

110TH CONGRESS
2D SESSION

S. 3434

To combat organized crime involving the illegal acquisition of retail goods for the purpose of selling those illegally obtained goods through physical and online retail marketplaces.

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2008

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To combat organized crime involving the illegal acquisition of retail goods for the purpose of selling those illegally obtained goods through physical and online retail marketplaces.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Combating Organized
5 Retail Crime Act of 2008”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Organized retail crime involves the coordi-
2 nated acquisition of large volumes of retail merchan-
3 dise by theft, embezzlement, fraud, false pretenses,
4 or other illegal means from commercial entities en-
5 gaged in interstate commerce, for the purpose of
6 selling or distributing such illegally obtained items in
7 the stream of commerce. Organized retail crime is a
8 growing problem nationwide that costs American
9 companies and consumers billions of dollars annually
10 and that has a substantial and direct effect upon
11 interstate commerce.

12 (2) The illegal acquisition and black-market
13 sale of merchandise by persons engaged in organized
14 retail crime result in an estimated annual loss of
15 hundreds of millions of dollars in sales and income
16 tax revenues to State and local governments.

17 (3) The illegal acquisition, unsafe tampering
18 and storage, and unregulated redistribution of con-
19 sumer products such as baby formula, over-the-
20 counter drugs, and other items by persons engaged
21 in organized retail crime pose a health and safety
22 hazard to consumers nationwide.

23 (4) Investigations into organized retail crime
24 have revealed that the illegal income resulting from
25 such crime often benefits persons and organizations

1 engaged in other forms of criminal activity, such as
2 drug trafficking and gang activity.

3 (5) Items obtained through organized retail
4 crime are resold in a variety of different market-
5 places, including flea markets, swap meets, open-air
6 markets, and Internet auction websites. Increasingly,
7 persons engaged in organized retail crime use Inter-
8 net auction websites to resell illegally obtained items.
9 The Internet offers such sellers a worldwide market
10 and a degree of anonymity that physical marketplace
11 settings do not offer.

12 **SEC. 3. OFFENSES RELATED TO ORGANIZED RETAIL CRIME.**

13 (a) TRANSPORTATION OF STOLEN GOODS.—The first
14 undesignated paragraph of section 2314 of title 18,
15 United States Code, is amended by inserting after “more,”
16 the following: “or, during any 12-month period, of an ag-
17 gregate value of \$5,000 or more during that period,”.

18 (b) SALE OR RECEIPT OF STOLEN GOODS.—The first
19 undesignated paragraph of section 2315 of title 18,
20 United States Code, is amended by inserting after
21 “\$5,000 or more,” the following: “or, during any 12-
22 month period, of an aggregate value of \$5,000 or more
23 during that period,”.

24 (c) FRAUD IN CONNECTION WITH ACCESS DE-
25 VICES.—Section 1029(e)(1) of title 18, United States

1 Code, is amended by inserting “Universal Product Code
2 label,” after “code,”.

3 (d) REVIEW AND AMENDMENT OF FEDERAL SEN-
4 TENCING GUIDELINES FOR OFFENSES RELATED TO OR-
5 GANIZED RETAIL CRIME.—

6 (1) REVIEW AND AMENDMENT.—

7 (A) IN GENERAL.—The United States Sen-
8 tencing Commission, pursuant to its authority
9 under section 994 of title 28, United States
10 Code, and in accordance with this subsection,
11 shall review and, if appropriate, amend the
12 Federal sentencing guidelines (including its pol-
13 icy statements) applicable to persons convicted
14 of offenses involving organized retail crime,
15 which is the coordinated acquisition of large
16 volumes of retail merchandise by theft, embez-
17 zlement, fraud, false pretenses, or other illegal
18 means from commercial entities engaged in
19 interstate commerce for the purpose of selling
20 or distributing such illegally obtained items in
21 the stream of commerce.

22 (B) OFFENSES.—Offenses referred to in
23 subparagraph (A) may include offenses con-
24 tained in—

1 (i) sections 1029, 2314, and 2315 of
2 title 18, United States Code; or

3 (ii) any other relevant provision of the
4 United States Code.

