

CONTROLLED SUBSTANCES TRAFFICKING PROHIBITION  
ACT

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JULY 16, 1998.—Ordered to be printed  
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Mr. MCCOLLUM, from the Committee on the Judiciary,  
submitted the following

R E P O R T

[To accompany H.R. 3633]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3633) to amend the Controlled Substances Import and Export Act to place limitations on controlled substances brought into the United States from Mexico, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

The “Controlled Substances Trafficking Prohibition Act” (H.R. 3633) addresses the problem of controlled substances purchased in

Mexico being illegally diverted after being brought into the United States. It does so by amending the Controlled Substances Import and Export Act so as to limit the amount of controlled substances that an individual can bring across the Mexican border into the United States. The bill limits the "personal use exemption" in the Controlled Substances Import and Export Act with respect to any individual entering the United States through a land border with Mexico with a controlled substance, without a prescription written by a practitioner licensed under the authority of the Act (or documentation which verifies such a prescription).<sup>1</sup> Under H.R. 3633, such an individual may not bring in more than 50 dosage units of such a controlled substance; or, in the case of an individual who does not lawfully reside in the United States, the quantity of controlled substances which may be imported is based on the approximate length of stay by that individual in the United States.

#### BACKGROUND AND NEED FOR THE LEGISLATION

The scope and nature of the movement of illegal drugs from Mexico into the United States is dramatic, and has been the subject of considerable attention in recent years. It is estimated by U.S. law enforcement officials that between 60 and 70 percent of all of the cocaine entering the United States each year transits Mexico. A growing, if less visible, aspect of the drug problem associated with the Mexican border involves individuals crossing the border into Mexico to purchase pharmaceutical products, with those products then becoming a source of illegal drug diversion in the United States.

One study has reported that 25 percent of the U.S. residents who enter Mexico as tourists purchase pharmaceutical products.<sup>2</sup> Another study has reported that 32 percent of the U.S. residents living along the U.S. side of the border visited a Mexican pharmacy in the previous year.<sup>3</sup> A 1992 study reported that 81 percent of the patients at an El Paso health clinic traveled to Juarez, Mexico, to purchase medications. 55 percent of these people reported that they purchased medications in Mexico several times a year, with 69 percent indicating that they had purchased pharmaceutical products in Mexico within the last month.<sup>4</sup>

The most common reason U.S. residents visit Mexico to acquire pharmaceutical products is the low prices of Mexican medications, which are controlled by Mexico's National Health Care System. The second major reason is the easy access. There are significant differences between the United States and Mexico in how drug products are regulated and distributed. Many of the products in the United States that require a prescription are available in Mexico as over-the-counter products. Furthermore, certain drugs which are not legally available in the United States, even with prescrip-

<sup>1</sup> Under current law, the Attorney General has the authority to exempt from otherwise applicable law those who bring controlled substances (except a Schedule I substance) into the United States if such substance is for that individual's personal medical use, or for an animal accompanying him, if the substance was lawfully obtained.

<sup>2</sup> See E. Kristin McKeithan, and Marvin D. Shepherd, "Pharmaceutical Products Declared by U.S. Residents on Returning to the United States From Mexico," *Clinical Therapeutics*, Vol. 18, No. 6, 1996.

<sup>3</sup> *ibid.*

<sup>4</sup> *ibid.*

tions, are legal in Mexico. One such drug is flunitrazepam (better known as the “date rape drug”), a product involved in a growing and serious abuse problem in the United States. Moreover, in Mexico, prescriptions can be written by physicians, dentists, homeopathic physicians, veterinarians, health professionals in the social services, nurses, and midwives.

