

**Foreign Manufacturers Legal Accountability Act of 2009 (Introduced in Senate)**

S 1606 IS

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

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**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 2009'.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

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

(2) Both consumers and businesses in the United States have been harmed by injuries to people in the United States caused by defective products manufactured or produced by foreign entities.

(3) People in the United States injured by defective products manufactured or produced by foreign entities often have difficulty recovering damages from the foreign manufacturers and producers responsible for such injuries.

(4) The difficulty described in paragraph (3) is caused by the obstacles in bringing a foreign manufacturer or producer into a United States court and subsequently enforcing a judgment against that manufacturer or producer.

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

(6) The difficulty of applying the tort laws of the United States to foreign manufacturers and producers puts United States manufacturers and producers at a competitive disadvantage because United States manufacturers and producers must--

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

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

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

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

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

(10) One of the major obstacles facing businesses and individuals in the United States who are injured and who seek compensation for economic or personal injuries caused by foreign manufacturers and producers is the challenge of serving process on such manufacturers and producers.

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

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

(13) The procedures described in paragraphs (11) and (12) add time and expense to litigation in the United States, thereby discouraging or frustrating meritorious lawsuits brought by persons injured in the United States against foreign manufacturers and producers.

(14) Foreign manufacturers and producers often seek to avoid judicial consideration of their actions by asserting that United States courts lack personal jurisdiction over them.

(15) The due process clauses of the fifth amendment to and section 1 of the 14th amendment to the Constitution govern United States court assertions of personal jurisdiction over defendants.

(16) The due process clauses described in paragraph (15) are satisfied when a defendant consents to the jurisdiction of a court.

(17) United States markets present many opportunities for foreign manufacturers.

(18) Creating a competitive advantage for either foreign or domestic manufacturers violates the principles of United States trade agreements with other countries.

(19) In choosing to import products into the United States, a foreign manufacturer or producer subjects itself to the laws of the United States. Such a foreign manufacturer or producer thereby acknowledges that it is subject to the personal jurisdiction of the State and Federal courts in at least one State.

### **SEC. 3. SENSE OF CONGRESS.**

It is the sense of Congress that--

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

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

(3) it is unfair to United States consumers and businesses that foreign manufacturers and producers often seek to avoid judicial consideration of their actions by asserting that United States courts lack personal jurisdiction over them;

(4) those who benefit from importing products into United States markets should expect to be subject to the jurisdiction of at least one court within the United States;

(5) importing products into the United States should be understood as consent to the accountability that the legal system of the United States ensures for all manufacturers and producers, foreign, and domestic;

(6) importers recognize the scope of opportunities presented to them by United States markets but also should recognize that products imported

into the United States must satisfy Federal and State safety standards established by statute, regulation, and common law;

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

(8) foreign manufacturers should act responsibly and recognize that they operate within the constraints of the United States legal system when they import products into the United States;

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

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

(11) it is fair to ensure that foreign manufacturers, whose products are distributed in commerce in the United States, are subject to the jurisdiction of State and Federal courts in at least one State because all United States manufacturers are subject to the jurisdiction of the State and Federal courts in at least one State; and

(12) it should be understood that, by registering an agent for service of process in the United States, the foreign manufacturer or producer acknowledges consent to the jurisdiction of the State in which the registered agent is located.

#### **SEC. 4. 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;
  - (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. 5. 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 or 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. 6. 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 5(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 5(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. 7. 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. 8. 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.

**Sponsor:** [Sen Whitehouse, Sheldon](#) [RI] (introduced 8/6/2009) [Cosponsors](#) (7)  
**Latest Major Action:** 8/6/2009 Referred to Senate committee. Status: Read twice and referred to the Committee on Finance.

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**COSPONSORS(7), ALPHABETICAL** [followed by Cosponsors withdrawn]: (Sort: [by date](#))

[Sen Brown, Sherrod](#) [OH] - 11/9/2009  
[Sen Durbin, Richard](#) [IL] - 8/6/2009  
[Sen Graham, Lindsey](#) [SC] - 12/1/2009  
[Sen Landrieu, Mary L.](#) [LA] - 10/27/2009  
[Sen Nelson, Bill](#) [FL] - 9/14/2009  
[Sen Sessions, Jeff](#) [AL] - 8/6/2009  
[Sen Specter, Arlen](#) [PA] - 11/18/2009

**SUMMARY AS OF:**  
8/6/2009--Introduced.

Foreign Manufacturers Legal Accountability Act of 2009 - Expresses the sense of Congress with respect to jurisdiction of courts in the United States over foreign manufacturers that import products into the United States.

Directs the Food and Drug Administration (FDA) (with respect to drugs, devices, cosmetics, and biological products), the Consumer Product Safety Commission (CPSC) (with respect to consumer products), and the Environmental Protection Agency (EPA) (with respect to chemical substances, new chemical substances, and pesticides) to require foreign manufacturers and producers of such products (or components used to manufacture them), in excess of a minimum value or quantity, to establish a registered agent in the United States who is authorized to accept service of process on their behalf for the purpose of all civil and regulatory actions in state and federal courts. Requires the registered agent to be located in a state with a substantial connection to the importation, distribution, or sale of the products. Directs the Secretary of Commerce to establish, maintain, and make available to the public a registry of such agents.

Deems a foreign manufacturer or producer of products covered under this Act that registers an agent to consent to the personal jurisdiction of the state or federal courts of the state in which the agent is located for the purpose of any civil or regulatory proceeding.

Prohibits importation into the United States of a covered product (or component part that will be used in the United States to manufacture a covered product) if the product (or component part) or any part of the product (or component part) was manufactured or

produced outside the United States by a manufacturer or producer who does not have a registered agent whose authority is in effect on the date of the importation.

Requires the Secretary of Agriculture and the Commissioner of Food and Drugs to jointly study 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.