

112TH CONGRESS
1ST SESSION

S. 912

To prevent foreign states that do business, issue securities, or borrow money in the United States, and fail to satisfy United States court judgments totaling \$100,000,000 or more based on such activities, from inflicting further economic injuries in the United States, from undermining the integrity of United States courts, and from discouraging responsible lending to poor and developing nations by undermining the secondary and primary markets for sovereign debt.

IN THE SENATE OF THE UNITED STATES

MAY 9, 2011

Mr. WICKER introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To prevent foreign states that do business, issue securities, or borrow money in the United States, and fail to satisfy United States court judgments totaling \$100,000,000 or more based on such activities, from inflicting further economic injuries in the United States, from undermining the integrity of United States courts, and from discouraging responsible lending to poor and developing nations by undermining the secondary and primary markets for sovereign debt.

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. SHORT TITLE.**

2 This Act may be cited as the “Judgment Evading
3 Foreign States Accountability Act of 2011”.

4 **SEC. 2. STATEMENT OF PURPOSE.**

5 The purpose of this Act is to prevent foreign states
6 that do business, issue securities, or borrow money in the
7 United States, and fail to satisfy United States court
8 judgments totaling \$100,000,000 or more based on such
9 activities, from inflicting further economic injuries in the
10 United States, from undermining the integrity of United
11 States courts, and from discouraging responsible lending
12 to poor and developing nations by undermining the sec-
13 ondary and primary markets for sovereign debt.

14 **SEC. 3. FINDINGS.**

15 Congress finds the following:

16 (1) Foreign states that do business, issue secu-
17 rities, or borrow money in the United States, and
18 refuse to satisfy judgments of United States courts
19 entered against them in connection with disputes re-
20 sulting from these or other commercial activities—

21 (A) directly or indirectly inflict billions of
22 dollars of damage in the United States; and

23 (B) undermine the credibility of United
24 States courts.

25 (2) Foreign states that engage in the behavior
26 described in paragraph (1) can infect the manage-

1 ment of corporations and other entities that they
2 own or control with their profligate and irresponsible
3 habits. When negligent ethical standards permit gov-
4 ernment officials to repudiate lawful judgments, the
5 injury to United States taxpayers is multiplied.

6 (3) The Republic of Argentina is a primary ex-
7 ample of a foreign state that has incurred large
8 debts in the United States, defaulted on those debts,
9 and refused to honor lawful judgments of United
10 States and other courts ordering repayment. In
11 2001, Argentina defaulted on more than
12 \$81,000,000,000 in sovereign debt, the largest such
13 default in history. In 2005, after refusing all efforts
14 by creditors to negotiate the terms of an exchange
15 offer, Argentina unilaterally offered lenders approxi-
16 mately 27 cents on the dollar in its restructuring
17 deal, far below the international norm for sovereign
18 debt restructurings. Argentina repudiated the debts
19 owed to the unprecedented proportion of bondholders
20 who rejected that offer.

21 (4) Argentina owes United States bond holders
22 more than \$3,500,000,000. The default and restruc-
23 turing by Argentina have cost United States bond-
24 holders, taxpayers, and share holders more than
25 \$10,000,000,000.

1 (5) Argentina has the capacity to pay its exter-
2 nal creditors. Argentina now holds more than
3 \$54,000,000,000 in reserves. Argentina chose to pay
4 off its \$9,800,000,000 debt to the International
5 Monetary Fund in full in 2005, years before it was
6 due, and has similarly announced an intention to
7 pay sovereign creditors of the Paris Club, of which
8 the United States is owed \$360,000,000.

9 (6) United States bondholders have won numer-
10 ous court rulings against Argentina relating to Ar-
11 gentina's default on debt owed to such bondholders.
12 Argentina's decision to repeatedly ignore these judg-
13 ments threatens the United States legal system. De-
14 spite having agreed to submit to the jurisdiction of
15 the State of New York and to waive claims of sov-
16 ereign immunity, Argentina is now contesting at
17 least 170 lawsuits and refusing to honor 100 judg-
18 ments against it, totaling more than
19 \$7,000,000,000.

20 (7) Argentina has demonstrated a similar dis-
21 regard for claims brought by United States investors
22 before the International Centre for Settlement of In-
23 vestment Disputes (ICSID), a tribunal of the World
24 Bank. Argentina is the respondent in more than a
25 quarter of the ICSID cases, more cases than any

1 other nation. Argentina's arguments for nonpayment
2 have been rejected by the Department of State and
3 the ICSID. Argentina is currently receiving
4 \$5,810,000,000 from the World Bank and has re-
5 quested an additional \$1,630,000,000 in funding.
6 Argentina has behaved in a manner that undermines
7 the viability of the ICSID process, thereby alarming
8 the worldwide investments of United States busi-
9 nesses that rely upon this forum for adjudication of
10 disputes.

