

Calendar No. 495

112TH CONGRESS
2^D SESSION

S. 1002

[Report No. 112-204]

To prohibit theft of medical products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 16, 2011

Mr. SCHUMER (for himself, Mr. KYL, Ms. KLOBUCHAR, Mr. BROWN of Ohio, Mr. WHITEHOUSE, Mr. SESSIONS, Mr. GRAHAM, Mr. COONS, Mr. BENNET, Mr. LUGAR, Mr. NELSON of Florida, Mr. CASEY, Mr. BLUMENTHAL, Mr. LAUTENBERG, Mrs. HAGAN, Mr. PORTMAN, Mr. WYDEN, Mr. MENENDEZ, Ms. AYOTTE, Mr. WICKER, Mr. KIRK, Mr. COCHRAN, Mr. CORKER, Mr. ALEXANDER, Mr. COATS, Mrs. GILLIBRAND, Mr. KOHL, Mr. BROWN of Massachusetts, Mr. ROBERTS, Mr. CORNYN, Mr. LEE, Mrs. FEINSTEIN, Mr. COBURN, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

AUGUST 28, 2012

Reported, under authority of the order of the Senate of August 2, 2012, by
Mr. LEAHY, with an amendment

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

A BILL

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 2011” or the “SAFE DOSES Act”.

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

6 (a) **IN GENERAL.**—Chapter 31 of title 18, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

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

10 **“(a) DEFINITIONS.**—In this section—

11 “(1) the term ‘biological product’ has the mean-
12 ing given the term in section 351 of the Public
13 Health Service Act (42 U.S.C. 262);

14 “(2) the terms ‘device’, ‘drug’, ‘infant formula’,
15 and ‘labeling’ have the meanings given those terms
16 in section 201 of the Federal Food, Drug, and Cos-
17 metic Act (21 U.S.C. 321);

18 “(3) the term ‘medical food’ has the meaning
19 given the term in section 5(b) of the Orphan Drug
20 Act (21 U.S.C. 360cc(b)); and

21 “(4) the term ‘medical product’ means a drug,
22 biological product, device, medical food, or infant
23 formula that—

24 “(A) is being stored for transportation, or
25 is being or has been transported, shipped, or re-
26 ceived; and

1 “(B) has not yet been made available for
2 retail purchase by a customer at the time of the
3 relevant conduct described in subsection (b).

4 “(b) OFFENSES.—It shall be unlawful, using any
5 means or facility of interstate or foreign commerce, or in
6 or affecting interstate or foreign commerce, to know-
7 ingly—

8 “(1) steal, take without authorization, embezzle,
9 carry away, or obtain by fraud or deception a med-
10 ical product, or attempt or conspire to do so;

11 “(2) transport, handle, traffic in, or store a sto-
12 len medical product, or attempt or conspire to do so;
13 or

14 “(3) participate, in any way, in a scheme to
15 alter, forge, or falsify the labeling or documentation
16 (including documentation relating to origination or
17 shipping) of a stolen or expired medical product.

18 “(c) PENALTIES.—

19 “(1) IN GENERAL.—Any person that violates
20 subsection (b)—

21 “(A) if the value of the medical product or
22 products is less than \$5,000, shall be fined
23 under this title, imprisoned for not more than
24 3 years, or both; and

1 “(B) subject to paragraph (2), for any
2 other violation, shall be fined under this title,
3 imprisoned for not more than 20 years, or both.

4 “(2) ADDITIONAL FACTORS.—Any person that
5 violates subsection (b) shall be fined under this title
6 and imprisoned for not less than 1 year nor more
7 than 20 years if—

8 “(A) the value of the medical product or
9 products is not less than \$5,000; and

10 “(B) the—

11 “(i) person—

12 “(I) buys, or otherwise obtains, a
13 medical product, knowing or with
14 reckless disregard as to whether the
15 medical product is expired or has been
16 stolen, with the intent to sell or dis-
17 tribute the medical product;

18 “(II) sells, or distributes, a med-
19 ical product, knowing or with reckless
20 disregard as to whether the medical
21 product is expired or has been stolen;
22 or

23 “(III) at the time of the violation
24 is employed by, or is an agent of, an
25 organization in the supply chain from

1 which the stolen or expired medical
2 products were removed, including a
3 manufacturer, wholesaler, repacker,
4 own-label distributor, private-label dis-
5 tributor, jobber, broker, drug trader,
6 transportation company, hospital,
7 pharmacy, or security company; or

8 “(ii) violation—

9 “(I) involves the use of violence,
10 force, or a threat of violence or force;

11 “(II) involves the use of a deadly
12 weapon;

13 “(III) results in injury, including
14 the injury of deprivation of treatment,
15 or death caused by ingestion or use of
16 a stolen or expired medical product;
17 or

18 “(IV) is the second or subsequent
19 offense under subsection (b) com-
20 mitted by the person.

21 “(3) CIVIL PENALTIES.—

22 “(A) IN GENERAL.—The Attorney General
23 may bring a civil action in an appropriate
24 United States district court against any person

1 that engages in conduct that violates subsection
2 (b):

3 “(B) PENALTY.—In a civil action brought
4 under subparagraph (A) the court may impose
5 a civil penalty in an amount not more than the
6 greater of 3 times the economic loss attrib-
7 utable to the violation or \$1,000,000.”.

8 (b) CIVIL FORFEITURE.—Section 981(a)(1)(C) of
9 title 18, United States Code, is amended by inserting
10 “670,” after “657,”.

11 (c) TECHNICAL AND CONFORMING AMENDMENT.—
12 The table of sections for chapter 31 of title 18, United
13 States Code, is amended by adding after the item relating
14 to section 669 the following:

“670. Theft of medical products.”.

