

# HOUSE BILL 1008

I4

71r2257

---

By: **Delegate Feldman**

Introduced and read first time: February 9, 2007

Assigned to: Economic Matters

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Internet Auction Sales Act**

3 FOR the purpose of prohibiting a person from knowingly publishing or causing to be  
4 published in an Internet auction offer to sell a product in violation of this Act;  
5 prohibiting a person from selling or offering to sell, by means of an Internet  
6 auction, infant formula or baby food that is subject to certain expiration dating  
7 requirements, any nonprescription drug, cosmetic, or infant formula or baby  
8 food that is not subject to certain expiration dating requirements, certain value  
9 loaded cards, manufacturer or store coupons, and products containing  
10 pseudoephedrine sold in certain quantities; authorizing a person to sell or offer  
11 to sell, by means of an Internet auction, any nonprescription drug, cosmetic, or  
12 infant formula or baby food that is not subject to certain expiration dating  
13 requirements if the person provides certain written or electronic records and  
14 certain information to the Internet auctioneer at a certain time; authorizing a  
15 person to sell or offer to sell, by means of an Internet auction, certain value  
16 loaded cards if the person provides certain written or electronic records and  
17 certain information to the Internet auctioneer and the general counsel of a  
18 certain retailer; requiring an Internet auctioneer to notify a certain retailer of  
19 the sale or offer of a certain number of value loaded cards and provide certain  
20 information to the retailer at a certain time; providing that an Internet  
21 auctioneer is not in violation of certain provisions of this Act relating to value  
22 loaded cards if the Internet auctioneer can demonstrate affirmatively  
23 compliance with certain provisions of this Act; requiring an Internet auctioneer  
24 to immediately terminate an Internet auction on receipt of information that  
25 provides a reasonable basis on which to conclude that the Internet auction  
26 violates certain provisions of this Act or the products offered for sale are stolen;

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 providing that an Internet auctioneer is not in violation of certain provisions of  
 2 this Act if the Internet auctioneer can demonstrate affirmatively receipt of a  
 3 certain record or document and termination of an Internet auction; providing  
 4 that a person who violates any provision of this Act is liable to the person  
 5 affected by the violation for certain damages, a certain fine, and reasonable  
 6 attorney's fees; authorizing a certain person to bring an action for an injunction  
 7 and seek certain remedies; establishing a certain short title; defining certain  
 8 terms; and generally relating to Internet auctions.

9 BY adding to

10 Article – Commercial Law

11 Section 11–1501 through 11–1507 to be under the new subtitle “Subtitle 15.  
 12 Internet Auction Sales Act”

13 Annotated Code of Maryland

14 (2005 Replacement Volume and 2006 Supplement)

15 BY repealing and reenacting, without amendments,

16 Article – Health – General

17 Section 21–101(e)

18 Annotated Code of Maryland

19 (2005 Replacement Volume and 2006 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article – Commercial Law**

23 **SUBTITLE 15. INTERNET AUCTION SALES ACT.**

24 **11-1501.**

25 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
 26 INDICATED.

27 (B) “COSMETIC” HAS THE MEANING STATED IN § 21-101 OF THE  
 28 HEALTH – GENERAL ARTICLE.

29 (C) “INTERNET AUCTION” MEANS A PROCUREMENT PROCESS IN WHICH  
 30 A PERSON, THROUGH PUBLICATION OVER THE INTERNET, OFFERS TO SELL OR  
 31 LEASE A SPECIFIED PRODUCT THROUGH REAL-TIME ELECTRONIC COMPETITIVE  
 32 BIDDING CONDUCTED OVER THE INTERNET, WITH THE PRODUCT AWARDED TO

1 THE HIGHEST BIDDER AT THE CLOSE OF THE TIME PERIOD ESTABLISHED FOR  
2 THE AUCTION.

3 (D) "INTERNET AUCTIONEER" MEANS A PERSON THAT ARRANGES,  
4 MANAGES, SPONSORS, ADVERTISES, ACCOUNTS FOR THE PROCEEDS OF, OR  
5 CARRIES OUT AN INTERNET AUCTION.

6 (E) (1) "VALUE LOADED CARD" MEANS A TANGIBLE DEVICE ON  
7 WHICH IS EMBEDDED OR ENCODED, IN AN ELECTRONIC OR OTHER FORMAT, A  
8 VALUE ISSUED IN EXCHANGE FOR PAYMENT THAT PROMISES TO PROVIDE TO  
9 THE BEARER MERCHANDISE OF EQUAL VALUE TO THE REMAINING BALANCE OF  
10 THE DEVICE.