5 (2) REQUIREMENTS.—In carrying out the re-
6 quirements of this subsection, the United States
7 Sentencing Commission shall—

8 (A) ensure that the Federal sentencing
9 guidelines (including its policy statements) re-
10 flect—

11 (i) the serious nature and magnitude
12 of organized retail crime; and

13 (ii) the need to deter, prevent, and
14 punish offenses involving organized retail
15 crime;

16 (B) consider the extent to which the Fed-
17 eral sentencing guidelines (including its policy
18 statements) adequately address offenses involv-
19 ing organized retail crime to sufficiently deter
20 and punish such offenses;

21 (C) maintain reasonable consistency with
22 other relevant directives and sentencing guide-
23 lines;

24 (D) account for any additional aggravating
25 or mitigating circumstances that might justify

1 exceptions to the generally applicable sentencing
 2 ranges; and

3 (E) consider whether to provide a sen-
 4 tencing enhancement for those convicted of con-
 5 duct involving organized retail crime, where
 6 such conduct involves—

7 (i) a threat to public health and safe-
 8 ty, including alteration of an expiration
 9 date or of product ingredients;

10 (ii) theft, conversion, alteration, or re-
 11 moval of a product label;

12 (iii) a second or subsequent offense;

13 or

14 (iv) the use of advanced technology to
 15 acquire retail merchandise by means of
 16 theft, embezzlement, fraud, false pretenses,
 17 or other illegal means.

18 **SEC. 4. SALES OF ILLEGALLY OBTAINED ITEMS IN PHYS-**
 19 **ICAL OR ONLINE RETAIL MARKETPLACES.**

20 (a) IN GENERAL.—Chapter 113 of title 18, United
 21 States Code, is amended by adding at the end the fol-
 22 lowing:

23 **“SEC. 2323. ONLINE RETAIL MARKETPLACES.**

24 “(a) DEFINITIONS.—As used in this section, the fol-
 25 lowing definitions shall apply:

1 “(1) HIGH VOLUME SELLER.—The term ‘high
2 volume seller’ means a user of an online retail mar-
3 ketplace who, in any continuous 12-month period
4 during the previous 24 months, has entered into—

5 “(A) multiple discrete sales or transactions
6 resulting in the accumulation of an aggregate
7 total of \$20,000 or more in gross revenues; or

8 “(B) 200 or more discrete sales or trans-
9 actions resulting in the accumulation of an ag-
10 gregate total of \$10,000 or more in gross reve-
11 nues.

12 “(2) INTERNET SITE.—The term ‘Internet site’
13 means a location on the Internet that is accessible
14 at a specific Internet domain name or address under
15 the Internet Protocol (or any successor protocol), or
16 that is identified by a uniform resource locator.

17 “(3) ONLINE RETAIL MARKETPLACE.—The
18 term ‘online retail marketplace’ means an Internet
19 site where users other than the operator of the
20 Internet site can enter into transactions with each
21 other for the sale or distribution of goods or serv-
22 ices, and in which—

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

1 “(B) the operator of the Internet site—

2 “(i) has the contractual right to su-
3 pervise the activities of users with respect
4 to such goods or services; or

5 “(ii) has a financial interest in the
6 sale of such goods or services; and

7 “(C) in any continuous 12-month period
8 during the previous 24 months, users other
9 than the operator of the Internet site collec-
10 tively have entered into—

11 “(i) multiple discrete transactions for
12 the sale of goods or services aggregating a
13 total of \$500,000 or more in gross reve-
14 nues; or

15 “(ii) 1,000 or more discrete trans-
16 actions for the sale of goods or services ag-
17 gregating a total of \$250,000 or more in
18 gross revenues.

19 “(4) OPERATOR OF AN ONLINE RETAIL MAR-
20 KETPLACE.—The term ‘operator of an online retail
21 marketplace’ means a person or entity that—

22 “(A) operates or controls an online retail
23 marketplace; and

24 “(B) makes the online retail marketplace
25 available for users to enter into transactions

1 with each other on that marketplace for the
2 sale or distribution of goods or services.

3 “(5) OPERATOR OF A PHYSICAL RETAIL MAR-
4 KETPLACE.—The term ‘operator of a physical retail
5 marketplace’ means a person or entity that rents or
6 otherwise makes available a physical retail market-
7 place to transient vendors to conduct business for
8 the sale of goods, or services related to such goods.

