

Union Calendar No. 449

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 4353**

[Report No. 105-802]

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## **A BILL**

To amend the Securities Exchange Act of 1934 and the Foreign Corrupt Practices Act of 1977 to improve the competitiveness of American business and promote foreign commerce, and for other purposes.

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OCTOBER 8, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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## IN THE HOUSE OF REPRESENTATIVES

JULY 30, 1998

Mr. BLILEY (for himself and Mr. OXLEY) introduced the following bill; which was referred to the Committee on Commerce

OCTOBER 8, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on July 30, 1998]

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## A BILL

To amend the Securities Exchange Act of 1934 and the Foreign Corrupt Practices Act of 1977 to improve the competitiveness of American business and promote foreign commerce, 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,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “International Anti-Brib-*  
3 *ery and Fair Competition Act of 1998”.*

4 **SEC. 2. AMENDMENTS TO THE FOREIGN CORRUPT PRAC-**  
5 **TICES ACT GOVERNING ISSUERS.**

6 *(a) PROHIBITED CONDUCT.—Section 30A(a) of the Se-*  
7 *curities Exchange Act of 1934 (15 U.S.C. 78dd–1(a)) is*  
8 *amended—*

9 *(1) by amending subparagraph (A) of paragraph*  
10 *(1) to read as follows:*

11 *“(A)(i) influencing any act or decision of*  
12 *such foreign official in his official capacity, (ii)*  
13 *inducing such foreign official to do or omit to do*  
14 *any act in violation of the lawful duty of such*  
15 *official, or (iii) securing any improper advan-*  
16 *tage; or”;*

17 *(2) by amending subparagraph (A) of paragraph*  
18 *(2) to read as follows:*

19 *“(A)(i) influencing any act or decision of*  
20 *such party, official, or candidate in its or his of-*  
21 *ficial capacity, (ii) inducing such party, official,*  
22 *or candidate to do or omit to do an act in viola-*  
23 *tion of the lawful duty of such party, official, or*  
24 *candidate, or (iii) securing any improper advan-*  
25 *tage; or”; and*

1           (3) by amending subparagraph (A) of paragraph  
2           (3) to read as follows:

3                   “(A)(i) influencing any act or decision of  
4                   such foreign official, political party, party offi-  
5                   cial, or candidate in his or its official capacity,  
6                   (ii) inducing such foreign official, political  
7                   party, party official, or candidate to do or omit  
8                   to do any act in violation of the lawful duty of  
9                   such foreign official, political party, party offi-  
10                  cial, or candidate, or (iii) securing any im-  
11                  proper advantage; or”.

12           (b) OFFICIALS OF INTERNATIONAL ORGANIZATIONS.—  
13           Paragraph (1) of section 30A(f) of the Securities Exchange  
14           Act of 1934 (15 U.S.C. 78dd–1(f)(1)) is amended to read  
15           as follows:

16                   “(1)(A) The term ‘foreign official’ means any of-  
17                   ficer or employee of a foreign government or any de-  
18                   partment, agency, or instrumentality thereof, or of a  
19                   public international organization, or any person act-  
20                   ing in an official capacity for or on behalf of any  
21                   such government or department, agency, or instru-  
22                   mentality, or for or on behalf of any such public  
23                   international organization.

24                   “(B) For purposes of subparagraph (A), the term  
25                   ‘public international organization’ means—

1           “(i) an organization that is designated by  
2           Executive order pursuant to section 1 of the  
3           International Organizations Immunities Act (22  
4           U.S.C. 288); or

5           “(ii) any other international organization  
6           that is designated by the President by Executive  
7           order for the purposes of this section, effective as  
8           of the date of publication of such order in the  
9           Federal Register.”.

10       (c) *ALTERNATIVE JURISDICTION OVER ACTS OUTSIDE*  
11 *THE UNITED STATES.*—Section 30A of the Securities Ex-  
12 change Act of 1934 (15 U.S.C. 78dd–1) is amended—

13           (1) by adding at the end the following:

14           “(g) *ALTERNATIVE JURISDICTION.*—

15           “(1) It shall also be unlawful for any issuer or-  
16           ganized under the laws of the United States, or a  
17           State, territory, possession, or commonwealth of the  
18           United States or a political subdivision thereof and  
19           which has a class of securities registered pursuant to  
20           section 12 of this title or which is required to file re-  
21           ports under section 15(d) of this title, or for any  
22           United States person that is an officer, director, em-  
23           ployee, or agent of such issuer or a stockholder thereof  
24           acting on behalf of such issuer, to corruptly do any  
25           act outside the United States in furtherance of an

1 offer, payment, promise to pay, or authorization of  
2 the payment of any money, or offer, gift, promise to  
3 give, or authorization of the giving of anything of  
4 value to any of the persons or entities set forth in  
5 paragraphs (1), (2), and (3) of subsection (a) of this  
6 section for the purposes set forth therein, irrespective  
7 of whether such issuer or such officer, director, em-  
8 ployee, agent, or stockholder makes use of the mails  
9 or any means or instrumentality of interstate com-  
10 merce in furtherance of such offer, gift, payment,  
11 promise, or authorization.