11 (2) "VALUE LOADED CARD" DOES NOT INCLUDE:

12 (I) A PREPAID TELECOMMUNICATIONS OR TECHNOLOGY  
13 CARD;

14 (II) A PREPAID BANK CARD; OR

15 (III) A REWARDS CARD.

16 **11-1502.**

17 A PERSON MAY NOT KNOWINGLY PUBLISH OR CAUSE TO BE PUBLISHED IN  
18 AN INTERNET AUCTION AN OFFER TO SELL A PRODUCT IN VIOLATION OF THIS  
19 SUBTITLE.

20 **11-1503.**

21 (A) A PERSON MAY NOT SELL OR OFFER TO SELL BY MEANS OF AN  
22 INTERNET AUCTION:

23 (1) INFANT FORMULA OR BABY FOOD THAT IS SUBJECT TO  
24 EXPIRATION DATING REQUIREMENTS ISSUED BY THE U.S. FOOD AND DRUG  
25 ADMINISTRATION;

26 (2) EXCEPT AS PROVIDED IN SUBSECTION (B)(1) OF THIS  
27 SECTION, ANY NONPRESCRIPTION DRUG, COSMETIC, OR INFANT FORMULA OR

1 **BABY FOOD THAT IS NOT SUBJECT TO EXPIRATION DATING REQUIREMENTS**  
2 **ISSUED BY THE U.S. FOOD AND DRUG ADMINISTRATION;**

3 **(3) EXCEPT AS PROVIDED IN SUBSECTION (B)(2) OF THIS**  
4 **SECTION, A VALUE LOADED CARD;**

5 **(4) A MANUFACTURER OR STORE COUPON; OR**

6 **(5) A PRODUCT CONTAINING PSEUDOEPHEDRINE SOLD IN**  
7 **QUANTITIES EXCEEDING THAT ALLOWED UNDER FEDERAL LAW.**

8 **(B) (1) A PERSON MAY SELL OR OFFER TO SELL, BY MEANS OF AN**  
9 **INTERNET AUCTION, ANY NONPRESCRIPTION DRUG, COSMETIC, OR INFANT**  
10 **FORMULA OR BABY FOOD THAT IS NOT SUBJECT TO EXPIRATION DATING**  
11 **REQUIREMENTS ISSUED BY THE U.S. FOOD AND DRUG ADMINISTRATION IF THE**  
12 **PERSON PROVIDES TO THE INTERNET AUCTIONEER, BEFORE THE PUBLICATION**  
13 **OF THE OFFER TO SELL THE PRODUCT TO THE PUBLIC:**

14 **(I) A WRITTEN OR ELECTRONIC RECORD OF THE**  
15 **PURCHASE OR ACQUISITION OF THE PRODUCT THAT SPECIFICALLY IDENTIFIES**  
16 **THE PRODUCT BY PRODUCT NAME;**

17 **(II) THE QUANTITY OF THE PRODUCT PURCHASED OR**  
18 **ACQUIRED BY THE PERSON, AS INDICATED BY ITEM, BOX, CRATE, PALLET, OR**  
19 **OTHER METHOD;**

20 **(III) THE DATE OF PURCHASE OR ACQUISITION;**

21 **(IV) THE COMPLETE NAME, ADDRESS, AND TELEPHONE**  
22 **NUMBER OF THE PERSON FROM WHICH THE PRODUCT WAS PURCHASED OR**  
23 **ACQUIRED;**

24 **(V) THE PRODUCT'S EXPIRATION DATE; AND**

25 **(VI) THE PRODUCT'S LOT AND SERIAL NUMBER.**

26 **(2) A PERSON MAY SELL OR OFFER TO SELL, BY MEANS OF AN**  
27 **INTERNET AUCTION, A VALUE LOADED CARD IF THE PERSON PROVIDES TO THE**

1 **INTERNET AUCTIONEER AND THE GENERAL COUNSEL OF THE RETAILER TO**  
2 **WHICH THE VALUE LOADED CARD APPLIES:**

3 **(I) A WRITTEN OR ELECTRONIC RECORD OF THE**  
4 **PURCHASE OR ACQUISITION OF THE VALUE LOADED CARD THAT SPECIFICALLY**  
5 **IDENTIFIES THE SERIAL NUMBER AND AMOUNT OF THE VALUE LOADED CARD;**

