

# Calendar No. 510

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

# S. 2375

[Report No. 105-277]

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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## IN THE SENATE OF THE UNITED STATES

JULY 30, 1998

Mr. D'AMATO from the Committee on Banking, Housing, and Urban Affairs, reported the following original bill; which was read twice and placed on the calendar

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## A BILL

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.

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 “International Anti-  
5 Bribery Act of 1998”.

1 **SEC. 2. AMENDMENTS RELATING TO ISSUERS OF SECURI-**  
2 **TIES.**

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

6 (1) in paragraph (1)—

7 (A) by striking “(B)” and inserting “(D)”;

8 and

9 (B) by striking subparagraph (A) and in-  
10 serting the following:

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

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

16 “(C) securing any improper advantage;  
17 or”;

18 (2) in paragraph (2)—

19 (A) by striking “(B)” and inserting “(D)”;

20 and

21 (B) by striking subparagraph (A) and in-  
22 serting the following:

23 “(A) influencing any act or decision of  
24 such party, official, or candidate in its or his of-  
25 ficial capacity;

1           “(B) inducing such party, official, or can-  
2           didate to do or omit to do an act in violation  
3           of the lawful duty of such party, official, or  
4           candidate;

5           “(C) securing any improper advantage;  
6           or”;

7           (3) in paragraph (3)—

8           (A) by striking “(B)” and inserting “(D)”;  
9           and

10          (B) by striking subparagraph (A) and in-  
11          serting the following:

12           “(A) influencing any act or decision of  
13           such foreign official, political party, party offi-  
14           cial, or candidate in its or his official capacity;

15           “(B) inducing such foreign official, politi-  
16           cal party, party official, or candidate to do or  
17           omit to do any act in violation of the lawful  
18           duty of such foreign official, political party,  
19           party official, or candidate;

20           “(C) securing any improper advantage;  
21           or”.

22          (b) OFFICIALS OF INTERNATIONAL ORGANIZA-  
23          TIONS.—Section 30A(f) of the Securities Exchange Act of  
24          1934 (15 U.S.C. 78dd–1(f)) is amended—

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

3 “(1) The term—

4 “(A) ‘foreign official’ means any officer or  
5 employee of a foreign government or any de-  
6 partment, agency, or instrumentality thereof, or  
7 of a public international organization, or any  
8 person acting in an official capacity for or on  
9 behalf of any such government, department,  
10 agency, or instrumentality, or for or on behalf  
11 of any such public international organization;  
12 and

13 “(B) ‘public international organization’  
14 means an organization that has been so des-  
15 ignated by Executive order pursuant to section  
16 1 of the International Organizations Immuni-  
17 ties Act (22 U.S.C. 288).”; and

18 (2) in paragraph (3)(A)(v), by inserting before  
19 the period “to those referred to in clauses (i)  
20 through (iv)”.

21 (c) ALTERNATIVE JURISDICTION OVER ACTS OUT-  
22 SIDE OF THE UNITED STATES.—Section 30A of the Secu-  
23 rities Exchange Act of 1934 (15 U.S.C. 78dd–1) is  
24 amended—

1           (1) by redesignating subsection (f) as sub-  
2           section (g);

3           (2) by inserting after subsection (e) the follow-  
4           ing:

5           “(f) ALTERNATIVE JURISDICTION.—

6           “(1) IN GENERAL.—It shall be unlawful for an  
7           issuer, or for any United States person that is an of-  
8           ficer, director, employee, or agent of such issuer or  
9           any stockholder thereof, acting on behalf of that  
10          issuer, to corruptly do any act outside of the United  
11          States in furtherance of an offer, payment, promise  
12          to pay, or authorization of the payment of any  
13          money, or offer, gift, promise to give, or authoriza-  
14          tion of the giving of any thing of value to any of the  
15          persons or entities referred to in paragraphs (1),  
16          (2), and (3) of subsection (a), for the purposes set  
17          forth therein, whether or not that issuer (or that of-  
18          ficer, director, employee, agent, or stockholder)  
19          makes use of the mails or any means or instrumen-  
20          tality of interstate commerce in furtherance of the  
21          offer, gift, payment, promise, or authorization.

22          “(2) APPLICABILITY.—This subsection applies  
23          only to an issuer that—

24                  “(A) is organized under the laws of the  
25                  United States, or a State, territory, possession,

1 or commonwealth of the United States or a po-  
2 litical subdivision thereof; and

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

6 “(3) UNITED STATES PERSON.—In this sub-  
7 section, the term ‘United States person’ means—

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

11 “(B) any corporation, partnership, associa-  
12 tion, joint-stock company, business trust, unin-  
13 corporated organization, or sole proprietorship  
14 organized under the laws of the United States  
15 or any State, territory, possession, or common-  
16 wealth of the United States, or any political  
17 subdivision thereof.”;

18 (3) in subsection (b), by striking “Subsection  
19 (a)” and inserting “Subsections (a) and (f)”; and

20 (4) in subsection (c), by striking “subsection  
21 (a)” and inserting “subsections (a) and (f)”.

