

Second Regular Session  
Sixty-sixth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 08-0205.01 Michael Dohr

HOUSE BILL 08-1154

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HOUSE SPONSORSHIP

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SENATE SPONSORSHIP

(None),

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House Committees  
Judiciary

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING THE INTERNET SALE AUCTION ACT.

Bill Summary

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Makes it unlawful to sell via an internet auction the following:

- Infant formula or baby food subject to federal expiration-dating requirements;
- Infant formula or baby food not subject to federal expiration-dating requirements, nonprescription drugs, or cosmetics, unless the person selling the product provides certain information to the internet auctioneer ("auctioneer") prior to the publication of the offer to sell the product;
- A value-loaded card, unless the seller provides certain

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

information to the auctioneer and the company's general counsel;

- Manufacturers' coupons and store coupons;
- Products containing pseudoephedrine in amounts exceeding those allowed by federal regulation.

When a person who sells a total of 5 or more value-loaded cards in concurrent internet auctions conducted by an auctioneer, requires the auctioneer to notify the retailer of the sale in writing or electronically within 24 hours. Requires the auctioneer to give the retailer relevant information about the seller, including the sales history and all aliases and accounts used by the seller.

Compels an auctioneer to immediately terminate an internet auction if he or she receives information providing a reasonable basis to conclude that the auction violates the act's provisions or that the merchandise is stolen or fraudulently obtained.

Adds e-fencing to the crime of theft by receiving.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 finds and declares that:

4 (a) Organized retail crime is a considerable problem for the retail  
5 industry. According to the federal bureau of investigation, the industry  
6 loses at least \$35 billion each year to organized retail crime.

7 (b) The problem also has a serious effect on the citizens of  
8 Colorado. The loss from organized retail crime in Colorado in 2004 was  
9 \$522 million resulting in an estimated loss of \$15,138,000 in sales tax  
10 revenue.

11 (c) The internet has made organized retail crime even more  
12 profitable by making it easier to sell stolen items to unsuspecting  
13 consumers;

14 (d) Internet auction sites allow for faceless transactions in which  
15 the consumer has no way of knowing whether the item he or she is  
16 purchasing is stolen, a practice referred to as "e-fencing";

1 (e) It is estimated that e-fencing is a \$37 billion industry  
2 worldwide and far more profitable than traditional fencing operations;

3 (f) Due to the ease of internet use and low overhead, it is  
4 estimated that e-fencing operations make an average profit of seventy  
5 cents on the dollar as compared to an average profit of thirty cents on the  
6 dollar from traditional fencing operations;

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

11 (h) The uncontrolled redistribution and unsafe storage of stolen  
12 and fraudulently obtained consumer products, such as baby formula,  
13 over-the-counter drugs, and other products, by persons engaged in  
14 organized retail crime is a health and safety hazard to Colorado  
15 consumers; and

16 (i) Items such as baby formula, nonprescription drugs, and  
17 cosmetics are the most frequently stolen retail items and therefore are  
18 fertile ground for e-fencing operations.

19 (2) Therefore, the general assembly finds and declares that it is in  
20 the best interests of the state to criminalize the sale of certain items via an  
21 internet auction.

22 **SECTION 2.** Article 13 of title 18, Colorado Revised Statutes, is  
23 amended BY THE ADDITION OF A NEW SECTION to read:

24 **18-13-130. Internet auction sales - prohibited items -**  
25 **definitions.** (1) A PERSON SHALL NOT SELL OR OFFER TO SELL VIA AN  
26 INTERNET AUCTION THE FOLLOWING PRODUCTS:

27 (a) INFANT FORMULA OR BABY FOOD THAT IS SUBJECT TO

1 EXPIRATION-DATING REQUIREMENTS ISSUED BY THE FEDERAL FOOD AND  
2 DRUG ADMINISTRATION;

3 (b) INFANT FORMULA OR BABY FOOD THAT IS NOT SUBJECT TO  
4 EXPIRATION-DATING REQUIREMENTS ISSUED BY THE FEDERAL FOOD AND  
5 DRUG ADMINISTRATION, A NONPRESCRIPTION DRUG, OR A COSMETIC;

6 (c) A VALUE-LOADED CARD;

7 (d) A MANUFACTURER OR STORE COUPON; OR

8 (e) A PRODUCT CONTAINING PSEUDOEPHEDRINE SOLD IN  
9 QUANTITIES EXCEEDING THOSE ALLOWED UNDER FEDERAL LAW.

