

111TH CONGRESS
1ST SESSION

H. R. 2765

IN THE SENATE OF THE UNITED STATES

JUNE 16, 2009

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend title 28, United States Code, to prohibit recognition and enforcement of foreign defamation judgments and certain foreign judgments against the providers of interactive computer services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. RECOGNITION OF FOREIGN DEFAMATION**
 2 **JUDGMENTS.**

3 (a) IN GENERAL.—Part VI of title 28, United States
 4 Code, is amended by adding at the end the following:

5 **“CHAPTER 181—FOREIGN JUDGMENTS**

“Sec.

“4101. Definitions.

“4102. Recognition of foreign defamation judgments.

“4103. Attorneys’ fees.

6 **“§ 4101. Definitions**

7 “In this chapter:

8 “(1) DOMESTIC COURT.—The term ‘domestic
 9 court’ means a Federal court or a court of any
 10 State.

11 “(2) FOREIGN COURT.—The term ‘foreign
 12 court’ means a court, administrative body, or other
 13 tribunal of a foreign country.

14 “(3) FOREIGN JUDGMENT.—The term ‘foreign
 15 judgment’ means a final judgment rendered by a
 16 foreign court.

17 “(4) STATE.—The term ‘State’ means each of
 18 the several States, the District of Columbia, and any
 19 commonwealth, territory, or possession of the United
 20 States.

21 **“§ 4102. Recognition of foreign defamation judgments**

22 “(a) FIRST AMENDMENT CONSIDERATIONS.—Not-
 23 withstanding any other provision of Federal or State law,

1 a domestic court shall not recognize or enforce a foreign
2 judgment for defamation whenever the party opposing rec-
3 ognition or enforcement of the judgment claims that the
4 judgment is inconsistent with the first amendment to the
5 Constitution of the United States, unless the domestic
6 court determines that the judgment is consistent with the
7 first amendment. The burden of establishing that the for-
8 eign judgment is consistent with the first amendment shall
9 lie with the party seeking recognition or enforcement of
10 the judgment.

11 “(b) JURISDICTIONAL CONSIDERATIONS.—Notwith-
12 standing any other provision of Federal or State law, a
13 domestic court shall not recognize or enforce a foreign
14 judgment for defamation if the party opposing recognition
15 or enforcement establishes that the exercise of personal
16 jurisdiction over such party by the foreign court that ren-
17 dered the judgment failed to comport with the due process
18 requirements imposed on domestic courts by the Constitu-
19 tion of the United States.

20 “(c) JUDGMENT AGAINST PROVIDER OF INTER-
21 ACTIVE COMPUTER SERVICE.—Notwithstanding any other
22 provision of Federal or State law, a domestic court shall
23 not recognize or enforce a foreign judgment for defama-
24 tion against the provider of an interactive computer serv-
25 ice, as defined in section 230 of the Communications Act

1 of 1934 (47 U.S.C. 230), whenever the party opposing rec-
2 ognition or enforcement of the judgment claims that the
3 judgment is inconsistent with such section 230, unless the
4 domestic court determines that the judgment is consistent
5 with such section 230. The burden of establishing that the
6 foreign judgment is consistent with such section 230 shall
7 lie with the party seeking recognition or enforcement of
8 the judgment.

9 “(d) APPEARANCES NOT A BAR.—An appearance by
10 a party in a foreign court rendering a foreign judgment
11 to which this section applies for the purpose of contesting
12 the foreign court’s exercise of jurisdiction in the case, mov-
13 ing the foreign court to abstain from exercising jurisdic-
14 tion in the case, defending on the merits any claims
15 brought before the foreign court, or for any other purpose,
16 shall not deprive such party of the right to oppose the
17 recognition or enforcement of the judgment under this sec-
18 tion.

19 **“§ 4103. Attorneys’ fees**

20 “In any action brought in a domestic court to enforce
21 a foreign judgment for defamation, the court may allow
22 the party opposing recognition or enforcement of the judg-
23 ment a reasonable attorney’s fee if such party prevails in
24 the action on a ground specified in subsection (a), (b),
25 or (c) of section 4102.”.

(b) CLERICAL AMENDMENT.—The table of chapters for part VI of title 28, United States Code, is amended by adding at the end the following:

“181. Foreign Judgments 4101”.

Passed the House of Representatives June 15, 2009.

Attest: LORRAINE C. MILLER,
Clerk.