

Calendar No. 504

116TH CONGRESS
2D SESSION

S. 4212

To amend title 28, United States Code, to strip foreign sovereign immunity of certain foreign states to secure justice for victims of novel coronavirus in the United States.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2020

Ms. MCSALLY (for herself, Mr. HAWLEY, Mrs. BLACKBURN, Mr. COTTON, Mr. TILLIS, Mr. ROUNDS, Mr. GRAHAM, and Mrs. CAPITO) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 30, 2020

Reported by Mr. GRAHAM, without amendment

A BILL

To amend title 28, United States Code, to strip foreign sovereign immunity of certain foreign states to secure justice for victims of novel coronavirus in the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Civil Justice for Vic-
3 tims of China-Originated Viral Infections Diseases Act”
4 or the “Civil Justice for Victims of COVID Act”.

5 **SEC. 2. RESPONSIBILITY OF FOREIGN STATES FOR RECK-**
6 **LESS ACTIONS OR OMISSIONS CAUSING THE**
7 **COVID-19 GLOBAL PANDEMIC IN THE UNITED**
8 **STATES.**

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

12 **“§ 1605C. Responsibility of foreign states for reckless**
13 **actions or omissions causing the COVID-**
14 **19 global pandemic in the United States**

15 “(a) RESPONSIBILITY OF FOREIGN STATES.—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 death or
19 physical or economic injury to person, property, or busi-
20 ness occurring in the United States following any reckless
21 action or omission (including a conscious disregard of the
22 need to report information promptly or deliberately hiding
23 relevant information) of a foreign state, or of any official,
24 employee, or agent of that foreign state while acting with-
25 in the scope of his or her office, employment, or agency,
26 that caused or substantially contributed to the COVID-

1 19 global pandemic in the United States, regardless of
2 where the action or omission occurred.

3 “(b) RULE OF CONSTRUCTION.—A foreign state shall
4 not be subject to the jurisdiction of the courts of the
5 United States under subsection (a) on the basis of an
6 omission or act that constitutes mere negligence.

7 “(c) JURISDICTION.—

8 “(1) EXCLUSIVE JURISDICTION.—The courts of
9 the United States shall have exclusive jurisdiction in
10 any action in which a foreign state is subject to the
11 jurisdiction of a court of the United States under
12 subsection (a).

13 “(2) ADDITIONAL AUTHORITY TO ISSUE OR-
14 DERS.—In addition to authority already granted by
15 other laws, the courts of the United States shall
16 have jurisdiction to make and issue any writ or
17 order of injunction necessary or appropriate for the
18 enforcement of this section, including pre-judgment
19 injunctions related to transfer or disposal of assets.

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

25 “(e) STAY.—

1 “(1) IN GENERAL.—A court of the United
 2 States may stay a proceeding against a foreign state
 3 if the Secretary of State certifies that the United
 4 States is engaged in good faith discussions with the
 5 foreign state defendant concerning the resolution of
 6 the claims against the foreign state, or any other
 7 parties as to whom a stay of claims is sought. In ex-
 8 ercising its discretion under this subsection, the
 9 court shall balance the interests of the United States
 10 with the interests of the plaintiffs in a timely review
 11 of their claims.

12 “(2) DURATION.—

13 “(A) IN GENERAL.—A stay under this sec-
 14 tion may be granted for not more than 180
 15 days.

16 “(B) EXTENSION.—

17 “(i) IN GENERAL.—The Attorney
 18 General may petition the court for an ex-
 19 tension of the stay for additional periods
 20 not to exceed 180 days.

21 “(ii) RECERTIFICATION.—A court
 22 may grant an extension under subpara-
 23 graph (A) if the Secretary of State recer-
 24 tifies that the United States remains en-
 25 gaged in good faith discussions with the

1 foreign state defendant concerning the res-
 2 olution of the claims against the foreign
 3 state, or any other parties as to whom a
 4 stay of claims is sought. In choosing
 5 whether to grant an extension, the court
 6 shall balance the interests of the United
 7 States with the interests of the plaintiffs in
 8 a timely review of their claims.”.

9 (b) APPLICABILITY.—The amendment made by sub-
 10 section (a) shall apply to any action or omission described
 11 in section 1605C of title 28, United States Code, as added
 12 by that subsection, that occurred before, on, or after the
 13 date of enactment of this Act.

14 (c) REMOVAL OF IMMUNITY FROM ATTACHMENT OR
 15 EXECUTION.—Section 1610 of title 28, United States
 16 Code, is amended—

17 (1) in subsection (a)(7), by striking “section
 18 1605A or section 1605(a)(7) (as such section was in
 19 effect on January 27, 2008)” and inserting “section
 20 1605A, section 1605(a)(7) (as such section was in
 21 effect on January 27, 2008), or section 1605C”;

22 (2) in subsection (b)(2), by striking “or
 23 1605(b)” and inserting “, 1605(b), or 1605C”;

24 (3) by striking subsection (d) and inserting the
 25 following:

1 “(d) The property of a foreign state, as defined in
 2 section 1603(a) of this chapter, used for a commercial ac-
 3 tivity in the United States, shall not be immune from at-
 4 tachment prior to the entry of judgment in any action
 5 brought in a court of the United States or of a State,
 6 or prior to the elapse of the period of time provided in
 7 subsection (e) of this section, if—

8 “(1) the foreign state has explicitly waived its
 9 immunity from attachment prior to judgment, not-
 10 withstanding any withdrawal of the waiver the for-
 11 eign state may purport to effect except in accord-
 12 ance with the terms of the waiver;

13 “(2) the purpose of the attachment is to secure
 14 satisfaction of a judgment that has been or may ulti-
 15 mately be entered against the foreign state, and not
 16 to obtain jurisdiction; or

17 “(3) the attachment relates to a claim for which
 18 the foreign state is not immune under section
 19 1605C.”; and

20 (4) in subsection (g)(1), in the matter pre-
 21 ceding subparagraph (A), by striking “1605A” and
 22 inserting “1605A or 1605C”.

23 (d) CAUSE OF ACTION.—Any citizen or resident of
 24 the United States injured in his or her person, property,
 25 or business by reason of any reckless action or omission

1 (including a conscious disregard of the need to report in-
 2 formation promptly or deliberately hiding relevant infor-
 3 mation) of a foreign state, or of any official, employee,
 4 or agent of that foreign state while acting within the scope
 5 of his or her office, employment, or agency, that caused
 6 or substantially contributed to the COVID–19 global pan-
 7 demic in the United States, regardless of where the action
 8 or omission occurred, may sue therefor in any appropriate
 9 district court of the United States and shall recover three-
 10 fold the damages he or she sustains and the cost of the
 11 suit, including attorney’s fees.

12 (e) ENFORCEMENT BY STATE ATTORNEYS GEN-
 13 ERAL.—Any State, on its own behalf or on behalf of the
 14 citizens or residents of the State, may bring a civil action
 15 under subsection (d) in a district court of the United
 16 States. Nothing in this Act may be construed to prevent
 17 a State from exercising its powers under State law.

18 (f) TIME LIMITATION ON THE COMMENCEMENT OF
 19 CIVIL ACTION.—Notwithstanding any other provision of
 20 law, a civil action arising under subsection (d) may be
 21 commenced up to 20 years after the cause of action ac-
 22 crues.

23 (g) TECHNICAL AND CONFORMING AMENDMENT.—
 24 The table of sections for chapter 97 of title 28, United

- 1 States Code, is amended by inserting after the item relat-
- 2 ing to section 1605B the following:

“1605C. Responsibility of foreign states for reckless actions or omissions causing the COVID–19 global pandemic in the United States.”.

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