

(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.

(Added Pub. L. 112-186, §2(a), Oct. 5, 2012, 126 Stat. 1427.)

REFERENCES IN TEXT

Section 201 of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (e)(3), is classified to section 321 of Title 21, Food and Drugs.

Section 351 of the Public Health Service Act, referred to in subsec. (e)(4), is classified to section 262 of Title 42, The Public Health and Welfare.

Section 5(b) of the Orphan Drug Act, referred to in subsec. (e)(5), is classified to section 360ee(b) of Title 21.

PRIORITY GIVEN TO CERTAIN INVESTIGATIONS AND PROSECUTIONS

Pub. L. 112-186, §4(e), Oct. 5, 2012, 126 Stat. 1429, provided that: “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.”

CHAPTER 33—EMBLEMS, INSIGNIA, AND NAMES

Sec. 700.	Desecration of the flag of the United States; penalties.
701.	Official badges, identification cards, other insignia.
702.	Uniform of armed forces and Public Health Service.
703.	Uniform of friendly nation.
704.	Military medals or decorations.
705.	Badge or medal of veterans' organizations.
706.	Red Cross.
706a.	Geneva distinctive emblems.
707.	4-H Club emblem fraudulently used. ¹
708.	Swiss Confederation coat of arms.
709.	False advertising or misuse of names to indicate Federal agency.
710.	Cremation urns for military use.
711.	“Smokey Bear” character or name.
711a.	“Woodsy Owl” character, name, or slogan.
712.	Misuse of names, words, emblems, or insignia.
713.	Use of likenesses of the great seal of the United States, the seals of the President and Vice President, the seal of the United States Senate, the seal of the United States House of Representatives, and the seal of the United States Congress.
[714.	Repealed.]
715.	“The Golden Eagle Insignia”.
716.	Public employee insignia and uniform.

AMENDMENTS

2007—Pub. L. 109-481, §2(b), Jan. 12, 2007, 120 Stat. 3674, added item 706a.

2006—Pub. L. 109-162, title XI, §1191(b), Jan. 5, 2006, 119 Stat. 3129, substituted “Public employee insignia and uniform” for “Police badges” in item 716.

2000—Pub. L. 106-547, §3(b), Dec. 19, 2000, 114 Stat. 2740, added item 716.

1997—Pub. L. 105-55, title III, §308(e), Oct. 7, 1997, 111 Stat. 1198, substituted “Use of likenesses of the great seal of the United States, the seals of the President and Vice President, the seal of the United States Senate, the seal of the United States House of Representatives, and the seal of the United States Congress” for “Use of likenesses of the great seal of the United States, the seals of the President and Vice President, and the seal of the United States Senate” in item 713.

1991—Pub. L. 102-229, title II, §210(e), Dec. 12, 1991, 105 Stat. 1717, substituted “Use of likenesses of the great seal of the United States, the seals of the President and

¹ So in original. Does not conform to section catchline.

Vice President, and the seal of the United States Senate.” for “Use of likenesses of the great seal of the United States, and of the seals of the President and Vice President.” in item 713.

1990—Pub. L. 101-647, title XXXV, §3518, Nov. 29, 1990, 104 Stat. 4923, inserted a comma after “INSIGNIA” in chapter heading.

1982—Pub. L. 97-258, §2(d)(1)(A), Sept. 13, 1982, 96 Stat. 1058, struck out item 714 relating to “Johnny Horizon” character or name.

1974—Pub. L. 93-318, §8, June 22, 1974, 88 Stat. 245, added item 711a.

1973—Pub. L. 93-147, §1(b), Nov. 3, 1973, 87 Stat. 555, substituted “Misuse of names, words, emblems, or insignia” for “Misuse of names by collecting agencies to indicate Federal agency” in item 712.

1972—Pub. L. 92-347, §3(c), July 11, 1972, 86 Stat. 462, added item 715.

1971—Pub. L. 91-651, §2, Jan. 5, 1971, 84 Stat. 1941, inserted “, and of the seals of the President and Vice President” after “United States” in item 713.