Studies indicate that U.S. residents from many states, not just the border states, cross the Mexican border and return to the United States with a wide variety of drug products in large quantities. While many of these products are undoubtedly purchased and brought back into the United States for legitimate use, the types and quantities of products coming into the United States raises serious questions about possible illegal diversion. For example, one study found that nearly 1.5 million tablets of flunitrazepam were declared and brought into the United States in one year through one gate at the Laredo, Texas, Customs border crossing.<sup>5</sup> The study further reported that more than 42 percent of all those who declared drugs while coming through the Laredo, Texas, crossing, declared flunitrazepam. Moreover, the median age for those declaring flunitrazepam was 26. While the importation of flunitrazepam into the United States was banned in March, 1996, concerns remain that the drug continues to be obtained in Mexico and brought across the border without being declared.

Current U.S. Customs’ requirements for bringing medications into the United States are that only a “reasonable” amount of medication can enter, and that it must be for personal use. Each U.S. port of entry defines “reasonable” amount differently. For example, the U.S. Customs port at Laredo defines a “reasonable” amount to be a 90-day supply. All medications must be properly identified, and the individual must have either a prescription or written statement from the physician stating that the medications are being used under a physician’s care and are medically necessary.

Although U.S. Customs may allow an individual to bring Mexican medications into the United States, the individual may still be in violation of State and federal law for prescription and controlled drugs. For example, in Texas, U.S. residents returning from Mexico with controlled substances are in violation of the Texas and federal controlled substances laws, because Mexican prescriptions for controlled substances are only valid in Texas if the prescriber is licensed in Texas and is registered with the U.S. Drug Enforcement Administration. There are no physicians in Mexico who are registered with the DEA. Furthermore, the vast majority of the drug products from Mexico are inaccurately or inadequately labeled, and, as such, violate the Controlled Substances Act of 1970. Finally, all drug products from Mexico are in violation of federal law (unless they meet the personal use exemption) because, currently, no Mexican drug products are approved by the U.S. Food and Drug Administration. Thus, individuals carrying controlled substances from Mexico which do not comport with the personal use exemption are in possession of an illegal controlled substance.

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<sup>5</sup> *ibid.* The study was done in 1994–1995, at the Laredo Bridge One, which handles visitor travel by foot and automobile, but not commercial travel such as large trucks or tractor trailer vehicles.

## HEARINGS

The Judiciary Committee's Subcommittee on Crime held a hearing on the bill on March 26, 1998, at which three witnesses testified. They were: Congressman Steve Chabot, who represents Ohio's First District and is a member of the Subcommittee on Crime and who authored the legislation; Matt Meagher, Senior Investigative Reporter, Inside Edition; and Wesley S. Windle, Program Officer, Office of Field Operations, U.S. Customs Service.

## COMMITTEE CONSIDERATION

H.R. 3633 was reported favorably on a voice vote, without amendment, by the Subcommittee on Crime on May 7, 1998.

On May 20, 1998, the Committee met in open session and ordered H.R. 3633 favorably reported, by voice vote, without amendment, a quorum being present.

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 1, 1998.*

Hon. HENRY J. HYDE,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3633, the Controlled Substances Trafficking Prohibition Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for federal costs), who can be reached at 226-2860, and Leo Lex (for the state and local impact), who can be reached at 225-3220.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

cc: Hon. John Conyers, Jr.,  
Ranking Minority Member.

*H.R. 3633—Controlled Substances Trafficking Prohibition Act*

H.R. 3633 would tighten the current restrictions on individuals bringing certain controlled substances, mainly those for personal medical use, into the United States through a land border with Mexico. The bill would continue to permit individuals to bring certain drugs across the border, but generally only in amounts of less than 50 dosage units. Based on information from the U.S. Customs Service, CBO estimates that enacting H.R. 3633 would result in no significant costs to the federal government because it would not significantly affect the workload of the Customs Service. The bill would not affect direct spending or receipts, so pay-as-you-go procedures would not apply.

H.R. 3633 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no impact on the budgets of state, local, or tribal governments. The bill would allow states to impose additional requirements on individuals who bring controlled substances from Mexico without a prescription or similar documentation.

