds a leasehold interest in, or  
19 maintains real property such as a retail store,  
20 warehouse, distribution center, manufacturing  
21 operation, or assembly facility in the State;

22 (B) leases or owns tangible personal prop-  
23 erty (other than computer software) of more  
24 than de minimus value in the State;

1           (C) has one or more employees, agents or  
2 independent contractors present in the State  
3 who engage in specific solicitations toward ob-  
4 taining product or service orders from cus-  
5 tomers in that State, or prospective customers  
6 in that State, on behalf of the person;

7           (D) has one or more employees or inde-  
8 pendent contractors present in the State who  
9 provide on-site design, installation, or repair  
10 services on behalf of the remote seller; or

11           (E) maintains an office in the State at  
12 which it regularly employs three or more em-  
13 ployees for any purpose.

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

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

23           (B) any presence in a State, as described  
24 in section 2(b)(1), for less than 15 days in a

1 taxable year (or a greater number of days if  
2 provided by State law);

3 (C) delivery and product placement serv-  
4 ices offered by an interstate or in-State com-  
5 mon carrier; and

6 (D) Internet advertising services provided  
7 by in-State residents which are not exclusively  
8 directed towards, or do not solicit exclusively,  
9 in-State customers.

10 (c) PROTECTION OF NON-SELLERS.—A State may  
11 not impose a sales or use tax collection obligation, or an  
12 obligation to report any information with respect thereto,  
13 on a person or assess a sales, use or similar tax on any  
14 person other than a purchaser or a seller having a physical  
15 presence in the State.

16 **SEC. 3. DISPUTE RESOLUTION.**

17 The district courts of the United States shall have  
18 original jurisdiction over civil actions to enforce the provi-  
19 sions of this Act, including authority to issue declaratory  
20 judgments pursuant to section 2201 of title 28, United  
21 States Code, and, notwithstanding the provisions of sec-  
22 tion 1341 of such title, injunctive relief, as necessary to  
23 carry out this Act.

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

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

1           (1) MARKETPLACE PROVIDER.—The term  
2           “marketplace provider” includes any person, other  
3           than a seller, who facilitates a sale. For purposes of  
4           this subsection, a person facilitates a sale when the  
5           person both—

6                   (A) lists or advertises tangible personal  
7                   property and services for sale in any forum, in-  
8                   cluding a catalog or Internet website; and

9                   (B) either directly or indirectly through  
10                  agreements or arrangements with third parties,  
11                  collects gross receipts from the customer and  
12                  transmits those receipts to the marketplace sell-  
13                  er, whether or not such person deducts any fees  
14                  from the transmission of those receipts to the  
15                  marketplace seller.

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

19           (3) REFERRER.—The term “referrer” shall  
20           mean every person who—

21                   (A) contracts or otherwise agrees with a  
22                   seller to list multiple items of tangible personal  
23                   property and services for sale and the sales  
24                   prices thereof in any forum, including a catalog  
25                   or Internet website;

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

3 (C) transfers, via telephone, Internet link,  
4 or otherwise, a customer to the seller or the  
5 seller's website to complete a purchase; and

6 (D) does not collect receipts from the cus-  
7 tomer for the transaction.

8 (4) PERSON.—The term “person” has the  
9 meaning given such term by section 1 of title 1 of  
10 the United States Code. Each corporation that is a  
11 member of a group of affiliated corporations, wheth-  
12 er unitary or not, is itself a separate “person”.

13 (5) SELLER.—The term “seller” does not in-  
14 clude—

15 (A) any marketplace provider;

16 (B) any referrer;

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

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

24 (6) SIMILAR TAX.—The term “similar tax”  
25 means a tax that is imposed with respect to the sale

1 or use of a product or service, regardless whether  
2 the tax is imposed on the person making the sale or  
3 the purchaser, with the right or obligation of the  
4 person making the sale to obtain reimbursement for  
5 the amount of the tax from the purchaser at the  
6 time of the transaction.

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

15 (b) EFFECTIVE DATE.—This Act shall apply with re-  
16 spect to calendar quarters beginning on or after January  
17 1, 2017.