

Statement by Congressman Brad Ellsworth
House Judiciary Subcommittee on Crime, Terror and Homeland Security
Monday, September 22, 2008

Mr. Chairman, I appreciate the opportunity to testify before your committee in support of my bill – the Organized Retail Crime Act of 2008. I also want to thank you for your leadership in the area of e-fencing and organized retail crime. I look forward to working with you and our colleagues on this committee in the coming days and weeks on legislation that will address the emerging issue of e-fencing. Together, we can craft legislation that cracks down on organized retail crime and protects consumers.

Before I came to Congress, I spent a career fighting crime in the Vanderburgh County Sheriff's Department. I remember a particular instance where we arrested two thieves who were running a sophisticated criminal enterprise from the trunk of their car. At a hardware retailer that had several Evansville locations, these two thieves would pay cash for one drill, make copies of the receipt using a copier that they had in the trunk of their car, and then shoplift the same drills in bulk. Using the fraudulent copied receipts, the thieves would then return the stolen merchandise and receive cash back multiple times over. I share this story as an example of the lengths criminals will go to fraudulently take advantage of businesses to make a quick profit.

Today, criminals with the same motives are using the internet with increasing frequency to sell stolen merchandise, and it's taking a heavy toll on retailers

throughout the country. According to a Food Marketing Institute study, in 2006 alone, retailers in my state, Indiana, lost \$662 million in stolen merchandise. Indiana has a six percentage sales tax so these stolen goods account for close to \$40 million in lost sales tax revenue to the state. This is a major problem.

Not only does organized retail crime result in substantial losses for retailers, it also has significant, negative consequences for consumers. These criminals often steal products like baby formula, diabetic test strips, and over-the-counter drugs from retailers. Needless to say, criminals are not interested in properly storing these sensitive health products, and as a result, the health and safety of consumers, who unknowingly purchase these stolen products, is often jeopardized. ORC rings also negatively impact the bottom line for consumers because leading American retailers are forced to spend millions of dollars each year conducting loss prevention efforts.

The Federal Bureau of Investigation estimates that organized retail crime currently accounts for \$30 billion in retail losses annually. The criminals who form and operate these organized crime rings are becoming more sophisticated in the ways they sell their stolen goods to an often unsuspecting public. ORC rings have expanded their base of operation from the streets, flea markets, and pawn shops to the online marketplace where they can break the law with anonymity.

For these reasons I felt compelled to introduced H.R. 6491, the Organized Retail Crime Act of 2008. This legislation cracks down on ORC by amending the federal criminal code to include activities such as the stealing, embezzlement, obtaining by fraud or false pretenses retail merchandise in quantities that are not purchased for personal use or consumption for the purpose of reselling such retail merchandise in commerce. By criminalizing the facilitation of organized retail crime, federal, state, and local law enforcement will be better equipped to crack down on illegal activity that takes place offline – at pawnshops and flea markets – as well as online.

In addition to amending the federal criminal code, H.R. 6491 requires specific and narrow obligations for the online marketplace used by high-volume sellers. Specifically, H.R. 6491 requires online auction sites to expeditiously assist with an investigation of the sale of stolen goods on its site when credible evidence comes to its attention, and remove or disable access to the material when there is reasonable cause to believe the goods or services were acquired through organized retail crime. These sites are to maintain a record of all investigations for a minimum of three years.

The legislation also requires the online auction site to maintain the name, telephone number, email address, legitimate physical address, any user identification, company name, and transactions conducted of each high-volume seller. A high-volume seller is defined as someone selling more than \$12,000 in merchandise annually.

Opponents of this legislation say it unfairly targets online auction sites. I would like to reiterate the fact that this legislation criminalizes the facilitation of organized retail crime. Facilitation includes criminal activity that takes place offline as well as online.

The proposed recordkeeping obligation for online marketplaces is far less burdensome than regulations in place for pawnshop owners, for example. In the pawnbroker industry, many states require fingerprinting and the presentation of valid government issued IDs before a transaction.

I want to acknowledge efforts by some online marketplaces to police their own sites for criminal activity. These efforts are certainly beneficial towards deterring the resale of stolen merchandise but I firmly believe these efforts do not go far enough. ORC is a growing problem that must be addressed through a robust effort of cooperation between retailers, the online marketplace, and law enforcement. I believe we can put in place a legal framework to make this happen.

My goal is simple. The online marketplace should be fair and protect consumers, producers, and the free market where goods are traded. I want online auction sites to prosper in a marketplace that has rules that are enforceable. It is important that state and local law enforcement have the tools necessary to pursue and stop crime where it exists. This legislation is

important in that it defines organized retail crime in the federal criminal code and requires online auction sites to perform the necessary recordkeeping of high-volume sellers so that criminals are prevented from exploiting the online marketplace. I'd also like to note that this legislation will not place an undue burden on users who play by the rules. The obligation is on the online marketplace to keep transparent records and assist with law enforcement when criminal activity is suspected.

Mr. Chairman, H.R. 6491, the Organized Retail Crime Act of 2008, is a non-intrusive, common sense bill that aims to dry up avenues for organized retail criminals to sell their stolen merchandise at the expense of retailers and consumers. I look forward to hearing the expert testimony today and I urge my colleagues to join Congressman Jim Jordan and me in supporting this important legislation as a first step toward cracking down on organized retail crime.