

116TH CONGRESS
2D SESSION

S. 4241

To require certain businesses to disclose the use of forced labor in their direct supply chain, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 21, 2020

Mr. HAWLEY introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To require certain businesses to disclose the use of forced labor in their direct supply chain, and for other purposes.

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 “Slave-Free Business
5 Certification Act of 2020”.

6 **SEC. 2. REQUIRED REPORTING ON USE OF FORCED LABOR**
7 **FROM COVERED BUSINESS ENTITIES.**

8 (a) DEFINITIONS.—In this section:

9 (1) COVERED BUSINESS ENTITY.—The term
10 “covered business entity” means any issuer, as that

1 term is defined in section 2(a) of the Securities Act
2 of 1933 (15 U.S.C. 77b(a)), that has annual, world-
3 wide gross receipts that exceed \$500,000,000.

4 (2) FORCED LABOR.—The term “forced labor”
5 means any labor practice or human trafficking activ-
6 ity in violation of national and international stand-
7 ards, including—

8 (A) International Labor Organization Con-
9 vention No. 182;

10 (B) the Trafficking Victims Protection Act
11 of 2000 (22 U.S.C. 7101 et seq.); and

12 (C) any act that would violate the criminal
13 provisions related to slavery and human traf-
14 ficking under chapter 77 of title 18, United
15 States Code, if the act had been committed
16 within the jurisdiction of the United States.

17 (3) GROSS RECEIPTS.—The term “gross re-
18 ceipts”—

19 (A) means the gross amount, including
20 cash and the fair market value of other prop-
21 erty or services received, gained in a transaction
22 that produces business income from—

23 (i) the sale or exchange of property;

24 (ii) the performance of services; or

1 (iii) the use of property or capital;

2 and

3 (B) does not include—

4 (i) repayment, maturity, or redemp-
5 tion of the principal of a—

6 (I) loan;

7 (II) bond;

8 (III) mutual fund;

9 (IV) certificate of deposit; or

10 (V) similar marketable instru-
11 ment;

12 (ii) proceeds from—

13 (I) the issuance of a company's
14 own stock; or

15 (II) the sale of treasury stock;

16 (iii) amounts received as the result of
17 litigation, including damages;

18 (iv) property acquired by an agent on
19 behalf of another party;

20 (v) Federal, State, or local tax re-
21 funds or other tax benefit recoveries;

22 (vi) certain contributions to capital;

23 (vii) income from discharge of indebt-
24 edness; or

1 (viii) amounts realized from exchanges
2 of inventory that are not recognized under
3 the Internal Revenue Code of 1986.

4 (4) ON-SITE SERVICE.—The term “on-site serv-
5 ice” means any service work provided on the site of
6 a covered business entity, including food service
7 work and catering services.

8 (5) ON-SITE SERVICE PROVIDER.—The term
9 “on-site service provider” means any entity that pro-
10 vides workers who perform, collectively, a total of
11 not less than 30 hours per week of on-site services
12 for a covered business entity.

13 (6) SECRETARY.—The term “Secretary” means
14 the Secretary of Labor.

15 (b) AUDIT AND REPORTING REQUIREMENTS.—

16 (1) IN GENERAL.—Not later than 1 year after
17 the date of enactment of this Act, and every year
18 thereafter, each covered business entity shall—

19 (A) conduct an audit of its supply chain,
20 pursuant to the requirements of section 3, to
21 investigate the presence or use of forced labor
22 by the covered business entity or its suppliers,
23 including by direct suppliers, secondary sup-
24 pliers, and on-site service providers of the cov-
25 ered business entity;

1 (B) submit a report to the Secretary con-
2 taining the information described in paragraph
3 (2) on the results of such audit and efforts of
4 the covered business entity to eradicate forced
5 labor from the supply chain and on-site services
6 of the covered business entity; and

7 (C)(i) publish the report described in sub-
8 paragraph (B) on the public website of the cov-
9 ered business entity, and provide a conspicuous
10 and easily understood link on the homepage of
11 the website that leads to the report; or

12 (ii) in the case of a covered business entity
13 that does not have a public website, provide the
14 report in written form to any consumer of the
15 covered business entity not later than 30 days
16 after the consumer submits a request for the
17 report.

