

105TH CONGRESS  
2D SESSION

# S. 2600

To amend section 402 of the Controlled Substances Act to reform the civil remedy provisions relating to recordkeeping violations.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 9 (legislative day, OCTOBER 2), 1998

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend section 402 of the Controlled Substances Act to reform the civil remedy provisions relating to recordkeeping violations.

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 “Controlled Substances  
5 Civil Penalty Reform Act of 1998”.

6       **SEC. 2. CIVIL PENALTY REFORM.**

7       Section 402 of the Controlled Substances Act (21  
8 U.S.C. 842) is amended—

9               (1) in subsection (a)—

1 (A) in paragraph (5), by inserting “neg-  
2 ligently” after “(5)”; and

3 (B) in paragraph (10), by inserting “neg-  
4 ligently” after “(10)”; and

5 (2) in subsection (c)(1)—

6 (A) by striking “Except as provided in  
7 paragraph (2)” and inserting “(A) Except as  
8 provided in subparagraph (B) of this paragraph  
9 and in paragraph (2)”; and

10 (B) by adding at the end the following:

11 “(B) In the case of a violation of paragraph (5) or  
12 (10) of subsection (a) in which, a result of the violation,  
13 no unauthorized person obtains unlawful control of a con-  
14 trolled substance, the amount of the civil penalty shall not  
15 exceed \$10,000.”; and

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

17 “(d) CIVIL ACTIONS FOR RECORDKEEPING VIOLA-  
18 TIONS.—

19 “(1) IN GENERAL.—In deciding whether to pur-  
20 sue a civil action associated with a violation of para-  
21 graph (5) or (10) of subsection (a), the Attorney  
22 General shall consider—

23 “(A) whether diversion actually occurred;

24 “(B) whether actual harm to the public re-  
25 sulted from the diversion;

1           “(C) whether the violations were inten-  
2           tional or negligent in nature;

3           “(D) whether the violations were a first  
4           time offense;

5           “(E) time intervals between inspections  
6           where no or any serious violations were found;

7           “(F) whether the violations were multiple  
8           occurrences of the same type of violation;

9           “(G) whether and to what extent financial  
10          profits may have resulted from the diversion;  
11          and

12          “(H) the financial capacity of registrants  
13          to pay the fines assessed.

14          “(2) FACTORS FOR CONSIDERATION; INFORMAL  
15          PROCEDURES.—In determining whether to assess a  
16          penalty under subsection (c) for a violation of para-  
17          graph (5) or (10) of subsection (a) and, if so, the  
18          amount of the penalty, the Attorney General, may—

19                 “(A) take into account whether the violator  
20                 has taken immediate and effective corrective ac-  
21                 tions, including demonstrating the existence of  
22                 compliance procedures, in order to reduce the  
23                 potential for any future violations; and

24                 “(B) follow informal procedures such as  
25                 sending 1 or more warning letters to the viola-

1           tor, as the Attorney General determines to be  
2           appropriate.”.

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