

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4223

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IN THE SENATE OF THE UNITED STATES

JUNE 27, 2012

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Strengthening and Fo-  
3 cusing Enforcement to Deter Organized Stealing and En-  
4 hance Safety Act of 2012” or the “SAFE DOSES Act”.

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

6 (a) PROHIBITED CONDUCT AND PENALTIES.—Chap-  
7 ter 31 of title 18, United States Code, is amended by add-  
8 ing at the end the following:

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

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

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

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

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

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

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

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

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

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

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

13           “(2) the violation—

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

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

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

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

23           “(c) CRIMINAL PENALTIES.—Whoever violates sub-  
24 section (a)—

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

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

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

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

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

20           “(2) \$1,000,000.

21           “(e) DEFINITIONS.—In this section—

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

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

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

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

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

14           “(6) the term ‘supply chain’ includes manufac-  
15 turer, wholesaler, repacker, own-labeled distributor,  
16 private-label distributor, jobber, broker, drug trader,  
17 transportation company, hospital, pharmacy, or se-  
18 curity company.”.

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

“670. Theft of medical products.”.

23 **SEC. 3. CIVIL FORFEITURE.**

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

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

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

9 (b) RACKETEERING.—

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

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

19 (2) MONEY LAUNDERING.—Section 1957(b)(1)  
20 of title 18, United States Code, is amended by add-  
21 ing at the end the following: “If the offense involves  
22 a pre-retail medical product (as defined in section  
23 670) the punishment for the offense shall be the  
24 same as the punishment for an offense under section  
25 670 unless the punishment under this subsection is  
26 greater.”.

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

9           (d) STOLEN PROPERTY.—

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

19           (2) SALE OR RECEIPT OF STOLEN GOODS AND  
20 RELATED OFFENSES.—Section 2315 of title 18,  
21 United States Code, is amended by adding at the  
22 end of the fourth undesignated paragraph the fol-  
23 lowing: “If the offense involves a pre-retail medical  
24 product (as defined in section 670) the punishment  
25 for the offense shall be the same as the punishment

1 for an offense under section 670 unless the punish-  
2 ment under this section is greater.”.

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

8 **SEC. 5. AMENDMENT TO EXTEND WIRETAPPING AUTHOR-**  
9 **ITY TO NEW OFFENSE.**

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

12 (1) by redesignating paragraph (s) as para-  
13 graph (t);

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

16 (3) by inserting after paragraph (r) the fol-  
17 lowing:

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

20 **SEC. 6. REQUIRED RESTITUTION.**

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

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

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

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

2 “(iv) an offense under section 670 (relat-  
3 ing to theft of medical products); and”.

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

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

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

21 (1) consider the extent to which the Federal  
22 sentencing guidelines and policy statements appro-  
23 priately reflect—

24 (A) the serious nature of such offenses;

25 (B) the incidence of such offenses; and

1           (C) the need for an effective deterrent and  
2           appropriate punishment to prevent such of-  
3           fenses;

4           (2) consider establishing a minimum offense  
5           level under the Federal sentencing guidelines and  
6           policy statements for offenses covered by this Act;

7           (3) account for any additional aggravating or  
8           mitigating circumstances that might justify excep-  
9           tions to the generally applicable sentencing ranges;

10          (4) ensure reasonable consistency with other  
11          relevant directives, Federal sentencing guidelines  
12          and policy statements;

13          (5) make any necessary conforming changes to  
14          the Federal sentencing guidelines and policy state-  
15          ments; and

16          (6) ensure that the Federal sentencing guide-  
17          lines and policy statements adequately meet the pur-  
18          poses of sentencing set forth in section 3553(a)(2)  
19          of title 18, United States Code.

Passed the House of Representatives June 26, 2012.

Attest:

KAREN L. HAAS,

*Clerk.*