The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs), who can be reached at 226–2860, and Leo Lex (for the state and local impact), who can be reached at 225–3220. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 3633 will have no inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

*Section 1. Short Title.*

This section provides the short title of the Act, which is the Controlled Substances Trafficking Prohibition Act.

*Section 2. Limitation.*

This section amends section 1006(a) of the Controlled Substances Import and Export Act (Section 956(a) of title 21, United States Code).

The Controlled Substances Import and Export Act provides generally that it is unlawful to import into the United States any controlled substance from schedule I or schedule II and any narcotic drugs in schedule III, IV, or V (section 952(a) of title 21). A number of exceptions are then delineated. One of the exceptions is established in section 956(a), which provides that the Attorney General may by regulation exempt any individual who has a controlled substance (except a substance in schedule I, pursuant to section 812

of title 21) in his possession for his personal medical use, or for an animal accompanying him, if he lawfully obtained such substance.

Subsection 2(a) places limitations on the personal use exemption of section 956(a) by circumscribing the discretion of the Attorney General to exempt controlled substances that an individual can bring across the Mexican border into the United States. Specifically, subsection 2(a) limits the personal use exemption with respect to any individual entering the United States through a land border with Mexico with a controlled substance who does not have a prescription written by a practitioner licensed under the authority of the Controlled Substances Import and Export Act (or documentation which verifies such a prescription). Subsection 2(a) provides that such an individual may not bring in more than 50 dosage units (as defined by the Attorney General in regulation) of such a controlled substance; or, in the case of an individual who does not lawfully reside in the United States, may not bring in more than a quantity which is consistent with the approximate length of stay by that individual in the United States (as determined by a United States Customs official at the border).

The Committee recognizes that the effect of this subsection is to alter legislatively the personal use exemption, which could be altered by the Attorney General by regulation. It can reasonably be argued that the dynamic and complex nature of border transit of pharmaceutical products would ideally be addressed through regulations, which might then be modified over time in response to changing problems. It is the view of the Committee that in the instant case it is appropriate to respond to this specific problem legislatively rather than waiting passively for some possible future regulatory adjustment for two principal reasons. First, such a regulatory adjustment has been acknowledged by federal law enforcement as being long overdue; yet, no such adjustment has been made. This delay highlights the oftentimes cumbersome and slow nature of actually accomplishing regulatory changes. Second, the evidence suggests a strong likelihood that the problem addressed by this bill is not going to end or even change appreciably in the foreseeable future. As such, the problem is ripe for a longer-term legislative solution.

Subsection 2(b) clarifies that the limitations established in section 2(a) are only the minimum requirements established under federal law and, as such, do not preclude States from establishing more stringent importation limitations.

Subsection 2(c) clarifies that subsection 2(a) is not to be construed to affect in any way the jurisdiction of the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italics, existing law in which no change is proposed is shown in roman):

**SECTION 1006 OF THE CONTROLLED SUBSTANCES  
IMPORT AND EXPORT ACT**

EXEMPTION AUTHORITY

SEC. 1006. (a) **[The Attorney General]** (1) *Except as provided in paragraph (2), the Attorney General may by regulation exempt from sections 1002 (a) and (b), 1003, 1004, and 1005 any individual who has a controlled substance (except a substance in schedule I) in his possession for his personal medical use, or for administration to an animal accompanying him, if the lawfully obtained such substance and he makes such declaration (or gives such other notification) as the Attorney General may by regulation require.*

(2) *Any individual who enters the United States through a land border with Mexico with a controlled substance (except a substance in schedule I) for which such individual does not possess a prescription written by a practitioner licensed under the authority of this Act or documentation which verifies such a prescription and who meets the requirements of paragraph (1) may bring a controlled substance (except a substance in schedule I) into the United States but only in an amount—*

*(A) which is not more than 50 dosage units (as defined by the Attorney General in regulation) of the controlled substances; or*

*(B) which, in the case of an individual who does not lawfully reside in the United States, is consistent with the approximate length of the individual's stay in the United States as determined by a United States Customs official at the United States border.*

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