

Union Calendar No.

112TH CONGRESS
2^D SESSION

H. R. 4223

[Report No. 112-]

To amend title 18, United States Code, to prohibit theft of medical products,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 2012

Mr. SENSENBRENNER (for himself, Ms. LINDA T. SÁNCHEZ of California, Mr. COBLE, Mr. GALLEGLY, Mr. PIERLUISI, and Mr. MEEHAN) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE --, 2012

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on March 20, 2012]

A BILL

To amend title 18, United States Code, to prohibit theft
of medical products, and for other purposes.

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 “Strengthening and Fo-*
5 *cusing Enforcement to Deter Organized Stealing and En-*
6 *hance Safety Act of 2012” or the “SAFE DOSES Act”.*

7 **SEC. 2. THEFT OF MEDICAL PRODUCTS.**

8 *(a) PROHIBITED CONDUCT AND PENALTIES.—Chapter*
9 *31 of title 18, United States Code, is amended by adding*
10 *at the end the following:*

11 **“§ 670. Theft of medical products**

12 *“(a) PROHIBITED CONDUCT.—Whoever, in, or using*
13 *any means or facility of, interstate or foreign commerce—*

14 *“(1) embezzles, steals, or by fraud or deception*
15 *obtains, or knowingly and unlawfully takes, carries*
16 *away, or conceals a pre-retail medical product;*

17 *“(2) knowingly and falsely makes, alters, forges,*
18 *or counterfeits the labeling or documentation (includ-*
19 *ing documentation relating to origination or ship-*
20 *ping) of a pre-retail medical product;*

21 *“(3) knowingly possesses, transports, or traffics*
22 *in a pre-retail medical product that was involved in*
23 *a violation of paragraph (1) or (2);*

1 “(4) *with intent to defraud, buys, or otherwise*
2 *obtains, a pre-retail medical product that has expired*
3 *or been stolen;*

4 “(5) *with intent to defraud, sells, or distributes,*
5 *a pre-retail medical product that is expired or stolen;*
6 *or*

7 “(6) *attempts or conspires to violate any of*
8 *paragraphs (1) through (5);*
9 *shall be punished as provided in subsection (c) and subject*
10 *to the other sanctions provided in this section.*

11 “(b) *AGGRAVATED OFFENSES.—An offense under this*
12 *section is an aggravated offense if—*

13 “(1) *the defendant is employed by, or is an agent*
14 *of, an organization in the supply chain for the pre-*
15 *retail medical product; or*

16 “(2) *the violation—*

17 “(A) *involves the use of violence, force, or a*
18 *threat of violence or force;*

19 “(B) *involves the use of a deadly weapon;*

20 “(C) *results in serious bodily injury or*
21 *death, including serious bodily injury or death*
22 *resulting from the use of the medical product in-*
23 *volved; or*

24 “(D) *is subsequent to a prior conviction for*
25 *an offense under this section.*

1 “(c) *CRIMINAL PENALTIES.*—Whoever violates sub-
2 *section (a)*—

3 “(1) *if the offense is an aggravated offense under*
4 *subsection (b)(2)(C), shall be fined under this title or*
5 *imprisoned not more than 30 years, or both;*

6 “(2) *if the value of the medical products involved*
7 *in the offense is \$5,000 or greater, shall be fined*
8 *under this title, imprisoned for not more than 15*
9 *years, or both, but if the offense is an aggravated of-*
10 *fense other than one under subsection (b)(2)(C), the*
11 *maximum term of imprisonment is 20 years; and*

12 “(3) *in any other case, shall be fined under this*
13 *title, imprisoned for not more than 3 years, or both,*
14 *but if the offense is an aggravated offense other than*
15 *one under subsection (b)(2)(C), the maximum term of*
16 *imprisonment is 5 years.*

17 “(d) *CIVIL PENALTIES.*—Whoever violates subsection
18 (a) *is subject to a civil penalty in an amount not more*
19 *than the greater of—*