12 “(2) As used in this subsection, the term ‘United  
13 States person’ means a national of the United States  
14 (as defined in section 101 of the Immigration and  
15 Nationality Act (8 U.S.C. 1101)) or any corporation,  
16 partnership, association, joint-stock company, busi-  
17 ness trust, unincorporated organization, or sole pro-  
18 prietorship organized under the laws of the United  
19 States or any State, territory, possession, or common-  
20 wealth of the United States, or any political subdivi-  
21 sion thereof.”;

22 (2) in subsection (b), by striking “Subsection  
23 (a)” and inserting “Subsections (a) and (g)”; and

24 (3) in subsection (c), by striking “subsection (a)”  
25 and inserting “subsection (a) or (g)”.

1           (d) *PENALTIES.*—Section 32(c) of the Securities Ex-  
2 change Act of 1934 (15 U.S.C. 78ff(c)) is amended—

3           (1) in paragraph (1)(A), by striking “section  
4 30A(a)” and inserting “subsection (a) or (g) of sec-  
5 tion 30A”;

6           (2) in paragraph (1)(B), by striking “section  
7 30A(a)” and inserting “subsection (a) or (g) of sec-  
8 tion 30A”; and

9           (3) by amending paragraph (2) to read as fol-  
10 lows:

11           “(2)(A) Any officer, director, employee, or agent of an  
12 issuer, or stockholder acting on behalf of such issuer, who  
13 willfully violates subsection (a) or (g) of section 30A of this  
14 title shall be fined not more than \$100,000, or imprisoned  
15 not more than 5 years, or both.

16           “(B) Any officer, director, employee, or agent of an  
17 issuer, or stockholder acting on behalf of such issuer, who  
18 violates subsection (a) or (g) of section 30A of this title shall  
19 be subject to a civil penalty of not more than \$10,000 im-  
20 posed in an action brought by the Commission.”.

1 **SEC. 3. AMENDMENTS TO THE FOREIGN CORRUPT PRAC-**  
2 **TICES ACT GOVERNING DOMESTIC CON-**  
3 **CERNS.**

4 (a) *PROHIBITED CONDUCT.*—Section 104(a) of the  
5 *Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–*  
6 *2(a)) is amended—*

7 (1) *by amending subparagraph (A) of paragraph*  
8 *(1) to read as follows:*

9 “(A)(i) *influencing any act or decision of*  
10 *such foreign official in his official capacity, (ii)*  
11 *inducing such foreign official to do or omit to do*  
12 *any act in violation of the lawful duty of such*  
13 *official, or (iii) securing any improper advan-*  
14 *tage; or”;*

15 (2) *by amending subparagraph (A) of paragraph*  
16 *(2) to read as follows:*

17 “(A)(i) *influencing any act or decision of*  
18 *such party, official, or candidate in its or his of-*  
19 *ficial capacity, (ii) inducing such party, official,*  
20 *or candidate to do or omit to do an act in viola-*  
21 *tion of the lawful duty of such party, official, or*  
22 *candidate, or (iii) securing any improper advan-*  
23 *tage; or”;*

24 (3) *by amending subparagraph (A) of paragraph*  
25 *(3) to read as follows:*



1           “(A)(i) influencing any act or decision of  
2           such foreign official, political party, party offi-  
3           cial, or candidate in his or its official capacity,  
4           (ii) inducing such foreign official, political  
5           party, party official, or candidate to do or omit  
6           to do any act in violation of the lawful duty of  
7           such foreign official, political party, party offi-  
8           cial, or candidate, or (iii) securing any im-  
9           proper advantage; or”.

