118TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
118–53

SECURING THE BORDER FOR PUBLIC HEALTH ACT OF 2023

MAY 11, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. RODGERS of Washington, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 801]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 801) to amend title III of the Public Health Service Act to provide for suspension of entries and imports from designated countries to prevent the spread of communicable diseases and import into the United States of certain controlled substances, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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39–006

Purpose and Summary

This bill allows the Secretary of the Department of Health and Human Services, after consultation with the Attorney General, to restrict the entry of persons or property from foreign countries to prevent the introduction of certain controlled substances into the United States.

Background and Need for Legislation

Currently, 42 U.S.C. 265 allows the Secretary, in the interest of public health, to restrict the entry of persons or property from certain designated countries when there is serious danger of introduction of a communicable disease into the United States.

The United States is facing an unprecedented illicit drug crisis, and simultaneously suffering under skyrocketing overdose and poisoning rates. This bill would expand the current already existing authority under 42 U.S.C. 265 to allow the Secretary, in the interest of public health, to restrict the entry of persons or property from certain designated countries when there is serious danger of introduction of a communicable disease or, after consultation with the Attorney General, certain controlled substances. The certain controlled substances include, as defined in the corresponding Code of Federal Regulations, narcotic drugs, opiates, opium derivatives, stimulants, and fentanyl-related substances.

Committee Action

On February 15, 2023, the Subcommittees on Oversight and Investigations and Health, jointly, held a hearing on H.R. 801. The Subcommittee received testimony from:

- Mr. Urbino Martinez, Brooks County Sheriff
- Mr. Stuart Archer, CEO, Oceans Health Care
- Ms. Rochelle M. Garza, President, Texas Civil Rights Project
- Mr. Brandon Judd, President, National Border Patrol Council

On March 8, 2023, the Subcommittee on Health met in open markup session and forwarded H.R. 801, without amendment, to the full Committee by a recorded vote of 17 yeas and 12 nays. On March 23 and 24, 2023, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 801, without amendment, favorably reported to the House by a recorded vote of 24 yeas and 19 nays.

Committee Votes

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE #21

BILL: H.R. 801, the Securing the Border for Public Health Act of 2023

AMENDMENT: A motion by Mrs. Rodgers to order H.R. 801 favorably reported to the House, without amendment (Final Passage)

DISPOSITION: **AGREED TO,** by a roll call vote of 24 yeas and 19 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers	X			Rep. Pallone		X	
Rep. Burgess	X			Rep. Eshoo		X	
Rep. Latta	X			Rep. DeGette		X	
Rep. Guthrie	X			Rep. Schakowsky			
Rep. Griffith	X			Rep. Matsui		X	
Rep. Bilirakis	X			Rep. Castor			
Rep. Johnson	X			Rep. Sarbanes		X	
Rep. Bucshon				Rep. Tonko		X	
Rep. Hudson				Rep. Clarke		X	
Rep. Walberg				Rep. Cárdenas		X	
Rep. Carter	X			Rep. Ruiz		X	
Rep. Duncan	X			Rep. Peters			
Rep. Palmer				Rep. Dingell		X	
Rep. Dunn	X			Rep. Veasey		X	
Rep. Curtis	X			Rep. Kuster		X	
Rep. Lesko	X			Rep. Kelly			
Rep. Pence				Rep. Barragán		X	
Rep. Crenshaw	X			Rep. Blunt Rochester		X	
Rep. Joyce	X			Rep. Soto		X	
Rep. Armstrong	X			Rep. Craig		X	
Rep. Weber	X			Rep. Schrier		X	
Rep. Allen	X			Rep. Trahan		X	
Rep. Balderson	X			Rep. Fletcher		X	
Rep. Fulcher	X						
Rep. Pfluger	X						
Rep. Harshbarger	X						
Rep. Miller-Meeks	X						
Rep. Cammack	X						
Rep. Obernolte	X						

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held a hearing and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 801 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

H.R. 801, Securing the Border for Public Health Act of 2023
As ordered reported by the House Committee on Energy and Commerce on March 24, 2023

By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	*	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	*	*	not estimated

Increases *net direct spending* in any of the four consecutive 10-year periods beginning in 2034?	< $2.5 billion	Statutory pay-as-you-go procedures apply?	Yes
		Mandate Effects	
Increases *on-budget deficits* in any of the four consecutive 10-year periods beginning in 2034?	< $5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

* = between zero and $500,000.