9 “(6) PHYSICAL RETAIL MARKETPLACE.—The
10 term ‘physical retail marketplace’ may include a flea
11 market, indoor or outdoor swap meet, open air mar-
12 ket, or other similar environment, and means a
13 venue or event in which physical space is made avail-
14 able not more than 4 days per week by an operator
15 of a physical retail marketplace as a temporary place
16 of business for transient vendors to conduct business
17 for the sale of goods, or services related to such
18 goods; and

19 “(A) in which in any continuous 12-month
20 period during the preceding 24 months, there
21 have been 10 or more days on which 5 or more
22 transient vendors have conducted business at
23 the venue or event; and

24 “(B) does not mean and shall not apply to
25 an event which is organized and conducted for

1 the exclusive benefit of any community chest,
2 fund, foundation, association, or corporation or-
3 ganized and operated for religious, educational,
4 or charitable purposes, provided that no part of
5 any admission fee or parking fee charged ven-
6 dors or prospective purchasers, and no part of
7 the gross receipts or net earnings from the sale
8 or exchange of goods or services, whether in the
9 form of a percentage of the receipts or earn-
10 ings, salary, or otherwise, inures to the benefit
11 of any private shareholder or person partici-
12 pating in the organization or conduct of the
13 event.

14 “(7) STRUCTURING.—The term ‘structuring’
15 means to knowingly conduct, or attempt to conduct,
16 alone, or in conjunction with or on behalf of 1 or
17 more other persons, 1 or more transactions in cur-
18 rency, in any amount, in any manner, with the pur-
19 pose of evading categorization as a physical retail
20 marketplace, an online retail marketplace, or a high
21 volume seller.

22 “(8) TEMPORARY PLACE OF BUSINESS.—The
23 term ‘temporary place of business’ means any phys-
24 ical space made open to the public, including but not
25 limited to a building, part of a building, tent or va-

1 cant lot, which is temporarily occupied by 1 or more
2 persons or entities for the purpose of making sales
3 of goods, or services related to those goods, to the
4 public. A place of business is not temporary with re-
5 spect to a person or entity if that person or entity
6 conducts business at the place and stores unsold
7 goods there when it is not open for business.

8 “(9) TRANSIENT VENDOR.—The term ‘transient
9 vendor’ means any person or entity that, in the
10 usual course of business, transports inventory,
11 stocks of goods, or similar tangible personal property
12 to a temporary place of business for the purpose of
13 entering into transactions for the sale of such prop-
14 erty.

15 “(10) USER.—The term ‘user’ means a person
16 or entity that accesses an online retail marketplace
17 for the purpose of entering into transactions for the
18 sale or distribution of goods or services.

19 “(11) VALID PHYSICAL POSTAL ADDRESS.—The
20 term ‘valid physical postal address’ means—

21 “(A) a current street address, including
22 the city, State, and Zip code;

23 “(B) a Post Office box that has been reg-
24 istered with the United States Postal Service;

25 or

1 “(C) a private mailbox that has been reg-
2 istered with a commercial mail receiving agency
3 that is established pursuant to United States
4 Postal Service regulations.

5 “(b) SAFEGUARDS AGAINST SALES OF ILLEGALLY-
6 OBTAINED ITEMS.—

7 “(1) DUTIES OF OPERATORS OF PHYSICAL RE-
8 TAIL MARKETPLACES AND ONLINE RETAIL MARKET-
9 PLACES TO CONDUCT ACCOUNT REVIEWS AND FILE
10 SUSPICIOUS ACTIVITY REPORTS.—In the event that
11 an operator of a physical or online retail market-
12 place is presented with documentary evidence show-
13 ing that a transient vendor of the physical retail
14 marketplace, a user of the online retail marketplace,
15 or a director, officer, employee, or agent of such
16 transient vendor or user, has used or is using the re-
17 tail marketplace to sell or distribute items that were
18 stolen, embezzled, or obtained by fraud, false pre-
19 tenses or other illegal means, or has engaged in or
20 is engaging in structuring, the operator shall—

21 “(A) not later than 15 days after receiving
22 such evidence—

23 “(i) file a suspicious activity report
24 with the Attorney General of the United
25 States; and

1 “(ii) not later than 5 days after filing
2 the report, notify any person or entity that
3 presented the documentary evidence that
4 the operator filed the report; and

5 “(B)(i) initiate a review of the account of
6 such transient vendor or user for evidence of il-
7 legal activity; and

8 “(ii) as soon as possible, but not later than
9 45 days after receiving such evidence—

10 “(I) complete this review; and

11 “(II) submit the results of such ac-
12 count review to the Attorney General.

