

ONE HUNDRED ELEVENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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WASHINGTON, DC 20515-6115

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Minority (202) 225-3641

**MEMORANDUM**

**July 19, 2010**

**To: Members of the Committee on Energy and Commerce**  
**Fr: Committee on Energy and Commerce Democratic Staff**  
**Re: Full Committee Markup on July 21, 2010**

On Wednesday, July 21, 2010, at 10:00 a.m. in Room 2123 of the Rayburn House Office Building, the full Committee will meet in open markup session to consider the following bills:

- **H.R. 3101, the “Twenty-First Century Communications and Video Accessibility Act of 2010”, amended;**
- **H.R. 4692, the “National Manufacturing Strategy Act of 2010”;**
- **H.R. 5156, the “Clean Energy Technology Manufacturing and Export Assistance Act”, amended;**
- **H.R. 4678 , the “Foreign Manufacturer Legal Accountability Act of 2010”, amended; and**
- **H. R. 3655, the “Bereaved Consumer’s Bill of Rights Act”, amended.**

**I. H.R. 3101, TWENTY-FIRST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT OF 2010**

**A. Background**

The Twenty-First Century Communications and Video Accessibility Act of 2010 would update the communications laws to help ensure that individuals with vision, hearing, and other disabilities are able to utilize fully Internet-based communications services and equipment and better access video programming.

Although Congress has previously acted to ensure access to communications devices by people with disabilities, these laws were last updated in 1996. Since that time, the communications marketplace has undergone a fundamental transformation, driven by broadband. Internet-based and digital technologies are now pervasive, offering innovative and effective ways to communicate and share information.

Through increased mobility and the use of data, the benefits of modern technology have profoundly altered our everyday lives, streamlining tasks and allowing mobile access to the Internet and an increasingly diverse menu of applications and services. Smartphones, text messaging, and video conferencing are but a few of the many technologies that a growing number of Americans rely on daily. The extraordinary benefits of many of these technologies, however, are often not accessible to individuals with disabilities.

## **1. Americans with Disabilities**

Various studies have found that people with disabilities suffer disproportionately higher rates of unemployment and poverty than those without disabilities. For instance, in 2008, only 40% of working-age people with disabilities were employed, while almost 80% of those without disabilities were working.<sup>1</sup> If certain current and emerging technologies are not designed to be accessible to the disabilities community, this deep economic divide may only grow larger.

Similarly, if nothing is done to update current laws, an even greater proportion of aging Americans will be left behind. The number of people over age 65 living in the United States is approximately 40 million, or 13% of the total population. One estimate shows that by 2050 that number is expected to increase to 88.5 million, or an estimated 20% of the population.<sup>2</sup> This growth will be accompanied by a jump in the number of Americans with, among other things, vision and hearing impairments who will need accessible communications products and services.

Disabilities access also disproportionately affects American service members returning from Iraq and Afghanistan. Current studies indicate that 13% of combat troops wounded in hostile operations sustain penetrating eye trauma resulting in some vision impairment. In addition, between 12% and 20% of veterans have traumatic brain injuries (TBI) and 64% of service members who suffer TBI test positive for visual dysfunction.<sup>3</sup> Finally, 58,000 veterans have reported ringing in their ears after returning from

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<sup>1</sup> See, e.g., Cornell University, *2008 Disabilities Status Report – United States, Rehabilitation and Training Center on Disability Demographics and Statistics*, p. 32 (online at <http://www.ilr.cornell.edu/edi/disabilitystatistics/>).

<sup>2</sup> United States Census Bureau, *The Next Four Decades – The Older Population in the United States: 2010-2050* (May 2010) (online at [www.census.gov/prod/2010pubs/p25-1138.pdf](http://www.census.gov/prod/2010pubs/p25-1138.pdf)).