18 (2) REQUIRED REPORT CONTENTS.—Each re-
19 port required under paragraph (1)(B) shall contain,
20 at a minimum—

21 (A) a disclosure of the covered business en-
22 tity’s policies to prevent the use of forced labor
23 by the covered business entity, its direct sup-
24 pliers, and its on-site service providers;

1 (B) a disclosure of what policies or proce-
2 dures, if any, the covered business entity uses—

3 (i) for the verification of product sup-
4 ply chains and on-site service provider
5 practices to evaluate and address risks of
6 forced labor and whether the verification
7 was conducted by a third party;

8 (ii) to require direct suppliers and on-
9 site service providers to provide written
10 certification that materials incorporated
11 into the product supplied or on-site serv-
12 ices, respectively, comply with the laws re-
13 garding forced labor of each country in
14 which the supplier or on-site service pro-
15 vider is engaged in business;

16 (iii) to maintain internal account-
17 ability standards and procedures for em-
18 ployees or contractors of the covered busi-
19 ness entity failing to meet requirements re-
20 garding forced labor; and

21 (iv) to provide training on recognizing
22 and preventing forced labor, particularly
23 with respect to mitigating risks within the
24 supply chains of products and on-site serv-
25 ices of the covered business entity, to em-

1 ployees, including management personnel,
2 of the covered business entity who have di-
3 rect responsibility for supply chain man-
4 agement or on-site services;

5 (C) a description of the findings of each
6 audit required under paragraph (1)(A), includ-
7 ing the details of any instances of found or sus-
8 pected forced labor; and

9 (D) a written certification, signed by the
10 chief executive officer of the covered business
11 entity, that—

12 (i) the covered business entity has
13 complied with the requirements of this Act
14 and exercised due diligence in order to
15 eradicate forced labor from the supply
16 chain and on-site services of the covered
17 business entity;

18 (ii) to the best of the chief executive
19 officer’s knowledge, the covered business
20 entity has found no instances of the use of
21 forced labor by the covered business entity
22 or has disclosed every known instance of
23 the use of forced labor; and

24 (iii) the chief executive officer and any
25 other officers submitting the report or cer-

1 tification understand that section 1001 of
2 title 18, United States Code (popularly
3 known as the “False Statements Act”),
4 applies to the information contained in the
5 report submitted to the Secretary.

6 (c) REPORT OF VIOLATIONS TO CONGRESS.—Each
7 year, the Secretary shall prepare and submit a report to
8 Congress regarding the covered business entities that—

9 (1) have failed to conduct audits required under
10 this Act for the preceding year or have been adju-
11 dicated in violation of any other provision of this
12 Act; or

13 (2) have been found to have used forced labor,
14 including the use of forced labor in their supply
15 chain or by their on-site service providers.

16 **SEC. 3. AUDIT REQUIREMENTS.**

17 (a) IN GENERAL.—Each audit conducted under sec-
18 tion 2(b)(1)(A) shall meet the following requirements:

19 (1) WORKER INTERVIEWS.—The auditor
20 shall—

21 (A) select a cross-section of workers to
22 interview that represents the full diversity of
23 the workplace, and includes, if applicable, men
24 and women, migrant workers and local workers,
25 workers on different shifts, workers performing

1 different tasks, and members of various produc-
2 tion teams;

3 (B) if individuals under the age of 18 are
4 employed at the facility of the direct supplier or
5 on-site service provider, interview a representa-
6 tive group using age-sensitive interview tech-
7 niques;

8 (C) conduct interviews—

9 (i) on-site and, particularly in cases
10 where there are indications of egregious
11 violations about which employees may hesi-
12 tate to discuss at work, off-site of the facil-
13 ity and during non-work hours; and

14 (ii) individually or in groups (except
15 for purposes of subparagraph (B));

16 (D) use audit tools to ensure that each
17 worker is asked a comprehensive set of ques-
18 tions;

19 (E) collect from interviewed workers copies
20 of the workers' pay stubs, in order to compare
21 the pay stubs with payment records provided by
22 the direct supplier;

23 (F) ensure that all worker responses are
24 confidential and are never shared with manage-
25 ment; and

1 (G) interview a representative of the labor
2 organization or other worker representative or-
3 ganization that represents workers at the facil-
4 ity or, if no such organization is present, at-
5 tempt to interview a representative from a local
6 worker advocacy group.

7 (2) MANAGEMENT INTERVIEWS.—The auditor
8 shall—

9 (A) interview a cross-section of the man-
10 agement of the supplier, including human re-
11 sources personnel, production supervisors, and
12 others; and

13 (B) use audit tools to ensure that man-
14 agers are asked a comprehensive set of ques-
15 tions.