1970—Pub. L. 91-419, §4, Sept. 25, 1970, 84 Stat. 871, added item 714.

1968—Pub. L. 90-381, §2, July 5, 1968, 82 Stat. 291, added item 700.

1966—Pub. L. 89-807, §1(b), Nov. 11, 1966, 80 Stat. 1525, added item 713.

1959—Pub. L. 86-291, §3, Sept. 21, 1959, 73 Stat. 570, added item 712.

1952—Act May 23, 1952, ch. 327, §2, 66 Stat. 92, added item 711.

1950—Act Sept. 28, 1950, ch. 1092, §1(a), 64 Stat. 1077, added item 710.

1949—Act May 24, 1949, ch. 139, §14, 63 Stat. 91, inserted “Uniform of armed forces and Public Health Service” in lieu of enumerating the specific branches in item 702.

§ 700. Desecration of the flag of the United States; penalties

(a)(1) Whoever knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon any flag of the United States shall be fined under this title or imprisoned for not more than one year, or both.

(2) This subsection does not prohibit any conduct consisting of the disposal of a flag when it has become worn or soiled.

(b) As used in this section, the term “flag of the United States” means any flag of the United States, or any part thereof, made of any substance, of any size, in a form that is commonly displayed.

(c) Nothing in this section shall be construed as indicating an intent on the part of Congress to deprive any State, territory, possession, or the Commonwealth of Puerto Rico of jurisdiction over any offense over which it would have jurisdiction in the absence of this section.

(d)(1) An appeal may be taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order issued by a United States district court ruling upon the constitutionality of subsection (a).

(2) The Supreme Court shall, if it has not previously ruled on the question, accept jurisdiction over the appeal and advance on the docket and expedite to the greatest extent possible.

(Added Pub. L. 90-381, §1, July 5, 1968, 82 Stat. 291; amended Pub. L. 101-131, §§2, 3, Oct. 28, 1989, 103 Stat. 777.)

CONSTITUTIONALITY

For information regarding constitutionality of this section as amended by Pub. L. 101-131, see Congress-

sional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-131, §2(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Whoever knowingly casts contempt upon any flag of the United States by publicly mutilating, defacing, defiling, burning, or trampling upon it shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.”

Subsec. (b). Pub. L. 101-131, §2(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The term ‘flag of the United States’ as used in this section, shall include any flag, standard colors, ensign, or any picture or representation of either, or of any part or parts of either, made of any substance or represented on any substance, of any size evidently purporting to be either of said flag, standard, color, or ensign of the United States of America, or a picture or a representation of either, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, standards, colors, or ensign of the United States of America.”

Subsec. (d). Pub. L. 101-131, §3, added subsec. (d).

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-547, §1, Dec. 19, 2000, 114 Stat. 2738, provided that: “This Act [enacting sections 716 and 1036 of this title] may be cited as the ‘Enhanced Federal Security Act of 2000.’”

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101-131, §1, Oct. 28, 1989, 103 Stat. 777, provided that: “This Act [amending this section] may be cited as the ‘Flag Protection Act of 1989.’”

§ 701. Official badges, identification cards, other insignia

Whoever manufactures, sells, or possesses any badge, identification card, or other insignia, of the design prescribed by the head of any department or agency of the United States for use by any officer or employee thereof, or any colorable imitation thereof, or photographs, prints, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia, or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be fined under this title or imprisoned not more than six months, or both.

(June 25, 1948, ch. 645, 62 Stat. 731; Pub. L. 103-322, title XXXIII, §330016(1)(E), Sept. 13, 1994, 108 Stat. 2146.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§76a, 76b (June 29, 1932, ch. 306, §§1, 2, 47 Stat. 342; May 22, 1939, ch. 141, 53 Stat. 752).

Sections were consolidated.

The term “department or agency” was substituted for “department or independent office” in two places to embrace all properly constituted agencies as defined in section 6 of this title and to eliminate any possible ambiguity as to scope of section.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103-322 substituted “fined under this title” for “fined not more than \$250”.