<sup>3</sup> Geoffrey Ling et al., *Explosive Blast Neurotrauma*, *Journal of Neurotrauma* (June 2009).

deployment to Iraq or Afghanistan, and the U.S. Department of Veterans Affairs reports that hearing loss will affect 800,000 veterans by 2011.<sup>4</sup>

## **2. Current Statutory and Regulatory Structure**

The statutes and regulations that govern access to communications and video programming for persons with disabilities were enacted when voice communications were transmitted via traditional telephone lines and television was broadcast using analog signals. Current statutory provisions cover the accessibility of traditional telephone service,<sup>5</sup> the compatibility of hearing aids with telephones,<sup>6</sup> and closed captioning for video programming transmitted by broadcast or pay television service and on televisions with screens larger than thirteen inches.<sup>7</sup> In light of increasing reliance on the Internet in all facets of Americans' lives, the National Broadband Plan recently issued by the Federal Communications Commission (FCC) recommends that the Department of Justice "amend its regulations to clarify the obligations of commercial establishments" under the Americans with Disabilities Act "with respect to commercial websites."<sup>8</sup>

### **B. Section-by-Section Summary of H.R. 3101, as Amended in Subcommittee Markup**

#### **1. Section 1. Title and Table of Contents**

This section states that the Act shall be cited as the "Twenty-First Century Communications and Video Programming Act of 2010".

#### **2. Section 2. Limitation on Liability**

This section provides liability protection where a manufacturer or service provider is only acting as a broadband conduit or where a manufacturer or service provider is merely making the existence of third-party accessibility software known to consumers, as long as the manufacturer or service provider is not relying on such third-party software to make the product or service accessible.

#### **3. Title I. Communications Access**

*Section 101. Definitions.* Section 101 contains definitions, including 'advanced communications services', which is defined as electronic messaging, Voice over Internet protocol (VoIP) service and video conferencing.

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<sup>4</sup> Army Times, *War is Hell – On Your Hearing* (Apr. 24, 2010) (online at [www.armytimes.com/news/2010/04/offduty\\_hearing\\_042310w/](http://www.armytimes.com/news/2010/04/offduty_hearing_042310w/)).

<sup>5</sup> 47 U.S.C. 255 and 47 U.S.C. 225.

<sup>6</sup> 47 U.S.C. 610

<sup>7</sup> 47 U.S.C. 303(u)

<sup>8</sup> Federal Communications Commission, *National Broadband Plan*, Recommendation 9.10 (2010).

*Section 102. Hearing Aid Compatibility.* Section 102 requires that equipment that enables voice communications, including equipment that enables advanced communications, be compatible with hearing aids.

*Section 103. Relay Services.* Section 103 requires providers of VoIP-based services to contribute to the Telecommunications Relay Services Fund.

*Section 104. Access to Internet-Based Services and Equipment.* Section 104 requires makers of equipment used for advanced communications and providers of advanced communications services to ensure that their equipment and services are accessible, if so doing is achievable. In determining achievability, the FCC is directed to consider enumerated factors that focus on the specific device in question.

Section 104 also permits the FCC to enforce the obligations contained in the Act and requires that entities covered by H.R. 3101 keep records concerning their accessibility programs and efforts and annually certify with the FCC that they are keeping these records. The FCC is permitted to access these records upon filing by any party of a complaint. Finally, Section 104 requires the FCC to establish a clearinghouse of information on accessible products and services.

*Section 105. Emergency Access and Real-Time Text Advisory Committee.* Section 105 establishes an advisory committee to examine issues related to access to emergency services and so-called “real-time text” services by the disabled. The advisory committee will submit recommendations to the FCC for the adoption of technical standards and procedures.

#### **4. Title II. Video Programming**

*Section 201. Video Programming and Emergency Access Advisory Committee.* Section 201 establishes an FCC advisory committee to examine issues related to closed captioning, video description, access to emergency information, access to video programming guides and menus, and access to video equipment user interfaces. The committee will submit two reports to the FCC with findings and recommendations for the adoption of technical standards and procedures regarding these services.<sup>9</sup> The FCC must accept the recommendations if it finds that the recommendations are adequate to meet the objectives of the Act. Otherwise, the FCC may adopt such standards and procedures it believes are necessary to meet the objectives of the Act.

