

STRENGTHENING AND FOCUSING ENFORCEMENT TO
DETER ORGANIZED STEALING AND ENHANCE SAFETY
ACT OF 2012

—————
JUNE 25, 2012.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. SMITH of Texas, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 4223]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4223) to amend title 18, United States Code, to prohibit theft of medical products, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The Amendment

The amendment is as follows:
Strike all after the enacting clause and insert the following:

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

(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.

Purpose and Summary

This bill combats large-scale theft of pre-retail medical cargo, including life-saving drugs on which millions of Americans rely to cure illness, before it enters the stream of commerce. Specifically, the legislation: increases sentences for the theft, transportation, and storage of medical product cargo; enhances penalties for those who knowingly obtain stolen medical products for resale into the supply chain; increases sentences when injury or death results from ingestion of a stolen substance or where the defendant is employed by an organization in the supply chain; provides law enforcement tools such as wiretaps; and provides restitution to victims injured by stolen medical products.

Background and Need for the Legislation

Medical product cargo theft poses significant health risks to patients who are unaware that their medicines have been stolen and improperly cared for before being sold back into the legitimate supply chain.

Sophisticated and enterprising criminal organizations are stealing large quantities of medical products and selling them via the wholesale market into legitimate pharmacies and hospitals. They are putting patient safety at risk because improperly cared-for medical products can be ineffective or harmful, and such damaged products are often impossible for health care professionals to identify. High-value pharmaceuticals, including treatments for serious diseases, are frequent targets. Unfortunately, these high-value items are the very type of sensitive products that need the most careful handling and temperature control. Many medical products can become ineffective if stored at the wrong temperature, even for a brief time. Yet, under current law, the theft of life-saving medical supplies is punished to the same degree as the theft of stereo equipment or clothing.

The criminal organizations hijack tractor-trailers at rest stops, break into warehouses and evade alarm systems, forge shipping documents, produce high-quality counterfeit labels with altered expiration dates and lot numbers, and otherwise thwart the intense security measures used by the industry. Some employ sophisticated surveillance equipment and techniques in order to learn exactly

when and where they can steal the particular shipments they want.

Some prominent examples include:

- In 2009, thieves stole 129,000 vials of insulin (worth approximately \$11 million) in North Carolina. A few months later (in June), the Food and Drug Administration (FDA) received a report that some of the vials had been reintroduced into the supply chain when a diabetic patient reported to a medical center in Houston with an adverse reaction after using insulin from the stolen lot. The FDA issued a warning that the insulin had likely not been kept refrigerated correctly and could still be in the market. The spoiled product was ultimately found in pharmacies in 17 states, with at least 2 additional patients experiencing adverse reactions. An investigation linked the theft to an organized crime ring, and while some arrests have been made, more than 125,000 vials of insulin remain unaccounted for.
- Over \$75 million of prescription drugs, including treatments for cancer, heart disease, and neurological disorders including depression, ADHD and schizophrenia, were stolen from a warehouse in Enfield, Connecticut in March 2010.¹ The burglary was one of the largest pharmaceutical heists in history. The criminals broke into the secure facility on a weekend by cutting a hole in the roof and repelling into the storage area. They disabled the alarm system and loaded dozens of crates onto a tractor-trailer. Arrests and indictments were made in May 2012 and fortunately, nearly all the stolen product was recovered.²
- A truckload of insulin worth \$39 million was stolen in 2009 from a truck stop near Somerset, Pennsylvania. The trailer was eventually located with the product still inside but no arrests were made.
- Drugs that treat kidney failure, ADHD, schizophrenia, rheumatoid arthritis and ovarian cancer were stolen in three separate incidents between 2008 and 2009. The prescription drugs, worth over \$3 million in total, were taken during a distribution center break-in and in two separate trailer break-ins. The FBI made an arrest in only one of the three incidents, and the criminal was convicted.
- A trailer containing insulin and hormone therapy medication was stolen from a truck yard in Plainfield, Indiana in 2007. The investigation yielded evidence that a Cuban theft ring located in South Florida may have been responsible. Items from this theft have shown up in transaction records and warehouse seizures in other investigations—demonstrating a possible connection between different organized theft rings.
- In 2008, a truck container in the custody of a third-party shipper was stolen from its storage lot. Police tracked the

¹Amir Efrati & Peter Loftus, *Lilly Drugs Stolen in Warehouse Heist*, WALL ST. J., Mar. 17, 2010; Ian Yarett, *The \$75 Million Pharmaceutical Heist*, NEWSWEEK, Mar. 17, 2010.

