

112TH CONGRESS
1ST SESSION

H. R. 3531

To authorize certain private rights of action under the Foreign Corrupt Practices Act of 1977 for violations by foreign concerns that damage domestic businesses.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 30, 2011

Mr. PERLMUTTER introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, 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 authorize certain private rights of action under the Foreign Corrupt Practices Act of 1977 for violations by foreign concerns that damage domestic businesses.

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 Business Brib-
5 ery Prohibition Act of 2011”.

6 **SEC. 2. ACTIONS AUTHORIZED.**

7 Section 104A of the Foreign Corrupt Practices Act
8 of 1977 (15 U.S.C. 78dd–3) is amended—

1 (1) by redesignating subsection (f) as sub-
2 section (g); and

3 (2) by inserting after subsection (e) the fol-
4 lowing:

5 “(f) PRIVATE RIGHTS OF ACTION AUTHORIZED.—

6 “(1) AUTHORIZED PLAINTIFFS.—Any foreign
7 concern that violates subsection (a) shall be liable in
8 an action brought in accordance with this subsection
9 in any court of competent jurisdiction to any issuer
10 that is subject to section 30A of the Securities Ex-
11 change Act of 1934, domestic concern that is subject
12 to section 104 of this Act, or other United States
13 person that is damaged by the violation of sub-
14 section (a) of this section for damages caused to
15 such issuer, domestic concern, or other person by
16 the violation.

17 “(2) PROOF OF DAMAGES.—For purposes of
18 this subsection, a plaintiff in an action under this
19 subsection must allege and prove that—

20 “(A) the defendant foreign concern vio-
21 lated subsection (a); and

22 “(B) the defendant foreign concern’s viola-
23 tion of subsection (a)—

1 “(i) prevented the plaintiff from ob-
2 taining or retaining business for or with
3 any person; and

4 “(ii) assisted the foreign concern in
5 obtaining or retaining such business.

6 “(3) MEASURE OF DAMAGES.—

7 “(A) IN GENERAL.—The damages which a
8 plaintiff may obtain in an action under this
9 subsection may be equal to the higher of the
10 two following amounts that are established by
11 the plaintiff’s allegations and proof:

12 “(i) The total amount of the contract
13 or agreement that the defendant gained in
14 obtaining or retaining business by means
15 of the violation of subsection (a).

16 “(ii) The total amount of the contract
17 or agreement that the plaintiff failed to
18 gain because of the defendant’s obtaining
19 or retaining business by means of the vio-
20 lation of subsection (a).

21 “(B) TREBLE DAMAGES.—In assessing
22 damages under subparagraph (A), the court
23 shall enter judgment for three times the
24 amount determined under clause (i) or (ii) of
25 such subparagraph (whichever is greater), to-

1 gether with a reasonable attorney’s fee and
2 costs, for any violation of subsection (a).

3 “(4) EXCEPTION FOR ROUTINE GOVERNMENTAL
4 ACTION.—The exception in subsection (b) shall apply
5 to an action under this subsection.

6 “(5) AFFIRMATIVE DEFENSES.—The affirma-
7 tive defenses in subsection (c) shall apply to an ac-
8 tion under this subsection.

9 “(6) CONTRIBUTION.—Every person who be-
10 comes liable to make payment under this subsection
11 may recover contribution as in cases of contract
12 from any person who, if joined in the original suit,
13 would have been liable to make the same payment.

14 “(7) STATUTE OF LIMITATIONS.—No action
15 shall be maintained to enforce any liability created
16 under this subsection unless brought within 3 years
17 after the discovery of the facts constituting the
18 cause of action and within 6 years after such cause
19 of action accrued.

20 “(8) DEFINITIONS.—

21 “(A) FOREIGN CONCERN.—For purposes
22 of this subsection, the term ‘foreign concern’
23 means any person other than an issuer that is
24 subject to section 30A of the Securities Ex-
25 change Act of 1934, a domestic concern that is

1 subject to section 104 of this Act, or another
2 United States person.

3 “(B) UNITED STATES PERSON.—The term
4 ‘United States person’ has the meaning given
5 such term in section 104(i)(2) of this Act.”.

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