10           (b) *PENALTIES*.—Section 104(g) of the *Foreign Cor-*  
11 *rupt Practices Act of 1977* (15 U.S.C. 78dd–2(g)) is amend-  
12 *ed—*

13           (1) by amending subsection (g)(1) to read as fol-  
14 *lows:*

15           “(g)(1)(A) *PENALTIES*.—Any domestic concern that is  
16 *not a natural person and that violates subsection (a) or*  
17 *(i) of this section shall be fined not more than \$2,000,000.*

18           “(B) *Any domestic concern that is not a natural per-*  
19 *son and that violates subsection (a) or (i) of this section*  
20 *shall be subject to a civil penalty of not more than \$10,000*  
21 *imposed in an action brought by the Attorney General.”;*  
22 *and*

23           (2) by amending paragraph (2) to read as fol-  
24 *lows:*

1       “(2)(A) *Any natural person that is an officer, director,*  
2 *employee, or agent of a domestic concern, or stockholder act-*  
3 *ing on behalf of such domestic concern, who willfully vio-*  
4 *lates subsection (a) or (i) of this section shall be fined not*  
5 *more than \$100,000 or imprisoned not more than 5 years,*  
6 *or both.*

7       “(B) *Any natural person that is an officer, director,*  
8 *employee, or agent of a domestic concern, or stockholder act-*  
9 *ing on behalf of such domestic concern, who violates sub-*  
10 *section (a) or (i) of this section shall be subject to a civil*  
11 *penalty of not more than \$10,000 imposed in an action*  
12 *brought by the Attorney General.”.*

13       (c) *OFFICIALS OF INTERNATIONAL ORGANIZATIONS.—*  
14 *Paragraph (2) of section 104(h) of the Foreign Corrupt*  
15 *Practices Act of 1977 (15 U.S.C. 78dd–2(h)) is amended*  
16 *to read as follows:*

17               “(2)(A) *The term ‘foreign official’ means any of-*  
18 *ficer or employee of a foreign government or any de-*  
19 *partment, agency, or instrumentality thereof, or of a*  
20 *public international organization, or any person act-*  
21 *ing in an official capacity for or on behalf of any*  
22 *such government or department, agency, or instru-*  
23 *mentality, or for or on behalf of any such public*  
24 *international organization.*

1           “(B) For purposes of subparagraph (A), the term  
2           ‘public international organization’ means—

3                   “(i) an organization that is designated by  
4                   Executive order pursuant to section 1 of the  
5                   International Organizations Immunities Act (22  
6                   U.S.C. 288); or

7                   “(ii) any other international organization  
8                   that is designated by the President by Executive  
9                   order for the purposes of this section, effective as  
10                  of the date of publication of such order in the  
11                  Federal Register.”.

12           (d) *ALTERNATIVE JURISDICTION OVER ACTS OUTSIDE*  
13 *THE UNITED STATES.*—Section 104 of the Foreign Corrupt  
14 *Practices Act of 1977 (15 U.S.C. 78dd–2) is further amend-*  
15 *ed—*

16                   (1) by adding at the end the following:

17                   “(i) *ALTERNATIVE JURISDICTION.*—

18                   “(1) It shall also be unlawful for any United  
19                   States person to corruptly do any act outside the  
20                   United States in furtherance of an offer, payment,  
21                   promise to pay, or authorization of the payment of  
22                   any money, or offer, gift, promise to give, or author-  
23                   ization of the giving of anything of value to any of  
24                   the persons or entities set forth in paragraphs (1),  
25                   (2), and (3) of subsection (a), for the purposes set

1        *forth therein, irrespective of whether such United*  
2        *States person makes use of the mails or any means*  
3        *or instrumentality of interstate commerce in further-*  
4        *ance of such offer, gift, payment, promise, or author-*  
5        *ization.*

6                *“(2) As used in this subsection, the term ‘United*  
7        *States person’ means a national of the United States*  
8        *(as defined in section 101 of the Immigration and*  
9        *Nationality Act (8 U.S.C. 1101)) or any corporation,*  
10        *partnership, association, joint-stock company, busi-*  
11        *ness trust, unincorporated organization, or sole pro-*  
12        *prietorship organized under the laws of the United*  
13        *States or any State, territory, possession, or common-*  
14        *wealth of the United States, or any political subdivi-*  
15        *sion thereof.”;*

16                *(2) in subsection (b), by striking “Subsection*  
17        *(a)” and inserting “Subsections (a) and (i)”;*

18                *(3) in subsection (c), by striking “subsection (a)”*  
19        *and inserting “subsection (a) or (i)”;* and

20                *(4) in subsection (d)(1), by striking “subsection*  
21        *(a)” and inserting “subsection (a) or (i)”.*

