

111TH CONGRESS
1ST SESSION

H. R. 3679

To prohibit the Federal Government from awarding contracts, grants, or other agreements to, providing any other Federal funds to, or engaging in activities that promote certain corporations or companies guilty of certain felony convictions.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 30, 2009

Ms. MCCOLLUM (for herself, Mr. STARK, Mr. GRIJALVA, Mr. McDERMOTT, Mr. ELLISON, Ms. LEE of California, Mr. OBEY, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

To prohibit the Federal Government from awarding contracts, grants, or other agreements to, providing any other Federal funds to, or engaging in activities that promote certain corporations or companies guilty of certain felony convictions.

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 “Against Corporations
5 Organizing to Rip-off the Nation Act” or the “ACORN
6 Act”.

1 **SEC. 2. FINDINGS.**

2 (1) According to the Corporate Fraud Task
3 Force Report to the President, 2008, in fiscal year
4 2007, United States Attorneys' offices opened 878
5 new criminal health care fraud investigations involv-
6 ing 1,548 potential defendants. Federal prosecutors
7 had 1,612 health care fraud criminal investigations
8 pending, involving 2,603 potential defendants, and
9 filed criminal charges in 434 cases involving 786 de-
10 fendants. A total of 560 defendants were convicted
11 for health care fraud-related crimes during the year.

12 (2) On September 2, 2009, it was announced
13 that Pfizer Inc. and its subsidiary Pharmacia &
14 Upjohn Company Inc., agreed to pay \$2.3 billion,
15 the largest health care fraud settlement in the his-
16 tory of the Department of Justice, to resolve crimi-
17 nal liability from the illegal promotion of certain
18 pharmaceutical products.

19 (3) Pharmacia & Upjohn Company agreed to
20 plead guilty to a felony violation of the Federal
21 Food, Drug and Cosmetic Act for misbranding
22 Bextra with the intent to defraud or mislead.

23 (4) Pharmacia & Upjohn Company marketed
24 "off-label" uses of Bextra for several uses and dos-
25 ages that the Food and Drug Administration de-
26 clined to approve due to safety concerns.

1 (5) The Assistant Attorney General for the
2 Civil Division has stated, “Illegal conduct and fraud
3 by pharmaceutical companies puts the public health
4 at risk, corrupts medical decisions by health care
5 providers, and costs the Government billions of dol-
6 lars.”.

7 (6) The Director of the Defense Department’s
8 Criminal Investigative Services stated, “The off-label
9 promotion of pharmaceutical drugs by Pfizer signifi-
10 cantly impacted the integrity of TRICARE, the De-
11 partment of Defense’s health care system. This ille-
12 gal activity increases patients’ costs, threatens their
13 safety and negatively affects the health care services
14 to the over nine million military members, retirees
15 and their families who rely on this system.”.

16 **SEC. 3. PROHIBITIONS ON FEDERAL FUNDS AND OTHER**
17 **ACTIVITIES WITH RESPECT TO CERTAIN COR-**
18 **PORATIONS OR COMPANIES.**

19 (a) PROHIBITIONS.—Subject to subsection (e), with
20 respect to any covered corporation or company or applica-
21 ble individual the following prohibitions apply:

22 (1) No Federal contract, grant, cooperative
23 agreement, or any other form of agreement (includ-
24 ing a memorandum of understanding) may be
25 awarded to or entered into with the corporation or

1 company for a 5-year period beginning 30 days after
2 the date of the criminal conviction involved or termi-
3 nation of charter (as the case may be).

4 (2) No Federal funds in any other form may be
5 provided to the corporation or company for such 5-
6 year period.

7 (3) No Federal employee or contractor may
8 promote in any way (including recommending to a
9 person or referring to a person for any purpose) the
10 corporation or company for such 5-year period.

11 (4) No covered corporation or company or ap-
12 plicable individual may contribute funds to a can-
13 didate for Federal office, Federal political action
14 committee, or Federal or State political party during
15 such a 5-year period.

16 (5) No more than \$1,000,000 in any calendar
17 year may be used by the corporation or company, or
18 applicable individual, for the purpose of lobbying
19 Congress or Federal employees during such 5-year
20 period.

21 (b) COVERED CORPORATION OR COMPANY.—In this
22 section, the term “covered corporation or company” means
23 any of the following:

24 (1) Any corporation or company guilty of felony
25 criminal violations under any Federal or State law—

1 (A) including a felony violation of the Fed-
2 eral Food, Drug and Cosmetic Act, sections
3 3729 through 3733 of title 31, United States
4 Code (formerly known as the False Claims
5 Act), or a violation for the filing of a fraudulent
6 form with any Federal or State regulatory
7 agency; but

8 (B) excluding a violation for which the cor-
9 poration or company has fully completed all
10 terms of criminal sentencing or a criminal set-
11 tlement agreement as of the date of the enact-
12 ment of this Act.

13 (2) Any corporation or company that had its
14 State corporate charter terminated due to its failure
15 to comply with Federal or State lobbying disclosure
16 requirements.

17 (3) Any corporation or company that, within
18 the 5-year period beginning 30 days after the date
19 of conviction of an applicable individual of a viola-
20 tion described in subsection (c)(2)(B)—

21 (A) employs the applicable individual, in a
22 permanent or temporary capacity;

23 (B) has under contract or retains the ap-
24 plicable individual; or

1 (C) has the applicable individual acting on
2 the behalf of the corporation or company or
3 with the express or apparent authority of the
4 corporation or company.

5 (c) ADDITIONAL DEFINITIONS.—In this section:

6 (1) The term “corporation or company” in-
7 cludes Pfizer, Pharmacia & Upjohn Company Inc.
8 and any Pfizer-related affiliate.

9 (2) The term “applicable individual” means,
10 with respect to a corporation or company, an indi-
11 vidual who—

12 (A) is a director, officer, or executive of
13 the corporation or company; and

14 (B) has been found guilty of a felony viola-
15 tion under Federal or State law in relation to
16 the individual’s conduct in the individual’s ca-
17 pacity as a director, officer, or executive of a
18 corporation or company.

19 (d) REVISION OF FEDERAL ACQUISITION REGULA-
20 TION.—The Federal Acquisition Regulation shall be re-
21 vised to carry out the provisions of this Act relating to
22 contracts.

23 (e) PRESIDENTIAL WAIVER AUTHORITY.—The Presi-
24 dent may waive a prohibition in subsection (a) with re-

1 spect to a corporation, company, or applicable individual
2 if the President—

3 (1) determines such a waiver is in the national
4 interest; and

5 (2) provides notice to all appropriate Congres-
6 sional committees of the intent to grant such waiver
7 15 days before the date such waiver is granted.

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