*Section 202. Video Description and Closed Captioning.* Section 202 reinstates the FCC’s video description rules that were vacated by the D.C. Circuit Court of Appeals in 2002 and grants the FCC limited authority to expand upon those rules after a period of 6 years. This section also requires the FCC to issue regulations to mandate the provision of closed captioning with video programming distributed over the Internet and requires video

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<sup>9</sup> Video description is a service that provides an audio description of the action or movements occurring on the screen, thereby making video programming more accessible to vision-impaired individuals.

programming providers be able to convey emergency information in a manner that is accessible to individuals who are visually-impaired.

*Section 203. Closed Captioning Decoder and Video Description Capability.* Section 203 requires the FCC to issue regulations to ensure that equipment used to view video programming, including devices with small screens, be capable of displaying closed captioning, passing through video description services, and conveying emergency information.

*Section 204. User Interfaces on Digital Apparatus.* Section 204 requires that user interfaces for equipment used to view video programming be accessible, and requires that remote controls for such devices have a button or a substantially equivalent mechanism dedicated to closed captioning features.

*Section 205. Access to Video Programming Guides and Menus Provided on Navigation Devices.* Section 205 requires that on-screen text menus and guides provided by navigation devices be accessible to individuals with disabilities. Cable and satellite providers are permitted to meet the requirements of this section by providing a software or third-party solution to consumers, upon request and at no charge.

*Section 206. Definitions.* Section 206 contains definitions.

At the Committee markup, an amendment in the nature of a substitute is expected to be offered that makes changes to the bill based on ongoing discussions about this legislation.

## **II. H.R. 4692, NATIONAL MANUFACTURING STRATEGY ACT OF 2010**

### **A. Background**

Manufacturing is an important part of the United States economy. At the end of 2009, the United States manufacturing sector employed more than 11.5 million people.<sup>10</sup> As a percentage of the nation's gross domestic product (GDP), manufacturing accounted for 11% in 2009.<sup>11</sup> Manufacturing also consistently comprises a majority of exports from the United States.<sup>12</sup>

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<sup>10</sup> Bureau of Labor Statistics, *Employment, Hours, and Earnings from the Current Employment Statistics Survey (National)* (online at [www.bls.gov/iag/tgs/iag31-33.htm](http://www.bls.gov/iag/tgs/iag31-33.htm) under "Back data" for "Employment, all employees") (accessed July 9, 2010).

<sup>11</sup> Bureau of Economic Analysis, *Gross-Domestic-Product-by-Industry Accounts, Value Added by Industry as a Percentage of Gross Domestic Product* (online at [www.bea.gov/industry/gpotables/gpo\\_action.cfm](http://www.bea.gov/industry/gpotables/gpo_action.cfm)) (accessed July 9, 2010).

<sup>12</sup> See, e.g., U.S. Census Bureau, *U.S. International Trade in Goods and Services (FT 900)* (Apr. 2010) (online at [www.census.gov/ft900](http://www.census.gov/ft900)).

United States manufacturing, however, is not what it once was. In December 1999, manufacturing employed 17.3 million people<sup>13</sup> – reflecting a loss of 5.8 million employees in the sector over the past 10 years. In 1999, manufacturing made up 14.6% of the nation’s GDP<sup>14</sup> – over 3.5% more than today. Furthermore, although manufactured goods exports have generally grown in recent years, United States exporters have lost market share to even more rapidly growing exporters in China, Southeast Asia, and India.<sup>15</sup>

The state of our manufacturing sector has an impact not only on the nation’s economy, but also on its security. According to the National Defense Industrial Association, “with each lost manufacturing job, our defense manufacturing capability declines. Today, the U.S. depends on other nations, who are not necessarily our friends, for strategic materials and technology.”<sup>16</sup>

There are several federal working groups and a variety of programs to support United States manufacturing, including: the Interagency Working Group on Manufacturing Competitiveness, chaired by the Department of Commerce’s Assistant Secretary for Manufacturing and Services; the Commerce Department’s Manufacturing Council; the Manufacturing Extension Partnership Program; and the Interagency Working Group on Manufacturing Research and Development, run through the National Science and Technology Council. There have also been some important steps towards developing a national strategy. At the end of last year, the Executive Office of the President issued a framework describing the state of manufacturing and setting out the Administration’s current policies and initiatives.<sup>17</sup> In 2004, the Department of Commerce issued a report addressing U.S. manufacturing and providing recommendations.<sup>18</sup>