22        *(e) TECHNICAL AMENDMENT.—Section 104(h)(4)(A) of*  
23        *the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–*  
24        *2(h)(4)(A)) is amended by striking “For purposes of para-*  
25        *graph (1), the” and inserting “The”.*

1 **SEC. 4. AMENDMENTS TO THE FOREIGN CORRUPT PRAC-**  
2 **TICES ACT GOVERNING OTHER PERSONS.**

3 *Title I of the Foreign Corrupt Practices Act of 1977*  
4 *is amended by inserting after section 104 (15 U.S.C. 78dd-*  
5 *2) the following new section:*

6 **“SEC. 104A. PROHIBITED FOREIGN TRADE PRACTICES BY**  
7 **PERSONS OTHER THAN ISSUERS OR DOMES-**  
8 **TIC CONCERNS.**

9 *“(a) PROHIBITION.—It shall be unlawful for any per-*  
10 *son other than an issuer that is subject to section 30A of*  
11 *the Securities Exchange Act of 1934 or a domestic concern*  
12 *(as defined in section 104 of this Act), or for any officer,*  
13 *director, employee, or agent of such person or any stock-*  
14 *holder thereof acting on behalf of such person, while in the*  
15 *territory of the United States, corruptly to make use of the*  
16 *mails or any means or instrumentality of interstate com-*  
17 *merce or to do any other act in furtherance of an offer,*  
18 *payment, promise to pay, or authorization of the payment*  
19 *of any money, or offer, gift, promise to give, or authoriza-*  
20 *tion of the giving of anything of value to—*

21 *“(1) any foreign official for purposes of—*

22 *“(A)(i) influencing any act or decision of*  
23 *such foreign official in his official capacity, (ii)*  
24 *inducing such foreign official to do or omit to do*  
25 *any act in violation of the lawful duty of such*

1           *official, or (iii) securing any improper advan-*  
2           *tage; or*

3           *“(B) inducing such foreign official to use*  
4           *his influence with a foreign government or in-*  
5           *strumentality thereof to affect or influence any*  
6           *act or decision of such government or instrumen-*  
7           *tality,*

8           *in order to assist such person in obtaining or retain-*  
9           *ing business for or with, or directing business to, any*  
10          *person;*

11          *“(2) any foreign political party or official there-*  
12          *of or any candidate for foreign political office for*  
13          *purposes of—*

14                 *“(A)(i) influencing any act or decision of*  
15                 *such party, official, or candidate in its or his of-*  
16                 *ficial capacity, (ii) inducing such party, official,*  
17                 *or candidate to do or omit to do an act in viola-*  
18                 *tion of the lawful duty of such party, official, or*  
19                 *candidate, or (iii) securing any improper advan-*  
20                 *tage; or*

21                 *“(B) inducing such party, official, or can-*  
22                 *didate to use its or his influence with a foreign*  
23                 *government or instrumentality thereof to affect*  
24                 *or influence any act or decision of such govern-*  
25                 *ment or instrumentality,*

1       *in order to assist such person in obtaining or retain-*  
2       *ing business for or with, or directing business to, any*  
3       *person; or*

4               “(3) *any person, while knowing that all or a*  
5       *portion of such money or thing of value will be of-*  
6       *fered, given, or promised, directly or indirectly, to*  
7       *any foreign official, to any foreign political party or*  
8       *official thereof, or to any candidate for foreign politi-*  
9       *cal office, for purposes of—*

10               “(A)(i) *influencing any act or decision of*  
11       *such foreign official, political party, party offi-*  
12       *cial, or candidate in his or its official capacity,*  
13       *(ii) inducing such foreign official, political*  
14       *party, party official, or candidate to do or omit*  
15       *to do any act in violation of the lawful duty of*  
16       *such foreign official, political party, party offi-*  
17       *cial, or candidate, or (iii) securing any im-*  
18       *proper advantage; or*

19               “(B) *inducing such foreign official, political*  
20       *party, party official, or candidate to use his or*  
21       *its influence with a foreign government or in-*  
22       *strumentality thereof to affect or influence any*  
23       *act or decision of such government or instrumen-*  
24       *tality,*

1       *in order to assist such person in obtaining or retain-*  
2       *ing business for or with, or directing business to, any*  
3       *person.*

4       “(b) *EXCEPTION FOR ROUTINE GOVERNMENTAL AC-*  
5       *TION.—Subsection (a) of this section shall not apply to any*  
6       *facilitating or expediting payment to a foreign official, po-*  
7       *litical party, or party official the purpose of which is to*  
8       *expedite or to secure the performance of a routine govern-*  
9       *mental action by a foreign official, political party, or party*  
10       *official.*

