To restore States’ sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. ENZI (for himself, Mr. DURBIN, Mr. ALEXANDER, Mr. JOHNSON of South Dakota, Mr. BOOZMAN, Mr. BLUNT,) introduced the following bill; which was read twice and referred to the Committee on ________

A BILL

To restore States’ sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Marketplace Fairness Act”.

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that States should have the ability to enforce their existing sales and use tax laws and to treat similar sales transactions equally, without re-
gard to the manner in which the sale is transacted, and
the right to collect - or decide not to collect - taxes that
are already owed under State law.

SEC. 3. AUTHORIZATION TO REQUIRE COLLECTION OF
SALES AND USE TAXES.

(a) STREAMLINED SALES AND USE TAX AGREEMENT.—Each Member State under the Streamlined Sales
and Use Tax Agreement is authorized to require all sellers
not qualifying for a small seller exception to collect and
remit sales and use taxes with respect to remote sales
sourced to that Member State pursuant to the provisions
of the Streamlined Sales and Use Tax Agreement. Such
authority shall commence beginning no earlier than the
first day of the calendar quarter that is at least 90 days
after the date of the enactment of this Act.

(b) ALTERNATIVE.—

(1) IN GENERAL.—A State that is not a Mem-
ber State under the Streamlined Sales and Use Tax
Agreement is authorized to require all sellers not
qualifying for the small seller exception to collect
and remit sales and use taxes with respect to remote
sales sourced to that State, but only if the State
adopts and implements minimum simplification re-
quirements. Such authority shall commence begin-
ning no earlier than the first day of the calendar
quarter that is at least 6 months after the date that
the State enacts legislation to implement each of the
following minimum simplification requirements:

(A) Provide—

(i) a single State-level agency to ad-
minister all sales and use tax laws, includ-
ing the collection and administration of all
State and applicable locality sales and use
taxes for all sales sourced to the State
made by remote sellers,

(ii) a single audit for all State and
local taxing jurisdictions within that State,
and

(iii) a single sales and use tax return
to be used by remote sellers and single and
consolidated providers and to be filed with
the State-level agency.

(B) Provide a uniform sales and use tax
base among the State and the local taxing juris-
dictions within the State.

(C) Require remote sellers and single and
consolidated providers to collect sales and use
taxes pursuant to the applicable destination
rate, which is the sum of the applicable State
rate and any applicable rate for the local jurisdic-
tion into which the sale is made.

(D) Provide—

(i) adequate software and services to
remote sellers and single and consolidated
providers that identifies the applicable des-
tination rate, including the State and local
sales tax rate (if any), to be applied on
sales sourced to the State, and

(ii) certification procedures for both
single providers and consolidated providers
to make software and services available to
remote sellers, and hold such providers
harmless for any errors or omissions as a
result of relying on information provided
by the State.

(E) Hold remote sellers using a single or
consolidated provider harmless for any errors
and omissions by that provider.

(F) Relieve remote sellers from liability to
the State or locality for collection of the incor-
rect amount of sales or use tax, including any
penalties or interest, if collection of the im-
proper amount is the result of relying on infor-
modation provided by the State.
(G) Provide remote sellers and single and consolidated providers with 30 days notice of a rate change by any locality in the State.

(2) Treatment of Local Rate Changes.—

For purposes of this subsection, local rate changes may only be effective on the first day of a calendar quarter. Failure to provide notice under paragraph (1)(G) shall require the State and locality to hold the remote seller or single or consolidated provider harmless for collecting tax at the immediately preceding effective rate during the 30-day period. Each State must provide updated rate information as part of the software and services required by paragraph (1)(D).

(c) Small Seller Exception.—A State shall be authorized to require a remote seller, or a single or consolidated provider acting on behalf of a remote seller, to collect sales or use tax under this Act if the remote seller has gross annual receipts in total remote sales in the United States in the preceding calendar year exceeding $500,000. For purposes of determining whether the threshold in this subsection is met, the sales of all persons related within the meaning of subsections (b) and (c) of section 267 or section 707(b)(1) of the Internal Revenue Code of 1986 shall be aggregated.
SEC. 4. TERMINATION OF AUTHORITY.