15 **SEC. 3. PENALTIES FOR THEFT-RELATED OFFENSES.**

16 (a) INTERSTATE OR FOREIGN SHIPMENTS BY CAR-
17 RIER.—Section 659 of title 18, United States Code, is
18 amended in the fifth undesignated paragraph, by striking
19 “10 years” and inserting “20 years”.

20 (b) RACKETEERING.—Chapter 95 of title 18, United
21 States Code, is amended—

22 (1) in section 1952(a)(3)(A), by striking “5
23 years” and inserting “20 years”; and

24 (2) in section 1957(b)(1), by striking “ten
25 years” and inserting “20 years”.

1 (c) BREAKING OR ENTERING CARRIER FACILI-
 2 TIES.—Section 2117 of title 18, United States Code, is
 3 amended in the first undesignated paragraph by striking
 4 “ten years” and inserting “20 years”.

5 (d) STOLEN PROPERTY.—Chapter 113 of title 18,
 6 United States Code, is amended—

7 (1) in section 2314, in the sixth undesignated
 8 paragraph, by striking “ten years” and inserting
 9 “20 years”; and

10 (2) in section 2315, in the fourth undesignated
 11 paragraph, by striking “ten years” and inserting
 12 “20 years”.

13 **SEC. 4. AMENDMENT TO RICO.**

14 Section 1961(1)(B) of title 18, United States Code,
 15 is amended by inserting “, section 670 (relating to theft
 16 of medical products)” before “, sections 891”.

17 **SEC. 5. AMENDMENT TO TITLE III.**

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

20 (1) by redesignating paragraph (s) as para-
 21 graph (t); and

22 (2) by inserting after paragraph (r) the fol-
 23 lowing:

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

1 **SEC. 6. AMENDMENT TO ORDER OF RESTITUTION.**

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

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

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

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

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

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

12 Pursuant to its authority under section 994 of title
13 28, United States Code, and in accordance with this Act,
14 the United States Sentencing Commission shall review
15 and, if appropriate, amend the Federal Sentencing Guide-
16 lines and policy statements applicable to a person con-
17 victed of an offense under section 2118 of title 18, United
18 States Code, section 670 of title 18, United States Code,
19 as added by this Act, or other section of title 18 of the
20 United States Code, amended by this Act.

21 **SECTION 1. SHORT TITLE.**

22 *This Act may be cited as the “Safe Doses Act”.*

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

24 (a) *PROHIBITED CONDUCT AND PENALTIES.*—Chapter
25 31 of title 18, United States Code, is amended by adding
26 at the end the following:

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

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

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

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

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

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

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

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

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

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

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

4 “(2) the violation—

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

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

8 “(C) results in serious bodily injury or
9 death, including serious bodily injury or death
10 resulting from the use of the medical product in-
11 volved; or

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

14 “(c) *CRIMINAL PENALTIES.*—Whoever violates sub-
15 section (a)—

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

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

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

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

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

11 “(2) *\$1,000,000.*

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

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

16 “(2) *the term ‘medical product’ means a drug,*
17 *biological product, device, medical food, or infant for-*
18 *mula;*

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

23 “(4) *the term ‘biological product’ has the mean-*
24 *ing given the term in section 351 of the Public Health*
25 *Service Act;*

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

4 “(6) the term ‘supply chain’ includes manufac-
5 turer, wholesaler, repacker, own-labeled distributor,
6 private-label distributor, jobber, broker, drug trader,
7 transportation company, hospital, pharmacy, or secu-
8 rity company.”.

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

 “670. Theft of medical products.”.

13 **SEC. 3. CIVIL FORFEITURE.**

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

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

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

24 (b) *RACKETEERING.*—

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

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

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

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

25 (d) *STOLEN PROPERTY.*—

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

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

19 **SEC. 5. INCLUSION OF NEW OFFENSE AS RICO PREDICATE.**

20 Section 1961(1)(B) of title 18, *United States Code, is*
21 *amended by inserting “, section 670 (relating to theft of*
22 *medical products)” before “, sections 891”.*

1 **SEC. 6. AMENDMENT TO EXTEND WIRETAPPING AUTHORITY**
 2 **TO NEW OFFENSE.**

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

5 *(1) by redesignating paragraph (s) as paragraph*
 6 *(t);*

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

9 *(3) by inserting after paragraph (r) the fol-*
 10 *lowing:*

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

13 **SEC. 7. REQUIRED RESTITUTION.**

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

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

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

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

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

22 **SEC. 8. DIRECTIVE TO THE UNITED STATES SENTENCING**
 23 **COMMISSION.**

24 *(a) IN GENERAL.—Pursuant to its authority under*
 25 *section 994 of title 28, United States Code, and in accord-*
 26 *ance with this section, the United States Sentencing Com-*

1 mission shall review and, if appropriate, amend the Federal
2 sentencing guidelines and policy statements applicable to
3 persons convicted of offenses under section 670 of title 18,
4 United States Code, as added by this Act, section 2118 of
5 title 18, United States Code, or any another section of title
6 18, United States Code, amended by this Act, to reflect the
7 intent of Congress that penalties for such offenses be suffi-
8 cient to deter and punish such offenses, and appropriately
9 account for the actual harm to the public from these of-
10 fenses.

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

13 (1) consider the extent to which the Federal sen-
14 tencing guidelines and policy statements appro-
15 priately reflect—

16 (A) the serious nature of such offenses;

17 (B) the incidence of such offenses; and

18 (C) the need for an effective deterrent and
19 appropriate punishment to prevent such offenses;

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

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

1 (4) *ensure reasonable consistency with other rel-*
2 *evant directives, Federal sentencing guidelines and*
3 *policy statements;*

4 (5) *make any necessary conforming changes to*
5 *the Federal sentencing guidelines and policy state-*
6 *ments; and*

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

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