

111TH CONGRESS
2D SESSION

H. R. 4678

To require foreign manufacturers of products imported into the United States to establish registered agents in the United States who are authorized to accept service of process against such manufacturers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 24, 2010

Ms. SUTTON (for herself, Mr. TURNER, Ms. LINDA T. SÁNCHEZ of California, Mr. CONYERS, Ms. ZOE LOFGREN of California, Mrs. MILLER of Michigan, Mr. BRALEY of Iowa, Mr. SARBANES, Ms. GINNY BROWN-WAITE of Florida, Mr. MICHAUD, Mr. DOGGETT, Mr. JONES, Mr. DUNCAN, Mr. HARE, Mr. KILDEE, Mr. STUPAK, Mr. DONNELLY of Indiana, Mr. GENE GREEN of Texas, Mr. TERRY, Ms. EDWARDS of Maryland, Ms. SHEA-PORTER, Mr. OBERSTAR, Mr. RYAN of Ohio, Mr. KANJORSKI, Ms. KAPTUR, Mr. KAGEN, and Mr. YARMUTH) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require foreign manufacturers of products imported into the United States to establish registered agents in the United States who are authorized to accept service of process against such manufacturers, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Foreign Manufacturers
3 Legal Accountability Act of 2010”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **APPLICABLE AGENCY.**—The term “applica-
7 ble agency” means, with respect to covered prod-
8 ucts—

9 (A) described in subparagraphs (A) and
10 (B) of paragraph (3), the Food and Drug Ad-
11 ministration;

12 (B) described in paragraph (3)(C), the
13 Consumer Product Safety Commission; or

14 (C) described in subparagraphs (D) and
15 (E) of paragraph (3), the Environmental Pro-
16 tection Agency.

17 (2) **COMMERCE.**—The term “commerce” means
18 trade, traffic, commerce, or transportation—

19 (A) between a place in a State and any
20 place outside thereof; or

21 (B) which affects trade, traffic, commerce,
22 or transportation described in subparagraph
23 (A).

24 (3) **COVERED PRODUCT.**—The term “covered
25 product” means any of the following:

1 (A) Drugs, devices, and cosmetics, as such
2 terms are defined in section 201 of the Federal
3 Food, Drug, and Cosmetic Act (21 U.S.C.
4 321).

5 (B) A biological product, as such term is
6 defined in section 351(i) of the Public Health
7 Service Act (42 U.S.C. 262(i)).

8 (C) A consumer product, as such term is
9 used in section 3(a) of the Consumer Product
10 Safety Act (15 U.S.C. 2052).

11 (D) A chemical substance or new chemical
12 substance, as such terms are defined in section
13 3 of the Toxic Substances Control Act (15
14 U.S.C. 2602).

15 (E) A pesticide, as such term is defined in
16 section 2 of the Federal Insecticide, Fungicide,
17 and Rodenticide Act (7 U.S.C. 136).

18 (4) DISTRIBUTE IN COMMERCE.—The term
19 “distribute in commerce” means to sell in commerce,
20 to introduce or deliver for introduction into com-
21 merce, or to hold for sale or distribution after intro-
22 duction into commerce.

1 **SEC. 3. REGISTRATION OF AGENTS OF FOREIGN MANUFAC-**
2 **TURERS AUTHORIZED TO ACCEPT SERVICE**
3 **OF PROCESS IN THE UNITED STATES.**

4 (a) REGISTRATION.—

5 (1) IN GENERAL.—Not later than 180 days
6 after the date of the enactment of this Act and ex-
7 cept as provided in paragraph (3), the head of each
8 applicable agency shall require foreign manufactur-
9 ers and producers of covered products distributed in
10 commerce (or component parts that will be used in
11 the United States to manufacture such products) to
12 establish a registered agent in the United States
13 who is authorized to accept service of process on be-
14 half of such manufacturer or producer for the pur-
15 pose of all civil and regulatory actions in State and
16 Federal courts, if such service is made in accord
17 with the State or Federal rules for service of process
18 in the State in which the case or regulatory action
19 is brought.

20 (2) LOCATION.—The head of each applicable
21 agency shall require that an agent of a foreign man-
22 ufacturer or producer registered under paragraph
23 (1) be located in a State with a substantial connec-
24 tion to the importation, distribution, or sale of the
25 products of such foreign manufacturer or producer.

1 (3) MINIMUM SIZE.—Paragraph (1) shall only
2 apply to foreign manufacturers and producers that
3 manufacture or produce covered products (or compo-
4 nent parts that will be used in the United States to
5 manufacture such products) in excess of a minimum
6 value or quantity established by the head of the ap-
7 plicable agency under this section.

8 (b) REGISTRY OF AGENTS OF FOREIGN MANUFAC-
9 TURERS.—

10 (1) IN GENERAL.—The Secretary of Commerce
11 shall, in cooperation with each head of an applicable
12 agency, establish and keep up to date a registry of
13 agents registered under subsection (a).

14 (2) AVAILABILITY.—The Secretary of Com-
15 merce shall make the registry established under
16 paragraph (1) available to the public through the
17 Internet website of the Department of Commerce.

18 (c) CONSENT TO JURISDICTION.—A foreign manu-
19 facturer or producer of covered products that registers an
20 agent under this section thereby consents to the personal
21 jurisdiction of the State and Federal courts of the State
22 in which the registered agent is located for the purpose
23 of any civil or regulatory proceeding.

24 (d) REGULATIONS.—Not later than the date de-
25 scribed in subsection (a)(1), the Secretary of Commerce

1 and each head of an applicable agency shall prescribe reg-
2 ulations to carry out this section.

3 **SEC. 4. PROHIBITION OF IMPORTATION OF PRODUCTS OF**
4 **MANUFACTURERS WITHOUT REGISTERED**
5 **AGENTS IN UNITED STATES.**

6 (a) IN GENERAL.—Beginning on the date that is 180
7 days after the date the regulations required under section
8 3(d) are prescribed, a person may not import into the
9 United States a covered product (or component part that
10 will be used in the United States to manufacture a covered
11 product) if such product (or component part) or any part
12 of such product (or component part) was manufactured
13 or produced outside the United States by a manufacturer
14 or producer who does not have a registered agent de-
15 scribed in section 3(a) whose authority is in effect on the
16 date of the importation.

17 (b) ENFORCEMENT.—The Secretary of Homeland Se-
18 curity shall prescribe regulations to enforce the prohibition
19 in subsection (a).

1 **SEC. 5. STUDY ON REGISTRATION OF AGENTS OF FOREIGN**
2 **FOOD PRODUCERS AUTHORIZED TO ACCEPT**
3 **SERVICE OF PROCESS IN THE UNITED**
4 **STATES.**

5 Not later than 1 year after the date of the enactment
6 of this Act, the Secretary of Agriculture and the Commis-
7 sioner of Food and Drugs shall jointly—

8 (1) complete a study on the feasibility and ad-
9 visability of requiring foreign producers of food dis-
10 tributed in commerce to establish a registered agent
11 in the United States who is authorized to accept
12 service of process on behalf of such producers for
13 the purpose of all civil and regulatory actions in
14 State and Federal courts; and

15 (2) submit to Congress a report on the findings
16 of the Secretary with respect to such study.

17 **SEC. 6. RELATIONSHIP WITH OTHER LAWS.**

18 Nothing in this Act shall affect the authority of any
19 State to establish or continue in effect a provision of State
20 law relating to service of process or personal jurisdiction,
21 except to the extent that such provision of law is incon-
22 sistent with the provisions of this Act, and then only to
23 the extent of such inconsistency.

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