11 (8) Argentina's debts are legitimate. Any asser-
12 tion that the outstanding Argentine debt was in-
13 curred by the repressive, nondemocratic regimes that
14 ruled Argentina in the late 1970s and early 1980s
15 is inaccurate. The bonds currently held by United
16 States creditors were issued by democratically elect-
17 ed Argentine governments.

18 (9) While the Argentine military junta, which
19 caused tremendous suffering during a tyrannical 7-
20 year reign, borrowed from foreign banks, 96 percent
21 of that debt was refinanced in 1993 when Argen-
22 tina's "Brady Plan" restructuring was completed.
23 Before the 1993 restructuring, which was under-
24 written by the United States Government, Argentina

1 had undergone major restructurings of its foreign
2 debt in 1985 and 1987.

3 (10) None of the Argentine debt held by United
4 States creditors originated during the Argentine
5 military junta. To characterize the debt issued in the
6 1993 Brady Plan restructuring as derivative of
7 junta-era debt would malign the United States pol-
8 icymakers who approved and underwrote the Brady
9 Plan on behalf of the American people. Ninety-five
10 percent of the defaulted Argentine debt held by
11 United States creditors was borrowed after 1993 by
12 freely elected Argentine governmental officials and
13 has no relationship to the military junta.

14 (11) Argentina's defaults have raised the costs
15 of borrowing for the public and private sectors. If
16 the country took action to remediate its debts, its
17 annual interest expense would decline. Argentina's
18 defaults have discouraged foreign direct investment.
19 A 2007 study estimates that Argentina loses more
20 than \$6,000,000,000 in foreign direct investment
21 every year as a result of its default and debt repudi-
22 ation and the resultant risk profile.

23 (12) An October 2010 evaluation report by the
24 Financial Action Task Force (FATF), an intergov-
25 ernmental body that analyzes financial systems for

1 criminal activity, found that Argentina is the only
2 G-20 nation to receive a negative evaluation and
3 that Argentina failed to meet 47 out of the 49 finan-
4 cial standards. Argentina was given an original
5 timeline of 3 months, then an additional 10 months
6 to demonstrate compliance to the standards or face
7 being blacklisted due to financial corruption and de-
8 ficiencies in combating financing of terrorism and
9 anti-money laundering systems.

10 (13) FATF reported several shortcomings in
11 Argentina's financial sector, most notably corruption
12 and the poor enforcement of Argentine financial
13 laws. The lack of enforcement has prompted wide-
14 spread money laundering in Argentina's financial
15 sector creating an environment that places Argen-
16 tina at risk of becoming a hub for terrorism and
17 drug trafficking in the Western Hemisphere.

18 (14) United States citizens—

19 (A) are generally unaware of Argentina's
20 irresponsible behavior and disregard for the rule
21 of law;

22 (B) continue to invest in, lend to, and do
23 business with Argentina; and

24 (C) are unfamiliar with the associated
25 risks.

1 (15) Those who are injured as a result of this
2 conduct often have little or no recourse. Judgment
3 evading foreign states and their state-owned cor-
4 porations enjoy a safe haven within their national
5 borders, which often presents an insurmountable ob-
6 stacle to recovery for those who are injured by the
7 behavior of those states.

8 (16) The absence of a remedy for defaults by
9 such foreign states undermines nations that badly
10 need to access capital from foreign lenders, with dis-
11 proportionate harm falling on responsible and demo-
12 cratic nations. By undermining confidence in the
13 secondary market for sovereign debt, judgment evad-
14 ing foreign states significantly increase the risk that
15 primary lending to less-advantaged nations will be
16 curtailed, depriving deserving sovereign borrowers of
17 access to the international capital markets.

18 (17) Action by the United States Government
19 to combat this growing problem must include meas-
20 ures that—

21 (A) protect against the irresponsible con-
22 duct of judgment evading foreign states and
23 their state-owned corporations; and

24 (B) motivate such states and corporations
25 to raise their standards of behavior.

1 (18) An effective means of achieving the impor-
2 tant objectives described in paragraph (17), until
3 those states demonstrate that such measures are no
4 longer necessary, would be—

5 (A) to deprive judgment evading foreign
6 states and their state-owned corporations of the
7 privilege of issuing securities or borrowing in
8 the United States; and

9 (B) to require that warnings of their irre-
10 sponsible behavior be given to persons in the
11 United States who are contemplating investing
12 in, lending to, or doing business with such
13 states and businesses.

14 **SEC. 4. DEFINITIONS.**

15 In this Act:

16 (1) **AGENCY OR INSTRUMENTALITY OF A FOR-**
17 **EIGN STATE.**—The term “agency or instrumentality
18 of a foreign state” has the meaning given that term
19 in section 1603(b) of title 28, United States Code.

