112TH CONGRESS 1ST SESSION H.R. 3531

AUTHENTICATED U.S. GOVERNMENT INFORMATION

> To authorize certain private rights of action under the Foreign Corrupt Practices Act of 1977 for violations by foreign concerns that damage domestic businesses.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 30, 2011

Mr. PERLMUTTER introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, 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 by foreign concerns that damage domestic businesses.
 - 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 2011".

6 SEC. 2. ACTIONS AUTHORIZED.

7 Section 104A of the Foreign Corrupt Practices Act
8 of 1977 (15 U.S.C. 78dd–3) is amended—

1 (1) by redesignating subsection (f) as sub-2 section (g); and

3 (2) by inserting after subsection (e) the fol-4 lowing:

5 "(f) PRIVATE RIGHTS OF ACTION AUTHORIZED.—

"(1) AUTHORIZED PLAINTIFFS.—Any foreign 6 7 concern that violates subsection (a) shall be liable in 8 an action brought in accordance with this subsection 9 in any court of competent jurisdiction to any issuer 10 that is subject to section 30A of the Securities Ex-11 change Act of 1934, domestic concern that is subject 12 to section 104 of this Act, or other United States 13 person that is damaged by the violation of sub-14 section (a) of this section for damages caused to 15 such issuer, domestic concern, or other person by the violation. 16

17 "(2) PROOF OF DAMAGES.—For purposes of
18 this subsection, a plaintiff in an action under this
19 subsection must allege and prove that—

20 "(A) the defendant foreign concern vio21 lated subsection (a); and
22 (((D) the black for iteration is a state of the state of th

22 "(B) the defendant foreign concern's viola23 tion of subsection (a)—

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1	"(i) prevented the plaintiff from ob-
2	taining or retaining business for or with
3	any person; and
4	"(ii) assisted the foreign concern in
5	obtaining or retaining such business.
6	"(3) Measure of damages.—
7	"(A) IN GENERAL.—The damages which a
8	plaintiff may obtain in an action under this
9	subsection may be equal to the higher of the
10	two following amounts that are established by
11	the plaintiff's allegations and proof:
12	"(i) The total amount of the contract
13	or agreement that the defendant gained in
14	obtaining or retaining business by means
15	of the violation of subsection (a).
16	"(ii) The total amount of the contract
17	or agreement that the plaintiff failed to
18	gain because of the defendant's obtaining
19	or retaining business by means of the vio-
20	lation of subsection (a).
21	"(B) TREBLE DAMAGES.—In assessing
22	damages under subparagraph (A), the court
23	shall enter judgment for three times the
24	amount determined under clause (i) or (ii) of
25	such subparagraph (whichever is greater), to-

1	gether with a reasonable attorney's fee and
2	costs, for any violation of subsection (a).
3	"(4) Exception for routine governmental
4	ACTION.—The exception in subsection (b) shall apply
5	to an action under this subsection.
6	"(5) Affirmative defenses.—The affirma-
7	tive defenses in subsection (c) shall apply to an ac-
8	tion under this subsection.
9	"(6) CONTRIBUTION.—Every person who be-
10	comes liable to make payment under this subsection
11	may recover contribution as in cases of contract
12	from any person who, if joined in the original suit,
13	would have been liable to make the same payment.
14	"(7) STATUTE OF LIMITATIONS.—No action
15	shall be maintained to enforce any liability created
16	under this subsection unless brought within 3 years
17	after the discovery of the facts constituting the
18	cause of action and within 6 years after such cause
19	of action accrued.
20	"(8) DEFINITIONS.—
21	"(A) FOREIGN CONCERN.—For purposes
22	of this subsection, the term 'foreign concern'
23	means any person other than an issuer that is
24	subject to section 30A of the Securities Ex-
25	change Act of 1934, a domestic concern that is

1	subject to section 104 of this Act, or another
2	United States person.
3	"(B) UNITED STATES PERSON.—The term
4	'United States person' has the meaning given
5	such term in section $104(i)(2)$ of this Act.".