Manufacturing cuts across a range of governmental interests and agencies. Some have argued that a strategic consideration among and across agencies and an effort to unify their efforts would improve federal government policy and support.<sup>19</sup> Other nations,

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<sup>13</sup> Bureau of Labor Statistics, *Employment, Hours, and Earnings from the Current Employment Statistics Survey (National)* (online at [www.bls.gov/iag/tgs/iag31-33.htm](http://www.bls.gov/iag/tgs/iag31-33.htm) under “Back data” for “Employment, all employees”) (accessed July 9, 2010).

<sup>14</sup> Bureau of Economic Analysis, *Gross-Domestic-Product-by-Industry Accounts, Value Added by Industry as a Percentage of Gross Domestic Product* (online at [www.bea.gov/industry/gpotables/gpo\\_action.cfm](http://www.bea.gov/industry/gpotables/gpo_action.cfm)) (accessed July 9, 2010).

<sup>15</sup> Manufacturing Institute, *The Facts About Modern Manufacturing* (2009).

<sup>16</sup> National Defense Industrial Association, Manufacturing Division, *Maintaining a Viable Defense Industrial Base* (Aug. 1, 2008).

<sup>17</sup> Executive Office of the President, *A Framework for Revitalizing American Manufacturing* (Dec. 2009).

<sup>18</sup> Department of Commerce, *Manufacturing in America* (Jan. 2004).

<sup>19</sup> See, e.g., House Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, Testimony of Scott N. Paul, Executive Director, Alliance for American Manufacturing (“it makes perfect sense to harness the best minds, as well as to coordinate among the appropriate agencies, to focus on a government-wide strategy to advance manufacturing in both employment and output terms”), Testimony of Mark A. Gordon, Executive Committee Member of the Manufacturing Division, National Defense Industrial Association (“There are many groups from government, industry, and academia which are

including the United Kingdom, Japan, China, and Germany develop and maintain manufacturing strategies as a means of setting national policy direction to support domestic economic growth in manufacturing.<sup>20</sup>

## **B. Summary of the Legislation**

The National Manufacturing Strategy Act of 2010, introduced by Rep. Daniel Lipinski (D-IL), would require the President to undertake a deep and broad analysis of the nation's manufacturing sector, including the international and economic environment, related technological developments, workforce elements, the impact of governmental policies, and other relevant issues affecting domestic manufacturers. Based on this analysis, the President would develop a national manufacturing strategy that identifies goals and recommendations for how the federal government, as well as state, local and private institutions, can best support the improvement and growth of our nation's manufacturers and support their efforts to move into the markets of the future. This process would recur every four years, in order to assess the implementation of prior recommendations, review changes in markets, adjust for changes in technology and the economic climate, and respond to any other influences that may arise.

The President's development of a national strategy for manufacturing would be informed by members of the Administration and the private sector. The bill requires the President to convene a Manufacturing Strategy Task Force, comprised of federal officials and two governors, to make recommendations for the strategy. The task force may also convene subgroups, with additional governmental and private members, to address particular industries, policy topics, or other matters. In addition, the President must convene a Manufacturing Strategy Board to make recommendations. The board would be made up of 21 individuals from the private sector, representing a broad range of regions and industries.

The act requires that the strategy be delivered to Congress and published on a public website. The President also would be required to include in each fiscal year's budget request information regarding the consistency of the budget with the goals and recommendations of the most recent national manufacturing strategy.

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chartered to further the domestic manufacturing agenda, but they are not strategic, senior, or sufficient enough to deliver the goal of H.R. 4692"), *Hearing on H.R. 4692, the National Manufacturing Strategy Act of 2010*, 111<sup>th</sup> Cong. (July 14, 2010).

