

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. SANCHEZ 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Foreign Manufacturers Legal Accountability Act of 2010'.

SEC. 2. DEFINITIONS.

In this Act:

(1) APPLICABLE AGENCY- The term 'applicable agency' means, with respect to covered products--

(A) described in subparagraphs (A) and (B) of paragraph (3), the Food and Drug Administration;

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

(C) described in subparagraphs (D) and (E) of paragraph (3), the Environmental Protection Agency.

(2) COMMERCE- The term `commerce' means trade, traffic, commerce, or transportation--

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

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

(3) COVERED PRODUCT- The term `covered product' means any of the following:

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

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

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

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

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

(4) DISTRIBUTE IN COMMERCE- The term `distribute in commerce' means to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

SEC. 3. REGISTRATION OF AGENTS OF FOREIGN MANUFACTURERS AUTHORIZED TO ACCEPT SERVICE OF PROCESS IN THE UNITED STATES.

(a) Registration-

(1) IN GENERAL- Not later than 180 days after the date of the enactment of this Act and except as provided in paragraph (3), the head of each applicable agency shall require foreign manufacturers and producers of covered products distributed in commerce (or component parts that will be used in the United States to manufacture such products) to establish a registered agent in the United States who is authorized to accept service of process on behalf of such manufacturer or producer for the purpose of all civil and regulatory actions in State and Federal courts, if such service is made in accord with the State or Federal rules for service of process in the State in which the case or regulatory action is brought.

(2) LOCATION- The head of each applicable agency shall require that an agent of a foreign manufacturer or producer registered under paragraph (1) be located in a State with a substantial connection to the importation, distribution, or sale of the products of such foreign manufacturer or

producer.

(3) MINIMUM SIZE- Paragraph (1) shall only apply to foreign manufacturers and producers that manufacture or produce covered products (or component parts that will be used in the United States to manufacture such products) in excess of a minimum value or quantity established by the head of the applicable agency under this section.

(b) Registry of Agents of Foreign Manufacturers-

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

(2) AVAILABILITY- The Secretary of Commerce shall make the registry established under paragraph (1) available to the public through the Internet website of the Department of Commerce.

(c) Consent to Jurisdiction- A foreign manufacturer or producer of covered products that registers an agent under this section thereby consents to the personal jurisdiction of the State and Federal courts of the State in which the registered agent is located for the purpose of any civil or regulatory proceeding.

(d) Regulations- Not later than the date described in subsection (a)(1), the Secretary of Commerce and each head of an applicable agency shall prescribe regulations to carry out this section.

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

(a) In General- Beginning on the date that is 180 days after the date the regulations required under section 3(d) are prescribed, a person may not import into the United States a covered product (or component part that will be used in the United States to manufacture a covered product) if such product (or component part) or any part of such product (or component part) was manufactured or produced outside the United States by a manufacturer or producer who does not have a registered agent described in section 3(a) whose authority is in effect on the date of the importation.

(b) Enforcement- The Secretary of Homeland Security shall prescribe regulations to enforce the prohibition in subsection (a).

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

Not later than 1 year after the date of the enactment of this Act, the Secretary of Agriculture and the Commissioner of Food and Drugs shall jointly--

(1) complete a study on the feasibility and advisability of requiring foreign producers of food distributed in commerce to establish a registered agent in the United States who is authorized to accept service of process on behalf of such producers for the purpose of all civil and regulatory actions in State and Federal courts; and

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

SEC. 6. RELATIONSHIP WITH OTHER LAWS.

Nothing in this Act shall affect the authority of any State to establish or continue in effect a provision of State law relating to service of process or personal jurisdiction, except to the extent that such provision of law is inconsistent with the provisions of this Act, and then only to the extent of such inconsistency.

END