

111TH CONGRESS
1ST SESSION

S. 1606

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 SENATE OF THE UNITED STATES

AUGUST 6, 2009

Mr. WHITEHOUSE (for himself, Mr. DURBIN, and Mr. SESSIONS) introduced the following bill; which was read twice and referred to the Committee on Finance

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Foreign Manufacturers
5 Legal Accountability Act of 2009”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Each year, many people in the United
2 States are injured by defective products manufac-
3 tured or produced by foreign entities and imported
4 into the United States.

5 (2) Both consumers and businesses in the
6 United States have been harmed by injuries to peo-
7 ple in the United States caused by defective prod-
8 ucts manufactured or produced by foreign entities.

9 (3) People in the United States injured by de-
10 fective products manufactured or produced by for-
11 eign entities often have difficulty recovering damages
12 from the foreign manufacturers and producers re-
13 sponsible for such injuries.

14 (4) The difficulty described in paragraph (3) is
15 caused by the obstacles in bringing a foreign manu-
16 facturer or producer into a United States court and
17 subsequently enforcing a judgment against that
18 manufacturer or producer.

19 (5) Obstacles to holding a responsible foreign
20 manufacturer or producer liable for an injury to a
21 person in the United States undermine the purpose
22 of the tort laws of the United States.

23 (6) The difficulty of applying the tort laws of
24 the United States to foreign manufacturers and pro-
25 ducers puts United States manufacturers and pro-

1 ducers at a competitive disadvantage because United
2 States manufacturers and producers must—

3 (A) abide by common law and statutory
4 safety standards; and

5 (B) invest substantial resources to ensure
6 that they do so.

7 (7) Foreign manufacturers and producers can
8 avoid the expenses necessary to make their products
9 safe if they know that they will not be held liable for
10 violations of United States product safety laws.

11 (8) Businesses in the United States undertake
12 numerous commercial relationships with foreign
13 manufacturers, exposing the businesses to additional
14 tort liability when foreign manufactures or producers
15 evade United States courts.

16 (9) Businesses in the United States engaged in
17 commercial relationships with foreign manufacturers
18 or producers often cannot vindicate their contractual
19 rights if such manufacturers or producers seek to
20 avoid responsibility in United States courts.

21 (10) One of the major obstacles facing busi-
22 nesses and individuals in the United States who are
23 injured and who seek compensation for economic or
24 personal injuries caused by foreign manufacturers

1 and producers is the challenge of serving process on
2 such manufacturers and producers.

3 (11) An individual or business injured in the
4 United States by a foreign company must rely on a
5 foreign government to serve process when that com-
6 pany is located in a country that is a signatory to
7 the Convention on the Service Abroad of Judicial
8 and Extrajudicial Documents in Civil or Commercial
9 Matters done at The Hague November 15, 1965 (20
10 UST 361; TIAS 6638).

11 (12) An injured person in the United States
12 must rely on the cumbersome system of letters roga-
13 tory to effect service in a country that did not sign
14 the Convention on the Service Abroad of Judicial
15 and Extrajudicial Documents in Civil or Commercial
16 Matters. These countries do not have an enforceable
17 obligation to serve process as requested.

18 (13) The procedures described in paragraphs
19 (11) and (12) add time and expense to litigation in
20 the United States, thereby discouraging or frus-
21 trating meritorious lawsuits brought by persons in-
22 jured in the United States against foreign manufac-
23 turers and producers.

24 (14) Foreign manufacturers and producers
25 often seek to avoid judicial consideration of their ac-

1 tions by asserting that United States courts lack
2 personal jurisdiction over them.

3 (15) The due process clauses of the fifth
4 amendment to and section 1 of the 14th amendment
5 to the Constitution govern United States court as-
6 sertions of personal jurisdiction over defendants.

7 (16) The due process clauses described in para-
8 graph (15) are satisfied when a defendant consents
9 to the jurisdiction of a court.

10 (17) United States markets present many op-
11 portunities for foreign manufacturers.

12 (18) Creating a competitive advantage for ei-
13 ther foreign or domestic manufacturers violates the
14 principles of United States trade agreements with
15 other countries.

16 (19) In choosing to import products into the
17 United States, a foreign manufacturer or producer
18 subjects itself to the laws of the United States. Such
19 a foreign manufacturer or producer thereby acknowl-
20 edges that it is subject to the personal jurisdiction
21 of the State and Federal courts in at least one
22 State.