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

1 (1) by striking “section 30A(a) of this title”  
2 each place that term appears and inserting “sub-  
3 section (a) or (f) of section 30A”; and

4 (2) in paragraph (2)—

5 (A) in subparagraph (A), by striking “or  
6 director” and inserting “, director, employee, or  
7 agent”;

8 (B) by striking subparagraph (B); and

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

11 **SEC. 3. AMENDMENTS RELATING TO DOMESTIC CONCERNS.**

12 (a) **PROHIBITED CONDUCT.**—Section 104(a) of the  
13 Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–  
14 2(a)) is amended—

15 (1) in paragraph (1)—

16 (A) by striking “(B)” and inserting “(D)”;

17 and

18 (B) by striking subparagraph (A) and in-  
19 serting the following:

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

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

1           “(C) securing any improper advantage;  
2 or”;

3           (2) in paragraph (2)—

4           (A) by striking “(B)” and inserting “(D)”;  
5 and

6           (B) by striking subparagraph (A) and in-  
7 serting the following:

8           “(A) influencing any act or decision of  
9 such party, official, or candidate in its or his of-  
10 ficial capacity;

11           “(B) inducing such party, official, or can-  
12 didate to do or omit to do an act in violation  
13 of the lawful duty of such party, official, or  
14 candidate;

15           “(C) securing any improper advantage;  
16 or”; and

17           (3) in paragraph (3)—

18           (A) by striking “(B)” and inserting “(D)”;  
19 and

20           (B) by striking subparagraph (A) and in-  
21 serting the following:

22           “(A) influencing any act or decision of  
23 such foreign official, political party, party offi-  
24 cial, or candidate in its or his official capacity;



1           “(B) inducing such foreign official, politi-  
2           cal party, party official, or candidate to do or  
3           omit to do any act in violation of the lawful  
4           duty of such foreign official, political party,  
5           party official, or candidate;

6           “(C) securing any improper advantage;  
7           or”.

8           (b) OFFICIALS OF INTERNATIONAL ORGANIZA-  
9           TIONS.—Section 104(h) of the Foreign Corrupt Practices  
10          Act of 1977 (15 U.S.C. 78dd–2(h)) is amended—

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

13           “(2) The term—

14           “(A) ‘foreign official’ means any officer or  
15           employee of a foreign government or any de-  
16           partment, agency, or instrumentality thereof, or  
17           of a public international organization, or any  
18           person acting in an official capacity for or on  
19           behalf of any such government, department,  
20           agency, or instrumentality, or for or on behalf  
21           of any such public international organization;  
22           and

23           “(B) ‘public international organization’  
24           means an organization that has been so des-  
25           ignated by Executive order pursuant to section

1           1 of the International Organizations Immuni-  
2           ties Act (22 U.S.C. 288).”; and

3           (2) in paragraph (4)(A)(v), by inserting before  
4           the period “to those referred to in clauses (i)  
5           through (iv)”.

6           (c) ALTERNATIVE JURISDICTION OVER ACTS OUT-  
7           SIDE OF THE UNITED STATES.—Section 104 of the For-  
8           eign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–2)  
9           is amended—

10           (1) by redesignating subsection (h) as sub-  
11           section (i);

12           (2) by inserting after subsection (g) the follow-  
13           ing:

14           “(h) ALTERNATIVE JURISDICTION.—

15           “(1) IN GENERAL.—It shall be unlawful for a  
16           United States person to corruptly do any act outside  
17           of the United States in furtherance of an offer, pay-  
18           ment, promise to pay, or authorization of the pay-  
19           ment of any money, or offer, gift, promise to give,  
20           or authorization of the giving of any thing of value  
21           to any of the persons or entities referred to in para-  
22           graphs (1), (2), and (3) of subsection (a), for the  
23           purposes set forth therein, whether or not that  
24           United States person makes use of the mails or any  
25           means or instrumentality of interstate commerce in

1 furtherance of the offer, gift, payment, promise, or  
2 authorization.

3 “(2) DEFINITION.—In this subsection, the term  
4 ‘United States person’ means—

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

8 “(B) any corporation, partnership, associa-  
9 tion, joint-stock company, business trust, unin-  
10 corporated organization, or sole proprietorship  
11 organized under the laws of the United States  
12 or any State, territory, possession, or common-  
13 wealth of the United States, or any political  
14 subdivision thereof.”;

15 (3) in subsection (b), by striking “Subsection  
16 (a)” and inserting “Subsections (a) and (h)”;

17 (4) in subsection (c), by striking “subsection  
18 (a)” and inserting “subsections (a) and (h)”;

19 (5) in subsection (d), by striking “subsection  
20 (a) of this section” and inserting “subsection (a) or  
21 (h)”.

