

112TH CONGRESS  
2D SESSION

# S. 1886

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IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2012

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 2011”.

4 **SEC. 2. COUNTERFEIT DRUG PREVENTION.**

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

7           (1) by redesignating paragraphs (2) and (3) as  
8 paragraphs (3) and (4), respectively; and

9           (2) by inserting after paragraph (1) the fol-  
10 lowing:

11           “(2) COUNTERFEIT DRUGS.—

12               “(A) IN GENERAL.—Whoever commits an  
13 offense under subsection (a) with respect to a  
14 drug (as defined in section 201 of the Federal  
15 Food, Drug, and Cosmetic Act (21 U.S.C.  
16 321)) shall—

17                   “(i) if an individual, be fined not more  
18 than \$4,000,000, imprisoned not more  
19 than 20 years, or both; and

20                   “(ii) if a person other than an indi-  
21 vidual, be fined not more than  
22 \$10,000,000.

23           “(B) MULTIPLE OFFENSES.—In the case  
24 of an offense by a person under this paragraph  
25 that occurs after that person is convicted of an-

1 other offense under this paragraph, the person  
2 convicted—

3 “(i) if an individual, shall be fined not  
4 more than \$8,000,000, imprisoned not  
5 more than 20 years, or both; and

6 “(ii) if other than an individual, shall  
7 be fined not more than \$20,000,000.”.

8 **SEC. 3. SENTENCING COMMISSION DIRECTIVE.**

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

20 (b) REQUIREMENTS.—In carrying out this section,  
21 the Commission shall—

22 (1) ensure that the sentencing guidelines and  
23 policy statements reflect the intent of Congress that  
24 the guidelines and policy statements reflect the seri-  
25 ous nature of the offenses described in subsection

1 (a) and the need for an effective deterrent and ap-  
2 propriate punishment to prevent such offenses;

3 (2) consider the extent to which the guidelines  
4 may or may not appropriately account for the poten-  
5 tial and actual harm to the public resulting from the  
6 offense;

7 (3) assure reasonable consistency with other  
8 relevant directives and with other sentencing guide-  
9 lines;

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

13 (5) make any necessary conforming changes to  
14 the sentencing guidelines; and

15 (6) assure that the guidelines adequately meet  
16 the purposes of sentencing as set forth in section  
17 3553(a)(2) of title 18, United States Code.

Passed the Senate March 6, 2012.

Attest:

NANCY ERICKSON,

*Secretary.*