11       “(c) *AFFIRMATIVE DEFENSES.—It shall be an affirma-*  
12       *tive defense to actions under subsection (a) of this section*  
13       *that—*

14               “(1) *the payment, gift, offer, or promise of any-*  
15       *thing of value that was made, was lawful under the*  
16       *written laws and regulations of the foreign official’s,*  
17       *political party’s, party official’s, or candidate’s coun-*  
18       *try; or*

19               “(2) *the payment, gift, offer, or promise of any-*  
20       *thing of value that was made, was a reasonable and*  
21       *bona fide expenditure, such as travel and lodging ex-*  
22       *penses, incurred by or on behalf of a foreign official,*  
23       *party, party official, or candidate and was directly*  
24       *related to—*



1           “(A) *the promotion, demonstration, or ex-*  
2           *planation of products or services; or*

3           “(B) *the execution or performance of a con-*  
4           *tract with a foreign government or agency there-*  
5           *of.*

6           “(d) *INJUNCTIVE RELIEF.—*

7           “(1) *When it appears to the Attorney General*  
8           *that any person to which this section applies, or offi-*  
9           *cer, director, employee, agent, or stockholder thereof, is*  
10           *engaged, or about to engage, in any act or practice*  
11           *constituting a violation of subsection (a) of this sec-*  
12           *tion, the Attorney General may, in his discretion,*  
13           *bring a civil action in an appropriate district court*  
14           *of the United States to enjoin such act or practice,*  
15           *and upon a proper showing, a permanent injunction*  
16           *or a temporary restraining order shall be granted*  
17           *without bond.*

18           “(2) *For the purpose of any civil investigation*  
19           *which, in the opinion of the Attorney General, is nec-*  
20           *essary and proper to enforce this section, the Attorney*  
21           *General or his designee are empowered to administer*  
22           *oaths and affirmations, subpoena witnesses, take evi-*  
23           *dence, and require the production of any books, pa-*  
24           *pers, or other documents which the Attorney General*  
25           *deems relevant or material to such investigation. The*

1     *attendance of witnesses and the production of docu-*  
2     *mentary evidence may be required from any place in*  
3     *the United States, or any territory, possession, or*  
4     *commonwealth of the United States, at any des-*  
5     *ignated place of hearing.*

6             *“(3) In case of contumacy by, or refusal to obey*  
7     *a subpoena issued to, any person, the Attorney Gen-*  
8     *eral may invoke the aid of any court of the United*  
9     *States within the jurisdiction of which such investiga-*  
10    *tion or proceeding is carried on, or where such person*  
11    *resides or carries on business, in requiring the attend-*  
12    *ance and testimony of witnesses and the production*  
13    *of books, papers, or other documents. Any such court*  
14    *may issue an order requiring such person to appear*  
15    *before the Attorney General or his designee, there to*  
16    *produce records, if so ordered, or to give testimony*  
17    *touching the matter under investigation. Any failure*  
18    *to obey such order of the court may be punished by*  
19    *such court as a contempt thereof.*

20             *“(4) All process in any such case may be served*  
21    *in the judicial district in which such person resides*  
22    *or may be found. The Attorney General may make*  
23    *such rules relating to civil investigations as may be*  
24    *necessary or appropriate to implement the provisions*  
25    *of this subsection.*

1       “(e) *PENALTIES.*—

2               “(1)(A) *Any juridical person that violates sub-*  
3 *section (a) of this section shall be fined not more than*  
4 *\$2,000,000.*

5               “(B) *Any juridical person that violates sub-*  
6 *section (a) of this section shall be subject to a civil*  
7 *penalty of not more than \$10,000 imposed in an ac-*  
8 *tion brought by the Attorney General.*

9               “(2)(A) *Any natural person who willfully vio-*  
10 *lates subsection (a) of this section shall be fined not*  
11 *more than \$100,000 or imprisoned not more than 5*  
12 *years, or both.*

13               “(B) *Any natural person who violates subsection*  
14 *(a) of this section shall be subject to a civil penalty*  
15 *of not more than \$10,000 imposed in an action*  
16 *brought by the Attorney General.*

17               “(3) *Whenever a fine is imposed under para-*  
18 *graph (2) upon any officer, director, employee, agent,*  
19 *or stockholder of a person, such fine may not be paid,*  
20 *directly or indirectly, by such person.*

21       “(f) *DEFINITIONS.*—*For purposes of this section:*

22               “(1) *The term ‘person’, when referring to an of-*  
23 *fender, means any natural person other than a na-*  
24 *tional of the United States (as defined in section 101*  
25 *of the Immigration and Nationality Act (8 U.S.C.*

1       1101) or any corporation, partnership, association,  
2       joint-stock company, business trust, unincorporated  
3       organization, or sole proprietorship organized under  
4       the law of a foreign nation or a political subdivision  
5       thereof.