The authority granted by this Act shall terminate on the date that the highest court of competent jurisdiction makes a final determination that the State no longer meets the requirements of this Act, and the determination of such court is no longer subject to appeal.

SEC. 5. LIMITATIONS.

(a) IN GENERAL.—Nothing in this Act shall be construed as—

(1) subjecting a seller or any other person to franchise, income, occupation, or any other type of taxes, other than sales and use taxes,

(2) affecting the application of such taxes, or

(3) enlarging or reducing State authority to impose such taxes.

(b) NO EFFECT ON NEXUS.—No obligation imposed by virtue of the authority granted by this Act shall be considered in determining whether a seller or any other person has a nexus with any State for any tax purpose other than sales and use taxes.

(c) LICENSING AND REGULATORY REQUIREMENTS.—

Other than the limitation set forth in subsection (a), and section 3, nothing in this Act shall be construed as permitting or prohibiting a State from—

(1) licensing or regulating any person,
(2) requiring any person to qualify to transact 
intrastate business,

(3) subjecting any person to State taxes not re-
lated to the sale of goods or services, or

(4) exercising authority over matters of inter-
state commerce.

(d) No New Taxes.—Nothing in this Act shall be 
construed as encouraging a State to impose sales and use 
taxes on any goods or services not subject to taxation prior 
to the date of the enactment of this Act.

(e) Intrastate Sales.—The provisions of this Act 
shall only apply to remote sales and shall not apply to 
intrastate sales or intrastate sourcing rules. States grant-
ed authority under section 3(a) shall comply with the 
intrastate provisions of the Streamlined Sales and Use 
Tax Agreement.

SEC. 6. DEFINITIONS AND SPECIAL RULES.

In this Act:

(1) Consolidated Provider.—The term 
“consolidated provider” means any person certified 
by a State who has the rights and responsibilities for 
sales and use tax administration, collection, remit-
tance, and audits for transactions serviced or proc-
essed for the sale of goods or services made by re-
mote sellers on an aggregated basis.
(2) Locality; Local.—The terms “locality” and “local” refer to any political subdivision of a State.

(3) Member State.—The term “Member State”—

(A) means a Member State as that term is used under the Streamlined Sales and Use Tax Agreement as in effect on the date of the enactment of this Act, and

(B) does not include any associate member under the Streamlined Sales and Use Tax Agreement.

(4) Person.—The term “person” means an individual, trust, estate, fiduciary, partnership, corporation, limited liability company, or other legal entity, and a State or local government.

(5) Remote Sale.—The term “remote sale” means a sale of goods or services attributed to a State with respect to which a seller does not have adequate physical presence to establish nexus under *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

(6) Remote Seller.—The term “remote seller” means a person that makes remote sales.

(7) Single Provider.—The term “single provider” means any person certified by a State who
has the rights and responsibilities for sales and use
tax administration, collection, remittance, and audits
for transactions serviced or processed for the sale of
goods or services made by remote sellers.

(8) SOURCED.—For purposes of a State granted
ed authority under section 3(b), the location to
which a remote sale is sourced refers to the location
where the item sold is received by the purchaser,
based on the location indicated by instructions for
delivery that the purchaser furnishes to the seller.
When no delivery location is specified, the remote
sale is sourced to the customer’s address that is ei-
ther known to the seller or, if not known, obtained
by the seller during the consummation of the trans-
action, including the address of the customer’s pay-
ment instrument if no other address is available. If
an address is unknown and a billing address cannot
be obtained, the remote sale is sourced to the ad-
dress of the seller from which the remote sale was
made. A State granted authority under section 3(a)
shall comply with the sourcing provisions of the
Streamlined Sales and Use Tax Agreement.

(9) STATE.—The term “State” means each of
the several States, the District of Columbia, the
Commonwealth of Puerto Rico, Guam, American
Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(10) **Streamlined Sales and Use Tax Agreement.**—The term “Streamlined Sales and Use Tax Agreement” means the multi-State agreement with that title adopted on November 12, 2002, as in effect on the date of the enactment of this Act and as further amended from time to time.

**SEC. 7. SEVERABILITY.**

If any provision of this Act or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of the provisions of such to any person or circumstance shall not be affected thereby.