

111TH CONGRESS  
2D SESSION

# S. 3941

To prohibit trafficking in counterfeit military goods or services.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2010

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

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## A BILL

To prohibit trafficking in counterfeit military goods or services.

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 Military  
5       Counterfeits Act of 2010”.

6       **SEC. 2. TRAFFICKING IN COUNTERFEIT MILITARY GOODS**  
7               **OR SERVICES.**

8       (a) TRAFFICKING IN COUNTERFEIT MILITARY  
9       GOODS OR SERVICES.—Section 2320 of title 18, United  
10       States Code, is amended—

(1) in subsection (a), by adding at the end the following:

“(3) MILITARY GOODS OR SERVICES.—

“(A) IN GENERAL.—A person who commits an offense under paragraph (1) with knowledge that the good or service described in paragraph (1) is identified as meeting military standards or is intended for use in a military or national security application shall be punished in accordance with subparagraph (B).

“(B) PENALTIES.—

“(i) INDIVIDUAL.—An individual who commits an offense described in subparagraph (A) shall be fined not more than \$5,000,000, imprisoned for not more than 20 years, or both.

“(ii) PERSON OTHER THAN AN INDIVIDUAL.—A person other than an individual that commits an offense described in subparagraph (A) shall be fined not more than \$15,000,000.

“(C) SUBSEQUENT OFFENSES.—

“(i) INDIVIDUAL.—An individual who commits an offense described in subparagraph (A) after the individual is convicted

1 of an offense under subparagraph (A) shall  
 2 be fined not more than \$15,000,000, im-  
 3 prisoned not more than 30 years, or both.

4 “(ii) PERSON OTHER THAN AN INDI-  
 5 VIDUAL.—A person other than an indi-  
 6 vidual that commits an offense described in  
 7 subparagraph (A) after the person is con-  
 8 victed of an offense under subparagraph  
 9 (A) shall be fined not more than  
 10 \$30,000,000.”; and

11 (2) in subsection (e)—

12 (A) in paragraph (1), by striking the pe-  
 13 riod at the end and inserting a semicolon;

14 (B) in paragraph (3), by striking “and” at  
 15 the end;

16 (C) in paragraph (4), by striking the pe-  
 17 riod at the end and a semicolon; and

18 (D) by adding at the end the following:

19 “(5) the term ‘identified as meeting military  
 20 standards’ relating to a good or service—

21 “(A) means the good or service—

22 “(i) bears a label, tag, stamp, product  
 23 code, phrase, or emblem of any kind that  
 24 indicates that the good or service meets a  
 25 standard, requirement, or specification

1 issued by the Department of Defense, an  
2 Armed Force, or a reserve component;

3 “(ii) is packaged in a wrapper, con-  
4 tainer, box, case, or packaging of any type  
5 or nature which bears a label, tag, stamp,  
6 product code, phrase, or emblem of any  
7 kind which indicates that the good or serv-  
8 ices meets a standard, requirement, or  
9 specification issued by the Department of  
10 Defense, an Armed Force, or a reserve  
11 component; or

12 “(iii) is accompanied by or marketed  
13 with a certificate or other oral or written  
14 representation that the good or service  
15 meets a standard, requirement, or speci-  
16 fication issued by the Department of De-  
17 fense, an Armed Force, or a reserve com-  
18 ponent; and

19 “(B) shall not apply to the identification of  
20 a good or service in a manner that is unlikely  
21 to cause confusion, to cause mistake, or to de-  
22 ceive; and

23 “(6) the term ‘use in a military or national se-  
24 curity application’ means the use of a good or serv-

1 ice, independently, in conjunction with, or as a com-  
2 ponent of another good or service—

3 “(A) during the performance of the official  
4 duties of the Armed Forces of the United  
5 States or the reserve components of the Armed  
6 Forces; or

7 “(B) by or for the United States in fur-  
8 therance of the national defense or national se-  
9 curity.”.

10 (b) SENTENCING GUIDELINES.—

11 (1) DIRECTIVE.—Not later than 180 days after  
12 the date of enactment of this Act, pursuant to is au-  
13 thority under section 994 of title 28, United States  
14 Code, and in accordance with this subsection, the  
15 United States Sentencing Commission shall review  
16 and amend the Federal sentencing guidelines and  
17 policy statements application to persons convicted of  
18 an offense under section 2320(a) of title 18, United  
19 States Code, to reflect the intent of Congress that  
20 penalties for such offenses be increased in compari-  
21 son to those provided on the day before the date of  
22 enactment of this Act under the guidelines and pol-  
23 icy statements.

24 (2) REQUIREMENTS.—In amending the Federal  
25 Sentencing Guidelines and policy statements under

1 paragraph (1), the United States Sentencing Com-  
2 mission shall—

3 (A) ensure that the guidelines and policy  
4 statements, including section 2B5.3 of the Fed-  
5 eral Sentencing Guidelines (and any successor  
6 thereto), reflect—

7 (i) the serious nature of the offenses  
8 described in section 2320(a) of title 18,  
9 United States Code;

10 (ii) the need for an effective deterrent  
11 and appropriate punishment to prevent of-  
12 fenses under section 2320(a) of title 18,  
13 United States Code; and

14 (iii) the effectiveness of incarceration  
15 in furthering the objectives described in  
16 clauses (i) and (ii);

17 (B) consider the extent to which the guide-  
18 lines appropriately account for the risk, even if  
19 attenuated or unknown to the offender, to  
20 members of the Armed Forces of the United  
21 States, military readiness, and national security  
22 resulting from an offense committed under sec-  
23 tion 2320(a) of title 18, United States Code, in-  
24 cluding in instances involving a limited value or  
25 quantity of goods or services;

1           (C) ensure reasonable consistency with  
2           other relevant directives and guidelines and  
3           Federal statutes;

4           (D) make any necessary conforming  
5           changes to the guidelines; and

6           (E) ensure that the guidelines relating to  
7           offenses under section 2320(a) of title 18,  
8           United States Code, adequately meet the pur-  
9           poses of sentencing, as described in section  
10          3553(a)(2) of title 18, United States Code.

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