

Calendar No. 277

109TH CONGRESS
1ST SESSION**S. 1095**

To amend chapter 113 of title 18, United States Code, to clarify the prohibition on the trafficking in goods or services, and for other purposes.

 IN THE SENATE OF THE UNITED STATES

MAY 20, 2005

Mr. CORNYN (for himself and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

NOVEMBER 3, 2005

Reported by Mr. SPECTER, with an amendment

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

A BILL

To amend chapter 113 of title 18, United States Code, to clarify the prohibition on the trafficking in goods or services, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting American
 5 Goods and Services Act of 2005”.

1 **SEC. 2. PROHIBITION ON TRAFFICKING OF CERTAIN**
2 **GOODS AND SERVICES.**

3 (a) IN GENERAL.—Section 2320 of title 18, United
4 States Code, is amended—

5 (1) by striking subsection (a) and inserting the
6 following:

7 “(a)(1) Any person who intentionally traffics or at-
8 tempts to traffic in goods or services and knowingly uses
9 a counterfeit mark on or in connection with such goods
10 or services—

11 “(A) if an individual, shall be fined not more
12 than \$2,000,000, imprisoned not more than 10
13 years, or both; and

14 “(B) if a person other than an individual, shall
15 be fined not more than \$5,000,000.

16 “(2) Any person who possesses goods with a counter-
17 feit mark with an intent to traffic such goods—

18 “(A) if an individual, shall be fined not more
19 than \$2,000,000, or imprisoned not more than 10
20 years, or both; and

21 “(B) if a person other than an individual, shall
22 be fined not more than \$5,000,000.

23 “(3) In the case of an offense by a person under this
24 section that occurs after that person is convicted of an-
25 other offense under this section, the person—

1 “(A) if an individual, shall be fined not more
2 than \$5,000,000, imprisoned not more than 20
3 years, or both; and

4 “(B) if other than an individual, shall be fined
5 not more than \$15,000,000.”; and

6 (2) in subsection (b), by striking paragraph (2)
7 and inserting the following:

8 “(2) the term ‘traffic’ means—

9 “(A) transport, transfer, or otherwise dis-
10 pose of, to another as consideration for any-
11 thing of value or without consideration; or

12 “(B) make or obtain control of with intent
13 to so transport, transfer, or dispose of; and”.

14 (b) PROHIBITION OF TRANSPORT OF COUNTERFEIT
15 GOODS OR UNAUTHORIZED COPIES AND PHONORECORDS
16 OF COPYRIGHTED WORKS.—

17 (1) IN GENERAL.—Chapter 113 of title 18,
18 United States Code, is amended by inserting after
19 section 2320 the following:

20 **“§ 2320A. Transport of counterfeit goods and unau-**
21 **thorized copyrighted works into or out of**
22 **the United States**

23 “(a) DEFINITIONS.—In this section—

1 “(1) the terms ‘copies’ and ‘phonorecords’ have
2 the respective meanings given under section 101 of
3 title 17;

4 “(2) the term ‘counterfeit mark’ has the mean-
5 ing given under section 2320(e)(1); and

6 “(3) the term ‘United States’ means each of the
7 several States of the United States, the District of
8 Columbia, and the territories and possessions of the
9 United States.

10 “(b) OFFENSE.—Any person who intentionally trans-
11 ports goods bearing a counterfeit mark or copies or
12 phonorecords of a copyrighted work not authorized by the
13 copyright holder into or out of the United States for the
14 purposes of commercial advantage or private financial
15 gain shall be fined not more than \$100,000, imprisoned
16 not more than 10 years, or both.”.

17 (2) TECHNICAL AND CONFORMING AMEND-
18 MENT.—The table of sections for chapter 113 of
19 title 18, United States Code, is amended by insert-
20 ing after the item relating to section 2320 the fol-
21 lowing:

“2320A. Transport of counterfeit goods and unauthorized copyrighted works
into or out of the United States.”.

22 **SECTION 1. TRAFFICKING DEFINED.**

23 (a) COUNTERFEIT GOODS OR SERVICES.—Section
24 2320(e) of title 18, United States Code, is amended—

1 (1) *by striking paragraph (2) and inserting the*
 2 *following:*

3 “(2) *the term ‘traffic’ means to transport, trans-*
 4 *fer, or otherwise dispose of, to another, for purposes*
 5 *of commercial advantage or private financial gain, or*
 6 *to make, import, export, obtain control of, or possess,*
 7 *with intent to so transport, transfer, or otherwise dis-*
 8 *pose of;”*; and

9 (2) *by redesignating paragraph (3) as para-*
 10 *graph (4) and inserting the following:*

11 “(3) *the term ‘financial gain’ includes the re-*
 12 *ceipt, or expected receipt, of anything of value; and”.*

13 (b) *CONFORMING AMENDMENTS.—*

14 (1) *SOUND RECORDINGS AND MUSIC VIDEOS OF*
 15 *LIVE MUSICAL PERFORMANCES.—Section 2319A(e) of*
 16 *title 18, United States Code, is amended by striking*
 17 *paragraph (2) and inserting the following:*

18 “(2) *the term ‘traffic’ has the same meaning as*
 19 *in section 2320(e) of this title.”.*

20 (2) *COUNTERFEIT LABELS FOR PHONORECORDS,*
 21 *COMPUTER PROGRAMS, ETC.—Section 2318(b) of title*
 22 *18, United States Code, is amended by striking para-*
 23 *graph (2) and inserting the following:*

24 “(2) *the term ‘traffic’ has the same meaning as*
 25 *in section 2320(e) of this title;”.*

1 (3) *ANTI-BOOTLEGGING.*—*Section 1101 of title*
2 *17, United States Code, is amended by striking sub-*
3 *section (b) and inserting the following:*

4 “(b) *DEFINITION.*—*As used in this section, the term*
5 *‘traffic’ has the same meaning as in section 2320(e) of title*
6 *18, United States Code.*”.

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