20 (2) **FINAL JUDGMENT.**—The term “final judg-
21 ment” means any judgment of a United States dis-
22 trict court, the Court of International Trade, or the
23 court of any State, that is no longer eligible to be
24 appealed to any court in the United States.

1 (3) FOREIGN STATE.—The term “foreign state”
2 has the meaning given that term in section 1603(a)
3 of title 28, United States Code, except that it does
4 not include an agency or instrumentality of a foreign
5 state.

6 (4) INTERNATIONAL ORGANIZATION.—The term
7 “international organization” means an entity des-
8 ignated by the President as being entitled to enjoy
9 the privileges, exemptions, and immunities provided
10 by the International Organizations Immunities Act
11 (22 U.S.C. 288 et seq.).

12 (5) JUDGMENT EVADING FOREIGN STATE.—
13 The term “judgment evading foreign state” means
14 any foreign state that—

15 (A) has 1 or more judgments entered
16 against it by any United States district court,
17 the Court of International Trade, or the court
18 of any State that exceed, in the aggregate,
19 \$100,000,000;

20 (B) fails to satisfy in full any such judg-
21 ment for a period of more than 2 years after
22 the judgment becomes a final judgment, regard-
23 less of whether such judgment became a final
24 judgment before the date of the enactment of
25 this Act; and

1 (C) is not a foreign state eligible for—

2 (i) financing through the Inter-
3 national Development Association, but not
4 from the International Bank for Recon-
5 struction and Development; or

6 (ii) debt relief under the Enhanced
7 HIPC Initiative (as defined in section
8 1625(e)(3) of the International Financial
9 Institutions Act) or the Multilateral Debt
10 Relief Initiative.

11 (6) STATE.—The term “State” means each of
12 the several States, the District of Columbia, and any
13 commonwealth, territory, or possession of the United
14 States.

15 (7) STATE-OWNED CORPORATION OF A JUDG-
16 MENT EVADING FOREIGN STATE.—The term “state-
17 owned corporation of a judgment evading foreign
18 state” means any corporation or entity, other than
19 a natural person—

20 (A) that is an agency or instrumentality of
21 a foreign state that is a judgment evading for-
22 eign state; or

23 (B) a majority of the shares or other own-
24 ership interest of which is held, either directly
25 or indirectly, by a judgment evading foreign

1 state or by an agency or instrumentality of a
2 foreign state that is a judgment evading foreign
3 state.

4 **SEC. 5. STATEMENT OF POLICY.**

5 It is the policy of the United States—

6 (1) to advocate within the governing bodies of
7 international organizations, international financial
8 institutions, such as the World Bank and the Inter-
9 national Monetary Fund, and other foreign policy
10 settings for the full compensation and fair treatment
11 of United States taxpayers in whose favor judgments
12 have been awarded by the United States courts;

13 (2) to seek to protect the economic interests of
14 such taxpayers and other persons and of nations
15 that benefit from a reliable flow of foreign capital
16 by—

17 (A) restricting the access to the United
18 States capital markets of judgment evading for-
19 eign states and their state-owned corporations;

20 (B) requiring that such persons be warned
21 of the dangers of investing in, lending to, or
22 doing business with such states and state-owned
23 corporations; and

24 (C) calling on the World Bank, the Inter-
25 national Monetary Fund, and other inter-

1 national financial institutions to vote against
2 providing funding or foreign capital to judg-
3 ment evading foreign states; and

4 (3) to further solidify the authority of the
5 United States courts by preventing judgment evad-
6 ing foreign states from willfully disregarding the
7 judgments of those courts.

8 **SEC. 6. BAR ON ACCESS TO UNITED STATES LENDERS AND**
9 **INVESTORS.**

10 (a) MEASURES WITH RESPECT TO JUDGMENT EVAD-
11 ING FOREIGN STATES.—The Securities and Exchange
12 Commission shall—

13 (1) take all necessary measures to deny every
14 judgment evading foreign state access to United
15 States capital markets, including the ability, directly
16 or indirectly, to borrow money or sell securities in
17 the United States; and

18 (2) require that all periodic filings made by the
19 judgment evading foreign state with the Securities
20 and Exchange Commission under the securities laws
21 bear the following legend prominently on the cover
22 page: “WARNING: THIS REPORT IS SUB-
23 MITTED BY A FOREIGN STATE THAT HAS
24 BEEN DETERMINED BY THE UNITED
25 STATES DEPARTMENT OF THE TREASURY

1 TO BE A JUDGMENT EVADING FOREIGN
2 STATE BASED UPON ITS FAILURE TO SAT-
3 ISFY OUTSTANDING UNITED STATES
4 COURT JUDGMENTS.”.

