

116TH CONGRESS
2D SESSION

S. 3662

To amend title 28, United States Code, to provide a civil action against a foreign state for deliberate concealment or distortion of information with respect to an international public health emergency, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2020

Mr. COTTON introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to provide a civil action against a foreign state for deliberate concealment or distortion of information with respect to an international public health emergency, 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 “Holding the Chinese
5 Communist Party Accountable for Infecting Americans
6 Act of 2020”.

7 **SEC. 2. FINDINGS; PURPOSE.**

8 (a) FINDINGS.—Congress finds the following:

1 (1) The Communist Party of China covered up
2 the existence and downplayed the seriousness of the
3 coronavirus disease 2019 (COVID–19), at least as
4 early as December 2019.

5 (2) Chinese government officials engaged in a
6 campaign to silence and delegitimize doctors, includ-
7 ing Dr. Li Wenliang, who were warning their col-
8 leagues and others about COVID–19.

9 (3) Chinese government officials ordered the de-
10 struction of laboratory samples and research regard-
11 ing COVID–19 in January 2020.

12 (4) Chinese government officials have detained
13 or otherwise silenced researchers, journalists, and
14 citizens who attempted to share information that
15 could have proven unflattering to the response of the
16 Chinese government to the COVID–19 outbreak.

17 (5) Chinese government officials have expelled
18 United States journalists who were covering the
19 COVID–19 outbreak in China.

20 (6) Chinese government officials have attempted
21 to censor or destroy academic research into COVID–
22 19 and its origins that might disagree with the offi-
23 cial positions of the Chinese government.

24 (7) Chinese government officials have inten-
25 tionally underreported or altered official numbers of

1 COVID–19 infections and deaths in China, leading
2 world health experts to make flawed analyses that
3 severely underestimated the nature and seriousness
4 of COVID–19.

5 (8) Academic studies have shown that, had ap-
6 propriate interventions occurred to stop the spread
7 of COVID–19 even just weeks earlier, the spread of
8 COVID–19 would have been severely curtailed.

9 (9) The cover-up of COVID–19 by the Chinese
10 government—

11 (A) has caused significant death, injury,
12 and economic harm in the United States and
13 around the world; and

14 (B) is, at minimum, grossly negligent be-
15 havior causing significant injury.

16 (b) PURPOSE.—The purpose of this Act is to provide
17 civil litigants with the broadest possible basis, consistent
18 with the Constitution of the United States, to seek relief
19 against persons, entities, and foreign countries, wherever
20 acting and wherever they may be found, that are respon-
21 sible for, or complicit in ordering, controlling, or otherwise
22 directing acts intended to deliberately conceal or distort
23 the existence or nature of COVID–19, if such acts are
24 found to have likely contributed to the global COVID–19
25 pandemic.

1 **SEC. 3. DEFINITION.**

2 In this Act, the term “COVID–19” means the
3 coronavirus disease 2019 (COVID–19).

4 **SEC. 4. RESPONSIBILITY OF FOREIGN STATES FOR DELIB-**
5 **ERATE CONCEALMENT OR DISTORTING IN-**
6 **FORMATION ABOUT INTERNATIONAL PUBLIC**
7 **HEALTH EMERGENCIES.**

8 (a) IN GENERAL.—Chapter 97 of title 28, United
9 States Code, is amended by inserting after section 1605B
10 the following new section:

11 **“§ 1605C. Responsibility of foreign states for delib-**
12 **erate concealment or distorting informa-**
13 **tion about international public health**
14 **emergencies of international concern**

15 “(a) RESPONSIBILITY OF FOREIGN STATE.—A for-
16 eign state shall not be immune from the jurisdiction of
17 the courts of the United States in any case in which money
18 damages are sought against a foreign state for physical
19 injury or death, or injury to property or economic inter-
20 ests, occurring in the United States and caused by—

21 “(1) the spread of COVID–19; and

22 “(2) a tortious act or acts, including acts in-
23 tended to deliberately conceal or distort the existence
24 or nature of COVID–19, of the foreign state, or of
25 any official, employee, or agent of that foreign state
26 while acting within the scope of his or her office,

1 employment, or agency, regardless where the
2 tortious act or acts of the foreign state occurred.

3 “(b) EXCLUSIVE JURISDICTION.—

4 “(1) ORIGINAL JURISDICTION.—The United
5 States District Court for the Southern District of
6 New York, the United States District Court for the
7 Northern District of California, the United States
8 District Court for the Northern District of Illinois,
9 and the United States District Court for the South-
10 ern District of Texas shall have original and exclu-
11 sive jurisdiction over all actions in which a foreign
12 state is subject to the jurisdiction of a court of the
13 United States under this section.

