

Organized Retail Crime Act of 2008 (Introduced in House)

HR 6491 IH

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To amend title 18, United States Code, to combat, deter, and punish individuals and enterprises engaged nationally and internationally in organized crime involving theft and interstate fencing of stolen retail merchandise, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

July 15, 2008

Mr. ELLSWORTH (for himself and Mr. JORDAN of Ohio) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to combat, deter, and punish individuals and enterprises engaged nationally and internationally in organized crime involving theft and interstate fencing of stolen retail merchandise, 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 'Organized Retail Crime Act of 2008'.

SEC. 2. FINDINGS AND STATEMENT OF PURPOSE.

(a) Findings- Congress makes the following findings:

- (1) Organized retail crime involving the obtaining by fraud and theft of retail merchandise from entities engaged in interstate commerce is a nationwide problem of an increasing scale and is expected to cost American companies and consumers more than \$30,000,000,000 annually.
- (2) The increasing losses by retailers as a result of organized retail crime make certain goods and products less available and accessible to American consumers.
- (3) The uncontrolled redistribution and unsafe storage of stolen and fraudulently obtained consumer products such as baby formula, over-the-

counter drugs, and other products by persons engaged in such organized retail crime is a health and safety hazard to American consumers.

(4) The unregulated black-market sales of such fraudulently obtained and stolen merchandise results in an estimated \$1,600,000,000 annual loss in much needed sales and income tax revenues to State and local governments.

(5) The illegal income from the expanding theft and resale of stolen retail goods is reasonably believed to benefit persons and organizations engaged in other forms of criminal activity such as drug trafficking, gang activity, and terrorism.

(6) Organized retail crime rings often obtain retail merchandise through the use of checks for which there are insufficient funds or that are forged or stolen, frequently returning the merchandise to fraudulently obtain refunds. Such practices create major problems for the retail industry and the national banking system.

(7) Organized retail crime rings are increasingly using counterfeit, forged, misappropriated, and improperly transferred Universal Product Code labels and other devices employed to identify articles for sale as a method for achieving their ends.

(8) The dramatic growth of organized retail crime and the unfettered resale of such stolen and fraudulently obtained goods in national and international Internet-based marketplaces has resulted in effective evasion by such resellers of State and local regulations on secondhand goods and article resellers which had traditionally been used to control the possession, resale, and transfer of stolen goods.

(9) The unrestricted expansion of anonymous Internet-based marketplaces for stolen and fraudulently obtained goods has resulted in a dramatic increase in the deployment of organized retail crime rings seeking to sell stolen goods in Internet-based marketplaces.

(10) Conduct constituting organized retail crime and conduct facilitating organized retail crime both substantially affect interstate commerce.

(b) Statement of Purpose- In light of the above findings, the purposes of this Act are as follows:

(1) To protect consumers, retailers, the national banking system, and State and local governments from the more than \$30,000,000,000 annual problem of organized retail crime as well as the related adverse health and safety risks it creates.

(2) To continue to allow legitimate transactions to occur on online marketplaces while addressing the growing problem of fencing stolen merchandise over the Internet ('e-fencing') that facilitates organized retail crime.

SEC. 3. ORGANIZED RETAIL CRIME.

(a) Definitions- Section 2311 of title 18, United States Code, is amended--

(1) by inserting after the fifth paragraph (relating to the definition of 'motor vehicle') the following:

'Organized retail crime' means--

(1) the stealing, embezzlement, or obtaining by fraud, false pretenses, or other illegal means, of retail merchandise in quantities that would not normally be purchased for personal use or consumption for the purpose of reselling or otherwise reentering such retail merchandise in commerce; or

(2) the recruitment of persons to undertake, or the coordination, organization, or facilitation of, such stealing, embezzlement, or obtaining by fraud, false pretenses, or other illegal means;';

(2) by inserting before the paragraph inserted by subsection (a)(1) of this section, the following:

'Online marketplace' means--

(1) an Internet site where persons other than the operator of the Internet site can enter into transactions for the sale of goods or services and in which--

(A) such goods or services are promoted through inclusion in search results displayed within the Internet site; and

(B) the operator of the Internet site--

(i) has the contractual right to supervise the activities of the person with respect to such goods or services; or

(ii) has a financial interest in the sale of such goods or services;';

(3) by inserting after the second paragraph, relating to the definition of 'cattle', the following new paragraph:

'Internet site' means a location on the Internet accessible at a specific Internet domain name, is accessible at a specific address under the Internet Protocol (or any successor protocol), or is identified by a uniform resource locator;'; and

(4) by inserting before the paragraph inserted by paragraph (3) of this subsection, the following new paragraph:

'High-volume seller' means a seller on an online marketplace who in the past 12 months has made or offered to make discrete transactions aggregating at least \$12,000;'.

(b) Transportation of Stolen Goods- The first paragraph of section 2314 of title 18, United States Code, is amended by inserting 'or engages in organized retail crime involving the transporting, transmitting, or transferring in interstate or foreign commerce any goods, wares, or merchandise,' after '\$5,000 or more,'.

(c) Sale or Receipt of Stolen Goods- The first paragraph of section 2315 of title 18, United States Code, is amended by inserting 'or engages in organized retail crime involving receiving, possessing, concealing, storing, bartering, selling, or disposing of any goods, wares, or merchandise,' after '\$5,000 or more,'.

(d) Fraud in Connection With Access Devices- Section 1029(e)(1) of title 18, United States Code, is amended--

(1) by inserting '(including gift card)' after 'card';

(2) by inserting '(including a Universal Product Code label)' after 'code';
and

(3) by inserting '(including a radio frequency identification transponder)' after 'identifier'.

