

**S2375 (PASSED BY SENATE ON JULY 31, 1998)**

**S 2375 ES**

**105th CONGRESS**

**2d Session**

**S. 2375**

AN ACT

To amend the Securities Exchange Act of 1934 and the Foreign Corrupt Practices Act of 1977, to strengthen prohibitions on international bribery and other corrupt practices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `International Anti-Bribery Act of 1998'.

SEC. 2. AMENDMENTS RELATING TO ISSUERS OF SECURITIES.

(a) PROHIBITED CONDUCT- Section 30A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1(a)) is amended--

(1) in paragraph (1)--

(A) by striking `(B)' and inserting `(D)'; and

(B) by striking subparagraph (A) and inserting the following:

`(A) influencing any act or decision of such foreign official in his official capacity;

`(B) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official;

`(C) securing any improper advantage; or';

(2) in paragraph (2)--

(A) by striking `(B)' and inserting `(D)'; and

(B) by striking subparagraph (A) and inserting the following:

`(A) influencing any act or decision of such party, official, or candidate in its or his official capacity;

`(B) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate;

`(C) securing any improper advantage; or'; and

(3) in paragraph (3)--

(A) by striking `(B)' and inserting `(D)'; and

(B) by striking subparagraph (A) and inserting the following:

`(A) influencing any act or decision of such foreign official, political party, party official, or candidate in its or his official capacity;

` (B) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate;

` (C) securing any improper advantage; or'.

(b) OFFICIALS OF INTERNATIONAL ORGANIZATIONS- Section 30A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1(f)) is amended--

(1) by striking paragraph (1) and inserting the following:

` (1) The term--

` (A) `foreign official' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government, department, agency, or instrumentality, or for or on behalf of any such public international organization; and

` (B) `public international organization' means an organization that has been so designated by Executive order pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288).'; and

(2) in paragraph (3)(A)(v), by inserting before the period ` to those referred to in clauses (i) through (iv)'.

(c) ALTERNATIVE JURISDICTION OVER ACTS OUTSIDE OF THE UNITED STATES- Section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1) is amended--

(1) by redesignating subsection (f) as subsection (g);

(2) by inserting after subsection (e) the following:

` (f) ALTERNATIVE JURISDICTION-

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` (1) IN GENERAL- It shall be unlawful for an issuer, or for any United States person that is an officer, director, employee, or agent of such issuer or any stockholder thereof, acting on behalf of that issuer, to corruptly do any act outside of the United States in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of any thing of value to any of the persons or entities referred to in paragraphs (1), (2), and (3) of subsection (a), for the purposes set forth therein, whether or not that issuer (or that officer, director, employee, agent, or stockholder) makes use of the mails or any means or instrumentality of interstate commerce in furtherance of the offer, gift, payment, promise, or authorization.

` (2) APPLICABILITY- This subsection applies only to an issuer that--

` (A) is organized under the laws of the United States, or a State, territory, possession, or commonwealth of the United States or a political subdivision thereof; and

` (B) has a class of securities registered pursuant to section 12 or that is required to file reports under section 15(d).

` (3) UNITED STATES PERSON- In this subsection, the term `United States person' means--

`(A) a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)); and

`(B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.';

(3) in subsection (b), by striking `Subsection (a)' and inserting `Subsections (a) and (f)'; and

(4) in subsection (c), by striking `subsection (a)' and inserting `subsections (a) and (f)'.

(d) PENALTIES- Section 32(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(c)) is amended--

(1) by striking `section 30A(a) of this title' each place that term appears and inserting `subsection (a) or (f) of section 30A'; and

(2) in paragraph (2)--

(A) in subparagraph (A), by striking `or director' and inserting `, director, employee, or agent';

(B) by striking subparagraph (B); and

(C) by redesignating subparagraph (C) as subparagraph (B).

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### SEC. 3. AMENDMENTS RELATING TO DOMESTIC CONCERNS.

(a) PROHIBITED CONDUCT- Section 104(a) of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2(a)) is amended--

(1) in paragraph (1)--

(A) by striking `(B)' and inserting `(D)'; and

(B) by striking subparagraph (A) and inserting the following:

`(A) influencing any act or decision of such foreign official in his official capacity;

`(B) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official;

`(C) securing any improper advantage; or';

(2) in paragraph (2)--

(A) by striking `(B)' and inserting `(D)'; and

(B) by striking subparagraph (A) and inserting the following:

`(A) influencing any act or decision of such party, official, or candidate in its or his official capacity;

`(B) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate;

`(C) securing any improper advantage; or'; and

(3) in paragraph (3)--

(A) by striking `(B)' and inserting `(D)'; and

(B) by striking subparagraph (A) and inserting the following:

`(A) influencing any act or decision of such foreign official, political party, party official, or candidate in its or his official capacity;

`(B) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate;

`(C) securing any improper advantage; or'.