<sup>20</sup> See, e.g., United Kingdom Department for Business, Enterprise & Regulatory Reform, Department for Innovation, Universities & Skills, *Manufacturing: New Challenges, New Opportunities* (Sept. 2008) (online at [www.berr.gov.uk/files/file47660.pdf](http://www.berr.gov.uk/files/file47660.pdf)) (accessed on July 9, 2010); International Trade Administration, Jane Corwin and Rebecca Puckett, *Japan's Manufacturing Competitiveness Strategy: Challenges for Japan, Opportunities for the United States* (April 2009) (online at [www.ita.doc.gov/td/tradepolicy/Japan%20Mfg%20Study.pdf](http://www.ita.doc.gov/td/tradepolicy/Japan%20Mfg%20Study.pdf)); House Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, Testimony of Owen E. Herrnstadt, Director of Trade and Globalization, International Association of Machinists and Aerospace Workers (referencing manufacturing policies in China and Germany), *Hearing on H.R. 4692, the National Manufacturing Strategy Act of 2010*, 111<sup>th</sup> Cong. (July 14, 2010).

Finally, the National Academy of Sciences would be required to conduct a series of studies related to the nation's manufacturing sector, including a study every four years to inform the quadrennial national manufacturing strategy. The Government Accountability Office would be required to conduct a review of each manufacturing strategy, evaluating its development and the subsequent implementation of its recommendations.

The Subcommittee on Commerce, Trade, and Consumer Protection held a legislative hearing on H.R. 4692 on July 14, 2010. Based on testimony and discussions following the hearing, a manager's amendment in the nature of a substitute will likely be offered to consolidate and streamline provisions in the bill, as well as to clarify responsibilities for analysis and development of the national manufacturing strategy. Specifically, the manager's amendment would collapse the board and task force into one advisory committee.

### **III. H.R. 5156, CLEAN ENERGY TECHNOLOGY MANUFACTURING AND EXPORT ASSISTANCE ACT**

#### **A. Background**

In 2007, the green technology industry in the United States generated more than 9 million jobs and revenue of about \$1 trillion, according to one estimate.<sup>21</sup> On March 4, 2008, the AFL-CIO Executive Council stated that “[i]nvestments must be used to identify, develop and capture cutting-edge technologies and to manufacture and build these technologies here for domestic use and export.”<sup>22</sup>

Despite widespread recognition of the importance of exports for our economy, the United States is still behind many of our international competitors. The International Trade Administration (ITA) issued a report on the environmental technology industry indicating that, in 2008, U.S. exports in the environmental technology sector amounted to \$43.8 billion.<sup>23</sup> The United States had a little less than 9% of the non-U.S. market in exports. On March 19, 2009, the President said, “[W]e can make the investments that would allow us to become the world's leading exporter of renewable energy... We can let the jobs of tomorrow be created abroad, or we can create those jobs right here in America and lay the foundation for lasting prosperity.”<sup>24</sup>

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<sup>21</sup> American Solar Energy Society and Management Information Service, Inc., *Green Collar Jobs in the U.S. and Colorado; Economic Drivers for the 21<sup>st</sup> Century*, viii (Jan. 2009). ASES's definition of the renewable energy and energy efficiency industry includes “wind, photovoltaics, solar thermal, hydroelectric power, geothermal, biomass (ethanol, biodiesel, and biomass power), and fuel cells and hydrogen” as well as energy service companies, the recycling, reuse, and manufacturing sector, and portions of other industries in which only a portion of the output is classified as within the energy efficiency sector. *Id.*

<sup>22</sup> AFL-CIO, Executive Council Statement, *Greening the Economy* (Mar. 4, 2008).

<sup>23</sup> International Trade Administration, *Environmental Technologies Industries, FY 2010 Industry Assessment*.

<sup>24</sup> The White House, *Remarks by the President at the Edison Electric Vehicle Technical Center* (Mar. 19, 2009).

## **B. Summary of the Legislation**

H.R. 5156, the Clean Energy Technology Manufacturing and Export Assistance Act, introduced by Rep. Doris O. Matsui (D-CA), would create a fund administered by ITA to help boost U.S. clean energy technology firms here and abroad. Its purpose is to ensure that clean energy technology firms, including parts suppliers and engineers and design firms, have the information and assistance they need to be competitive domestically and globally. The fund would be used to promote policies that reduce production costs and encourage innovation, investment, and productivity, as well as to implement a national clean energy technology export strategy.

