

Calendar No. 381

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 114-221

REINFORCING AMERICAN-MADE PRODUCTS
ACT OF 2015

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1518



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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

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SECOND SESSION

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 1518]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1518) to make exclusive the authority of the Federal Government to regulate the labeling of products made in the United States and introduced in interstate or foreign commerce, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 1518, the Reinforcing American-Made Products Act of 2015, is to ensure that there is a single national standard for labeling products as “Made in the U.S.A.” or “Made in America.”

BACKGROUND AND NEEDS

The Federal Trade Commission (FTC or Commission) currently regulates claims of U.S. origin under its general authority to act against deceptive acts and practices under section 5 of the Federal Trade Commission Act (FTC Act, 15 U.S.C. 45). Under section 320933 of the Violent Crime Control and Law Enforcement Act of 1994 (15 U.S.C. 45a), products bearing the “Made in the U.S.A.” or “Made in America” label are required to do so in a manner consistent with the decisions and orders of the FTC. Since 1997, the FTC has enforced a stringent national labeling standard that requires products marked “Made in the U.S.A.” or “Made in America”

to be “all or virtually all” produced in the United States.¹ Under this standard, marketers labeling or advertising a product as “Made in the U.S.A.” must have a reasonable basis to support the claim. The Commission considers three factors in evaluating whether “all or virtually all” of a product is made in the United States: (1) whether the final assembly or processing of the product took place in the United States; (2) the portion of the total manufacturing cost of the product that is attributable to U.S. parts and processing; and (3) how far removed from the finished product any foreign content is.

In 2011, the California Supreme Court allowed a lawsuit to proceed wherein plaintiffs challenged a company’s “Made in the U.S.A.” claim under the State’s unfair competition law and false advertising law, effectively establishing a State standard that diverged from the FTC standard. California later codified its own “Made in the U.S.A.” standard, under which a product can bear the “Made in the U.S.A.” label in California if 95 percent of its contents are domestically sourced. If a company can certify that some components are unavailable in the United States, then a 90 percent threshold applies. These divergent standards raise interstate commerce concerns for manufacturers. Most manufacturers do not have the ability to control where their products are sold because they sell their goods wholesale to national and international distributors. The products are then shipped to retailers throughout the country. Because of this market reality, many U.S. manufacturers eligible to use the “Made in the U.S.A.” mark in 49 out of 50 States and the rest of the world cannot label their products as such because they may ultimately reach the more restrictive California market.

S. 1518 would amend the Federal product labeling statute to ensure that the current authority of the FTC to enforce “Made in the U.S.A.” labeling rules preempts State requirements. This national standard would allow manufacturers with “all or virtually all” parts of their product produced in the United States to use the label, and would help consumers decide whether their choice to purchase products marked as “Made in the U.S.A.” supports U.S. manufacturing and jobs.

SUMMARY OF PROVISIONS

S. 1518 would amend section 320933 of the Violent Crime Control and Law Enforcement Act of 1994, (15 U.S.C. 45a), to include an “Effect on State Law” subsection that states that the national “Made in the U.S.A.” standard supersedes any provisions of any State law relating to the extent to which a product is introduced, delivered for introduction, sold, advertised, or offered for sale in interstate or foreign commerce with a “Made in the U.S.A.” or “Made in America” label.

LEGISLATIVE HISTORY

Senator Lee introduced this bill on June 4, 2015, with Senators Capito, Fischer, Collins, and King as co-sponsors. On November 18, 2015, in an open Executive Session, the Committee considered the

¹“Made in U.S.A.” and Other U.S. Origin Claims, Federal Trade Commission, 62 Fed. Reg. 63,756 (Dec. 2, 1997).

bill. The Committee, by voice vote, ordered S. 1518 to be reported favorably.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 1518—Reinforcing American-Made Products Act of 2015

S. 1518 would preempt state laws that establish standards under which a “Made in America” or “Made in the U.S.A.” label may be affixed to a product. The bill would reiterate that the Federal Trade Commission (FTC) is solely responsible for developing and enforcing those standards.

Based on information from the FTC, CBO expects that implementing S. 1518 would not affect the workload or enforcement activities of the agency, and therefore, would have no effect on the federal budget.

Enacting S. 1518 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 1518 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

By preempting state laws, S. 1518 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). At least one state, California, currently has a law setting its own standards for such labels. S. 1518 would preempt that law. The costs, if any, to the state of complying with the mandate would not exceed the annual threshold established in UMRA (\$154 million in 2016, adjusted annually for inflation.)

S. 1518 contains no private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Susan Willie (for federal costs) and Leo Lex (for intergovernmental mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 1518, as reported, would not impose any new regulatory requirements on businesses.

ECONOMIC IMPACT

Enactment of this legislation is not expected to have an adverse impact on the Nation’s economy.

PRIVACY

S. 1518 would not have an adverse impact on the personal privacy of individuals.

PAPERWORK

S. 1518 would not measurably increase paperwork requirements for most businesses.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would designate the bill's short title as the "Reinforcing American-Made Products Act of 2015."

Section 2. Exclusivity of Federal authority to regulate labeling of products made in the United States and introduced in interstate and foreign commerce.

This section would amend section 320933 of the Violent Crime Control and Law Enforcement Act of 1994 (15 U.S.C. 45a) to include an "Effect on State Law" subsection that states that the "Made in the U.S.A." labeling provisions shall supersede any provisions of the law of any State relating to the extent to which a product is introduced, delivered for introduction, sold, advertised, or offered for sale in interstate or foreign commerce with a "Made in the U.S.A." or "Made in America" label, or the equivalent thereof, in order to represent that such product was in whole or substantial part of domestic origin.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT
OF 1994

[Public Law 103-322; 108 Stat. 1796]

SEC. 320933. LABELS ON PRODUCTS.

[15 U.S.C. 45a]

[To the extent]

(a) *IN GENERAL.*—*To the extent* any person introduces, delivers for introduction, sells, advertises, or offers for sale in commerce a product with a "Made in the U.S.A." or "Made in America" label, or the equivalent thereof, in order to represent that such product was in whole or substantial part of domestic origin, such label shall

be consistent with decisions and orders of the Federal Trade Commission issued pursuant to section 5 of the Federal Trade Commission Act. This section only applies to such labels. [Nothing in this section] *Except as provided in subsection (b), nothing in this section shall preclude the application of other provisions of law relating to labeling.* The Commission may periodically consider an appropriate percentage of imported components which may be included in the product and still be reasonably consistent with such decisions and orders. Nothing in this section shall preclude use of such labels for products that contain imported components under the label when the label also discloses such information in a clear and conspicuous manner. The Commission shall administer this section pursuant to section 5 of the Federal Trade Commission Act and may from time to time issue rules pursuant to section 553 of title 5, United States Code, for such purpose. If a rule is issued, such violation shall be treated by the Commission as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices. This section shall be effective upon publication in the Federal Register of a Notice of the provisions of this section. The Commission shall publish such notice within six months after the enactment of this section.

(b) EFFECT ON STATE LAW.—The provisions of this section shall supersede any provisions of the law of any State relating to the extent to which a product is introduced, delivered for introduction, sold, advertised, or offered for sale in interstate or foreign commerce with a “Made in the U.S.A.” or “Made in America” label, or the equivalent thereof, in order to represent that such product was in whole or substantial part of domestic origin.