10 (2) A PERSON SHALL NOT KNOWINGLY PUBLISH OR CAUSE TO BE  
11 PUBLISHED IN AN INTERNET AUCTION AN OFFER TO SELL A PRODUCT IN  
12 VIOLATION OF SUBSECTION (1) OF THIS SECTION.

13 (3) A VIOLATION OF SUBSECTION (1) OR (2) OF THIS SECTION SHALL  
14 BE A CLASS 1 MISDEMEANOR.

15 (4) IT SHALL NOT BE A VIOLATION OF PARAGRAPH (b) OF  
16 SUBSECTION (1) OF THIS SECTION IF THE PERSON SELLING THE PRODUCT,  
17 PRIOR TO THE PUBLICATION OF THE OFFER TO SELL THE PRODUCT TO THE  
18 PUBLIC, PROVIDES TO THE INTERNET AUCTIONEER:

19 (a) A WRITTEN OR ELECTRONIC RECORD OF THE SELLER'S  
20 PURCHASE OF THE PRODUCT THAT SPECIFICALLY IDENTIFIES THE PRODUCT  
21 BEING SOLD BY PRODUCT NAME;

22 (b) THE QUANTITY PURCHASED BY THE SELLER, AS INDICATED BY  
23 ITEM, BOX, CRATE, PALLET, OR OTHERWISE;

24 (c) THE DATE OF THE SELLER'S PURCHASE; AND

25 (d) THE COMPLETE NAME OR BUSINESS NAME, ADDRESS, AND  
26 TELEPHONE NUMBER OF THE PERSON FROM WHOM THE SELLER PURCHASED  
27 THE PRODUCT.

1           (5) IT SHALL NOT BE A VIOLATION OF PARAGRAPH (c) OF  
2 SUBSECTION (1) OF THIS SECTION IF THE PERSON SELLING THE CARD, PRIOR  
3 TO THE PUBLICATION OF THE OFFER TO SELL THE CARD TO THE PUBLIC,  
4 PROVIDES TO THE INTERNET AUCTIONEER AND THE GENERAL COUNSEL OF  
5 THE COMPANY THAT ISSUED THE VALUE-LOADED CARD:

6           (a) A WRITTEN OR ELECTRONIC RECORD OF THE SELLER'S  
7 PURCHASE OR ACQUISITION OF THE VALUE-LOADED CARD THAT  
8 SPECIFICALLY IDENTIFIES THE SERIAL NUMBER AND AMOUNT OF THE  
9 VALUE-LOADED CARD;

10           (b) THE DATE OF THE SELLER'S PURCHASE; AND

11           (c) THE COMPLETE NAME OR BUSINESS NAME, ADDRESS, AND  
12 PHONE NUMBER OF THE PERSON FROM WHOM THE SELLER PURCHASED THE  
13 VALUE-LOADED CARD.

14           (6) WHENEVER A PERSON SELLS OR OFFERS FOR SALE A TOTAL OF  
15 FIVE OR MORE VALUE-LOADED CARDS IN CONCURRENT INTERNET  
16 AUCTIONS CONDUCTED BY AN INTERNET AUCTIONEER, WHICH  
17 VALUE-LOADED CARDS PURPORT TO HAVE BEEN ISSUED BY OR ON BEHALF  
18 OF A PARTICULAR RETAILER, THE INTERNET AUCTIONEER SHALL NOTIFY  
19 THE RETAILER IN WRITING OR ELECTRONICALLY WITHIN TWENTY-FOUR  
20 HOURS AFTER PUBLISHING THE AUCTION AND SHALL PROVIDE THE  
21 RETAILER WITH RELEVANT INFORMATION ABOUT THE PERSON, INCLUDING  
22 THE SALES HISTORY AND ALL KNOWN ALIASES AND ACCOUNTS USED BY  
23 THE PERSON IN INTERNET AUCTIONS CONDUCTED BY THAT INTERNET  
24 AUCTIONEER. AN INTERNET AUCTIONEER SHALL NOT BE DEEMED LIABLE  
25 FOR A VIOLATION OF PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION  
26 IF THE INTERNET AUCTIONEER AFFIRMATIVELY DEMONSTRATES  
27 COMPLIANCE WITH THIS REQUIREMENT.