23 **SEC. 3. SENSE OF CONGRESS.**

24 It is the sense of Congress that—

1 (1) foreign manufacturers and producers whose
2 products are sold in the United States should not be
3 able to avoid liability simply because of difficulties
4 relating to serving process upon them;

5 (2) to avoid such lack of accountability, foreign
6 manufacturers and producers of foreign products
7 distributed in the United States should be required,
8 by regulation, to register an agent in the United
9 States who is authorized to accept service of process
10 for such manufacturer or producer;

11 (3) it is unfair to United States consumers and
12 businesses that foreign manufacturers and producers
13 often seek to avoid judicial consideration of their ac-
14 tions by asserting that United States courts lack
15 personal jurisdiction over them;

16 (4) those who benefit from importing products
17 into United States markets should expect to be sub-
18 ject to the jurisdiction of at least one court within
19 the United States;

20 (5) importing products into the United States
21 should be understood as consent to the account-
22 ability that the legal system of the United States en-
23 sures for all manufacturers and producers, foreign,
24 and domestic;

1 (6) importers recognize the scope of opportuni-
2 ties presented to them by United States markets but
3 also should recognize that products imported into
4 the United States must satisfy Federal and State
5 safety standards established by statute, regulation,
6 and common law;

7 (7) foreign manufacturers should recognize that
8 they are responsible for the contracts they enter into
9 with United States companies;

10 (8) foreign manufacturers should act respon-
11 sibly and recognize that they operate within the con-
12 straints of the United States legal system when they
13 import products into the United States;

14 (9) foreign manufacturers who are unwilling to
15 act and recognize as described in paragraphs (6),
16 (7), and (8) should not have access to United States
17 markets;

18 (10) United States laws and the laws of United
19 States trading partners should not put burdens on
20 foreign manufacturers and importers that do not
21 apply to domestic companies;

22 (11) it is fair to ensure that foreign manufac-
23 turers, whose products are distributed in commerce
24 in the United States, are subject to the jurisdiction
25 of State and Federal courts in at least one State be-

1 cause all United States manufacturers are subject to
2 the jurisdiction of the State and Federal courts in
3 at least one State; and

4 (12) it should be understood that, by reg-
5 istering an agent for service of process in the United
6 States, the foreign manufacturer or producer ac-
7 knowledges consent to the jurisdiction of the State
8 in which the registered agent is located.

9 **SEC. 4. DEFINITIONS.**

10 In this Act:

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

14 (A) described in subparagraphs (A) and
15 (B) of paragraph (3), the Food and Drug Ad-
16 ministration;

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

19 (C) described in subparagraphs (D) and
20 (E) of paragraph (3), the Environmental Pro-
21 tection Agency.

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

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

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

4 (3) COVERED PRODUCT.—The term “covered
5 product” means any of the following:

6 (A) Drugs, devices, and cosmetics, as such
7 terms are defined in section 201 of the Federal
8 Food, Drug, and Cosmetic Act (21 U.S.C.
9 321).

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

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

16 (D) A chemical substance or new chemical
17 substance, as such terms are defined in section
18 3 of the Toxic Substances Control Act (15
19 U.S.C. 2602).

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

23 (4) DISTRIBUTE IN COMMERCE.—The term
24 “distribute in commerce” means to sell in commerce,
25 to introduce or deliver for introduction into com-

1 merce, or to hold for sale or distribution after intro-
2 duction into commerce.

3 **SEC. 5. REGISTRATION OF AGENTS OF FOREIGN MANUFAC-**
4 **TURERS AUTHORIZED TO ACCEPT SERVICE**
5 **OF PROCESS IN THE UNITED STATES.**

6 (a) REGISTRATION.—

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

22 (2) LOCATION.—The head of each applicable
23 agency shall require that an agent of a foreign man-
24 ufacturer or producer registered under paragraph
25 (1) be located in a State with a substantial connec-

1 tion to the importation, distribution, or sale of the
2 products of such foreign manufacturer or producer.

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

10 (b) REGISTRY OF AGENTS OF FOREIGN MANUFAC-
11 TURERS.—

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

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

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

1 (d) REGULATIONS.—Not later than the date de-
2 scribed in subsection (a)(1), the Secretary of Commerce
3 and each head of an applicable agency shall prescribe reg-
4 ulations to carry out this section.

5 **SEC. 6. PROHIBITION OF IMPORTATION OF PRODUCTS OF**
6 **MANUFACTURERS WITHOUT REGISTERED**
7 **AGENTS IN UNITED STATES.**

8 (a) IN GENERAL.—Beginning on the date that is 180
9 days after the date the regulations required under section
10 5(d) are prescribed, a person may not import into the
11 United States a covered product (or component part that
12 will be used in the United States to manufacture a covered
13 product) if such product (or component part) or any part
14 of such product (or component part) was manufactured
15 or produced outside the United States by a manufacturer
16 or producer who does not have a registered agent de-
17 scribed in section 5(a) whose authority is in effect on the
18 date of the importation.

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

1 **SEC. 7. 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. 8. 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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