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Quietly passed act favors profits over health and safety

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BY THOMAS MCGARITY
Special to the Star-Telegram

While public attention was focused on Russian hacking and the confirmation hearings of Donald Trump's cabinet nominees, the House of Representatives quietly passed a bill that will have a profound impact on how the federal government protects us from corporate fraud and threats to our health and safety.

The so-called Regulatory Accountability Act of 2017 combines six legislative proposals that have been percolating since 2011.

It would change the way federal agencies develop the standards and regulations that implement laws protecting our health, safety and the environment from risky products and activities and our pocketbooks from fraud and other rip-offs.

In 2009, after several major food poisoning outbreaks including a contaminated peanut butter scandal that killed nine people and sickened at least 700, Congress enacted the Food Safety Modernization Act.

The statute directed the Food and Drug Administration to develop regulations that require food growers, transporters, processors and importers to take adequate safety precautions.

The FDA used a process known as informal rulemaking to write those regulations.

The Administrative Procedure Act of 1946 established a simple model for informal rulemaking.

An agency must publish a notice describing the substance of the regulation, solicit comments from the public and publish a final rule along with a "concise general statement of basis and purpose."

Over the years, federal courts and various presidents have added to those requirements, mandating that agencies respond to public comments, prepare analyses of regulations' impacts and obtain approval from the Office of Management and Budget, among other measures.

These additions have significantly slowed the development of protective standards.

It took the FDA almost five years to announce the rules necessary to implement the Food Safety Modernization Act.

The Environmental Protection Agency took almost four years to announce risk management standards in response to the April 2013 fertilizer plant explosion in West, Texas.

And it has taken other agencies even longer to develop much-needed protections that we all take for granted.

The Regulatory Accountability Act would be far worse.

The bill would require agencies to base regulations on technocratic cost-benefit analyses and to adopt the least-costly option or explain why they did not do so.

Such a requirement turns popular protective laws on their head and prioritizes corporate profit over the health and safety of the American people, with potentially dangerous consequences.

In 1991, after the Fifth Circuit Court of Appeals read the Toxic Substances Control Act to include similar requirements for a regulation banning cancer-causing asbestos, the EPA abandoned the effort and declined to protect the public from any other toxic substances until Congress amended the statute 25 years later.

The Regulatory Accountability Act also requires trial-like public hearings for all "high-impact" rules — those imposing a cost on the economy of $1 billion — and for any "information quality" challenges.

Faced with a similar requirement in the early 1970s, the EPA abandoned its efforts to write water quality standards for toxic pollutants in wastewater until Congress amended the Clean Water Act in 1977 to provide another way.

Industry loudly complains about trial-like hearings when it comes to licensing new power plants, approving new food additives and issuing pollution permits.

It makes no more sense for an agency to conduct a trial in promulgating rules than it would to require Congress to conduct a trial every time it enacts a major law.

Thomas McGarity is a professor of law at The University of Texas at Austin and a board member of the Center for Progressive Reform.

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