H.R. 801 would authorize the Department of Health and Human Services (HHS) to suspend the entry of people and goods into the United States from certain countries if the department determines that doing so would prevent the arrival of certain controlled substances, including opiates and fentanyl. The bill would require HHS to consult with the Department of Justice before making such a determination.

Under current law, by invoking its authority under Section 362 of the Public Health Service Act, HHS can deny entry to people or goods from certain countries to prevent the spread of communicable diseases. Furthermore, the government may prevent certain people (but not goods) from coming into the country if their entry is determined to be detrimental to U.S. interests, under Section 212(f) of the Immigration and Nationality Act.

Direct spending: Enacting H.R. 801 would expand the government's authority to restrict the import of goods into the United States. If that authority is used, it would result in a net increase in direct spending because any such restrictions would decrease the collection of certain customs fees charged on the import of these goods. Since these fees are classified in the budget as direct spending, any decrease in collections would result in an increase in direct spending. A portion of the fees collected can be spent by Customs and Border Protection without further appropriation; therefore, the increase in direct spending under the bill would be less than the total change in customs fees collected.

CBO estimates that direct spending would increase by less than $500,000 under the bill. HHS has rarely used its existing Section 362 authority to restrict the import of goods into the United States, and CBO's estimate incorporates the assumption that the new authority under H.R. 801 would also be used only rarely. However, the estimate of costs is subject to significant uncertainty. If the new authority is not used at all during the 2023–2033 period, H.R. 801 would have no effect on direct spending during that period. If the authority is used more frequently than CBO anticipates, or if an order is issued that affects a larger number of imports than CBO expects, costs would be larger. Additionally, if the authority under H.R. 801 is used more than CBO expects, total output of the economy could change (through changes to international trade, for example). CBO has not undertaken an analysis of those effects.

CBO estimates that the bill would not affect the federal budget through immigration channels because H.R. 801 would not expand the government's authority to restrict immigration beyond that already authorized under the Immigration and Nationality Act. Numerous Presidents have invoked that authority in recent decades, most recently in Presidential Proclamations 9645 and 9983, issued in 2017 and 2020, respectively, which prohibited entry into the United States by nationals of certain countries.

Spending subject to appropriation: CBO estimates that it would cost HHS less than $500,000 to promulgate rules and enforce orders if the agency uses the authority under the bill. Such spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Jeremy Crimm. The estimate was reviewed by Chad Chirico, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to help stem the tide of the nation's illicit drug crisis by restricting the import of persons and property that would further increase the introduction of certain controlled substances across our borders.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 801 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

RELATED COMMITTEE AND SUBCOMMITTEE HEARINGS

Pursuant to clause 3(c)(6) of rule XIII,

1. The following hearing was used to develop or consider H.R. 801: Joint Oversight and Investigations Subcommittee and Health Subcommittee Field Hearing on February 15, 2023: "President Biden's Border Crisis is a Public Health Crisis."
2. The following related hearing was held on February 15, 2023: Joint Oversight and Investigations Subcommittee and Health Subcommittee Field Hearing: "President Biden's Border Crisis is a Public Health Crisis."

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 801 contains no earmarks, limited tax benefits, or limited tariff benefits.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides a short title of Securing the Border for Public Health Act of 2023.

Section 2. Suspension of entries and imports from designated countries to prevent spread of communicable diseases and import of certain controlled substances

Section 2 amends Section 362 of the Public Health Service Act (42 U.S.C. 265) to authorize the Secretary of the Department of Health and Human Services, in the interest of public health, and after consultation with the Attorney General, to restrict the entry of persons and property from countries designated by the Secretary when there is a determination that introduction of certain controlled substances into the United States would pose a serious danger. This section defines "certain controlled substance" to include, as defined in the corresponding Code of Federal Regulations, narcotic drugs, opiates, opium derivatives, stimulants, and fentanyl-related substances.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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, and existing law in which no change is proposed is shown in roman):

PUBLIC HEALTH SERVICE ACT

*   *   *   *   *   *   *

TITLE III—GENERAL POWERS AND DUTIES OF PUBLIC HEALTH SERVICE

*   *   *   *   *   *   *

PART G—QUARANTINE AND INSPECTION

*   *   *   *   *   *   *

[SUSPENSION OF ENTRIES AND IMPORTS FROM DESIGNATED PLACES

[SEC. 362. Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General, in accordance with regulations approved by the President, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.]