Under H.R. 5156, assistance provided by ITA will include educating U.S. clean energy technology firms about the export process and opportunities in foreign markets, and helping them to navigate in those markets. The Secretary of Commerce would report to Congress after five years, assessing the program's success in increasing the competitiveness of the U.S. in emerging markets and assisting U.S. businesses (particularly small- and medium-sized firms) with exports, and looking at its impact on job-creation.

The Subcommittee on Commerce, Trade, and Consumer Protection held a legislative hearing on H.R. 5156 on Wednesday, June 16, 2010. The Subcommittee met in open markup session to consider the legislation on June 30, 2010. The Subcommittee agreed to a manager's amendment changing the definition of 'clean energy technology', clarifying the bill's original intent that the fund created by the bill is not a grant-making program, and adding language concerning domestic job creation and small businesses. The Subcommittee forwarded H.R. 5156, amended, to the full Committee by a voice vote.

## **IV. H.R. 4678, FOREIGN MANUFACTURER LEGAL ACCOUNTABILITY ACT OF 2010**

### **A. Background**

In the decade between 1998 and 2007, the import of consumer products into the United States more than doubled.<sup>25</sup> This sharp rise in imported consumer products has been accompanied by an overall increase in product recalls and a disproportionate increase in the share of product recalls involving imported products – particularly products from China.

In 2007, the Consumer Product Safety Commission (CPSC) announced 473 recalls.<sup>26</sup> This was the highest level of recalls in 10 years.<sup>27</sup> Of those 473 recalls, 389

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<sup>25</sup> U.S. Consumer Product Safety Commission, *Import Safety Strategy* (July 2008) (online at [www.cpsc.gov/BUSINFO/importsafety.pdf](http://www.cpsc.gov/BUSINFO/importsafety.pdf)).

<sup>26</sup> *Id.*

<sup>27</sup> U.S. Consumer Product Safety Commission, *2011 Performance Budget Request* (Feb. 2010) (online at [www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2011plan.pdf](http://www.cpsc.gov/CPSCPUB/PUBS/REPORTS/2011plan.pdf)).

(82%) involved imported products.<sup>28</sup> Of the 389 recalls involving imported products, 288 (74%) involved products from China.<sup>29</sup> Defective imported products incidents that attracted national attention in the past several years included: a children's craft kit containing beads coated with a chemical similar to a date rape drug;<sup>30</sup> toy trains coated with lead paint;<sup>31</sup> a contaminated blood thinning drug;<sup>32</sup> and drywall emitting sulfurous gases.<sup>33</sup>

Holding foreign manufacturers accountable for injuries caused by defective products that make it into the hands of American consumers has proven difficult. Victims trying to sue foreign manufacturers for injuries caused by defective products face significant obstacles with respect to providing service of process (notice about the litigation required to be given to the defendant) and establishing jurisdiction over foreign manufacturers in U.S. courts.

The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters – of which the United States and many of its major trading partners, including China, are parties – provides a means of serving process on foreign manufacturers in their home countries.<sup>34</sup> This method, however, can be time consuming and costly because all the legal documents must be translated into the foreign manufacturer's native language and then provided to a governmental central authority, which in turn attempts to serve the documents on the manufacturer.<sup>35</sup> It can take three or more months for the central authority to serve the documents on the manufacturer.<sup>36</sup>

In addition, even if a victim successfully serves process on a foreign manufacturer, the manufacturer will likely challenge the exercise of personal jurisdiction over it by a U.S. court. Under well-established constitutional due process principles, before a U.S. court can exercise personal jurisdiction over a defendant it must consider: (1) the

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<sup>28</sup> U.S. Consumer Product Safety Commission, *Import Safety Strategy* (July 2008) (online at [www.cpsc.gov/BUSINFO/importsafety.pdf](http://www.cpsc.gov/BUSINFO/importsafety.pdf)).

