

114TH CONGRESS
2D SESSION

H. R. 5438

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.

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 2016

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

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 2016”.

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.

○