14 “(2) APPELLATE JURISDICTION.—The United
15 States Court of Appeals for the Federal Circuit shall
16 have exclusive jurisdiction of an appeal from a final
17 decision of an action under this section.

18 “(c) STAY OF ACTIONS PENDING FOREIGN STATE
19 NEGOTIATIONS.—

20 “(1) INTERVENTION.—The Attorney General
21 may intervene in any action in which a foreign state
22 is subject to the jurisdiction of a court of the United
23 States under this section for the purpose of seeking
24 a stay of the civil action, in whole or in part.

25 “(2) STAY.—

1 “(A) IN GENERAL.—A court of the United
2 States shall stay a proceeding under this sec-
3 tion against a foreign state or any official, em-
4 ployee, or agent of the foreign state, if the Sec-
5 retary of State certifies that the United States
6 is engaged in good faith discussions with the
7 foreign state defendant, or any other defendant,
8 with respect to the resolution of a claim against
9 such a defendant.

10 “(B) DURATION.—

11 “(i) IN GENERAL.—A stay under this
12 section may be granted for not more than
13 180 days.

14 “(ii) EXTENSION.—

15 “(I) IN GENERAL.—The Attorney
16 General may petition the court for an
17 extension of the stay for additional
18 180-day periods.

19 “(II) RECERTIFICATION.—A
20 court may grant an extension under
21 subclause (I) if the Secretary of State
22 recertifies that the United States re-
23 mains engaged in good faith discus-
24 sions with the foreign state defendant
25 or any other defendant concerning the

1 resolution of a claim against the for-
 2 eign state or any official, employee, or
 3 agent of the foreign state, as to whom
 4 a stay of claims is sought.

5 “(d) DISMISSAL OF ACTIONS FOLLOWING FOREIGN
 6 STATE AGREEMENT.—

7 “(1) INTERVENTION.—The Attorney General
 8 may intervene in any action in which a foreign state
 9 is subject to the jurisdiction of a court of the United
 10 States under this section for the purpose of seeking
 11 the dismissal of the case.

12 “(2) DISMISSAL WITH PREJUDICE.—A court of
 13 the United States may dismiss with prejudice a pro-
 14 ceeding under this section against a foreign state or
 15 any official, employee, or agent of the foreign state
 16 if the Secretary of State certifies that the United
 17 States and the foreign state have entered into an
 18 agreement with respect to the resolution of a claim
 19 against such a defendant, regardless of whether the
 20 plaintiff is a party to such agreement or consents to
 21 the dismissal.

22 “(e) RULE OF CONSTRUCTION.—A foreign state shall
 23 not be subject to the jurisdiction of the courts of the
 24 United States under this section on the basis of a tortious
 25 act or acts that constitute mere negligence.

1 “(f) DEFINITION.—In this section, the term
2 ‘COVID–19’ means the coronavirus disease 2019
3 (COVID–19).”.

4 (b) EXCEPTIONS TO THE IMMUNITY FROM ATTACH-
5 MENT OR EXECUTION.—Section 1610(g) of title 28,
6 United States Code, is amended by inserting “, 1605B,
7 or 1605C” after “1605A” each place the term appears.

8 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

9 (1) TABLE OF SECTIONS.—The table of sections
10 for chapter 97 of title 28, United States Code, is
11 amended by inserting after the item relating to sec-
12 tion 1605B the following:

“1605C. Responsibility of foreign states for deliberate concealment or distorting
information about international public health emergencies of
international concern.”.

13 (2) CONFORMING AMENDMENT.—Section
14 1605(g)(1)(A) of title 28, United States Code, is
15 amended by striking “or section 1605B” and insert-
16 ing “, section 1605B, or section 1605C”.

17 (d) SEVERABILITY.—If any provision of this Act or
18 any amendment made by this Act, or the application of
19 a provision or amendment to any person or circumstance,
20 is held to be invalid, the remainder of this Act and the
21 amendments made by this Act, and the application of the
22 provisions and amendments to any other person not simi-
23 larly situated or to other circumstances, shall not be af-
24 fected by the holding.

1 (e) APPLICABILITY.—The amendments made by this
2 section shall apply to a civil action—

3 (1) pending on, or commenced on or after, the
4 date of enactment of this Act; and

5 (2)(A) arising out of an injury to a person from
6 COVID–19 on or after January 1, 2020; or

7 (B) arising out of an injury to property or busi-
8 ness during the national emergency declared by the
9 President under the National Emergencies Act (50
10 U.S.C. 1601 et seq.) with respect to the coronavirus
11 disease 2019 (COVID–19).

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