<sup>29</sup> *Id.*

<sup>30</sup> *Recalled toys contain chemical linked to date-rape drug*, USA Today (Nov. 7, 2007) (online at [www.usatoday.com/money/industries/retail/2007-11-07-toy-recall-chemicals\\_N.htm](http://www.usatoday.com/money/industries/retail/2007-11-07-toy-recall-chemicals_N.htm)).

<sup>31</sup> U.S. Consumer Product Safety Commission, *RC2 Corp. Recalls Various Thomas & Friends™ Wooden Railway Toys Due to Lead Poisoning Hazard* (June 13, 2007) (online at [www.cpsc.gov/cpscpub/prerel/prhtml07/07212.html](http://www.cpsc.gov/cpscpub/prerel/prhtml07/07212.html)).

<sup>32</sup> *Deadly Heparin Contaminant Identified*, CBS (Mar. 19, 2008) (online at [www.cbsnews.com/stories/2008/03/19/health/main3950732.shtml?tag=dsGoogleModule](http://www.cbsnews.com/stories/2008/03/19/health/main3950732.shtml?tag=dsGoogleModule)).

<sup>33</sup> *CPSC Ties Drywall, Corrosion*, The Wall Street Journal (Nov. 24, 2009) (online at [online.wsj.com/article/SB125899409382460761.html](http://online.wsj.com/article/SB125899409382460761.html)).

<sup>34</sup> Senate Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts, Testimony of Louise Ellen Teitz, *Leveling the Playing Field and Protecting Americans*, 111th Cong. (May 19, 2009).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

defendant's purposeful minimum contacts with the state in which the court sits, and (2) fairness to the defendant of being subjected to jurisdiction in that state's courts.<sup>37</sup> Foreign manufacturers have increasingly turned to litigating this issue to avoid being brought before U.S. courts.<sup>38</sup> This litigation can be costly and time consuming due to the fact specific nature of these issues.<sup>39</sup> The result is an increased time and expense burden for both victims injured by defective products and the judicial system.<sup>40</sup>

## **B. Summary of the Legislation**

H.R. 4678, introduced by Rep. Betty Sutton (D-OH), is intended to hold foreign manufacturers and producers who send dangerous products to the United States accountable for the injuries and damage they cause. H.R. 4678 requires foreign manufacturers and producers that import products into the United States to designate a registered agent who is authorized to accept service of process here in the United States. The agent would have to be registered in a state with a substantial connection to the importation, distribution, or sale of products of the foreign manufacturer or producer. CPSC, the Food and Drug Administration, and the Environmental Protection Agency would each be required to determine, based on the value or quantity of goods manufactured or produced, which foreign manufacturers and producers under their respective authority would be required to designate a registered agent. Registering an agent consistent with the Act constitutes acceptance by the manufacturer of personal jurisdiction of the state and federal courts of the state in which the agent is located. Finally, the Act prohibits the importation into the United States of products from foreign manufacturers that fail to designate a registered agent.

The Subcommittee on Commerce, Trade, and Consumer Protection held a legislative hearing on June 16, 2010. H.R. 4678 was considered by the Subcommittee in open markup session on June 30, 2010. The Subcommittee adopted an amendment in the nature of a substitute that made several substantive and technical changes to the bill. The amendment did the following: (1) limited the breadth of the consent to personal jurisdiction by making clear that it does not include wholly foreign law suits; (2) provided additional guidance to applicable agencies on setting the minimum size that foreign manufacturers or producers must exceed in order to trigger the Act's requirements; (3) set certain minimum requirements to be eligible to serve as the registered agent for a foreign manufacturer or producer and also set certain minimum requirements for documenting the designation of a registered agent; (4) clarified the Act's applicability to component part manufacturers; (5) included the National Highway Traffic Safety Administration among the agencies that must require foreign manufacturers to meet the requirements of the Act; (6) called on all the agencies with responsibilities under the Act to cooperate with each other to establish consistent regulations to carry out the Act in an effective and efficient

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

manner and extended the timeframe for implementation of the Act to one year; and (7) required foreign manufacturers and producers to report to the applicable agency any safety campaigns or recalls in other countries for products also sold in the United States.

