

118TH CONGRESS
2D SESSION

S. 5252

To amend title 18, United States Code to require accountability in deferred prosecution agreements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 2024

Mr. WELCH (for himself and Mr. HAWLEY) 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 require accountability in deferred prosecution agreements, 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 “Hold Corporate Crimi-
5 nals Accountable Act of 2024”.

6 **SEC. 2. ACCOUNTABILITY IN DEFERRED PROSECUTION**
7 **AGREEMENTS.**

8 Section 3161(h)(2) of title 18, United States Code,
9 is amended—

1 (1) by striking “Any” and inserting “(A) Any”;

2 and

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

4 “(B)(i) If the defendant described in subpara-
5 graph (A) is a person other than an individual, the
6 court may not approve an agreement described in
7 that subparagraph unless the court determines that
8 the agreement is in the public interest.

9 “(ii) In determining whether to approve an
10 agreement under clause (i), the court shall consider
11 the following factors:

12 “(I) The reasonableness of punitive meas-
13 ures, including financial penalties.

14 “(II) Compliance terms or safeguards
15 within the agreement.

16 “(III) Effective independent monitoring of
17 agreement terms to ensure compliance by the
18 defendant.

19 “(IV) Cooperation of the defendant with
20 law enforcement, including identifying culpable
21 individuals related to the conduct at issue.

22 “(V) The underlying goals of the sub-
23 stantive law violation and whether the agree-
24 ments contains terms unrelated to those goals.

1 “(VI) Collateral consequences related to
2 the agreement.

3 “(VII) The impact of the offense on the
4 public, including victims of the offense.

5 “(VIII) The effects of the agreement on
6 the regulatory scheme.

7 “(IX) The effects of the agreement on ap-
8 plicable statutes of limitations and other time-
9 related interests.

10 “(X) The appropriateness of any restitu-
11 tion.

12 “(XI) The adequacy and specificity of pub-
13 lic admissions regarding the conduct at issue.

14 “(XII) Prior criminal investigations and
15 prosecutions of the defendant.

16 “(XIII) Any other compelling reasons to
17 affirm or reject the agreement.”.

18 **SEC. 3. EMPIRICALLY BASED COMPLIANCE MONITORING.**

19 (a) IN GENERAL.—Any person other than an indi-
20 vidual who is placed on probation or enters into a deferred
21 prosecution agreement that contains a condition of compli-
22 ance monitoring shall employ independent monitoring that
23 uses objective and methodologically sound metrics.

24 (b) REPORT.—Not later than 1 year after the date
25 of enactment of this Act, the Attorney General shall pub-

lish a report on efforts by the Department of Justice to identify guidelines and increase the use of compliance monitoring described in subsection (a) through criminal prosecutions.

SEC. 4. TRANSPARENCY REQUIREMENTS ON FEDERAL AGENCIES TO ENTER INTO DEFERRED PROSECUTION AGREEMENTS.

(a) REQUIREMENTS FOR SETTLEMENT AGREEMENTS.—

(1) IN GENERAL.—Chapter 3 of title 5, United States Code, is amended by adding at the end the following:

“§ 307. Information regarding settlement agreements

“(a) DEFINITION.—In this section, the term ‘covered settlement agreement’ means a settlement agreement (including deferred prosecution agreements and nonprosecution agreements) that is entered into by an Executive agency that—

“(1) relates to an alleged violation of Federal civil or criminal law;

“(2) involves an agreement to defer prosecution or withhold prosecution of the alleged violation; and

“(3) requires the payment of a total of not less than \$1,000,000 by 1 or more non-Federal persons.

