

105TH CONGRESS
1ST SESSION

H.R. 2141

To provide for a judicial remedy for United States persons injured as a result of violations by foreign states of their arbitral obligations under international law.

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 1997

Mr. MCCOLLUM (for himself, Mr. SHAW, and Mr. SPENCE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for a judicial remedy for United States persons injured as a result of violations by foreign states of their arbitral obligations under international law.

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 “International Arbitra-
5 tion Enforcement Act of 1997”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

1 (1) Arbitration is an efficient and flexible dis-
2 pute resolution mechanism of great benefit to United
3 States persons doing business internationally.

4 (2) In some countries, particularly those with
5 undeveloped or inconsistent judicial systems, inter-
6 national arbitration may be the only fair and reliable
7 dispute resolution mechanism available to United
8 States persons.

9 (3) The usefulness of international arbitration
10 depends in large measure on the commitment of for-
11 eign states to enforce foreign arbitral awards pursu-
12 ant to their accession to, and observance of, the
13 Convention on the Recognition and Enforcement of
14 Foreign Arbitral Awards.

15 (4) United States persons are often without
16 remedies when foreign states violate the Convention
17 by refusing to enforce foreign arbitral awards or by
18 otherwise impairing the ability to collect the awards
19 by improperly delaying their enforcement.

20 (5) It is in the interest of the United States to
21 maintain the reliability of international arbitration,
22 to promote the observance of the Convention, and to
23 protect United States persons from economic injury
24 resulting from violations of the Convention by for-
25 eign states.

1 (6) Similarly, it would be unjust to permit a
2 foreign state to be shielded from liability in the
3 United States for the damages suffered by a United
4 States person abroad resulting from a violation of
5 the Convention by the foreign state.

6 (7) It is therefore in the national interest to
7 create a judicial remedy in favor of United States
8 persons injured as a result of a violation of the Con-
9 vention by a foreign state and to facilitate the execu-
10 tion of any judgment entered in such an action.

11 **SEC. 3. PURPOSE.**

12 The purpose of this Act is to create a civil remedy
13 against foreign states whose violation of the Convention
14 injures United States persons by prohibiting the enforce-
15 ment of foreign arbitral awards entered in favor of such
16 United States persons or by impairing the ability of such
17 United States persons to collect such awards.

18 **SEC. 4. DEFINITIONS.**

19 As used in this Act—

20 (1) CONVENTION.—The term “Convention”
21 means the Convention on the Recognition and En-
22 forcement of Foreign Arbitral Awards, done at New
23 York on June 10, 1958.

24 (2) UNITED STATES PERSON.—The term
25 “United States person” means—

1 (A) any United States citizen or alien ad-
2 mitted for permanent residence into the United
3 States; or

4 (B) any corporation, trust, partnership, or
5 other judicial entity established pursuant to the
6 laws of the United States or its several States
7 and territories.

8 (3) FOREIGN ARBITRAL AWARD.—The term
9 “foreign arbitral award” means any arbitral award
10 to which the Convention applies.

11 **SEC. 5. LIABILITY FOR VIOLATION OF THE CONVENTION.**

12 (a) CIVIL REMEDY.—(1) Any foreign state that is
13 certified by the President under subsection (b) to have in-
14 jured a United States person through the state’s violation
15 of the Convention with respect to a foreign arbitral award
16 shall be liable to the United States person for money dam-
17 ages consisting of—

18 (A) the amount of the foreign arbitral award,
19 plus any interest provided for by the award; and

20 (B) the attorney’s fees and costs incurred by
21 the United States person in bringing an action
22 under this Act with respect to such certification.

23 (2) Actions may be brought under paragraph (1) with
24 respect to arbitral awards entered before, on, or after the
25 date of the enactment of this Act.

1 (b) PRESIDENTIAL CERTIFICATION.—The President
2 may certify an injury to a United States person through
3 a violation of the Convention if—

4 (1)(A) a foreign state has failed to enforce a
5 foreign arbitral award entered in favor of that
6 United States person in violation of the state’s obli-
7 gations under the Convention; or

8 (B) a foreign state has impeded, in violation of
9 its obligations under the Convention, the enforce-
10 ment of a foreign arbitral award entered in favor of
11 that United States person such that the ability of
12 the United States person to collect the award may
13 reasonably be presumed to have been impaired or re-
14 duced; and

15 (2) the United States person has exhausted all
16 judicial and administrative remedies in the foreign
17 state in which the arbitral award is sought to be en-
18 forced, or the further pursuit of such remedies would
19 reasonably be considered to be futile.

20 (c) EFFECT OF PRESIDENTIAL CERTIFICATION.—A
21 Presidential certification that a United States person has
22 been injured by a foreign state’s violation of the Conven-
23 tion shall, in any action brought under this Act, establish
24 an evidentiary presumption that—

1 (1) the foreign state certified to have violated
 2 the Convention has done so; and

3 (2) the damages suffered by the United States
 4 person are equivalent to the amount of the award
 5 plus interest, if any.

6 (d) JURISDICTION.—(1) Chapter 85 of title 28,
 7 United States Code, is amended by inserting after section
 8 1331 the following new section:

9 **“§ 1331a. Civil actions involving violations of the**
 10 **Convention on the Recognition and En-**
 11 **forcement of Foreign Arbitral Awards**

12 “The district courts shall have exclusive jurisdiction,
 13 without regard to the amount in controversy, of any action
 14 brought under section 5 of the International Arbitration
 15 Enforcement Act of 1997.”.

16 (2) The table of sections for chapter 85 of title 28,
 17 United States Code, is amended by inserting after the
 18 item relating to section 1331 the following:

“1331a. Civil actions involving violations of the Convention on the Recognition
 and Enforcement of Foreign Arbitral Awards.”.

19 (e) WAIVER OF SOVEREIGN IMMUNITY.—Section
 20 1605 of title 28, United States Code, is amended—

21 (1) by striking “or” at the end of paragraph
 22 (6);

23 (2) by striking the period at the end of para-
 24 graph (7) and inserting “; or”; and

1 (3) by adding at the end the following:

2 “(8) in which the action is brought with respect
3 to violations of the Convention on the Recognition
4 and Enforcement of Foreign Arbitral Awards under
5 section 5 of the International Arbitration Enforce-
6 ment Act of 1997.”.

7 (f) NO IMMUNITY FROM ATTACHMENT OR EXECU-
8 TION.—(1) Section 1610(a) of title 28, United States
9 Code, is amended—

10 (A) by striking the period at the end of para-
11 graph (7) and inserting “, or”; and

12 (B) by adding at the end the following:

13 “(8) the judgment or attachment relates to a
14 claim for which the foreign state is not immune
15 under section 1605(a)(8), regardless of whether the
16 property is or was involved in or related to the act
17 giving rise to or upon which the claim is based.”.

18 (2) Section 1610(b) of such title is amended—

19 (A) by striking “or” at the end of paragraph
20 (1);

21 (B) by striking the period at the end of para-
22 graph (2) and inserting “, or”; and

23 (C) by adding at the end the following:

24 “(3) the judgment or attachment relates to a
25 claim for which the foreign state is not immune

1 under section 1605(a)(8), regardless of whether the
2 property is or was involved in or related to the act
3 giving rise to or upon which the claim is based.”.

4 (g) LIMITATIONS PERIOD.—An action under this Act
5 may be brought within one year after the President makes
6 the certification under subsection (b) on which the action
7 is based.

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