

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3668

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IN THE SENATE OF THE UNITED STATES

JUNE 19, 2012

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

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## AN ACT

To prevent trafficking in counterfeit drugs.

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 “Counterfeit Drug Pen-  
3 alty Enhancement Act of 2012”.

4 **SEC. 2. COUNTERFEIT DRUG PENALTY ENHANCEMENT.**

5 (a) OFFENSE.—Section 2320(a) of title 18, United  
6 States Code, is amended—

7 (1) by striking “or” at the end of paragraph

8 (2);

9 (2) by inserting “or” at the end of paragraph

10 (3);

11 (3) by inserting after paragraph (3) the fol-  
12 lowing:

13 “(4) traffics in a counterfeit drug,”; and

14 (4) by striking “through (3)” and inserting  
15 “through (4)”.

16 (b) PENALTIES.—Section 2320(b)(3) of title 18,  
17 United States Code, is amended—

18 (1) in the heading, by inserting “AND COUN-  
19 TERFEIT DRUGS” after “SERVICES”; and

20 (2) by inserting “or counterfeit drug” after  
21 “service”.

22 (c) DEFINITION.—Section 2320(f) of title 18, United  
23 States Code, is amended—

24 (1) by striking “and” at the end of paragraph

25 (4);

1           (2) by striking the period at the end of para-  
2           graph (5) and inserting “; and”; and

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

4           “(6) the term ‘counterfeit drug’ means a drug,  
5           as defined by section 201 of the Federal Food,  
6           Drug, and Cosmetic Act, that uses a counterfeit  
7           mark on or in connection with the drug.”.

8           (d) **PRIORITY GIVEN TO CERTAIN INVESTIGATIONS**  
9 **AND PROSECUTIONS.**—The Attorney General shall give in-  
10 creased priority to efforts to investigate and prosecute of-  
11 fenses under section 2320 of title 18, United States Code,  
12 that involve counterfeit drugs.

13 **SEC. 3. SENTENCING COMMISSION DIRECTIVE.**

14           (a) **DIRECTIVE TO SENTENCING COMMISSION.**—Pur-  
15 suant to its authority under section 994(p) of title 28,  
16 United States Code, and in accordance with this section,  
17 the United States Sentencing Commission shall review and  
18 amend, if appropriate, its guidelines and its policy state-  
19 ments applicable to persons convicted of an offense de-  
20 scribed in section 2320(a)(4) of title 18, United States  
21 Code, as amended by section 2, in order to reflect the in-  
22 tent of Congress that such penalties be increased in com-  
23 parison to those currently provided by the guidelines and  
24 policy statements.

1 (b) REQUIREMENTS.—In carrying out this section,  
2 the Commission shall—

3 (1) ensure that the sentencing guidelines and  
4 policy statements reflect the intent of Congress that  
5 the guidelines and policy statements reflect the seri-  
6 ous nature of the offenses described in subsection  
7 (a) and the need for an effective deterrent and ap-  
8 propriate punishment to prevent such offenses;

9 (2) consider the extent to which the guidelines  
10 may or may not appropriately account for the poten-  
11 tial and actual harm to the public resulting from the  
12 offense;

13 (3) assure reasonable consistency with other  
14 relevant directives and with other sentencing guide-  
15 lines;

16 (4) account for any additional aggravating or  
17 mitigating circumstances that might justify excep-  
18 tions to the generally applicable sentencing ranges;

19 (5) make any necessary conforming changes to  
20 the sentencing guidelines; and

1                   (6) assure that the guidelines adequately meet  
2 the purposes of sentencing as set forth in section  
3 3553(a)(2) of title 18, United States Code.

Passed the House of Representatives June 18, 2012.

Attest:   KAREN L. HAAS,  
*Clerk.*