

118TH CONGRESS
1ST SESSION

S. 2805

To amend chapter 111 of title 28, United States Code, to increase transparency and oversight of third-party funding by foreign persons, to prohibit third-party funding by foreign states and sovereign wealth funds, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 2023

Mr. KENNEDY (for himself and Mr. MANCHIN) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapter 111 of title 28, United States Code, to increase transparency and oversight of third-party funding by foreign persons, to prohibit third-party funding by foreign states and sovereign wealth funds, 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 “Protecting Our Courts
5 from Foreign Manipulation Act of 2023”.

1 **SEC. 2. TRANSPARENCY AND LIMITATIONS ON FOREIGN**
 2 **THIRD-PARTY LITIGATION FUNDING.**

3 (a) IN GENERAL.—Chapter 111 of title 28, United
 4 States Code, is amended by adding at the end the fol-
 5 lowing:

6 **“§ 1660. Transparency and limitations on foreign**
 7 **third-party litigation funding**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘foreign person’—

10 “(A) means any person or entity that is
 11 not a United States person, as defined in sec-
 12 tion 101 of the Foreign Intelligence Surveil-
 13 lance Act of 1978 (50 U.S.C. 1801); and

14 “(B) does not include a foreign state or a
 15 sovereign wealth fund;

16 “(2) the term ‘foreign state’ has the meaning
 17 given that term in section 1603; and

18 “(3) the term ‘sovereign wealth fund’ means an
 19 investment fund owned or controlled by a foreign
 20 state, an agency or instrumentality of a foreign state
 21 (as defined in section 1603), or an agent of a for-
 22 eign principal (as defined in section 1 of the Foreign
 23 Agents Registration Act of 1938, as amended (22
 24 U.S.C. 611)).

25 “(b) DISCLOSURE OF THIRD-PARTY LITIGATION
 26 FUNDING AND FOREIGN SOURCE CERTIFICATION BY

1 FOREIGN PERSONS, FOREIGN STATES, AND SOVEREIGN
2 WEALTH FUNDS.—

3 “(1) IN GENERAL.—In any civil action, each
4 party or the counsel of record for the party shall—

5 “(A) disclose in writing to the court, to all
6 other named parties to the civil action, to the
7 Attorney General, and to the Principal Deputy
8 Assistant Attorney General for National Secu-
9 rity—

10 “(i) the name, the address, and, if ap-
11 plicable, the citizenship or the country of
12 incorporation or registration of any foreign
13 person, foreign state, or sovereign wealth
14 fund, other than the named parties or
15 counsel of record, that has a right to re-
16 ceive any payment that is contingent in
17 any respect on the outcome of the civil ac-
18 tion by settlement, judgment, or otherwise;

19 “(ii) the name, the address, and, if
20 applicable, the citizenship or the country of
21 incorporation or registration of any foreign
22 person, foreign state, or sovereign wealth
23 fund, other than the named parties or
24 counsel of record, that has a right to re-
25 ceive any payment that is contingent in

1 any respect on the outcome of any matter
2 within a portfolio that includes the civil ac-
3 tion and involves the same counsel of
4 record or affiliated counsel; and

5 “(iii) if the party or the counsel of
6 record for the party submits a certification
7 described in subparagraph (C)(i), the
8 name, the address, and, if applicable, the
9 citizenship or the country of incorporation
10 or registration of the foreign person, for-
11 eign state, or sovereign wealth fund that is
12 the source of the money;

13 “(B) produce to the court, to all other
14 named parties to the civil action, to the Attor-
15 ney General, and to the Principal Deputy As-
16 sistant Attorney General for National Security,
17 except as otherwise stipulated or ordered by the
18 court, a copy of any agreement creating a con-
19 tingent right described in subparagraph (A);
20 and

21 “(C) for a civil action involving an agree-
22 ment creating a right to receive any payment by
23 anyone, other than the named parties or coun-
24 sel of record, that is contingent in any respect
25 on the outcome of the civil action by settlement,

1 judgment, or otherwise, or on the outcome of
 2 any matter within a portfolio that includes the
 3 civil action and involves the same counsel or af-
 4 filiated counsel, submit to the court a certifi-
 5 cation that—

6 “(i) the money that has been or will
 7 be used to satisfy any term of the agree-
 8 ment has been or will be directly or indi-
 9 rectly sourced, in whole or in part, from a
 10 foreign person, foreign state, or sovereign
 11 wealth fund, including the monetary
 12 amounts that have been or will be used to
 13 satisfy the agreement; or

14 “(ii) that the disclosure and certifi-
 15 cation criteria set forth in subparagraph
 16 (A)(iii) and clause (i) of this subparagraph
 17 do not apply to the civil action.