13 “(2) DUTIES OF OPERATORS OF PHYSICAL RE-
14 TAIL MARKETPLACES AND ONLINE RETAIL MARKET-
15 PLACES TO TERMINATE SALES ACTIVITY.—

16 “(A) IN GENERAL.—If an operator of a
17 physical retail marketplace or an online retail
18 marketplace reasonably determines that, based
19 on the documentary evidence presented to it or
20 the account review conducted by it under para-
21 graph (1), there is clear and convincing evi-
22 dence that a transient vendor of the physical re-
23 tail marketplace, a user of the online retail
24 marketplace, or a director, officer, employee or
25 agent of such transient vendor or user, has

1 used or is using the retail marketplace to sell
2 or distribute items that were stolen, embezzled,
3 or obtained by fraud, false pretenses, or other
4 illegal means, or has engaged in or is engaging
5 in structuring, the operator shall, not sooner
6 than 21 days and not later than 45 days after
7 submitting the results of the account review to
8 the Attorney General pursuant to paragraph
9 (1), either—

10 “(i) terminate the ability of the tran-
11 sient vendor to conduct business at the
12 physical retail marketplace or terminate
13 the ability of the user to conduct trans-
14 actions on the online retail marketplace,
15 and notify the Attorney General of such
16 action; or

17 “(ii)(I) request that the transient ven-
18 dor or user present documentary evidence
19 that the operator reasonably determines to
20 be clear and convincing showing that the
21 transient vendor or user has not used the
22 retail marketplace to sell or distribute
23 items that were stolen, embezzled, or ob-
24 tained by fraud, false pretenses, or other

1 illegal means, or has not engaged in or is
2 not engaging in structuring; and

3 “(II)(aa) if the transient vendor or
4 user fails to present such information with-
5 in 45 days of such request, terminate the
6 ability of the transient vendor to conduct
7 business at the physical retail marketplace
8 or terminate the ability of the user to con-
9 duct transactions on the online retail mar-
10 ketplace, and notify the Attorney General
11 of such action; or

12 “(bb) if the transient vendor or user
13 presents such information within 45 days,
14 then the operator shall report such infor-
15 mation to the Attorney General and notify
16 the transient vendor or user that the oper-
17 ator will not terminate the activities of the
18 transient vendor or user.

19 “(B) ATTORNEY GENERAL AUTHORIZA-
20 TION.—The Attorney General or a designee
21 may, with respect to the timing of the opera-
22 tor’s actions pursuant to this paragraph, au-
23 thorize the operator in writing to take such ac-
24 tion prior to 21 days after submitting the re-
25 sults of the account review to the Attorney Gen-

1 eral or direct the operator in writing and for
2 good cause to delay such action to a date later
3 than 45 days after submitting the results of the
4 account review.

5 “(3) DOCUMENTARY EVIDENCE.—The docu-
6 mentary evidence referenced in paragraphs (1) or
7 (2)—

8 “(A) shall refer to 1 or more specific
9 items, individuals, entities or transactions alleg-
10 edly involved in theft, embezzlement, fraud,
11 false pretenses, or other illegal activity; and

12 “(B) shall be—

13 “(i) video recordings;

14 “(ii) audio recordings;

15 “(iii) sworn affidavits;

16 “(iv) financial, accounting, business,
17 or sales records;

18 “(v) records or transcripts of phone
19 conversations;

20 “(vi) documents that have been filed
21 in a Federal or State court proceeding; or

22 “(vii) signed reports to or from a law
23 enforcement agency.

24 “(4) RETENTION OF RECORDS.—

1 “(A) RETAIL MARKETPLACES.—Each oper-
2 ator of a physical retail marketplace and each
3 operator of an online retail marketplace shall
4 maintain—

5 “(i) a record of all documentary evi-
6 dence presented to it pursuant to para-
7 graph (1) for 3 years from the date the op-
8 erator received the evidence;

9 “(ii) a record of the results of all ac-
10 count reviews conducted pursuant to para-
11 graph (1), and any supporting documenta-
12 tion, for 3 years from the date of the re-
13 view; and

14 “(iii) a copy of any suspicious activity
15 report filed with the Attorney General pur-
16 suant to this subsection, and the original
17 supporting documentation concerning any
18 report that it files, for 3 years from the
19 date of the filing.