5 (b) MEASURES WITH RESPECT TO STATE-OWNED
6 CORPORATIONS OF JUDGMENT EVADING FOREIGN
7 STATES.—If any judgment evading foreign state remains
8 in default on any final judgment for more than 3 years,
9 regardless of whether such judgment became final before
10 the date of the enactment of this Act, the Securities and
11 Exchange Commission shall—

12 (1) take all necessary measures to deny any
13 state-owned corporation of a judgment evading for-
14 eign state access to the United States capital mar-
15 kets, including the ability to issue debt, equity or
16 other securities, or borrow money, unless the pro-
17 ceeds of such borrowing of securities issuance are to
18 be used, in the first instance, to satisfy in full all
19 final judgment against its parent judgment evading
20 foreign state; and

21 (2) require that all periodic filings made by
22 each state-owned corporation of a judgment evading
23 foreign state with the Securities and Exchange Com-
24 mission under the securities laws bear the following
25 legend prominently on the cover page: “WARNING:

1 THIS REPORT IS SUBMITTED BY A STATE-
2 OWNED CORPORATION OF A FOREIGN
3 STATE THAT HAS BEEN DETERMINED BY
4 THE DEPARTMENT OF THE TREASURY TO
5 BE A JUDGMENT EVADING FOREIGN STATE
6 BASED UPON ITS FAILURE TO SATISFY
7 OUTSTANDING UNITED STATES COURT
8 JUDGMENTS.”.

9 **SEC. 7. REQUESTS FOR AID OR ASSISTANCE FROM JUDG-**
10 **MENT EVADING FOREIGN STATES.**

11 (a) BILATERAL ASSISTANCE.—If any proposal is
12 made to a department, agency, or other instrumentality
13 of the United States Government to extend aid, a loan,
14 or any other form of assistance to a judgment evading for-
15 eign state, the head of the department, agency, or other
16 instrumentality may not consider the proposal unless it
17 prominently bears the legend set forth in subsection (c).

18 (b) MULTILATERAL ASSISTANCE.—If any proposal is
19 made to an international organization to extend aid, a
20 loan, or any other form of assistance to a judgment evad-
21 ing foreign state, the Secretary of State shall provide to
22 Congress prompt notice of such proposal that prominently
23 bears the legend set forth in subsection (c).

24 (c) LEGEND.—The legend set forth in this subsection
25 is the following: “REQUEST FOR GRANT-IN-AID OR

1 LOAN BY A JUDGMENT EVADING FOREIGN
2 STATE.”.

3 **SEC. 8. REPORTS; RECOMMENDATIONS OF ADDITIONAL**
4 **MEASURES.**

5 (a) ANNUAL REPORTS TO CONGRESS.—Not later
6 than January 31 of each year, the Secretary of the Treas-
7 ury shall submit a written report to Congress that—

8 (1) identifies each judgment evading foreign
9 state; and

10 (2) for each such judgment evading foreign
11 state—

12 (A) quantifies the impact on the United
13 States economy, and cost to United States tax-
14 payers, of the unsatisfied final judgments out-
15 standing against the judgment evading foreign
16 state; and

17 (B) describes all measures that the Sec-
18 retary of the Treasury and the Securities and
19 Exchange Commission have taken in the pre-
20 ceding year to carry out this Act.

21 (b) CONSIDERATION OF DOCUMENTS AND OTHER IN-
22 FORMATION.—The Secretary of the Treasury may con-
23 sider documents and other information received from third
24 parties and from judgment evading foreign states in pre-
25 paring each report submitted under subsection (a).

1 (c) TERMINATION OF DESIGNATION.—If the Sec-
2 retary of the Treasury, after evaluating documents and
3 other information received from third parties and from a
4 judgment evading foreign state, determines that the judg-
5 ment evading foreign state should no longer be classified
6 as such, the Secretary, in the next annual report to Con-
7 gress under subsection (a), shall certify that the require-
8 ments and prohibitions under this Act no longer apply to
9 such foreign state or to any state-owned corporation of
10 such foreign state.

11 (d) OTHER PUBLIC REPORTS TO INCLUDE INFORMA-
12 TION ABOUT JUDGMENT EVADING FOREIGN STATES.—
13 The Secretary of State, the Secretary of the Treasury, and
14 the Secretary of Commerce shall each reference the find-
15 ings of the Secretary of the Treasury from the Secretary's
16 most recent annual report to Congress under subsection
17 (a) relating to the unsatisfied final judgments outstanding
18 against the judgment evading foreign state in every report
19 prepared for the public relating to the country risk or in-
20 vestment climate of such judgment evading foreign state.

21 (e) ADDITIONAL MEASURES.—The Secretary of the
22 Treasury shall submit written recommendations to Con-
23 gress regarding additional measures to further the pur-
24 poses of this Act.

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