

115TH CONGRESS  
1ST SESSION

# H. R. 1549

To authorize certain private rights of action under the Foreign Corrupt Practices Act of 1977 for violations that damage certain businesses, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2017

Mr. PERLMUTTER introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on the Judiciary, and Financial Services, 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

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## A BILL

To authorize certain private rights of action under the Foreign Corrupt Practices Act of 1977 for violations that damage certain businesses, 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 “Foreign Business Brib-  
5 ery Prohibition Act of 2017”.

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

7 (a) PROHIBITED FOREIGN PRACTICES BY DOMESTIC  
8 CONCERNS.—Section 104 of the Foreign Corrupt Prac-

1 tices Act of 1977 (15 U.S.C. 78dd–2) is amended by add-  
2 ing at the end the following:

3 “(j) PRIVATE RIGHT OF ACTION AUTHORIZED.—

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

15 “(2) PROOF OF DAMAGES.—For purposes of  
16 this subsection, the court may not find for the plain-  
17 tiff in an action under this subsection unless the  
18 plaintiff alleges and proves that—

19 “(A) the defendant violated subsection (a);  
20 and

21 “(B) the defendant’s violation of sub-  
22 section (a)—

23 “(i) prevented the plaintiff from ob-  
24 taining or retaining business for or with  
25 any person; and

1                   “(ii) assisted the defendant in obtain-  
2                   ing or retaining such business.

3                   “(3) MEASURE OF DAMAGES.—

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

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

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

18                  “(B) TREBLE DAMAGES.—In assessing  
19                  damages under subparagraph (A), the court  
20                  shall enter judgment for three times the  
21                  amount determined under clause (i) or (ii) of  
22                  such subparagraph (whichever is greater), to-  
23                  gether with a reasonable attorney’s fee and  
24                  costs, for the violation of subsection (a).

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

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

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

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

18           “(8) UNITED STATES PERSON DEFINED.—In  
19 this subsection, the term ‘United States person’ has  
20 the meaning given that term in subsection (i)(2).”.

21           (b) PROHIBITED FOREIGN PRACTICES BY OTHER  
22 PERSONS.—Section 104A of the Foreign Corrupt Prac-  
23 tices Act of 1977 (15 U.S.C. 78dd–3) is amended—

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

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

3           “(f) PRIVATE RIGHT OF ACTION AUTHORIZED.—

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

15          “(2) PROOF OF DAMAGES.—For purposes of  
16          this subsection, the court may not find for the plain-  
17          tiff in an action under this subsection unless the  
18          plaintiff alleges and proves that—

19                 “(A) the defendant violated subsection (a);  
20                 and

21                 “(B) the defendant’s violation of sub-  
22                 section (a)—

23                         “(i) prevented the plaintiff from ob-  
24                         taining or retaining business for or with  
25                         any person; and

1                   “(ii) assisted the defendant in obtain-  
2                   ing or retaining such business.

3                   “(3) MEASURE OF DAMAGES.—

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

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

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

18                  “(B) TREBLE DAMAGES.—In assessing  
19                  damages under subparagraph (A), the court  
20                  shall enter judgment for three times the  
21                  amount determined under clause (i) or (ii) of  
22                  such subparagraph (whichever is greater), to-  
23                  gether with a reasonable attorney’s fee and  
24                  costs, for the violation of subsection (a).

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

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

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

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

18           “(8) UNITED STATES PERSON DEFINED.—In  
19 this subsection, the term ‘United States person’ has  
20 the meaning given that term in subsection (i)(2).”.

21           “(c) PROHIBITED FOREIGN PRACTICES BY ISSUERS.—  
22 Section 30A of the Securities Exchange Act of 1934 (15  
23 U.S.C. 78dd–1) is amended by adding at the end the fol-  
24 lowing:

25           “(h) PRIVATE RIGHT OF ACTION AUTHORIZED.—

1           “(1) AUTHORIZED PLAINTIFFS.—Any person  
2           that violates subsection (a) shall be liable in an ac-  
3           tion brought in accordance with this subsection in  
4           any court of competent jurisdiction to any issuer  
5           that is subject to this section, domestic concern that  
6           is subject to section 104 of the Foreign Corrupt  
7           Practices Act of 1977 (15 U.S.C. 78dd–2), or other  
8           person that is a United States person, that is dam-  
9           aged by the violation of subsection (a) of this sec-  
10          tion, for damages caused to such issuer, domestic  
11          concern, or other person by the violation.

12           “(2) PROOF OF DAMAGES.—For purposes of  
13          this subsection, the court may not find for the plain-  
14          tiff in an action under this subsection unless the  
15          plaintiff alleges and proves that—

16                   “(A) the defendant violated subsection (a);  
17                   and

18                   “(B) the defendant’s violation of sub-  
19                   section (a)—

20                           “(i) prevented the plaintiff from ob-  
21                           taining or retaining business for or with  
22                           any person; and

23                           “(ii) assisted the defendant in obtain-  
24                           ing or retaining such business.

25           “(3) MEASURE OF DAMAGES.—



1           “(A) IN GENERAL.—The damages that a  
2 plaintiff may obtain in an action under this  
3 subsection may be equal to the higher of the  
4 two following amounts that are established by  
5 the plaintiff’s allegations and proof:

6           “(i) The total amount of the contract  
7 or agreement that the defendant gained in  
8 obtaining or retaining business by means  
9 of the violation of subsection (a).

10           “(ii) The total amount of the contract  
11 or agreement that the plaintiff failed to  
12 gain because of the defendant’s obtaining  
13 or retaining business by means of the vio-  
14 lation of subsection (a).

15           “(B) TREBLE DAMAGES.—In assessing  
16 damages under subparagraph (A), the court  
17 shall enter judgment for three times the  
18 amount determined under clause (i) or (ii) of  
19 such subparagraph (whichever is greater), to-  
20 gether with a reasonable attorney’s fee and  
21 costs, for the violation of subsection (a).

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

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

4           “(6) CONTRIBUTION.—Each person who be-  
5           comes liable to make payment under this subsection  
6           may recover contribution as in cases of contract  
7           from any person who, if joined in the original suit,  
8           would have been liable to make the same payment.

9           “(7) STATUTE OF LIMITATIONS.—No action  
10          shall be maintained to enforce any liability created  
11          under this subsection unless brought within 3 years  
12          after the discovery of the facts constituting the  
13          cause of action and within 6 years after the cause  
14          of action accrued.

15          “(8) UNITED STATES PERSON DEFINED.—In  
16          this subsection, the term ‘United States person’ has  
17          the meaning given that term in subsection (g)(2).”.

18 **SEC. 3. EFFECTIVE DATE.**

19          The amendments made by this Act shall take effect  
20          on the date of the enactment of this Act and shall apply  
21          to causes of action accruing on or after such date of enact-  
22          ment.

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