

112TH CONGRESS
2^D SESSION

H. R. 4223

IN THE SENATE OF THE UNITED STATES

JUNE 27, 2012

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

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.