²Peter Applebome & Kristin Hussey, *2 Brothers Accused in Huge Theft of Prescription Drugs*, N. Y. TIMES, May 3, 2012.

container and eventually recovered the contents—but no arrests were made.

- In at least 10 separate incidents between 2006 and 2010, thieves have stolen large amounts of infant formula from tractor-trailers. Such thefts have occurred in multiple states. Only two arrests and prosecutions have resulted. The product was recovered in a handful of the incidents.

In order to deter future incidents such as these, and to provide law enforcement with the tools necessary to disrupt and dismantle the criminal organizations that are carrying them out, the SAFE DOSES Act:

- Increases sentences for the theft, transportation and storage of medical product cargo, including: a maximum sentence of 30 years where serious injury or death result; 20 years for the other aggravated offenses (unless the value is less than \$5,000, in which case the maximum is 5 years); 15 years for products worth more than \$5,000; and 3 years for products worth less than \$5,000;
- Enhances penalties for the “fences” who knowingly obtain stolen medical products for resale into the supply chain;
- Provides law enforcement an ability to access tools such as wiretaps in appropriate cases;
- Provides restitution to victims injured by stolen medical products;
- Creates an aggravated felony where the defendant is an “insider” (employee or agent) of a company in the supply chain; uses violence or force or a deadly weapon; causes serious bodily injury; or is a repeat offender of this law;
- Provides for civil penalties; and
- Changes other theft-related offenses to make sure that a person charged under such offenses for theft of pre-retail medical products shall be sentenced in accordance with (the new) section 670, unless the penalties provided for under the amended section are otherwise higher.

This legislation is supported by the Coalition for Patient Safety and Medicine Integrity, a group of pharmaceutical, medical device and medical products companies whose purpose is to protect patients from the risks posed by stolen and inappropriately handled medical products re-entering the legitimate supply chain. Members of the Coalition include Abbott, Eli Lilly, GlaxoSmithKline, Johnson & Johnson, Novartis, Novo Nordisk, Sanofi, PhRMA and the Healthcare Distribution Management Association (HDMA). The Coalition’s efforts are supported by the Pharmaceutical Security Institute, the National Insurance Crime Bureau (NICB), and the Biotechnology Industry Organization (BIO). The Committee on the Judiciary received letters of support for H.R. 4223 from: the following organizations: Alliance for Patient Access; Global Healthy Living Foundation; Men’s Health Network; National Council for Community Behavioral Healthcare; Prostate Health Education Network (PHEN); and National Community Pharmacists Association.

On March 28, 2012, the Committee on the Judiciary held a hearing on H.R. 4223. Testifying in favor of H.R. 4223, Tom Kubic, President and CEO of the Pharmaceutical Security Institute (“PSI”), said that, “[l]arge-scale medical product theft is a significant problem,” and that passage of H.R. 4223 “will allow law enforcement to utilize well-established investigative tools against an increasingly sophisticated criminal element that traffic in stolen medical products without regard for public safety.”

H.R. 4223 creates a new section within Title 18 to establish penalties for the theft and trafficking of pre-retail medical products. The bill is targeted to address those who knowingly steal medical products before they enter the stream of commerce, and traffic in them before they reach authorized providers. The bill is not intended to address those who do not have knowledge of the nature of the products they steal. The bill is structured in such a way that *mens rea* is required for all elements of the offense, including the knowledge that the contraband in question are pre-retail medical products.

The Senate Judiciary Committee unanimously approved a companion bill on March 8, 2012.

Hearings

The Committee’s Subcommittee on Crime, Terrorism and Homeland Security held 1 day of hearings on H.R. 4223, on March 28, 2012. Testimony was received from Thomas T. Kubic, President and CEO, Pharmaceutical Security Institute.

Committee Consideration

On June 6, 2012, the Committee on the Judiciary met in open session and ordered the bill H.R. 4223 favorably reported, with an amendment, by voice vote, a quorum being present.

Committee Votes

Mr. Sensenbrenner offered a manager’s amendment, agreed to by voice vote, which made several small changes to track language in the Senate version of the bill, S. 1002. The manager’s amendment clarified the *mens rea* standard to ensure that the law would not capture inadvertent or unknowing conduct. It did so by inserting “knowingly,” in paragraphs (1) and (2) of the new Section 670.

The manager’s amendment also clarified that the aggravated offense can apply in thefts of less than \$3,000 and that the maximum penalty for such crimes is 5 years. Also in the aggravated offense section, the manager’s amendment changed the wording slightly to reflect the effect of prior convictions. The manager’s amendment also made a minor jurisdictional change so the interstate commerce nexus reads: “In, or using any means or facility of, interstate or foreign commerce.”

