

112TH CONGRESS  
1ST SESSION

# H. R. 3531

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

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## 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

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## 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.—

6           “(1) AUTHORIZED PLAINTIFFS.—Any foreign  
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  
16          the violation.

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 vio-  
21                 lated subsection (a); and

22                 “(B) the defendant foreign concern’s viola-  
23                 tion of subsection (a)—

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.”.

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