

One Hundred Twelfth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the third day of January, two thousand and twelve*

An Act

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Strengthening and Focusing Enforcement to Deter Organized Stealing and Enhance Safety Act of 2012” or the “SAFE DOSES Act”.

SEC. 2. THEFT OF MEDICAL PRODUCTS.

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

“§ 670. Theft of medical products

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

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

“(2) knowingly and falsely makes, alters, forges, or counterfeits the labeling or documentation (including documentation relating to origination or shipping) of a pre-retail medical product;

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

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

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

“(6) attempts or conspires to violate any of paragraphs (1) through (5);

shall be punished as provided in subsection (c) and subject to the other sanctions provided in this section.

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

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

“(2) the violation—

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

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

“(C) results in serious bodily injury or death, including serious bodily injury or death resulting from the use of the medical product involved; or

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

“(c) CRIMINAL PENALTIES.—Whoever violates subsection (a)—

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

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

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

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

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

“(2) \$1,000,000.

“(e) DEFINITIONS.—In this section—

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

“(2) the term ‘medical product’ means a drug, biological product, device, medical food, or infant formula;

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

“(4) the term ‘biological product’ has the meaning given the term in section 351 of the Public Health Service Act;

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

“(6) the term ‘supply chain’ includes manufacturer, wholesaler, repacker, own-labeled distributor, private-label distributor, jobber, broker, drug trader, transportation company, hospital, pharmacy, or security company.”.

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

“670. Theft of medical products.”.

SEC. 3. CIVIL FORFEITURE.

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

SEC. 4. PENALTIES FOR THEFT-RELATED OFFENSES.

(a) INTERSTATE OR FOREIGN SHIPMENTS BY CARRIER.—Section 659 of title 18, United States Code, is amended by adding at the end of the fifth undesignated paragraph the following: “If the offense involves a pre-retail medical product (as defined in section

670), it shall be punished under section 670 unless the penalties provided for under this section are greater.”

(b) RACKETEERING.—

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

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

(2) MONEY LAUNDERING.—Section 1957(b)(1) of title 18, United States Code, is amended by adding at the end the following: “If the offense involves a pre-retail medical product (as defined in section 670) the punishment for the offense shall be the same as the punishment for an offense under section 670 unless the punishment under this subsection is greater.”

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

(d) STOLEN PROPERTY.—

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

(2) SALE OR RECEIPT OF STOLEN GOODS AND RELATED OFFENSES.—Section 2315 of title 18, United States Code, is amended by adding at the end of the fourth undesignated paragraph the following: “If the offense involves a pre-retail medical product (as defined in section 670) the punishment for the offense shall be the same as the punishment for an offense under section 670 unless the punishment under this section is greater.”

(e) PRIORITY GIVEN TO CERTAIN INVESTIGATIONS AND PROSECUTIONS.—The Attorney General shall give increased priority to efforts to investigate and prosecute offenses under section 670 of title 18, United States Code, that involve pre-retail medical products.

SEC. 5. AMENDMENT TO EXTEND WIRETAPPING AUTHORITY TO NEW OFFENSE.

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

(1) by redesignating paragraph (s) as paragraph (t);

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

(3) by inserting after paragraph (r) the following:

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

SEC. 6. REQUIRED RESTITUTION.

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

- (1) in clause (ii), by striking “or” at the end;
- (2) in clause (iii), by striking “and” at the end and inserting “or”; and
- (3) by adding at the end the following:
 - “(iv) an offense under section 670 (relating to theft of medical products); and”.

SEC. 7. DIRECTIVE TO UNITED STATES SENTENCING COMMISSION.

(a) **IN GENERAL.**—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of offenses under section 670 of title 18, United States Code, as added by this Act, section 2118 of title 18, United States Code, or any another section of title 18, United States Code, amended by this Act, to reflect the intent of Congress that penalties for such offenses be sufficient to deter and punish such offenses, and appropriately account for the actual harm to the public from these offenses.

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

- (1) consider the extent to which the Federal sentencing guidelines and policy statements appropriately reflect—
 - (A) the serious nature of such offenses;
 - (B) the incidence of such offenses; and
 - (C) the need for an effective deterrent and appropriate punishment to prevent such offenses;
- (2) consider establishing a minimum offense level under the Federal sentencing guidelines and policy statements for offenses covered by this Act;
- (3) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;
- (4) ensure reasonable consistency with other relevant directives, Federal sentencing guidelines and policy statements;
- (5) make any necessary conforming changes to the Federal sentencing guidelines and policy statements; and

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(6) ensure that the Federal sentencing guidelines and policy statements adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*