20 “(1) *three times the economic loss attributable to*
21 *the violation; or*

22 “(2) *\$1,000,000.*

23 “(e) *DEFINITIONS.*—*In this section—*

1 “(1) the term ‘pre-retail medical product’ means
2 a medical product that has not yet been made avail-
3 able for retail purchase by a consumer;

4 “(2) the term ‘medical product’ means a drug,
5 biological product, device, medical food, or infant for-
6 mula;

7 “(3) the terms ‘device’, ‘drug’, ‘infant formula’,
8 and ‘labeling’ have, respectively, the meanings given
9 those terms in section 201 of the Federal Food, Drug,
10 and Cosmetic Act;

11 “(4) the term ‘biological product’ has the mean-
12 ing given the term in section 351 of the Public Health
13 Service Act;

14 “(5) the term ‘medical food’ has the meaning
15 given the term in section 5(b) of the Orphan Drug
16 Act; and

17 “(6) the term ‘supply chain’ includes manufac-
18 turer, wholesaler, repacker, own-labeled distributor,
19 private-label distributor, jobber, broker, drug trader,
20 transportation company, hospital, pharmacy, or secu-
21 rity company.”.

22 (b) *CLERICAL AMENDMENT.*—The table of sections at
23 the beginning of chapter 31 of title 18, United States Code,
24 is amended by adding after the item relating to section 669
25 the following:

 “670. *Theft of medical products.*”.

1 **SEC. 3. CIVIL FORFEITURE.**

2 *Section 981(a)(1)(C) of title 18, United States Code,*
3 *is amended by inserting “670,” after “657.”*

4 **SEC. 4. PENALTIES FOR THEFT-RELATED OFFENSES.**

5 *(a) INTERSTATE OR FOREIGN SHIPMENTS BY CAR-*
6 *RIER.—Section 659 of title 18, United States Code, is*
7 *amended by adding at the end of the fifth undesignated*
8 *paragraph the following: “If the offense involves a pre-retail*
9 *medical product (as defined in section 670), it shall be pun-*
10 *ished under section 670 unless the penalties provided for*
11 *under this section are greater.”*

12 *(b) RACKETEERING.—*

13 *(1) TRAVEL ACT VIOLATIONS.—Section 1952 of*
14 *title 18, United States Code, is amended by adding*
15 *at the end the following:*

16 *“(d) If the offense under this section involves an act*
17 *described in paragraph (1) or (3) of subsection (a) and also*
18 *involves a pre-retail medical product (as defined in section*
19 *670), the punishment for the offense shall be the same as*
20 *the punishment for an offense under section 670 unless the*
21 *punishment under subsection (a) is greater.”*

22 *(2) MONEY LAUNDERING.—Section 1957(b)(1) of*
23 *title 18, United States Code, is amended by adding*
24 *at the end the following: “If the offense involves a pre-*
25 *retail medical product (as defined in section 670) the*
26 *punishment for the offense shall be the same as the*

1 *punishment for an offense under section 670 unless*
2 *the punishment under this subsection is greater.”*

3 *(c) BREAKING OR ENTERING CARRIER FACILITIES.—*
4 *Section 2117 of title 18, United States Code, is amended*
5 *by adding at the end of the first undesignated paragraph*
6 *the following: “If the offense involves a pre-retail medical*
7 *product (as defined in section 670) the punishment for the*
8 *offense shall be the same as the punishment for an offense*
9 *under section 670 unless the punishment under this section*
10 *is greater.”.*

11 *(d) STOLEN PROPERTY.—*

12 *(1) TRANSPORTATION OF STOLEN GOODS AND*
13 *RELATED OFFENSES.—Section 2314 of title 18,*
14 *United States Code, is amended by adding at the end*
15 *of the sixth undesignated paragraph the following: “If*
16 *the offense involves a pre-retail medical product (as*
17 *defined in section 670) the punishment for the offense*
18 *shall be the same as the punishment for an offense*
19 *under section 670 unless the punishment under this*
20 *section is greater.”.*