6               “(2)(A) The term ‘foreign official’ means any of-  
7       ficer or employee of a foreign government or any de-  
8       partment, agency, or instrumentality thereof, or of a  
9       public international organization, or any person act-  
10      ing in an official capacity for or on behalf of any  
11      such government or department, agency, or instru-  
12      mentality, or for or on behalf of any such public  
13      international organization.

14              “(B) For purposes of subparagraph (A), the term  
15      ‘public international organization’ means—

16              “(i) an organization that is designated by  
17      Executive order pursuant to section 1 of the  
18      International Organizations Immunities Act (22  
19      U.S.C. 288); or

20              “(ii) any other international organization  
21      that is designated by the President by Executive  
22      order for the purposes of this section, effective as  
23      of the date of publication of such order in the  
24      Federal Register.

1           “(3)(A) A person’s state of mind is knowing,  
2           with respect to conduct, a circumstance or a result  
3           if—

4                   “(i) such person is aware that such person  
5                   is engaging in such conduct, that such cir-  
6                   cumstance exists, or that such result is substan-  
7                   tially certain to occur; or

8                   “(ii) such person has a firm belief that such  
9                   circumstance exists or that such result is sub-  
10                  stantially certain to occur.

11           “(B) When knowledge of the existence of a par-  
12           ticular circumstance is required for an offense, such  
13           knowledge is established if a person is aware of a high  
14           probability of the existence of such circumstance, un-  
15           less the person actually believes that such cir-  
16           cumstance does not exist.

17           “(4)(A) The term ‘routine governmental action’  
18           means only an action which is ordinarily and com-  
19           monly performed by a foreign official in—

20                   “(i) obtaining permits, licenses, or other of-  
21                   ficial documents to qualify a person to do busi-  
22                   ness in a foreign country;

23                   “(ii) processing governmental papers, such  
24                   as visas and work orders;

1           “(iii) providing police protection, mail  
2           pick-up and delivery, or scheduling inspections  
3           associated with contract performance or inspec-  
4           tions related to transit of goods across country;

5           “(iv) providing phone service, power and  
6           water supply, loading and unloading cargo, or  
7           protecting perishable products or commodities  
8           from deterioration; or

9           “(v) actions of a similar nature.

10          “(B) The term ‘routine governmental action’ does  
11          not include any decision by a foreign official whether,  
12          or on what terms, to award new business to or to con-  
13          tinue business with a particular party, or any action  
14          taken by a foreign official involved in the decision-  
15          making process to encourage a decision to award new  
16          business to or continue business with a particular  
17          party.

18          “(5) The term ‘interstate commerce’ means trade,  
19          commerce, transportation, or communication among  
20          the several States, or between any foreign country and  
21          any State or between any State and any place or  
22          ship outside thereof, and such term includes the intra-  
23          state use of—

24                 “(A) a telephone or other interstate means  
25                 of communication, or

1                   “(B) any other interstate instrumentality.”.

2   **SEC. 5. TREATMENT OF INTERNATIONAL ORGANIZATIONS**  
3                   **PROVIDING COMMERCIAL COMMUNICATIONS**  
4                   **SERVICES.**

5           (a) *DEFINITION.*—For purposes of this section:

6                   (1) *INTERNATIONAL ORGANIZATION PROVIDING*  
7                   *COMMERCIAL COMMUNICATIONS SERVICES.*—The term  
8                   “international organization providing commercial  
9                   communications services” means—

10                   (A) *the International Telecommunications*  
11                   *Satellite Organization established pursuant to*  
12                   *the Agreement Relating to the International*  
13                   *Telecommunications Satellite Organization; and*

14                   (B) *the International Mobile Satellite Orga-*  
15                   *nization established pursuant to the Convention*  
16                   *on the International Maritime Satellite Organi-*  
17                   *zation.*

18                   (2) *PRO-COMPETITIVE PRIVATIZATION.*—The  
19                   term “pro-competitive privatization” means a privat-  
20                   ization that the President determines to be consistent  
21                   with the United States policy of obtaining full and  
22                   open competition to such organizations (or their suc-  
23                   cessors), and nondiscriminatory market access, in the  
24                   provision of satellite services.