(e) Facilitation of Organized Retail Crime-

(1) IN GENERAL- The first paragraph of section 2315 of title 18, United States Code, as amended by subsection (c) of this section, is further amended by inserting ', or facilitates such organized retail crime, including, but not limited to, facilitation through the operation of an online marketplace for the sale of goods and services, knowing or having reasonable cause to know that such organized retail crime is facilitated by such operation' before '; or' at the end of the paragraph.

(2) OPERATOR OF AN ONLINE MARKETPLACE- Section 2315 of title 18, United States Code, is further amended by inserting before the last paragraph the following:

'It is unlawful for an operator of an online marketplace to fail to--

'(1) expeditiously investigate when credible evidence of sales of goods or services acquired through organized retail crime on its online marketplace comes to its attention, and remove from the online marketplace or disable access to material from the online marketplace of sellers offering goods or services when the result of the investigation provides knowledge or a reasonable cause to know that the goods or services were acquired through organized retail crime, and maintain a record of all investigations for a minimum of three years;

'(2) require the seller of property whose merchandise packaging identifies the property as being available from a particular or exclusive retail source, to post such identifying information conspicuously on the Internet site where other information about the property is posted; and

'(3) in the case of each high volume seller--

'(A) maintain the following information for three years--

'(i) the name, telephone number, e-mail address, legitimate physical address, any user identification, and company name of the high-volume seller; and

'(ii) all transactions conducted by each high-volume seller on the online marketplace for the most recent three-year period; and

'(B) require any high-volume seller to--

'(i) conspicuously post its name, telephone number, and legitimate address on the Internet site where other information about the property being sold by the high-volume seller is posted; or

'(ii) provide, upon request of any business that has a reasonable suspicion that goods or services at the site were acquired through organized retail crime, its name, telephone number, and legitimate physical address.'

(f) Review and Amendment of Federal Sentencing Guidelines Related to Organized Retail Crime-

(1) REVIEW AND AMENDMENT- The United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, shall review and, if appropriate, amend the Federal sentencing guidelines (including its policy statements) applicable to persons convicted of offenses involving organized retail crime under--

(A) sections 1029, 2314, and 2315 of title 18, United States Code; and

(B) any other relevant provision of the United States Code.

(2) REQUIREMENTS- In carrying out the requirements of this section, the United States Sentencing Commission shall--

(A) ensure that the Federal sentencing guidelines (including its policy statements) reflect--

(i) the serious nature of the offenses and penalties referred to in this Act;

(ii) the magnitude of organized retail crime; and

(iii) the need to deter, prevent, and punish such offense;

(B) consider the extent to which the Federal sentencing guidelines (including its policy statements) adequately address violations of the sections amended by this Act to sufficiently deter and punish such offenses;

(C) maintain reasonable consistency with other relevant directives and sentencing guidelines;

(D) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges; and

(E) consider whether to provide a sentencing enhancement for those convicted of conduct proscribed by this Act, where such conduct involves--

(i) organized retail crime;

(ii) sale or resale of a product in an online marketplace;

(iii) a threat to public health and safety, including but not limited to alteration of an expiration date or of product ingredients;

(iv) theft, conversion, alteration, or removal of a product label;

(v) alteration, transfer, theft, conversion, counterfeiting, or reproduction of a Universal Product Code label; and

(vi) use of a fire or emergency exit.

(g) Civil Forfeiture-

(1) Section 2315 of title 18, United States Code, is further amended by inserting before the last paragraph the following:

“This section shall have the following civil forfeiture provisions:

`(1) Any property used, in any manner or part, to commit organized retail crime or the facilitation of organized retail crime shall be subject to forfeiture to the United States.

`(2) The provisions of chapter 46 of this title relating to civil forfeitures, including section 983 of this title, shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court, unless otherwise requested by an agency of the United States, shall order that any forfeited article be returned to the rightful owner or otherwise disposed of according to law.

`(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States--

`(i) any property constituting or derived from any proceeds the person obtained, directly or indirectly, as the result of the offense of organized retail crime or the facilitation of organized retail crime; and

`(ii) any of the person's property used, or intended to be used, in any manner or part, to commit, facilitate, aid, or abet the commission of either such offense.

`(B) The forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section. Notwithstanding section 413(h) of that Act, at the conclusion of the forfeiture proceedings, the court shall order that any forfeited article or component of an article bearing or consisting of a counterfeit mark be destroyed.

`(4) When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the owner of the property and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).

`(5) The term `victim', as used in paragraph (4), has the meaning given that term in section 3663A(a)(2).'

SEC. 4. ACTIONS AGAINST AN OPERATOR OF AN ONLINE MARKETPLACE.

(a) In General- Any business whose goods or services were sold or otherwise used in the facilitation of organized retail crime through the operation of an online marketplace may bring a civil action against the operator of the online marketplace for violations of section 3(e) with respect to such goods and services in any district court of the United States to enjoin further violation of this Act by the person or entity and to recover damages for any loss resulting from such violation.

(b) Subsequent Actions- A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this Act shall stop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by any business whose goods or services were sold or otherwise used in an act of organized retail crime.

SEC. 5. NO PREEMPTION OF STATE LAW.

No provision of this Act, including any amendment made by this Act, shall be construed as indicating an intent on the part of Congress to occupy the field in which that provision or amendment operates, including criminal penalties, to the exclusion of any State law on the same subject matter that would otherwise be within the authority of the State, unless there is a positive conflict between that provision or amendment and that State law so that the two cannot consistently stand together.

SEC. 6. EFFECTIVE DATE.

The amendments made by this Act take effect 120 days after the date of the enactment of this Act.