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall vote occurred during the Committee’s consideration of H.R. 4223:

1. Amendment by Mr. Polis to include “medical marijuana” as a pre-retail medical product for the purposes of the Act. Defeated 10–15.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Smith, Chairman		X	
Mr. Sensenbrenner, Jr.		X	
Mr. Coble			
Mr. Gallegly			
Mr. Goodlatte			
Mr. Lungren			
Mr. Chabot		X	
Mr. Issa			
Mr. Pence			
Mr. Forbes		X	
Mr. King		X	
Mr. Franks		X	
Mr. Gohmert			
Mr. Jordan			
Mr. Poe			
Mr. Chaffetz		X	
Mr. Griffin		X	
Mr. Marino		X	
Mr. Gowdy		X	
Mr. Ross		X	
Ms. Adams		X	
Mr. Quayle		X	
Mr. Amodei		X	
Mr. Conyers, Jr., Ranking Member	X		
Mr. Berman			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Cohen	X		
Mr. Johnson, Jr.		X	
Mr. Pierluisi	X		
Mr. Quigley			
Ms. Chu			
Mr. Deutch	X		
Ms. Sánchez	X		
Mr. Polis	X		
Total	10	15	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 4223, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 14, 2012.

Hon. LAMAR SMITH, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4223, the "SAFE DOSES Act."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 4223—SAFE DOSES Act.

As ordered reported by the House Committee on the Judiciary
on June 6, 2012.

CBO estimates that implementing H.R. 4223 would have no significant cost to the Federal Government. Enacting the bill could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any effects would be insignificant for each year.

H.R. 4223 would establish new Federal crimes relating to the theft of certain medical products. As a result, the government might be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that H.R. 4223 would apply to a relatively small number of additional offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 4223 could be subject to civil and criminal fines, the Federal Government might collect additional fines if the legislation is enacted. Civil and criminal fines are recorded as revenues. Criminal fines are depos-

ited in the Crime Victims Fund and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the relatively small number of cases likely to be affected.

H.R. 4223 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments.

On March 16, 2012, CBO transmitted a cost estimate for S. 1002, the Safe Doses Act, as ordered reported by the Senate Committee on the Judiciary on March 8, 2012. The two bills are similar and the cost estimates are the same.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 4223, makes improvements to the criminal code that will help law enforcement officials pursue those who steal and traffic pre-retail medical cargo.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 4223 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

Section 1. Short Title

This section cites the short title of the Act as the “Strengthening and Focusing Enforcement to Deter Organized Stealing and Enhance Safety Act” or “SAFE DOSES” Act of 2012.

Section 2. Theft of Medical Products

This section adds a new section 670 to Title 18, “Theft of medical products.”

- (a) *Prohibited Conduct.* This subsection establishes the offenses of (1) stealing a “pre-retail medical product” or obtaining it by fraud; (2) falsifying the labeling or shipping documents of pre-retail medical products; (3) possessing, transporting or trafficking in a pre-retail medical product involved in a violation of (1) or (2); (4) fraudulently obtaining an expired or stolen pre-retail medical product; (5) fraudulently selling or distributing an expired or stolen pre-retail medical product; or (6) attempting or conspiring to violate (1) through (5).
- (b) *Aggravated Offenses.* This subsection establishes an aggravated offense where (1) the defendant is an employee or agent of an organization in the supply chain for the pre-retail medical product or (2) the violation involves violence or a deadly weapon, or causes serious bodily injury or death, or is the defendant’s second offense under this section.

- (c) *Criminal Penalties.* This subsection establishes that the penalty for a violation of this section shall be (1) up to 30 years if the offense causes serious bodily injury or death; (2) up to 20 years for the other aggravated offenses (unless the value is less than \$5,000, in which case the maximum is 5 years); (3) 15 years for products worth more than \$5,000; and (4) 3 years for products worth less than \$5,000.
- (d) *Civil Penalties.* This subsection allows whoever violates subsection (a) to be subject to a civil penalty up to three times the economic loss attributable to the violation, or one million dollars, whichever is greater.
- (e) *Definitions.* This subsection defines the term “pre-retail medical product” as a medical product that has not yet been made available for retail purchase by a consumer; it defines a “medical product” as a drug, biological product, device, medical food or infant formula, and incorporates existing US Code definitions for each of those terms; it defines “supply chain” to include manufacturers, wholesalers, distributors, brokers, pharmacies, hospitals and security companies.

Section 3. Civil Forfeiture.