1       (b) *TREATMENT AS PUBLIC INTERNATIONAL ORGANI-*  
2 *ZATIONS.*—

3           (1) *TREATMENT.*—*An international organization*  
4 *providing commercial communications services shall*  
5 *be treated as a public international organization for*  
6 *purposes of section 30A of the Securities Exchange*  
7 *Act of 1934 (15 U.S.C. 78dd–1) and sections 104 and*  
8 *104A of the Foreign Corrupt Practices Act of 1977*  
9 *(15 U.S.C. 78dd–2) until such time as the President*  
10 *certifies to the Committee on Commerce of the House*  
11 *of Representatives and the Committees on Banking,*  
12 *Housing and Urban Affairs and Commerce, Science,*  
13 *and Transportation that such international organiza-*  
14 *tion providing commercial communications services*  
15 *has achieved a pro-competitive privatization.*

16           (2) *LIMITATION ON EFFECT OF TREATMENT.*—  
17 *The requirement for a certification under paragraph*  
18 *(1), and any certification made under such para-*  
19 *graph, shall not be construed to affect the administra-*  
20 *tion by the Federal Communications Commission of*  
21 *the Communications Act of 1934 in authorizing the*  
22 *provision of services to, from, or within the United*  
23 *States over space segment of the international satellite*  
24 *organizations, or the privatized affiliates or successors*  
25 *thereof.*



1       (c) *EXTENSION OF LEGAL PROCESS.*—

2           (1) *IN GENERAL.*—*Except as specifically and ex-*  
3 *pressly required by mandatory obligations in inter-*  
4 *national agreements to which the United States is a*  
5 *party, an international organization providing com-*  
6 *mercial communications services, its officials and em-*  
7 *ployees, and its records shall not be accorded immu-*  
8 *nity from suit or legal process for any act or omission*  
9 *taken in connection with such organization’s capacity*  
10 *as a provider, directly or indirectly, of commercial*  
11 *telecommunications services to, from, or within the*  
12 *United States.*

13           (2) *NO EFFECT ON PERSONAL LIABILITY.*—*Para-*  
14 *graph (1) shall not affect any immunity from per-*  
15 *sonal liability of any individual who is an official or*  
16 *employee of an international organization providing*  
17 *commercial communications services.*

18       (d) *ELIMINATION OR LIMITATION OF EXCEPTIONS.*—  
19 *The President and the Federal Communications Commis-*  
20 *sion shall, in a manner that is consistent with specific and*  
21 *express requirements in mandatory obligations in inter-*  
22 *national agreements to which the United States is a*  
23 *party—*

24           (1) *expeditiously take all actions necessary to*  
25 *eliminate or to limit substantially any privileges or*

1 *immunities accorded to an international organization*  
2 *providing commercial communications services, its of-*  
3 *ficials, its employees, or its records from suit or legal*  
4 *process for any act or omission taken in connection*  
5 *with such organization's capacity as a provider, di-*  
6 *rectly or indirectly, of commercial telecommuni-*  
7 *cations services to, from, or within the United States,*  
8 *that are not eliminated by subsection (c);*

9 (2) *expeditiously take all appropriate actions*  
10 *necessary to eliminate or to reduce substantially all*  
11 *privileges and immunities not eliminated pursuant to*  
12 *paragraph (1); and*

13 (3) *report to the Committee on Commerce of the*  
14 *House of Representatives and the Committee on Com-*  
15 *merce, Science, and Transportation of the Senate on*  
16 *any remaining privileges and immunities of an inter-*  
17 *national organization providing commercial commu-*  
18 *nications services within 90 days of the effective date*  
19 *of this act and semiannually thereafter.*

20 (e) *PRESERVATION OF LAW ENFORCEMENT AND IN-*  
21 *TELLIGENCE FUNCTIONS.*—*Nothing in subsection (c) or (d)*  
22 *of this section shall affect any immunity from suit or legal*  
23 *process of an international organization providing commer-*  
24 *cial communications services, or the privatized affiliates or*  
25 *successors thereof, for acts or omissions—*

1           (1) *under chapters 119, 121, 206, or 601 of title*  
2 *18, United States Code, the Foreign Intelligence Sur-*  
3 *veillance Act of 1978 (50 U.S.C. 1801 et seq.), section*  
4 *514 of the Comprehensive Drug Abuse Prevention and*  
5 *Control Act of 1970 (21 U.S.C. 884), or Rules 104,*  
6 *501, or 608 of the Federal Rules of Evidence;*

