

Calendar No. 297

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 115-203

REINFORCING AMERICAN-MADE PRODUCTS
ACT OF 2017

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 118



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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

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SECOND SESSION

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REINFORCING AMERICAN-MADE PRODUCTS ACT OF 2017

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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. 118]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 118) 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 with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 118, the Reinforcing American-Made Products Act of 2017, 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) oversees claims of U.S. origin under its general authority to act against deceptive acts and practices under section 5 of the FTC Act.¹ As part of the Violent Crime Control and Law Enforcement Act of 1994, Congress has required that products bearing the “Made in the U.S.A.” label to do so in a manner consistent with FTC decisions and orders.² Since 1997, the FTC has enforced a national labeling standard that re-

¹ 15 U.S.C. §45a.

² Public Law 103-322, 108 Stat. 2135.

quires a product with a “Made in the U.S.A.” label to be “all or virtually all” manufactured in the United States. The standard is laid out in an Enforcement Policy Statement on U.S. Origin Claims that provides guidance to companies seeking to make “Made in the U.S.A.” claims about their products.³ 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.⁴ The marketer must know that all significant parts and processing that go into the product are of U.S. origin and may make such claims where there is a *de minimis*, or negligible, amount of foreign content.⁵ The FTC considers the following three factors in evaluating whether “all or virtually all” of a product is made in the United States: whether the final assembly or processing of the product took place in the United States; the portion of the total manufacturing cost of the product that is attributable to U.S. parts and processing; and how far removed from the finished product any foreign content is.⁶

In 2011, the California Supreme Court addressed whether “Made in the U.S.A.” labeling for a lockset that contained a “few” foreign-made parts violated the State’s unfair competition and false advertising laws.⁷ The court held the labeling to be a material misrepresentation, effectively establishing a California requirement that a product bearing the “Made in the U.S.A.” label be composed of 100 percent domestic content. Many domestic manufacturers alleged that this 100 percent standard was nearly impossible for them to meet because some component parts were virtually impossible to source domestically.⁸ One company faced litigation in California resulting in a settlement based on an infraction of using an imported basketball net in a rim.⁹

In 2011, and again in 2012, the State Senate Assembly voted 68 to 0 to match the Federal standard, but the legislation failed to pass the State Senate. In 2015, the Assembly again voted to match the Federal standard. However, the State Senate agreed to an amendment that only loosened the State labeling law. Under the new standard, 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.

The State legislature approved the new standard, and Governor Jerry Brown signed it into law on September 1, 2015.¹⁰ While the California standard is less restrictive, it nevertheless differs from the FTC standard, impacts interstate commerce, and leaves manufacturers vulnerable to lawsuits.

S. 118 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

³“Made in USA” and other U.S. Origin Claims, The Federal Trade Commission, 62 Fed. Reg. 63,756 (Dec. 2, 1997).

⁴Id. at pp. 63,765.

⁵Id.

⁶Id.

⁷Kwikset Corp. v. Superior Court, 51 Cal. 4th 310 (Cal. 2011).

⁸For example, shoe eyelets are difficult to source in the United States. See Timothy Aepfel, “U.S. Shoe Factory Finds Supplies Are ‘Achilles Heel,’” *The Wall Street Journal*, Mar. 3, 2008 at B1.

⁹See Order Granting Preliminary Approval of Class Action Settlement and Approving Form and Manner of Service, *Hecht-Nielsen v. Lifetime Prods, Inc., et al.*, No. 37–2011–00089380–CU–BT–CTL (Cal. Super. Ct., San Diego Co., Jan. 8, 2014).

¹⁰CAL. BUS. & PROF. CODE §17533.7.

standard would allow a manufacturer with “all or virtually all” parts of its product produced in the United States to use the label, and would help a consumer decide whether the purchase of a product marked as “Made in the U.S.A.” supports U.S. manufacturing and jobs.

SUMMARY OF PROVISIONS

S. 118 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 provides that the national “Made in the U.S.A.” standard supersedes any provision 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.

While S. 118 would expressly preempt State “Made in the U.S.A.” labeling laws, such as section 17533.7 of the California Business and Professional Code, it would allow for the application of State laws to enforce against the use of labels that do not comply with the Federal “Made in the U.S.A.” labeling standard, for instance, through State statutes that prohibit unfair and deceptive acts or practices in commerce.

LEGISLATIVE HISTORY

Senator Lee introduced S. 118 on January 12, 2017, with Senators Fischer, King, Capito, and Collins as cosponsors. On May 18, 2017, in an open Executive Session, the Committee, by voice vote, ordered S. 118 reported favorably with an amendment (in the nature of a substitute).

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. 118—Reinforcing American-Made Products Act of 2017

S. 118 would preempt state laws that conflict with existing federal 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 estimates that there would be no significant cost to implement S. 118 as it would not affect the workload or enforcement activities of the agency.

Enacting S. 118 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 118 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 118 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by preempting state laws related to labelling items as “Made in the U.S.A.” or “Made in America.” At least one state, California, currently has a

state law setting its own standard for such labels. The costs, if any, to the state of complying with the mandate would not exceed the annual threshold established in UMRA (\$78 million in 2017, as adjusted annually for inflation).

S. 118 contains no private-sector mandates as defined in UMRA.

The CBO staff contact for this estimate is Stephen Rabent (for federal costs) and Rachel Austin (for intergovernmental mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

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. 118, 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. 118 would not have an adverse impact on the personal privacy of individuals.

PAPERWORK

S. 118 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 provide that the Act may be cited as the "Reinforcing American-Made Products Act of 2017."

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 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 U.S.A." labeling provisions would supersede any provisions of the law of any State expressly 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. This section would include a provision for the application of State laws to enforce against the use of labels that do not comply with the Federal "Made in the U.S.A." labeling standard.

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. 2135]

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.*—

(1) *IN GENERAL.*—*Except as provided in paragraph (2), the provisions of this section shall supersede any provisions of the law of any State expressly 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.*

(2) ENFORCEMENT.—Nothing in this section shall preclude the application of the law of any State to the use of a label not in compliance with subsection (a).

