

110TH CONGRESS
2D SESSION

H. R. 6188

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

JUNE 4, 2008

Mr. PERLMUTTER (for himself and Mr. UDALL of Colorado) 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 2008”.

1 **SEC. 2. ACTIONS AUTHORIZED.**

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

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

6 (2) by inserting after subsection (e) the fol-
7 lowing:

8 “(f) PRIVATE RIGHTS OF ACTION AUTHORIZED.—

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

20 “(2) PROOF OF DAMAGES.—For purposes of
21 this subsection, a plaintiff in an action under this
22 subsection must allege and prove that—

23 “(A) the defendant foreign concern vio-
24 lated subsection (a); and

25 “(B) the defendant foreign concern’s viola-
26 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 three
17 years after the discovery of the facts constituting the
18 cause of action and within six 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 which is
24 subject to section 30A of the Securities Ex-
25 change Act of 1934, a domestic concern which

1 is 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.”.

○