This section adds theft of medical products to the list of offenses for which civil forfeiture is available.

Section 4. Penalties for Theft Related Offenses.

This section amends a handful of statutes that prosecutors presently use in cases of large-scale cargo theft to say that, when the offenses charged under those sections involve pre-retail medical products, they shall be punished under Section 670. This section also instructs the Attorney General to give increased priority to investigating and prosecuting crimes involving pre-retail medical products.

Section 5. Amendment to Extend Wiretapping Authority to New Offense.

This section adds theft of medical products to the list of offenses eligible for Title III wiretaps.

Section 6. Required Restitution.

This section adds theft of medical products to the list of crimes requiring a restitution order.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 31—EMBEZZLEMENT AND THEFT

Sec.						
641.	Public money, property or records.	*	*	*	*	*
670.	<i>Theft of medical products.</i>	*	*	*	*	*

§ 659. Interstate or foreign shipments by carrier; State prosecutions

Whoever embezzles, steals, or unlawfully takes, carries away, or conceals, or by fraud or deception obtains from any pipeline system, railroad car, wagon, motortruck, trailer, or other vehicle, or from any tank or storage facility, station, station house, platform or depot or from any steamboat, vessel, or wharf, or from any aircraft, air cargo container, air terminal, airport, aircraft terminal or air navigation facility, or from any intermodal container, trailer, container freight station, warehouse, or freight consolidation facility, with intent to convert to his own use any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight, express, or other property; or

* * * * *

Shall be fined under this title or imprisoned not more than 10 years, or both, but if the amount or value of such money, baggage, goods, or chattels is less than \$1,000, shall be fined under this title or imprisoned for not more than 3 years, or both. *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.*

* * * * *

§ 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.

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CHAPTER 46—FORFEITURE

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§ 981. Civil forfeiture

(a)(1) The following property is subject to forfeiture to the United States:

(A) * * *

* * * * *

(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section 215, 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 656, 657, 670, 842, 844, 1005, 1006, 1007, 1014, 1028, 1029, 1030, 1032, or 1344 of this title or any offense constituting “specified unlawful activity” (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

* * * * *

CHAPTER 95—RACKETEERING

* * * * *

§ 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

(a) * * *

* * * * *

(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.*

* * * * *

§ 1957. Engaging in monetary transactions in property derived from specified unlawful activity

(a) * * *

(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both. *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.*

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CHAPTER 103—ROBBERY AND BURGLARY

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§ 2117. Breaking or entering carrier facilities

Whoever breaks the seal or lock of any railroad car, vessel, aircraft, motortruck, wagon or other vehicle or of any pipeline system, containing interstate or foreign shipments of freight or express or

other property, or enters any such vehicle or pipeline system with intent in either case to commit larceny therein, shall be fined under this title or imprisoned not more than ten years, or both. *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.*

* * * * *

CHAPTER 113—STOLEN PROPERTY

* * * * *

§ 2314. Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting

Whoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or

* * * * *

Shall be fined under this title or imprisoned not more than ten years, or both. *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.*

* * * * *

§ 2315. Sale or receipt of stolen goods, securities, moneys, or fraudulent State tax stamps

Whoever receives, possesses, conceals, stores, barter, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of \$5,000 or more, or pledges or accepts as security for a loan any goods, wares, or merchandise, or securities, of the value of \$500 or more, which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken; or

* * * * *

Shall be fined under this title or imprisoned not more than ten years, or both. *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.*

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CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

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§ 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division or National Security Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

(a) * * *

* * * * *

(r) any criminal violation of section 1 (relating to illegal restraints of trade or commerce), 2 (relating to illegal monopolizing of trade or commerce), or 3 (relating to illegal restraints of trade or commerce in territories or the District of Columbia) of the Sherman Act (15 U.S.C. 1, 2, 3); **[or]**

(s) *any violation of section 670 (relating to theft of medical products); or*

[(s)] (t) any conspiracy to commit any offense described in any subparagraph of this paragraph.

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PART II—CRIMINAL PROCEDURE

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CHAPTER 232—MISCELLANEOUS SENTENCING PROVISIONS

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§ 3663A. Mandatory restitution to victims of certain crimes

(a) * * *

* * * * *

(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense—

(A) that is—

(i) * * *

(ii) an offense against property under this title, or under section 416(a) of the Controlled Substances Act (21 U.S.C. 856(a)), including any offense committed by fraud or deceit; **[or]**

(iii) an offense described in section 1365 (relating to tampering with consumer products); **[and]** *or*

*(iv) an offense under section 670 (relating to theft of
medical products); and*

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