“(b) INFORMATION TO BE POSTED ONLINE.—

1 “(1) REQUIREMENT.—

2 “(A) IN GENERAL.—Subject to subpara-
3 graph (B), the head of each Executive agency
4 shall make publicly available in a searchable
5 format in a prominent location on the website
6 of the Executive agency—

7 “(i) a list of each covered settlement
8 agreement entered into by the Executive
9 agency, which shall include, for each cov-
10 ered settlement agreement—

11 “(I) the date on which the par-
12 ties entered into the covered settle-
13 ment agreement;

14 “(II) the names of the parties
15 that settled claims under the covered
16 settlement agreement;

17 “(III) a description of the claims
18 each party settled under the covered
19 settlement agreement;

20 “(IV) the amount each party set-
21 tling a claim under the covered settle-
22 ment agreement is obligated to pay
23 under the settlement agreement;

1 “(V) the total amount the set-
2 tling parties are obligated to pay
3 under the settlement agreement;

4 “(VI) for each settling party—

5 “(aa) the amount, if any,
6 the settling party is obligated to
7 pay that is expressly specified
8 under the covered settlement
9 agreement as a civil or criminal
10 penalty or fine; and

11 “(bb) the amount, if any,
12 that is expressly specified under
13 the covered settlement agreement
14 as not deductible for purposes of
15 the Internal Revenue Code of
16 1986; and

17 “(VII) a description of where
18 amounts collected under the covered
19 settlement agreement will be depos-
20 ited, including, if applicable, the de-
21 posit of such amounts in an account
22 available for use for 1 or more pro-
23 grams of the Federal Government;
24 and

1 “(ii) a copy of each covered settlement
 2 agreement entered into by the Executive
 3 agency.

4 “(B) CONFIDENTIALITY PROVISIONS.—The
 5 requirement to disclose information or a copy of
 6 a covered settlement agreement under subpara-
 7 graph (A) shall apply to the extent that the in-
 8 formation or copy (or portion thereof) is not
 9 subject to a confidentiality provision that pro-
 10 hibits disclosure of the information or copy (or
 11 portion thereof).

12 “(2) PERIOD.—The head of each Executive
 13 agency shall ensure that—

14 “(A) information regarding a covered set-
 15 tlement agreement is publicly available on the
 16 list described in paragraph (1)(A)(i) for a pe-
 17 riod of not less than 5 years, beginning on the
 18 date of the covered settlement agreement; and

19 “(B) a copy of a covered settlement agree-
 20 ment made available under paragraph (1)(A)(ii)
 21 is publicly available—

22 “(i) for a period of not less than 5
 23 years, beginning on the date of the covered
 24 settlement agreement; or

1 “(ii) for a covered settlement agree-
2 ment under which a non-Federal person is
3 required to pay not less than \$50,000,000,
4 for a period of not less than 10 years, be-
5 ginning on the date of the covered settle-
6 ment agreement.

7 “(c) PUBLIC STATEMENT.—If the head of an Execu-
8 tive agency determines that a confidentiality provision in
9 a covered settlement agreement, or the sealing of a covered
10 settlement agreement, is required to protect the public in-
11 terest of the United States, the head of the Executive
12 agency shall issue a public statement stating why such ac-
13 tion is required to protect the public interest of the United
14 States, which shall explain—

15 “(1) what interests confidentiality protects; and

16 “(2) why the interests protected by confiden-
17 tiality outweigh the public’s interest in knowing
18 about the conduct of the Federal Government and
19 the expenditure of Federal resources.

20 “(d) REQUIREMENTS FOR WRITTEN PUBLIC STATE-
21 MENTS.—Any written public statement issued by an Exec-
22 utive agency that refers to an amount to be paid by a
23 non-Federal person under a covered settlement agreement
24 shall—

1 “(1) specify which portion, if any, of the
2 amount to be paid under the covered settlement
3 agreement by a non-Federal person—

4 “(A) is expressly specified under the cov-
5 ered settlement agreement as a civil or criminal
6 penalty or fine to be paid for a violation of Fed-
7 eral law; or

8 “(B) is expressly specified under the cov-
9 ered settlement agreement as not deductible for
10 purposes of the Internal Revenue Code of 1986;

11 “(2) if no portion of the amount to be paid
12 under the covered settlement agreement by a non-
13 Federal person is expressly specified under the cov-
14 ered settlement agreement as a civil or criminal pen-
15 alty or fine, include a statement specifying that is
16 the case; and

17 “(3) describe in detail—

18 “(A) any actions the non-Federal person
19 shall take under the covered settlement agree-
20 ment in lieu of payment to the Federal Govern-
21 ment or a State or local government; and

22 “(B) any payments or compensation the
23 non-Federal person shall make to other non-
24 Federal persons under the covered settlement
25 agreement.

