

117TH CONGRESS  
2D SESSION

# S. 4902

To address the preference for United States industry with respect to patent rights in inventions made with Department of Homeland Security research assistance, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2022

Mr. PORTMAN (for himself and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To address the preference for United States industry with respect to patent rights in inventions made with Department of Homeland Security research assistance, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Invent Here, Make  
5 Here for Homeland Security Act”.

1 **SEC. 2. PREFERENCE FOR UNITED STATES INDUSTRY.**

2 Section 308 of the Homeland Security Act of 2002  
3 (6 U.S.C. 188) is amended by adding at the end the fol-  
4 lowing:

5 “(d) PREFERENCE FOR UNITED STATES INDUS-  
6 TRY.—

7 “(1) DEFINITIONS.—In this subsection:

8 “(A) COUNTRY OF CONCERN.—The term  
9 ‘country of concern’ means a country that—

10 “(i) is a covered nation, as that term  
11 is defined in section 4872(d) of title 10,  
12 United States Code; or

13 “(ii) the Secretary determines is en-  
14 gaged in conduct that is detrimental to the  
15 national security of the United States.

16 “(B) FUNDING AGREEMENT; NONPROFIT  
17 ORGANIZATION; SUBJECT INVENTION.—The  
18 terms ‘funding agreement’, ‘nonprofit organiza-  
19 tion’, and ‘subject invention’ have the meanings  
20 given those terms in section 201 of title 35,  
21 United States Code.

22 “(C) RELEVANT CONGRESSIONAL COMMIT-  
23 TEES.—The term ‘relevant congressional com-  
24 mittees’ means—

1                   “(i) the Committee on Homeland Se-  
2                   curity and Governmental Affairs of the  
3                   Senate; and

4                   “(ii) the Committee on Homeland Se-  
5                   curity of the House of Representatives.

6                   “(2) PREFERENCE.—Subject to the other provi-  
7                   sions of this subsection, no firm or nonprofit organi-  
8                   zation which receives title to any subject invention  
9                   developed under a funding agreement entered into  
10                  with the Department and no assignee of any such  
11                  firm or nonprofit organization shall grant to any  
12                  person the exclusive right to use or sell any subject  
13                  invention unless such person agrees that any prod-  
14                  ucts embodying the subject invention or produced  
15                  through the use of the subject invention will be man-  
16                  ufactured substantially in the United States.

17                  “(3) WAIVERS.—

18                  “(A) IN GENERAL.—Subject to subpara-  
19                  graph (B), in individual cases, the requirement  
20                  for an agreement described in paragraph (2)  
21                  may be waived by the Secretary upon a showing  
22                  by the firm, nonprofit organization, or assignee  
23                  that reasonable but unsuccessful efforts have  
24                  been made to grant licenses on similar terms to  
25                  potential licensees that would be likely to manu-

1           facture substantially in the United States or  
2           that under the circumstances domestic manu-  
3           facture is not commercially feasible.

4                   “(B) CONDITIONS ON WAIVERS GRANTED  
5           BY DEPARTMENT.—

6                           “(i) BEFORE GRANT OF WAIVER.—Be-  
7           fore granting a waiver under subparagraph  
8           (A), the Secretary shall—

9                                   “(I) consult with the relevant  
10           congressional committees regarding  
11           the decision of the Secretary to grant  
12           the waiver; and

13                                   “(II) comply with the procedures  
14           developed and implemented pursuant  
15           to section 70923(b)(2) of the Build  
16           America, Buy America Act (subtitle A  
17           of title IX of division G of Public Law  
18           117–58).

19                           “(ii) PROHIBITION ON GRANTING CER-  
20           TAIN WAIVERS.—The Secretary may not  
21           grant a waiver under subparagraph (A) if,  
22           as a result of the waiver, products embody-  
23           ing the applicable subject invention, or pro-  
24           duced through the use of the applicable

1 subject invention, will be manufactured  
2 substantially in a country of concern.”.

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