SEC. 362. SUSPENSION OF ENTRIES AND IMPORTS FROM DESIGNATED COUNTRIES TO PREVENT SPREAD OF COMMUNICABLE DISEASES AND IMPORT OF CERTAIN CONTROLLED SUBSTANCES.

(a) IN GENERAL.—Whenever the Secretary makes a determination described in subsection (b) with respect to a country, the Secretary, by regulation, shall have the power to prohibit, in whole or in part, for a period of time determined to be necessary by the Secretary, the introduction of persons and property from such countries designated by the Secretary in order to avert the danger described in such subsection.

(b) DETERMINATION.—A determination described in this subsection is a determination by the Secretary that, by reason of the existence of any communicable disease or, after consultation with the Attorney General, certain controlled substances in a foreign country—

(1) there is serious danger of the introduction of such disease or substances into the United States; and

(2) such danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health.

(c) DEFINITION.—In this section, the term "certain controlled substance" means—

(1) a narcotic drug as defined in section 1300.01 of title 21, Code of Federal Regulations (or successor regulations);

(2) an opiate as described in section 1308.11(b) or 1308.12(c) of such title (or successor regulations);

(3) an opium derivative as described in section 1308.11(c) of such title (or successor regulations);

(4) a stimulant as described in section 1308.11(f) or 1308.12(d) of such title (or successor regulations); and

(5) a fentanyl-related substance as described in section 1308.11(h) of such title (or successor regulations).

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MINORITY VIEWS

H.R. 801 would vastly expand the authority of the Secretary of Health and Human Services (HHS) to deny entry of people into the United States, including those seeking legal asylum protections, should the Secretary determine that there is a danger of the introduction of certain controlled substances into the U.S.

This policy amends Section 362 of the Public Health Service Act, often referred to as "Title 42" authorities. Under current law, the federal government may suspend the right to introduce persons or property into the United States if there is a serious danger of the introduction of a communicable disease into the U.S.[1] However, this legislation would vastly expand this authority to permit the Secretary to deny entry of persons or property into the United States should he or she determine, after consultation with the Attorney General, that there is a "serious danger" of the introduction of certain controlled substances into the United States. While the public health provisions under Section 362 were intended to prevent the spread of communicable diseases in the United States, this provision was not intended to allow the Secretary to have the unchecked authority to deny entry of persons or property into the country, which H.R. 801 would provide.

This policy could be easily misused to inappropriately and inhumanely block entry of immigrants and those seeking asylum into the United States. The bill would permit the Secretary to close U.S. borders to entrants of *any* country that the Secretary may choose based on an overbroad and vague determination that there is a "serious danger" of certain controlled substances entering the United States. H.R. 801 does not define how the Secretary should make a determination of what constitutes a "serious danger" to warrant the use of this authority, nor does the legislation provide any additional parameters or limitations under what circumstances the Secretary could exercise this authority, beyond simply requiring consultation with the Attorney General.

As drafted, H.R. 801 could also be interpreted to permit the Secretary to prohibit entry of property into the United States through legal ports of entry, potentially blocking entry of vital goods into the U.S. should the Secretary determine, virtually unilaterally, that there is a serious danger of the entry of certain controlled substances from a specific country. This authority could be easily abused.

The federal government's law enforcement agencies, including the Department of Justice and the Department of Homeland Security, are best positioned to detect and divert controlled substances at our nation's borders. Limiting entry of controlled substances into the United States is not the role of the Department of Health and

[1] 42 U.S.C. 265.

Human Services, or our public health agencies like the Centers for Disease Control and Prevention.

This legislation was not subject to a hearing before the Energy and Commerce Committee. As a result, the Committee and the public have not had a sufficient opportunity to fully analyze the implications for the policy. However, this legislation could clearly have far-reaching and detrimental consequences by vastly expanding the authority of the Secretary to unilaterally deny entry to persons or property into the United States.

FRANK PALLONE, Jr.,
Ranking Member.

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