

112TH CONGRESS
1ST SESSION

S. _____

To prevent trafficking in counterfeit drugs.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Counterfeit Drug Pen-
5 alty Enhancement Act of 2011”.

6 **SEC. 2. COUNTERFEIT DRUG PREVENTION.**

7 Section 2320(a) of title 18, United States Code, is
8 amended—

9 (1) by redesignating paragraph (2) as para-
10 graph (3);

11 (2) by inserting after paragraph (1) the fol-
12 lowing:

1 “(2) COUNTERFEIT DRUGS.—

2 “(A) IN GENERAL.—Whoever commits an
3 offense in violation of paragraph (1) with re-
4 spect to a drug (as defined in section 201 of the
5 Federal Food, Drug, and Cosmetic Act (21
6 U.S.C. 321)) shall—

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

10 “(ii) if a person other than an indi-
11 vidual, be fined not more than
12 \$10,000,000.

13 “(B) MULTIPLE OFFENSES.—In the case
14 of an offense by a person under this paragraph
15 that occurs after that person is convicted of an-
16 other offense under this paragraph, the person
17 convicted—

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

21 “(ii) if other than an individual, shall
22 be fined not more than \$20,000,000.”; and

23 (3) in paragraph (3)(B), as redesignated, by
24 striking “paragraph (1)” and inserting “paragraph
25 (1) or (2)”.

1 **SEC. 3. SENTENCING COMMISSION DIRECTIVE.**

2 (a) DIRECTIVE TO SENTENCING COMMISSION.—Pur-
3 suant to its authority under section 994(p) of title 28,
4 United States Code, and in accordance with this section,
5 the United States Sentencing Commission shall review and
6 amend, if appropriate, its guidelines and its policy state-
7 ments applicable to persons convicted of an offense under
8 section 2320(a)(2) of title 18, United States Code, in
9 order to reflect the intent of Congress that such penalties
10 be increased in comparison to those currently provided by
11 the guidelines and policy statements.

12 (b) REQUIREMENTS.—In carrying out this section,
13 the Commission shall—

14 (1) ensure that the sentencing guidelines and
15 policy statements reflect the intent of Congress that
16 the guidelines and policy statements reflect the seri-
17 ous nature of the offenses described in subsection
18 (a) and the need for an effective deterrent and ap-
19 propriate punishment to prevent such offenses;

20 (2) consider the extent to which the guidelines
21 may or may not appropriately account for the poten-
22 tial and actual harm to the public resulting from the
23 offense;

24 (3) assure reasonable consistency with other
25 relevant directives and with other sentencing guide-
26 lines;

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

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

6 (6) assure that the guidelines adequately meet
7 the purposes of sentencing as set forth in section
8 3553(a)(2) of title 18, United States Code.