21 *(2) SALE OR RECEIPT OF STOLEN GOODS AND*
22 *RELATED OFFENSES.—Section 2315 of title 18,*
23 *United States Code, is amended by adding at the end*
24 *of the fourth undesignated paragraph the following:*
25 *“If the offense involves a pre-retail medical product*

1 *(as defined in section 670) the punishment for the of-*
2 *fense shall be the same as the punishment for an of-*
3 *fense under section 670 unless the punishment under*
4 *this section is greater.”.*

5 *(e) PRIORITY GIVEN TO CERTAIN INVESTIGATIONS AND*
6 *PROSECUTIONS.—The Attorney General shall give increased*
7 *priority to efforts to investigate and prosecute offenses*
8 *under section 659 of title 18, United States Code, that in-*
9 *volve pre-retail medical products.*

10 **SEC. 5. AMENDMENT TO EXTEND WIRETAPPING AUTHORITY**
11 **TO NEW OFFENSE.**

12 *Section 2516(1) of title 18, United States Code, is*
13 *amended—*

14 *(1) by redesignating paragraph (s) as paragraph*
15 *(t);*

16 *(2) by striking “or” at the end of paragraph (r);*
17 *and*

18 *(3) by inserting after paragraph (r) the fol-*
19 *lowing:*

20 *“(s) any violation of section 670 (relating to*
21 *theft of medical products); or”.*

22 **SEC. 6. REQUIRED RESTITUTION.**

23 *Section 3663A(c)(1)(A) of title 18, United States Code,*
24 *is amended—*

25 *(1) in clause (ii), by striking “or” at the end;*

1 (2) *in clause (iii), by striking “and” at the end*
2 *and inserting “or”; and*

3 (3) *by adding at the end the following:*

4 *“(iv) an offense under section 670 (relating*
5 *to theft of medical products); and”.*

6 **SEC. 7. DIRECTIVE TO UNITED STATES SENTENCING COM-**
7 **MISSION.**

8 (a) *IN GENERAL.*—*Pursuant to its authority under*
9 *section 994 of title 28, United States Code, and in accord-*
10 *ance with this section, the United States Sentencing Com-*
11 *mission shall review and, if appropriate, amend the Federal*
12 *sentencing guidelines and policy statements applicable to*
13 *persons convicted of offenses under section 670 of title 18,*
14 *United States Code, as added by this Act, section 2118 of*
15 *title 18, United States Code, or any another section of title*
16 *18, United States Code, amended by this Act, to reflect the*
17 *intent of Congress that penalties for such offenses be suffi-*
18 *cient to deter and punish such offenses, and appropriately*
19 *account for the actual harm to the public from these of-*
20 *fenses.*

21 (b) *REQUIREMENTS.*—*In carrying out this section, the*
22 *United States Sentencing Commission shall—*

23 (1) *consider the extent to which the Federal sen-*
24 *tencing guidelines and policy statements appro-*
25 *priately reflect—*

1 (A) *the serious nature of such offenses;*

2 (B) *the incidence of such offenses; and*

3 (C) *the need for an effective deterrent and*

4 *appropriate punishment to prevent such offenses;*

5 (2) *consider establishing a minimum offense level*

6 *under the Federal sentencing guidelines and policy*

7 *statements for offenses covered by this Act;*

8 (3) *account for any additional aggravating or*

9 *mitigating circumstances that might justify excep-*

10 *tions to the generally applicable sentencing ranges;*

11 (4) *ensure reasonable consistency with other rel-*

12 *evant directives, Federal sentencing guidelines and*

13 *policy statements;*

14 (5) *make any necessary conforming changes to*

15 *the Federal sentencing guidelines and policy state-*

16 *ments; and*

17 (6) *ensure that the Federal sentencing guidelines*

18 *and policy statements adequately meet the purposes of*

19 *sentencing set forth in section 3553(a)(2) of title 18,*

20 *United States Code.*