(b) OFFICIALS OF INTERNATIONAL ORGANIZATIONS- Section 104(h) of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2(h)) is amended--

(1) by striking paragraph (2) and inserting the following:

`(2) The term--

`(A) `foreign official' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government, department, agency, or instrumentality, or for or on behalf of any such public international organization; and

`(B) `public international organization' means an organization that has been so designated by Executive order pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288).'; and

(2) in paragraph (4)(A)(v), by inserting before the period `to those referred to in clauses (i) through (iv)'.

(c) ALTERNATIVE JURISDICTION OVER ACTS OUTSIDE OF THE UNITED STATES- Section 104 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2) is amended--

(1) by redesignating subsection (h) as subsection (i);

(2) by inserting after subsection (g) the following:

`(h) ALTERNATIVE JURISDICTION-

`(1) IN GENERAL- It shall be unlawful for a United States person to corruptly do any act outside of the United States in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of any thing of value to any of the persons or entities referred to in paragraphs (1), (2), and (3) of subsection (a), for the purposes set forth therein, whether or not that United States person makes use of the mails or any means or instrumentality of interstate commerce in furtherance of the offer, gift, payment, promise, or authorization.

`(2) DEFINITION- In this subsection, the term `United States person' means--

`(A) a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)); and

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` (B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship organized under the laws of the United States or any State, territory, possession, or commonwealth of the United States, or any political subdivision thereof.';

(3) in subsection (b), by striking ` Subsection (a)' and inserting ` Subsections (a) and (h)';

(4) in subsection (c), by striking ` subsection (a)' and inserting ` subsections (a) and (h)'; and

(5) in subsection (d), by striking ` subsection (a) of this section' and inserting ` subsection (a) or (h)'.

(d) PENALTIES- Section 104(g) of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2(g)) is amended--

(1) by striking ` subsection (a)' each place that term appears and inserting ` subsection (a) or (h)';

(2) in paragraph (1), by inserting ` that is not a natural person' after ` domestic concern' each place that term appears; and

(3) in paragraph (2)--

(A) by striking ` Any officer' each place that term appears and inserting ` Any natural person that is an officer';

(B) in subparagraph (A), by striking ` or director' and inserting ` , director, employee, or agent';

(C) by striking subparagraph (B); and

(D) by redesignating subparagraph (C) as subparagraph (B).

(e) TECHNICAL AMENDMENT- Section 104(i)(4)(A) of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd-2(h)(4)(A)), as redesignated by subsection (c) of this section, is amended by striking ` For purposes of paragraph (1), the' and inserting ` The'.

#### SEC. 4. AMENDMENT RELATING TO OTHER PERSONS.

The Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd et seq.) is amended by inserting after section 104 the following new section:

` SEC. 104A. PROHIBITED FOREIGN TRADE PRACTICES BY PERSONS OTHER THAN ISSUERS OR DOMESTIC CONCERNS.

` (a) PROHIBITED CONDUCT- It shall be unlawful for any covered person, or for any officer, director, employee, or agent of such covered person or any stockholder thereof, acting on behalf of such covered person, while in the territory of the United States, corruptly to make use of the mails or any means or instrumentality of interstate commerce or to do any other act in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to--

` (1) any foreign official for purposes of--

` (A) influencing any act or decision of such foreign official in the official capacity of the foreign official;

` (B) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official;

` (C) securing any improper advantage; or

` (D) inducing such foreign official to use the influence of that official with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such covered person in obtaining or retaining business for or with, or directing business to, any person;

` (2) any foreign political party or official thereof or any candidate for foreign political office for purposes of--

` (A) influencing any act or decision of such party, official, or candidate in its or his official capacity;

` (B) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate;

` (C) securing any improper advantage; or

` (D) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such covered person in obtaining or retaining business for or with, or directing business to, any person; or

` (3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of--

` (A) influencing any act or decision of such foreign official, political party, party official, or candidate in its or his official capacity;

` (B) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate;

` (C) securing any improper advantage; or

` (D) inducing such foreign official, political party, party official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such covered person in obtaining or retaining business for or with, or directing business to, any person.

