

U.S. CONGRESS JOINS THE GROWING NUMBER OF COUNTRIES CONSIDERING SUPPLY CHAIN TRANSPARENCY LEGISLATION

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Labor, Employment and Workplace Safety Alert

Last week, the U.S. House of Representatives introduced H.R. 7089, which would require certain companies to disclose whether they have taken measures to identify and address forced labor, slavery, human trafficking, and the worst forms of child labor in their supply chains, and if so, what measures they have taken. This law would be known as the “Business Supply Chain Transparency on Trafficking and Slavery Act of 2018” and would amend the Securities Exchange Act of 1934. The amendments would require the Securities and Exchange Commission (SEC) to issue regulations imposing disclosure requirements on certain issuers that must report to the SEC and that have annual global receipts exceeding \$100,000,000. While the law would not require these companies to implement any policies or engage in any efforts with respect to their supply chains, it would require them to disclose publicly if they do nothing to identify or address modern slavery in their supply chains.

Covered companies would be required to include in their annual reports to the SEC disclosures regarding whether, and if so what, efforts they made during the year to address forced labor, slavery, human trafficking, and child labor in their supply chains — and to post this information on their websites. Specifically, the disclosures to the SEC and on the company's website would be required to cover the following topics:

- Whether the company has a policy to identify and eliminate risks of forced labor, slavery, human trafficking, and child labor within its supply chain — and, if so, the text or a description of any such policy;
- Any actions the company has taken pursuant to the above-referenced policy or any actions taken in the absence of a policy;
- Whether the company has a policy prohibiting its employees and employees of entities in its supply chain from engaging in commercial sex acts with a minor;
- Efforts to evaluate and address the risks of forced labor, slavery, human trafficking, and child labor in the product supply chain;
- If the company has taken efforts to evaluate and address these risks, a description of the risks identified and the measures taken to eliminate those risks, as well as an indication of whether the evaluation was conducted by a third party, whether the efforts included consultation with any unions or other worker associations, and the scope of the company's efforts across the supply chain;
- Efforts to ensure that audits of suppliers are conducted to investigate the suppliers' working conditions and labor practices, to verify whether suppliers have appropriate systems to identify modern slavery risks, and to evaluate whether the suppliers' systems comply with the company's policies or efforts;

- Efforts to require suppliers to attest that the manufacture of materials incorporated into any product and the recruitment of labor are carried out in compliance with laws addressing forced labor, slavery, human trafficking, and child labor;
- Efforts to maintain (and a description of) internal accountability standards, supply chain management, procurement systems, and reporting procedures regarding failure to meet the company's standards involving forced labor, slavery, human trafficking, and child labor;
- Efforts to train employees and management who have direct responsibility for supply chain management on issues related to forced labor, slavery, human trafficking, and child labor and how to mitigate those risks within supply chains;
- Efforts to ensure that suppliers' labor recruitment practices comply with the company's policies related to forced labor, slavery, human trafficking, and child labor; and
- Any remedial action taken by the company if forced labor, slavery, human trafficking, or child labor was found.

Similar transparency legislation has been introduced in Congress in the past [1], including bills in the House and Senate in 2015, 2014, and 2011 [2]. Even if H.R. 7089 faces a similar fate and is not passed by this Congress, it demonstrates the continued attention that this issue is receiving in the United States and around the world. Following the California Transparency in Supply Chains Act, which took effect in 2012, and the UK Modern Slavery Act of 2015, similar (or stronger) transparency legislation has been proposed in a number of other countries. For example, legislation has been considered in Hong Kong, the Netherlands (proposing child labor diligence), Switzerland, and Australia, with the Australian law expected to pass in the coming months. Earlier this year, the Australian state of New South Wales enacted a supply chain transparency law with significant penalty provisions, and last year, France enacted a corporate duty of vigilance law that goes beyond just transparency requirements and imposes affirmative obligations on certain companies.

In light of this trend, proactive companies should examine their current policies, contracts, training, and diligence involving their supply chains so they can be in a position to comply with any laws that might be applicable to them, as well as increasing demands from investors, consumers, and business partners. H.R. 7089 is an example of the types of policies and practices a company might consider and might be expected to disclose for its global operations.

NOTES

[1] Congresswoman Carolyn Maloney (D-NY), along with Congressman Chris Smith (R-NJ), sponsored H.R. 7089. This legislation is the same in substance as a bill they introduced in 2015 (H.R. 3226, 114th Cong.) and for which a companion bill was introduced in the Senate (S. 1968, 114th Cong.). In H.R. 7089, even the congressional findings supporting the legislation mirror H.R. 3226, citing the same Department of Labor statistics from 2014 and referring to an exception to the Tariff Act of 1930 that was subsequently eliminated by the Trade Facilitation and Trade Enforcement Act of 2015. See H.R. 7089, 115th Cong. § 2(a)(1), (3) (2018).

[2] See H.R. 3226, 114th Cong. (2015); S. 1968, 114th Cong. (2015); H.R. 4842, 113th Cong. (2014); H.R. 2759, 112th Cong. (2011).

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