20 “(B) ONLINE RETAIL MARKETPLACE.—
21 Each operator of an online retail marketplace
22 shall maintain, for 3 years after the date a user
23 becomes a high volume seller, the name, tele-
24 phone number, e-mail address, valid physical
25 postal address, and any other identification in-

1 formation that the operator receives about the
2 high volume seller.

3 “(5) CONFIDENTIALITY OF REPORTS.—No op-
4 erator of a physical retail marketplace or online re-
5 tail marketplace, and no director, officer, employee
6 or agent of such operator, may notify any individual
7 or entity that is the subject of a suspicious activity
8 report filed pursuant to paragraph (1), or of an ac-
9 count review performed pursuant to paragraph (1),
10 of the fact that the operator filed such a report or
11 performed such an account review, or of any infor-
12 mation contained in the report or account review.

13 “(6) HIGH VOLUME SELLERS.—

14 “(A) VALID POSTAL ADDRESS.—An oper-
15 ator of an online retail marketplace shall re-
16 quire each high volume seller to display a valid
17 physical postal address whenever other informa-
18 tion about the items or services being sold by
19 the high volume seller is displayed on the online
20 retail marketplace. Such valid physical postal
21 address must be displayed in a format clearly
22 visible to the average consumer.

23 “(B) FAILURE TO PROVIDE.—In the event
24 that a high volume seller has failed to display
25 a valid physical postal address as required in

1 this paragraph, the operator of the online retail
2 marketplace shall—

3 “(i) within 15 days notify the user of
4 its duty to display a valid physical postal
5 address; and

6 “(ii) if 45 days after providing this
7 initial notification the user still has not
8 displayed a valid physical postal address,
9 shall—

10 “(I) terminate the ability of the
11 user to conduct transactions on mar-
12 ketplace; and

13 “(II) file within 15 days a sus-
14 picious activity report with the Attor-
15 ney General of the United States.

16 “(7) CONTENTS OF SUSPICIOUS ACTIVITY RE-
17 PORTS.—A suspicious activity report submitted by
18 an operator to the Attorney General pursuant to
19 paragraph (1) or (6) shall contain the following in-
20 formation:

21 “(A) The name, address, telephone num-
22 ber, and e-mail address of the individual or en-
23 tity that is the subject of the report, to the ex-
24 tent known.

1 “(B) Any other information that is in the
2 possession of the operator filing the report re-
3 garding the identification of the individual or
4 entity that is the subject of the report.

5 “(C) A copy of the documentary evidence
6 and other information that led to the filing of
7 the report pursuant to paragraph (1) or (6).

8 “(D) A detailed description of the results
9 of the account review conducted pursuant to
10 paragraph (1).

11 “(E) Such other information as the Attor-
12 ney General may by regulation prescribe.

13 “(c) VOLUNTARY REPORTS.—Nothing in this section
14 prevents an operator of a physical retail marketplace or
15 online retail marketplace from voluntarily reporting to a
16 Federal, State, or local government agency any suspicious
17 activity that such operator believes is relevant to the pos-
18 sible violation of any law or regulation, provided that the
19 operator also complies with the requirements of this sec-
20 tion.

21 “(d) STRUCTURING.—No individual or entity shall
22 engage in structuring as defined in this section.

23 “(e) ENFORCEMENT BY ATTORNEY GENERAL.—

24 “(1) IN GENERAL.—Any individual or entity
25 who knowingly commits a violation of, or knowingly

1 fails to comply with the requirements specified in,
2 paragraph (1), (2), (4), (5), (6), or (7) of subsection
3 (b), or subsection (d), shall be liable to the United
4 States Government for a civil penalty of not more
5 than \$10,000 per violation.

6 “(2) FALSE STATEMENTS.—

7 “(A) INTENT TO INFLUENCE AN OPER-
8 ATOR.—Any person who knowingly makes any
9 material false or fictitious statement or rep-
10 resentation with the intent to influence an oper-
11 ator of a physical retail marketplace or an oper-
12 ator of an online retail marketplace to file a
13 suspicious activity report under subsection (b)
14 shall be liable to the United States Government
15 for a civil penalty of not more than \$10,000 per
16 violation.