18 “(2) TIMING.—

19 “(A) IN GENERAL.—The disclosure and
 20 certification required by paragraph (1) shall be
 21 made not later than the later of—

22 “(i) 30 days after execution of any
 23 agreement described in paragraph (1); or

24 “(ii) the date on which the civil action
 25 is filed.

“(B) PARTIES SERVED OR JOINED
 LATER.—A party that enters into an agreement
 described in paragraph (1) that is first served
 or joined after the date on which the civil action
 is filed shall make the disclosure and certifi-
 cation required by paragraph (1) not later than
 30 days after being served or joined, unless a
 different time is set by stipulation or court
 order.

“(3) FOREIGN SOURCE DISCLOSURE AND CER-
 TIFICATION FORMAT.—

“(A) IN GENERAL.—A disclosure required
 under paragraph (1)(A) and a certification re-
 quired under paragraph (1)(C) shall—

“(i) be made in the form of a declara-
 tion under penalty of perjury pursuant to
 section 1746 and shall be made to the best
 knowledge, information, and belief of the
 declarant formed after reasonable inquiry;
 and

“(ii) be provided to all other named
 parties to the civil action, to the Attorney
 General, and to the Principal Deputy As-
 sistant Attorney General for National Se-
 curity by the party or counsel of record for

1 the party making the disclosure and cer-
 2 tification, except as otherwise stipulated or
 3 ordered by the court.

4 “(B) SUPPLEMENTATION AND CORREC-
 5 TION.—Not later than 30 days after the date
 6 on which a party or counsel of record for the
 7 party knew or should have known that the dis-
 8 closure required under paragraph (1)(A) or a
 9 certification required under paragraph (1)(C) is
 10 incomplete or inaccurate in any material re-
 11 spect, the party or counsel of record shall sup-
 12 plement or correct the disclosure or certifi-
 13 cation.

14 “(c) PROHIBITION ON THIRD-PARTY FUNDING LITI-
 15 GATION BY FOREIGN STATES AND SOVEREIGN WEALTH
 16 FUNDS.—

17 “(1) IN GENERAL.—It shall be unlawful for any
 18 party to or counsel of record for a civil action to
 19 enter into an agreement creating a right for anyone,
 20 other than the named parties or counsel of record,
 21 to receive any payment that is contingent in any re-
 22 spect on the outcome of a civil action or any matter
 23 within a portfolio that includes the civil action and
 24 involves the same counsel of record or affiliated
 25 counsel, the terms of which are to be satisfied by

1 money that has been or will be directly or indirectly
 2 sourced, in whole or in part, from a foreign state or
 3 a sovereign wealth fund.

4 “(2) ENFORCEMENT.—Any agreement entered
 5 in violation of paragraph (1) shall be null and void.

6 “(d) FAILURE TO DISCLOSE, TO SUPPLEMENT;
 7 SANCTIONS.—A disclosure, production, or certification
 8 under subsection (b) is deemed to be information required
 9 by rule 26(a) of the Federal Rules of Civil Procedure and
 10 subject to the sanctions provisions of rule 37 of the Fed-
 11 eral Rules of Civil Procedure.”.

12 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 13 The table of sections chapter 111 of title 28, United
 14 States Code, is amended by adding at the end the fol-
 15 lowing:

“1660. Transparency and limitations on foreign third-party litigation funding.”.

16 **SEC. 3. REPORT TO CONGRESS.**

17 Not later than 1 year after the date of enactment
 18 of this Act, and annually thereafter, the Attorney General
 19 shall submit to the Committee on the Judiciary of the Sen-
 20 ate and the Committee on the Judiciary of the House of
 21 Representatives a report on the activities involving foreign
 22 third-party litigation funding in Federal courts, including,
 23 if applicable—

24 (1) the identities of foreign third-party litiga-
 25 tion funders in Federal courts, including names, ad-

1 dresses, and citizenship or country of incorporation
2 or registration;

3 (2) the identities of foreign persons, foreign
4 states, or sovereign wealth funds (as such terms are
5 defined in section 1660 of title 28, United States
6 Code, as added by section 2 of this Act) that have
7 been the sources of money for third-party litigation
8 funding in Federal courts;

9 (3) the judicial districts in which foreign third-
10 party litigation funding has occurred;

11 (4) an estimate of the total amount of foreign-
12 sourced money used for third-party litigation fund-
13 ing in Federal courts, including an estimate of the
14 amount of such money sourced from each country;
15 and

16 (5) a summary of the subject matters of the
17 civil actions in Federal courts for which foreign
18 sourced money has been used for third-party litiga-
19 tion funding.

20 **SEC. 4. APPLICABILITY.**

21 The amendments made by this Act shall apply to any
22 civil action pending on or commenced on or after the date
23 of enactment of this Act.

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