1 “(e) CONFIDENTIALITY.—The requirement to dis-
2 close information under subsection (d) shall apply to the
3 extent that the information to be disclosed (or portion
4 thereof) is not subject to a confidentiality provision that
5 prohibits disclosure of the information (or portion there-
6 of).

7 “(f) REPORTING.—

8 “(1) IN GENERAL.—Not later than January 31
9 of each year, the head of an Executive agency that
10 entered into a covered settlement agreement during
11 the previous calendar year shall submit to each com-
12 mittee of Congress with jurisdiction over the activi-
13 ties of the Executive agency a report indicating—

14 “(A) how many covered settlement agree-
15 ments the Executive agency entered into during
16 that previous calendar year;

17 “(B) how many covered settlement agree-
18 ments the Executive agency entered into during
19 that previous calendar year that had any terms
20 or conditions that are required to be kept con-
21 fidential;

22 “(C) how many covered settlement agree-
23 ments the Executive agency entered into during
24 that previous calendar year for which all terms

1 and conditions are required to be kept confiden-
 2 tial;

3 “(D) the total amount of attorney fees,
 4 costs, and expenses paid to non-Federal persons
 5 under settlement agreements (including consent
 6 decrees) of the Executive agency during that
 7 previous calendar year; and

8 “(E) the number of settlement agreements
 9 (including consent decrees) between the Execu-
 10 tive agency and non-Federal persons that in-
 11 volve regulatory action or regulatory changes,
 12 including the promulgation of new rules, during
 13 that previous calendar year.

14 “(2) AVAILABILITY OF REPORTS.—The head of
 15 an Executive agency that is required to submit a re-
 16 port under paragraph (1) shall make the report pub-
 17 licly available in a searchable format in a prominent
 18 location on the Web site of the Executive agency.”.

19 (2) TECHNICAL AND CONFORMING AMEND-
 20 MENT.—The table of sections for chapter 3 of title
 21 5, United States Code, is amended by adding at the
 22 end the following:

“307. Information regarding settlement agreements.”.

23 (b) REVIEW OF CONFIDENTIALITY OF SETTLEMENT
 24 AGREEMENTS.—Not later than 6 months after the date
 25 of enactment of this Act, the Comptroller General of the

1 United States shall submit to Congress a report regarding
2 how Executive agencies (as defined under section 105 of
3 title 5, United States Code) determine whether the terms
4 of a settlement agreement or the existence of a settlement
5 agreement will be treated as confidential, which shall in-
6 clude recommendations, if any, for legislative or adminis-
7 trative action to increase the transparency of Government
8 settlements while continuing to protect the legitimate in-
9 terests that confidentiality provisions serve.

10 **SEC. 5. EXTENSION OF STATUTE OF LIMITATIONS FOR CER-**
11 **TAIN CRIMES.**

12 Section 3282 of title 18, United States Code, is
13 amended by adding at the end the following:

14 “(c) FINANCIAL INSTITUTIONS.—Except as other-
15 wise expressly provided by law, no person other than an
16 individual shall be prosecuted, tried, or punished for any
17 offense involving a financial institution, corporation, or a
18 subsidiary of a financial institution or corporation unless
19 the indictment is found or the information is instituted
20 within 10 years next after such offense shall have been
21 committed.”.

22 **SEC. 6. INVESTIGATION OF FULLY CULPABLE INDIVIDUALS.**

23 Section 3553(e) of title 18, United States Code, is
24 amended—

1 (1) by striking “Upon” and inserting the fol-
2 lowing:

3 “(1) IN GENERAL.—Upon”; and

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

5 “(2) PROVIDING ASSISTANCE.—Any person
6 other than an individual seeking a sentence below a
7 level established by statute as a minimum sentence
8 under this subsection shall provide assistance to the
9 Government in identifying and fully investigating
10 employees or former employees involved in the of-
11 fense.”.

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