16 (3) DOCUMENTATION REVIEW.—The auditor
17 shall—

18 (A) conduct a documentation review to
19 provide tangible proof of compliance and to cor-
20 roborate or find discrepancies in the informa-
21 tion gathered through the worker and manage-
22 ment interviews; and

23 (B) review, at a minimum, the following
24 types of documents:

- 1 (i) Age verification procedures and
2 documents.
- 3 (ii) A master list of juvenile workers.
- 4 (iii) Selection and recruitment proce-
5 dures.
- 6 (iv) Contracts with labor brokers, if
7 any.
- 8 (v) Worker contracts and employment
9 agreements.
- 10 (vi) Introduction program materials.
- 11 (vii) Personnel files.
- 12 (viii) Employee communication and
13 training plans, including certifications pro-
14 vided to workers including skills training,
15 worker preparedness, government certifi-
16 cation programs, and systems or policy ori-
17 entations.
- 18 (ix) Collective bargaining agreements,
19 including collective bargaining representa-
20 tive certification, descriptions of the role of
21 the labor organization, and minutes of the
22 labor organization's meetings.
- 23 (x) Contracts with any security agen-
24 cy, and descriptions of the scope of respon-
25 sibilities of the security agency.

- 1 (xi) Payroll and time records.
- 2 (xii) Production capacity reports.
- 3 (xiii) Written human resources poli-
4 cies and procedures.
- 5 (xiv) Occupational health and safety
6 plans and records including legal permits,
7 maintenance and monitoring records, in-
8 jury and accident reports, investigation
9 procedures, chemical inventories, personal
10 protective equipment inventories, training
11 certificates, and evacuation plans.
- 12 (xv) Disciplinary notices.
- 13 (xvi) Grievance reports.
- 14 (xvii) Performance evaluations.
- 15 (xviii) Promotion or merit increase
16 records.
- 17 (xix) Dismissal and suspension
18 records of workers.
- 19 (xx) Records of employees who have
20 resigned.
- 21 (xxi) Worker pay stubs.

22 (4) CLOSING MEETING WITH MANAGEMENT.—

23 The auditor shall hold a closing meeting with the
24 management of the covered business entity to—

1 (A) report violations and nonconformities
2 found in the facility; and

3 (B) determine the steps forward to address
4 and remediate any problems.

5 (5) REPORT PREPARATION.—The auditor shall
6 prepare a full report of the audit, which shall in-
7 clude—

8 (A) a disclosure of the direct supplier’s or
9 on-site service provider’s—

10 (i) documented processes and proce-
11 dures that relate to eradicating forced
12 labor; and

13 (ii) documented risk assessment and
14 prioritization policies as such policies relate
15 to eradicating forced labor;

16 (B) a description of the worker interviews,
17 manager interviews, and documentation review
18 required under paragraphs (1), (2), and (3);

19 (C) a description of all violations or sus-
20 pected violations by the direct supplier of any
21 forced labor laws of the United States or, if ap-
22 plicable, the laws of another country as de-
23 scribed in section 2(b)(2)(B)(ii); and

24 (D) for each violation described in sub-
25 paragraph (C), a description of any corrective

1 and protective actions recommended for the di-
2 rect supplier consisting of, at a minimum—

3 (i) the issues relating to the violation
4 and any root causes of the violation;

5 (ii) the implementation of a solution;

6 and

7 (iii) a method to check the effective-
8 ness of the solution.

9 (b) **ADDITIONAL REQUIREMENTS RELATING TO AU-**
10 **DITS.**—Each covered business entity shall include, in any
11 contract with a direct supplier or on-site service provider,
12 a requirement that—

13 (1) the supplier or provider shall not retaliate
14 against any worker for participating in an audit re-
15 lating to forced labor; and

16 (2) worker participation in an audit shall be
17 protected through the same grievance mechanisms
18 available to the worker available for any other type
19 of workplace grievance.

20 **SEC. 4. ENFORCEMENT.**

21 (a) **CIVIL DAMAGES.**—The Secretary may assess civil
22 damages in an amount of not more than \$100,000,000
23 if, after notice and an opportunity for a hearing, the Sec-
24 retary determines that a covered business entity has vio-
25 lated any requirement of section 2(b).

1 (b) PUNITIVE DAMAGES.—In addition to damages
2 under subsection (a), the Secretary may assess punitive
3 damages in an amount of not more than \$500,000,000
4 against a covered business entity if, after notice and an
5 opportunity for a hearing, the Secretary determines the
6 covered business entity willfully violated any requirement
7 of section 2(b).

8 (c) DECLARATIVE OR INJUNCTIVE RELIEF.—The
9 Secretary may request the Attorney General institute a
10 civil action for relief, including a permanent or temporary
11 injunction, restraining order, or any other appropriate
12 order, in the district court of the United States for any
13 district in which the covered business entity conducts busi-
14 ness, whenever the Secretary believes that a violation of
15 section 2(b) constitutes a hazard to workers.

16 **SEC. 5. REGULATIONS.**

17 Not later than 180 days after the date of enactment
18 of this Act, the Secretary shall promulgate rules to carry
19 out this Act.

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