1           (7) AN INTERNET AUCTIONEER SHALL IMMEDIATELY TERMINATE  
2 AN INTERNET AUCTION UPON RECEIPT OF INFORMATION THAT PROVIDES A  
3 REASONABLE BASIS TO CONCLUDE THAT A SELLER PARTICIPATING IN THE  
4 AUCTION VIOLATES SUBSECTION (1) OF THIS SECTION OR THAT A PRODUCT  
5 OFFERED FOR SALE IS STOLEN OR HAS BEEN OBTAINED FRAUDULENTLY.

6           (8) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT  
7 OTHERWISE REQUIRES:

8           (a) "INTERNET" MEANS THE INTERNATIONAL COMPUTER NETWORK  
9 OF BOTH FEDERAL AND NONFEDERAL, INTEROPERABLE,  
10 PACKET-CONTROLLED, SWITCHED DATA NETWORKS.

11           (b) "INTERNET AUCTION" MEANS A PROCUREMENT PROCESS IN  
12 WHICH VENDORS, THROUGH PUBLICATION OVER THE INTERNET, OFFER TO  
13 SELL OR LEASE SPECIFIED PRODUCTS TO BIDDERS WHO BID ON THE  
14 SPECIFIED PRODUCTS THROUGH REAL-TIME, ELECTRONIC, COMPETITIVE  
15 BIDDING CONDUCTED OVER THE INTERNET, WITH THE PRODUCT AWARDED  
16 TO THE HIGHEST BIDDER OR BIDDERS AT THE CLOSE OF THE TIME PERIOD  
17 ESTABLISHED FOR THE AUCTION.

18           (c) "INTERNET AUCTIONEER" MEANS A PERSON WHO ARRANGES,  
19 MANAGES, SPONSORS, ADVERTISES, ACCOUNTS FOR THE PROCEEDS OF, OR  
20 CARRIES OUT AN INTERNET AUCTION.

21           (d) "VALUE-LOADED CARD" MEANS A TANGIBLE DEVICE WHEREON  
22 IS EMBEDDED OR ENCODED IN AN ELECTRONIC OR OTHER FORMAT A VALUE  
23 ISSUED IN EXCHANGE FOR PAYMENT THAT PROMISES TO PROVIDE TO THE  
24 BEARER MERCHANDISE OF EQUAL VALUE TO THE REMAINING BALANCE OF  
25 THE DEVICE. "VALUE-LOADED CARD" DOES NOT INCLUDE A PREPAID  
26 TELECOMMUNICATIONS OR TECHNOLOGY CARD, PREPAID BANK CARD, OR  
27 REWARDS CARD.

1           **SECTION 3.** 18-4-410 (1), Colorado Revised Statutes, is  
2 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

3           **18-4-410. Theft by receiving.** (1) (a) Except as provided in  
4 subsection (6) of this section, a person commits theft by receiving when  
5 he OR SHE receives, retains, loans money by pawn or pledge on, or  
6 disposes of anything of value of another, knowing or believing that said  
7 thing of value has been stolen, and when he OR SHE intends to deprive the  
8 lawful owner permanently of the use or benefit of the thing of value.

9           (b) EXCEPT AS PROVIDED IN SUBSECTION (6) OF THIS SECTION, A  
10 PERSON WHO USES THE INTERNET TO SELL OR OFFER TO SELL STOLEN OR  
11 FRAUDULENTLY OBTAINED PROPERTY WHEN THE PERSON KNOWS THAT THE  
12 PROPERTY IS STOLEN OR FRAUDULENTLY OBTAINED COMMITS THEFT BY  
13 RECEIVING.

14           **SECTION 4. Effective date - applicability.** This act shall take  
15 effect July 1, 2008, and shall apply to offenses committed on or after said  
16 date.

17           **SECTION 5. Safety clause.** The general assembly hereby finds,  
18 determines, and declares that this act is necessary for the immediate  
19 preservation of the public peace, health, and safety.