17 “(B) SUSPICIOUS ACTIVITY REPORT.—Any
18 person who knowingly and willfully makes any
19 material false or fictitious statement or rep-
20 resentation in any suspicious activity report re-
21 quired under subsection (b) may, upon convic-
22 tion thereof, be subject to liability under section
23 1001.

24 “(f) ENFORCEMENT BY STATES.—

1 “(1) CIVIL ACTION.—In any case in which the
2 attorney general of a State has reason to believe
3 that an interest of the residents of that State has
4 been or is threatened or adversely affected by any
5 person or entity who has committed or is committing
6 a violation of this section, the attorney general, offi-
7 cial, or agency of the State, as *parens patriae*, may
8 bring a civil action on behalf of the residents of the
9 State in a district court of the United States of ap-
10 propriate jurisdiction—

11 “(A) to enjoin further violation of this sec-
12 tion by the defendant;

13 “(B) to obtain damages on behalf of the
14 residents of the State in an amount equal to
15 the actual monetary loss suffered by such resi-
16 dents; or

17 “(C) to impose civil penalties in the
18 amounts specified in subsection (e).

19 “(2) WRITTEN NOTICE.—

20 “(A) IN GENERAL.—The State shall serve
21 prior written notice of any civil action under
22 paragraph (1) upon the Attorney General of the
23 United States, including a copy of its com-
24 plaint, except that if it is not feasible for the
25 State to provide such prior notice, the State

1 shall serve such notice immediately upon insti-
2 tuting such action.

3 “(B) ATTORNEY GENERAL ACTION.—Upon
4 receiving a notice respecting a civil action under
5 subparagraph (A), the Attorney General of the
6 United States shall have the right—

7 “(i) to intervene in such action;

8 “(ii) upon so intervening, to be heard
9 on all matters arising therein; and

10 “(iii) to file petitions for appeal.

11 “(3) STATE POWERS PRESERVED.—For pur-
12 poses of bringing any civil action under this sub-
13 section, nothing in this chapter shall prevent an at-
14 torney general of a State from exercising the powers
15 conferred on the attorney general by the laws of
16 such State to conduct investigations or to administer
17 oaths or affirmations or to compel the attendance of
18 witnesses or the production of documentary and
19 other evidence.

20 “(4) PENDING FEDERAL ACTION.—Whenever a
21 civil action has been instituted by the Attorney Gen-
22 eral of the United States for violation of any rule
23 prescribed under subsection (e), no State may, dur-
24 ing the pendency of such action instituted by the At-
25 torney General of the United States, institute a civil

1 action under this subsection against any defendant
2 named in the complaint in such action for any viola-
3 tion alleged in such complaint.

4 “(5) JURISDICTION.—

5 “(A) IN GENERAL.—Any civil action
6 brought under this subsection in a district court
7 of the United States may be brought in the dis-
8 trict in which the defendant is found, is an in-
9 habitant, or transacts business or wherever
10 venue is proper under section 1391 of title 28.

11 “(B) PROCESS.—Process in an action
12 under this subsection may be served in any dis-
13 trict in which the defendant is an inhabitant or
14 in which the defendant may be found.

15 “(g) NO PRIVATE RIGHT OF ACTION.—Nothing in
16 this section shall be interpreted to authorize a private
17 right of action for a violation of any provision of this sec-
18 tion, or a private right of action under any other provision
19 of Federal or State law to enforce a violation of this sec-
20 tion.”.

21 (b) CHAPTER ANALYSIS.—The chapter analysis for
22 chapter 113 of title 18, United States Code, is amended
23 by inserting after the item for section 2322 the following:

“2323. Online retail marketplaces.”.

1 **SEC. 5. NO PREEMPTION OF STATE LAW.**

2 No provision of this Act, including any amendment
3 made by this Act, shall be construed as indicating an in-
4 tent on the part of Congress to occupy the field in which
5 that provision or amendment operates, including criminal
6 penalties, to the exclusion of any State law on the same
7 subject matter that would otherwise be within the author-
8 ity of the State, unless there is a positive conflict between
9 that provision or amendment and that State law so that
10 the 2 cannot consistently stand together.

11 **SEC. 6. EFFECTIVE DATE.**

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

○