At full Committee markup, Chairman Waxman may offer a manager's amendment to address the minimum requirements for documenting the designation of a registered agent. The amendment may also make a technical change to clarify the effective date for the requirement to register an agent.

## **V. H.R. 3655, BEREAVED CONSUMER'S BILL OF RIGHTS ACT**

### **A. Background**

Burr Oak Cemetery, in Alsip, IL, made national news in July 2009, when stories surfaced that cemetery employees had removed human remains from graves and resold some of the graves to unsuspecting consumers.<sup>41</sup> H.R. 3655, introduced by Rep. Rush, is intended to address some of the deplorable conditions discovered at Burr Oak by requiring, among other things, all cemeteries to record and retain records of burial, inurnment, and entombment locations, explain to consumers the nature of the burial, inurnment, or entombment rights they are purchasing, and provide consumers with all the cemetery's written rules and regulations.

Funeral arrangements are a major expense for most families and households. Each year consumers spend billions of dollars arranging more than two million funerals for families and friends.<sup>42</sup> Consumers are currently protected under the Federal Trade Commission's (FTC) Funeral Rule against unfair and deceptive acts and practices committed by funeral homes.<sup>43</sup> The FTC's Funeral Rule further requires funeral homes to provide pricing disclosures for goods and services that they sell and to allow consumers to purchase the goods and services they want.<sup>44</sup> Similar protections, however, are not afforded to consumers of funeral, burial, and cremation goods and services, when those goods and services are sold by cemeteries, crematoria, or third-party sellers. Because consumers of funeral goods and services are grieving, they can be easily exploited and financially harmed by deceitful salesmen. H.R. 3655 seeks to reconcile the differences in consumer protections that the same consumer would receive when shopping for funeral-related goods and services as compared to burial and cremation goods and services.

### **B. Summary of the Legislation**

H.R. 3655, introduced by Rep. Bobby L. Rush (D-IL), would direct the FTC to prescribe rules prohibiting unfair or deceptive acts or practices in the provision of all

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<sup>41</sup> *Bodies Unearthed at Alsip Cemetery*, Chicago Tribune (July 9, 2009).

<sup>42</sup> Federal Trade Commission, Facts for Consumers: Funerals: A Consumer's Guide (online at [www.ftc.gov/bcp/edu/pubs/consumer/products/pro19.shtm](http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro19.shtm)).

<sup>43</sup> 16 C.F.R. Part 453 (1982).

<sup>44</sup> *Id.*

funeral goods or services. Specifically, all providers of these goods and services would be required to provide consumers with accurate, itemized price information for each specific funeral good or service offered for sale. The bill would further prohibit providers from making misrepresentations about federal, state, and local requirements, and prohibit conditioning the provision of any one funeral good or service on the purchase of another funeral good and service.

The bill also would require that contracts for funeral goods or services be written clearly and include disclosures about any fees, penalties, or costs that may be incurred in the future. With specific regard to cemeteries, the bill would require that consumers be provided with written rules and regulations and an explanation of the burial right that has been purchased. Cemeteries further would be required to keep clear records of all burials.

In addition, H.R. 3655 would authorize both the FTC and the states to enforce the Act's requirements. Also, the bill makes clear that it is not the intent of Congress to preempt state laws providing protections to consumers of funeral services or funeral goods except where there are conflicts between the respective laws.

H.R. 3655 would direct the FTC to issue the rules required under this Act within one year of enactment, in accordance with the Administrative Procedures Act. The bill also would ensure that FTC rules apply to all providers of funeral goods or services, even nonprofit.

The Subcommittee on Commerce, Trade, and Consumer Protection held a legislative hearing on H.R. 3655 on January 27, 2010. On March 24, 2010, the Subcommittee met in open markup session and favorably forwarded H.R. 3655 to the full Committee, amended, by a voice vote. The Subcommittee agreed to a manager's amendment that made several technical and clarifying changes to the bill, including the removal of an unnecessary reference to the Religious Freedom Restoration Act.