6 **(II) THE DATE OF PURCHASE OR ACQUISITION; AND**

7 **(III) THE COMPLETE NAME, ADDRESS, AND TELEPHONE**  
8 **NUMBER OF THE PERSON FROM WHICH THE VALUE LOADED CARD WAS**  
9 **PURCHASED OR ACQUIRED.**

10 **11-1504.**

11 **(A) IF, IN CONTEMPORANEOUS INTERNET AUCTIONS CONDUCTED BY AN**  
12 **INTERNET AUCTIONEER, A PERSON SELLS OR OFFERS TO SELL AN AGGREGATE**  
13 **OF FIVE OR MORE VALUE LOADED CARDS THAT ARE ISSUED BY OR ON BEHALF**  
14 **OF A RETAILER, THE INTERNET AUCTIONEER, WITHIN 24 HOURS AFTER THE**  
15 **SALE OR OFFER SHALL:**

16 **(1) NOTIFY THE RETAILER OF THE SALE OR OFFER IN WRITING**  
17 **OR THROUGH ELECTRONIC MEANS; AND**

18 **(2) PROVIDE THE RETAILER WITH INFORMATION ABOUT THE**  
19 **PERSON, INCLUDING THE PERSON'S SALES HISTORY AND ALL ALIASES AND**  
20 **ACCOUNTS USED BY THE PERSON IN INTERNET AUCTIONS CONDUCTED BY THE**  
21 **INTERNET AUCTIONEER.**

22 **(B) AN INTERNET AUCTIONEER IS NOT IN VIOLATION OF THIS SECTION**  
23 **IF THE INTERNET AUCTIONEER CAN DEMONSTRATE AFFIRMATIVELY THAT THE**  
24 **INTERNET AUCTIONEER NOTIFIED THE RETAILER AND PROVIDED**  
25 **INFORMATION TO THE RETAILER AS REQUIRED BY SUBSECTION (A) OF THIS**  
26 **SECTION.**

27 **11-1505.**

1           **(A) AN INTERNET AUCTIONEER SHALL TERMINATE AN INTERNET**  
2 **AUCTION IMMEDIATELY ON RECEIPT OF INFORMATION THAT PROVIDES A**  
3 **REASONABLE BASIS TO CONCLUDE THAT:**

4                   **(1) THE INTERNET AUCTION VIOLATES A PROVISION OF THIS**  
5 **SUBTITLE; OR**

6                   **(2) THE PRODUCT OFFERED FOR SALE IS STOLEN.**

7           **(B) AN INTERNET AUCTIONEER IS NOT IN VIOLATION OF THIS SECTION**  
8 **IF THE INTERNET AUCTIONEER CAN DEMONSTRATE AFFIRMATIVELY:**

9                   **(1) RECEIPT OF A RECORD OR DOCUMENT IN ACCORDANCE WITH**  
10 **§ 11-1503(B) OF THIS SUBTITLE; AND**

11                   **(2) TERMINATION OF AN INTERNET AUCTION AS REQUIRED**  
12 **UNDER SUBSECTION (A) OF THIS SECTION.**

13 **11-1506.**

14           **(A) A PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS**  
15 **LIABLE TO THE PERSON AFFECTED BY THE VIOLATION FOR:**

16                   **(1) ACTUAL DAMAGES CAUSED BY THE VIOLATION;**

17                   **(2) A FINE NOT EXCEEDING \$5,000; AND**

18                   **(3) REASONABLE ATTORNEY'S FEES.**

19           **(B) IN ADDITION TO THE REMEDIES PROVIDED UNDER SUBSECTION (A)**  
20 **OF THIS SECTION, A PERSON AFFECTED BY A VIOLATION OF THIS SUBTITLE MAY:**

21                   **(1) BRING AN ACTION FOR AN INJUNCTION AGAINST ANY PERSON**  
22 **WHO VIOLATES THIS SUBTITLE; AND**

23                   **(2) SEEK ANY OTHER REMEDY AVAILABLE AT LAW.**

24 **11-1507.**

1           **THIS SUBTITLE MAY BE CITED AS THE INTERNET AUCTION SALES ACT.**

2   **Article - Health - General**

3 21-101.

4           (e)     (1)    “Cosmetic” means any substance, or any component of a substance,  
5 that is intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or  
6 otherwise applied to the human body for cleansing, beautifying, promoting  
7 attractiveness, or altering appearance.

8                                 (2)    “Cosmetic” does not include soap.

9                         SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 October 1, 2007.