

117TH CONGRESS
1ST SESSION

S. 3137

To amend title 18, United States Code, to prohibit a foreign official from demanding a bribe, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 2021

Mr. WHITEHOUSE (for himself and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to prohibit a foreign official from demanding a bribe, 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 Extortion Pre-
5 vention Act”.

6 **SEC. 2. PROHIBITION OF DEMAND FOR BRIBE.**

7 Section 201 of title 18, United States Code, is
8 amended—

9 (1) in subsection (a)—

1 (A) in paragraph (2), by striking “and” at
2 the end;

3 (B) in paragraph (3), by striking the pe-
4 riod at the end and inserting a semicolon; and

5 (C) by adding at the end the following:

6 “(4) the term ‘foreign official’ means—

7 “(A) any official or employee of a foreign
8 government or any department, agency, or in-
9 strumentality thereof;

10 “(B) any official or employee of a public
11 international organization;

12 “(C) any person acting in an official ca-
13 pacity for or on behalf of any such government
14 or department, agency, or instrumentality, or
15 for or on behalf of any such public international
16 organization; or

17 “(D) any person acting in an unofficial ca-
18 pacity for or on behalf of and with authoriza-
19 tion from any such government or department,
20 agency, or instrumentality, or for or on behalf
21 of and with authorization from any such public
22 international organization; and

23 “(5) the term ‘public international organization’
24 means—

1 “(A) an organization that is designated by
 2 Executive order pursuant to section 1 of the
 3 International Organizations Immunities Act (22
 4 U.S.C. 288); or

5 “(B) any other international organization
 6 that is designated by the President by Execu-
 7 tive order for the purposes of this section, effec-
 8 tive as of the date of publication of such order
 9 in the Federal Register.”; and

10 (2) by adding at the end the following:

11 “(f) PROHIBITION OF DEMAND FOR A BRIBE.—

12 “(1) OFFENSE.—It shall be unlawful for any
 13 foreign official or person selected to be a foreign of-
 14 ficial to corruptly demand, seek, receive, accept, or
 15 agree to receive or accept, directly or indirectly, any-
 16 thing of value personally or for any other person or
 17 non-governmental entity, in or affecting interstate
 18 commerce, in return for—

19 “(A) being influenced in the performance
 20 of any official act;

21 “(B) being induced to do or omit to do any
 22 act in violation of the official duty of such offi-
 23 cial or person; or

24 “(C) conferring any improper advantage,

1 in connection with obtaining or retaining business
2 for or with, or directing business to, any person.

3 “(2) PENALTIES.—Any person who violates
4 paragraph (1) shall be fined not more than
5 \$250,000 or 3 times the monetary equivalent of the
6 thing of value, imprisoned for not more than 15
7 years, or both.

8 “(3) TRANSFER.—Except for costs related to
9 the administration and enforcement of the Foreign
10 Extortion Prevention Act, all fines and penalties im-
11 posed against a person under paragraph (2), wheth-
12 er pursuant to a criminal prosecution, enforcement
13 proceeding, deferred prosecution agreement, non-
14 prosecution agreement, a declination to prosecute or
15 enforce, a civil penalty, or any other resolution, shall
16 be deposited in the Victims of Kleptocracy Fund es-
17 tablished under paragraph (7).

18 “(4) JURISDICTION.—An offense under para-
19 graph (1) shall be subject to extraterritorial Federal
20 jurisdiction.

21 “(5) REPORT.—Not later than 1 year after the
22 date of enactment of the Foreign Extortion Preven-
23 tion Act, and annually thereafter, the Attorney Gen-
24 eral shall submit to the Committee on the Judiciary
25 of the House of Representatives and the Committee

1 on the Judiciary of the Senate, and post on the pub-
2 licly available website of the Department of Justice,
3 a report—

4 “(A) providing an overview of the scale
5 and nature of bribery involving foreign officials,
6 including an analysis of where these crimes are
7 most likely to be committed;

8 “(B) focusing, in part, on demands by for-
9 eign officials for bribes from United States
10 domiciled or incorporated entities, and the ef-
11 forts of foreign governments to prosecute such
12 cases;

13 “(C) addressing United States diplomatic
14 efforts to protect United States domiciled or in-
15 corporated entities from foreign bribery, and
16 the effectiveness of those efforts in protecting
17 such entities;

18 “(D) summarizing major actions taken
19 under this section in the previous year, includ-
20 ing enforcement actions taken and penalties im-
21 posed;

22 “(E) evaluating the effectiveness of the
23 Department of Justice in enforcing this section;

1 “(F) detailing what resources or legislative
2 action the Department of Justice need to en-
3 sure adequate enforcement of this section; and

4 “(G) studying the efficacy of mutual legal
5 assistance treaties and how they can be im-
6 proved or built upon in multilateral fora, in-
7 cluding the identification of legal and policy
8 issues that are delaying prompt responses.

9 “(6) ANNUAL PUBLICATION OF MUTUAL LEGAL
10 ASSISTANCE TREATY DATA.—Not later than 1 year
11 after the date of enactment of the Foreign Extortion
12 Prevention Act, and annually thereafter, the Attor-
13 ney General shall publish on the website of the De-
14 partment of Justice—

15 “(A) the number of requests for mutual
16 legal assistance made to the Department of
17 Justice from foreign governments during the
18 preceding year;

19 “(B) the number of requests for mutual
20 legal assistance returned for noncompliance
21 during the preceding year;

22 “(C) the reason or reasons each request
23 for mutual legal assistance returned for non-
24 compliance was so returned;

1 “(D) the number of requests for mutual
2 legal assistance processed by the Department of
3 Justice during the preceding year;

4 “(E) the median length of time taken to
5 process a request for mutual legal assistance by
6 the Department of Justice;

7 “(F) the number of requests for mutual
8 legal assistance that have been pending or not
9 completely fulfilled within 6 months of receipt
10 and the number of requests for mutual legal as-
11 sistance that have been pending or not com-
12 pletely fulfilled within one year or longer of re-
13 ceipt; and

14 “(G) the number of outreach efforts by the
15 Department of Justice to explain how foreign
16 countries can receive mutual legal assistance.

17 “(7) VICTIMS OF KLEPTOCRACY FUND.—

18 “(A) IN GENERAL.—There is established in
19 the United States Treasury a fund to be known
20 as the ‘Victims of Kleptocracy Fund’.

21 “(B) AVAILABILITY OF AMOUNTS.—
22 Amounts deposited into the Victims of Klepto-
23 cracy Fund in accordance with paragraph (3)
24 or any other provision of law shall be available
25 to the Attorney General, without fiscal year lim-

itation or need for subsequent appropriation,
only for the purposes of—

“(i) the International Criminal Inves-
tigative Training Assistance Program;

“(ii) the Kleptocracy Asset Recovery
Initiative;

“(iii) the Office of Overseas Prosecu-
torial Development, Assistance, and Train-
ing; and

“(iv) the Office of International Af-
fairs, including for the hiring of personnel
to speed processing of requests for mutual
legal assistance.

“(8) RULE OF CONSTRUCTION.—This sub-
section shall not be construed as encompassing con-
duct that would violate section 30A of the Securities
Exchange Act of 1934 (15 U.S.C. 78dd–1) or sec-
tion 104 or 104A of the Foreign Corrupt Practices
Act of 1977 (15 U.S.C. 78dd–2; 15 U.S.C. 78dd–
3) whether pursuant to a theory of direct liability,
conspiracy, complicity, or otherwise.”.

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