7           (2) *under similar State laws providing protec-*  
8 *tion to service providers cooperating with law enforce-*  
9 *ment agencies pursuant to State electronic surveil-*  
10 *lance or evidence laws, rules, regulations, or proce-*  
11 *dures; or*

12           (3) *pursuant to a court order.*

13 (f) *RULES OF CONSTRUCTION.—*

14           (1) *NEGOTIATIONS.—Nothing in this section*  
15 *shall affect the President's existing constitutional au-*  
16 *thority regarding the time, scope, and objectives of*  
17 *international negotiations.*

18           (2) *PRIVATIZATION.—Nothing in this section*  
19 *shall be construed as legislative authorization for the*  
20 *privatization of INTELSAT or Inmarsat, nor to in-*  
21 *crease the President's authority with respect to nego-*  
22 *tiations concerning such privatization.*

23 **SEC. 6. ENFORCEMENT AND MONITORING.**

24           (a) *REPORTS REQUIRED.—Not later than July 1 of*  
25 *1999 and each of the 5 succeeding years, the Secretary of*

1 *Commerce shall submit to the Committee on Commerce of*  
2 *the House of Representatives and the Committee on Bank-*  
3 *ing, Housing, and Urban Affairs of the Senate a report that*  
4 *contains the following information with respect to imple-*  
5 *mentation of the Convention:*

6           (1) *RATIFICATION.*—*A list of the countries that*  
7 *have ratified the Convention, the dates of ratification*  
8 *by such countries, and the entry into force for each*  
9 *such country.*

10           (2) *DOMESTIC LEGISLATION.*—*A description of*  
11 *domestic laws enacted by each party to the Conven-*  
12 *tion that implement commitments under the Conven-*  
13 *tion, and assessment of the compatibility of such laws*  
14 *with the Convention.*

15           (3) *ENFORCEMENT.*—*As assessment of the meas-*  
16 *ures taken by each party to the Convention during the*  
17 *previous year to fulfill its obligations under the Con-*  
18 *vention and achieve its object and purpose includ-*  
19 *ing—*

20                   (A) *an assessment of the enforcement of the*  
21 *domestic laws described in paragraph (2);*

22                   (B) *an assessment of the efforts by each such*  
23 *party to promote public awareness of such do-*  
24 *mestic laws and the achievement of such object*  
25 *and purpose; and*

1           (C) *an assessment of the effectiveness, trans-*  
2           *parency, and viability of the monitoring process*  
3           *for the Convention, including its inclusion of*  
4           *input from the private sector and non-govern-*  
5           *mental organizations.*

6           (4) *LAWS PROHIBITING TAX DEDUCTION OF*  
7           *BRIBES.—An explanation of the domestic laws en-*  
8           *acted by each party to the Convention that would*  
9           *prohibit the deduction of bribes in the computation of*  
10          *domestic taxes.*

11          (5) *NEW SIGNATORIES.—A description of efforts*  
12          *to expand international participation in the Conven-*  
13          *tion by adding new signatories to the Convention and*  
14          *by assuring that all countries which are or become*  
15          *members of the Organization for Economic Coopera-*  
16          *tion and Development are also parties to the Conven-*  
17          *tion.*

18          (6) *SUBSEQUENT EFFORTS.—An assessment of*  
19          *the status of efforts to strengthen the Convention by*  
20          *extending the prohibitions contained in the Conven-*  
21          *tion to cover bribes to political parties, party offi-*  
22          *cial, and candidates for political office.*

23          (7) *ADVANTAGES.—Advantages, in terms of im-*  
24          *munities, market access, or otherwise, in the countries*  
25          *or regions served by the organizations described in*

1        *section 5(a), the reason for such advantages, and an*  
2        *assessment of progress toward fulfilling the policy de-*  
3        *scribed in that section.*

4            (8) *BRIBERY AND TRANSPARENCY.—An assess-*  
5        *ment of anti-bribery programs and transparency with*  
6        *respect to each of the international organizations cov-*  
7        *ered by this Act.*

8            (b) *DEFINITION.—For purposes of this section, the*  
9        *term “Convention” means the Convention on Combating*  
10       *Bribery of Foreign Public Officials in International Busi-*  
11       *ness Transactions adopted on November 21, 1997, and*  
12       *signed on December 17, 1997, by the United States and 32*  
13       *other nations.*