` (b) EXCEPTION FOR ROUTINE GOVERNMENTAL ACTION- Subsection (a) shall not apply to any facilitating or expediting payment to a foreign official, political party, or party official, the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official, political party, or party official.

` (c) AFFIRMATIVE DEFENSES- It shall be an affirmative defense to actions under subsection (a) that--

` (1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the country of the foreign official, political party, party official, or candidate; or

` (2) the payment, gift, offer, or promise of anything of value that was made was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate, and was directly related to--

` (A) the promotion, demonstration, or explanation of products or services; or

` (B) the execution or performance of a contract with a foreign government or agency thereof.

` (d) INJUNCTIVE RELIEF-

` (1) IN GENERAL- When it appears to the Attorney General that any covered person, or officer, director, employee, agent, or stockholder of a covered person, is engaged, or about to engage, in any act or practice constituting a violation of subsection (a), the Attorney General may, in the discretion of the Attorney General, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent injunction or a temporary restraining order shall be granted without bond.

` (2) CIVIL INVESTIGATIONS- For the purpose of any civil investigation that, in the opinion of the Attorney General, is necessary and proper to enforce this section, the Attorney General, or a designee thereof, may administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents that the Attorney General deems relevant or material to such investigation. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

` (3) SUBPOENAS- In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or in which such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General, or a designee thereof, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

` (4) PROCESS- All process in any action referred to in this subsection may be served in the judicial district in which such person resides or may be found.

` (5) RULES- The Attorney General may make such rules relating to civil investigations as may be necessary or appropriate to implement this subsection.

` (e) PENALTIES-

` (1) JURIDICAL PERSONS- Any covered person that is a juridical person that violates subsection (a)--

` (A) shall be fined not more than \$2,000,000; and

` (B) shall be subject to a civil penalty of not more than \$10,000, imposed in an action brought by the Attorney General.

` (2) NATURAL PERSON- Any covered person who is a natural person and who--

` (A) willfully violates subsection (a) shall be fined not more than \$100,000, or imprisoned not more than 5 years, or both;

` (B) violates subsection (a) shall be subject to a civil penalty of not more than \$10,000, imposed in an action brought by the Attorney General.

` (3) PAYMENT OF FINES- Whenever a fine is imposed under paragraph (2) upon any officer, director, employee, agent, or stockholder of a covered person, such fine may not be paid, directly or indirectly, by that covered person.

` (f) APPLICABILITY; OTHER LAWS- This section does not apply--

` (1) to any issuer of securities to which section 30A of the Securities Exchange Act of 1934 applies; or

` (2) to any domestic concern to which section 104 of this Act applies.

` (g) DEFINITIONS- For purposes of this section--

` (1) the term--

` (A) `foreign official' means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization; and

` (B) `public international organization' means an organization that has been designated by Executive order pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288);

` (2) the state of mind of a covered person is `knowing' with respect to conduct, a circumstance, or a result if--

` (A) such covered person is aware that such covered person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or

` (B) such covered person has a firm belief that such circumstance exists or that such result is substantially certain to occur;

` (3) if knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a covered person is aware of a high probability of the existence of such circumstance, unless the covered person actually believes that such circumstance does not exist;

` (4) the term `covered person' means--

` (A) any natural person, other than a national of the United States (as defined in section 101(a) of the Immigration and Nationality Act); and

` (B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship that is organized under the law of a foreign nation or a political subdivision thereof; and

` (5) the term `routine governmental action'--

` (A) means only an action that is ordinarily and commonly performed by a foreign official--

` (i) in obtaining permits, licenses, or other official documents to qualify a person to do business in a foreign country;

` (ii) in processing governmental papers, such as visas and work orders;

` (iii) in providing police protection, mail pickup and delivery, or scheduling inspections associated with contract performance or inspections related to transit of goods across country;

` (iv) in providing phone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or

` (v) in actions of a similar nature to those referred to in clauses (i) through (iv); and

` (B) does not include any decision by a foreign official regarding whether, or on what terms, to award new business to or to continue business with a particular party, or any action taken by a foreign official involved in the decisionmaking process to encourage a decision to award new business to or continue business with a particular party.'.

Passed the Senate July 31, 1998.

Attest:

Secretary.

105th CONGRESS  
2d Session  
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AN ACT

To amend the Securities Exchange Act of 1934 and the Foreign Corrupt Practices Act of 1977, to strengthen prohibitions on international bribery and other corrupt practices, and for other purposes.

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