

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

House Bill 1297  
Economic Matters

(Delegates Feldman and Harrison)

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Consumer Protection - Internet Auction Sales

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This bill prohibits a person in the State from selling or offering to sell via Internet auction

- any food, drug, or cosmetic product that is subject to expiration dating requirements issued by the U.S. Food and Drug Administration;
- any infant formula or baby food; or
- more than five “value loaded cards” in one calendar month.

Violation of the bill’s provisions is an unfair or deceptive trade practice under the Maryland Consumer Protection Act, subject to MCPA’s civil and criminal penalties.

The bill takes effect July 1, 2008.

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Fiscal Summary

**State Effect:** Potential minimal increase in general fund revenues and expenditures due to the bill’s imposition of existing penalty provisions. If the Attorney General’s Office receives fewer than 50 complaints per year stemming from the bill, the additional workload could be handled with existing resources.

**Local Effect:** Potential minimal increase in revenues and expenditures due to the bill’s imposition of existing penalty provisions.

**Small Business Effect:** Potential minimal.

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## Analysis

**Bill Summary:** The bill defines a value loaded card as a tangible device on which is embedded or encoded a value issued in exchange for payment that promises to provide to the bearer merchandise of equal value to the remaining balance of the device. A value loaded card does not include • a prepaid telecommunications or technology card; • a prepaid bank card; or • a rewards card.

**Current Law:** Title 21, Subtitle 11 of the Health-General Article currently prohibits auction sales of any drug, medicine, cosmetic, pharmaceutical preparation, or medicinal preparation without receipt of prior notification by the Secretary of Health and Mental Hygiene, who may regulate such sales. Title 22 of the Commercial Law Article, also known as the Maryland Uniform Computer Information Transactions Act, sets forth detailed laws governing online commercial transactions, but does not specifically address Internet auctions.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. Upon receiving a complaint, the division must determine whether there are “reasonable grounds” to believe that a violation of MCPA has occurred. Generally, if the division does find reasonable grounds that a violation has occurred, the division must seek to conciliate the complaint. The division may also issue cease and desist orders, or seek action in court, including an injunction or civil damages, to enforce the Act. Violators of MCPA are subject to • civil penalties of \$1,000 for the first violation and \$5,000 for subsequent violations; and • criminal sanction as a misdemeanor, with a fine of up to \$1,000 and/or imprisonment for up to one year.

Generally, knowingly selling stolen merchandise is a theft crime that is punishable as a felony or misdemeanor depending on the value of the merchandise.

**Background:** In 2006, a similar bill was introduced in the New Jersey legislature in an attempt to curtail the sale of commonly stolen goods via Internet auctions, but the measure did not pass.

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## Additional Information

**Prior Introductions:** A similar bill, HB 1008 of 2007, received a hearing in the House Economic Matters Committee and was later withdrawn.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Office of the Attorney General (Consumer Protection), Department of Legislative Services

**Fiscal Note History:** First Reader - March 4, 2008  
mcp/ljm

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