22 (d) PENALTIES.—Section 104(g) of the Foreign Cor-  
23 rupt Practices Act of 1977 (15 U.S.C. 78dd–2(g)) is  
24 amended—

1 (1) by striking “subsection (a)” each place that  
2 term appears and inserting “subsection (a) or (h)”;

3 (2) in paragraph (1), by inserting “that is not  
4 a natural person” after “domestic concern” each  
5 place that term appears; and

6 (3) in paragraph (2)—

7 (A) by striking “Any officer” each place  
8 that term appears and inserting “Any natural  
9 person that is an officer”;

10 (B) in subparagraph (A), by striking “or  
11 director” and inserting “, director, employee, or  
12 agent”;

13 (C) by striking subparagraph (B); and

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

16 (e) TECHNICAL AMENDMENT.—Section 104(i)(4)(A)  
17 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C.  
18 78dd–2(h)(4)(A)), as redesignated by subsection (c) of  
19 this section, is amended by striking “For purposes of  
20 paragraph (1), the” and inserting “The”.

21 **SEC. 4. AMENDMENT RELATING TO OTHER PERSONS.**

22 The Foreign Corrupt Practices Act of 1977 (15  
23 U.S.C. 78dd et seq.) is amended by inserting after section  
24 104 the following new section:

1 **“SEC. 104A. PROHIBITED FOREIGN TRADE PRACTICES BY**  
2 **PERSONS OTHER THAN ISSUERS OR DOMES-**  
3 **TIC CONCERNS.**

4 “(a) PROHIBITED CONDUCT.—It shall be unlawful  
5 for any covered person, or for any officer, director, em-  
6 ployee, or agent of such covered person or any stockholder  
7 thereof, acting on behalf of such covered person, while in  
8 the territory of the United States, corruptly to make use  
9 of the mails or any means or instrumentality of interstate  
10 commerce or to do any other act in furtherance of an offer,  
11 payment, promise to pay, or authorization of the payment  
12 of any money, or offer, gift, promise to give, or authoriza-  
13 tion of the giving of anything of value to—

14 “(1) any foreign official for purposes of—

15 “(A) influencing any act or decision of  
16 such foreign official in the official capacity of  
17 the foreign official;

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

21 “(C) securing any improper advantage; or

22 “(D) inducing such foreign official to use  
23 the influence of that official with a foreign gov-  
24 ernment or instrumentality thereof to affect or  
25 influence any act or decision of such govern-  
26 ment or instrumentality,

1 in order to assist such covered person in obtaining  
2 or retaining business for or with, or directing busi-  
3 ness to, any person;

4 “(2) any foreign political party or official there-  
5 of or any candidate for foreign political office for  
6 purposes of—

7 “(A) influencing any act or decision of  
8 such party, official, or candidate in its or his of-  
9 ficial capacity;

10 “(B) inducing such party, official, or can-  
11 didate to do or omit to do an act in violation  
12 of the lawful duty of such party, official, or  
13 candidate;

14 “(C) securing any improper advantage; or

15 “(D) inducing such party, official, or can-  
16 didate to use its or his influence with a foreign  
17 government or instrumentality thereof to affect  
18 or influence any act or decision of such govern-  
19 ment or instrumentality,

20 in order to assist such covered person in obtaining  
21 or retaining business for or with, or directing busi-  
22 ness to, any person; or

23 “(3) any person, while knowing that all or a  
24 portion of such money or thing of value will be of-  
25 fered, given, or promised, directly or indirectly, to

1 any foreign official, to any foreign political party or  
2 official thereof, or to any candidate for foreign polit-  
3 ical office, for purposes of—

4 “(A) influencing any act or decision of  
5 such foreign official, political party, party offi-  
6 cial, or candidate in its or his official capacity;

7 “(B) inducing such foreign official, politi-  
8 cal party, party official, or candidate to do or  
9 omit to do any act in violation of the lawful  
10 duty of such foreign official, political party,  
11 party official, or candidate;

12 “(C) securing any improper advantage; or

13 “(D) inducing such foreign official, politi-  
14 cal party, party official, or candidate to use its  
15 or his influence with a foreign government or  
16 instrumentality thereof to affect or influence  
17 any act or decision of such government or in-  
18 strumentality,

19 in order to assist such covered person in obtaining  
20 or retaining business for or with, or directing busi-  
21 ness to, any person.

22 “(b) EXCEPTION FOR ROUTINE GOVERNMENTAL AC-  
23 TION.—Subsection (a) shall not apply to any facilitating  
24 or expediting payment to a foreign official, political party,  
25 or party official, the purpose of which is to expedite or

1 to secure the performance of a routine governmental ac-  
2 tion by a foreign official, political party, or party official.

3 “(c) AFFIRMATIVE DEFENSES.—It shall be an af-  
4 firmative defense to actions under subsection (a) that—

5 “(1) the payment, gift, offer, or promise of any-  
6 thing of value that was made, was lawful under the  
7 written laws and regulations of the country of the  
8 foreign official, political party, party official, or can-  
9 didate; or

10 “(2) the payment, gift, offer, or promise of any-  
11 thing of value that was made was a reasonable and  
12 bona fide expenditure, such as travel and lodging ex-  
13 penses, incurred by or on behalf of a foreign official,  
14 party, party official, or candidate, and was directly  
15 related to—

16 “(A) the promotion, demonstration, or ex-  
17 planation of products or services; or

18 “(B) the execution or performance of a  
19 contract with a foreign government or agency  
20 thereof.

21 “(d) INJUNCTIVE RELIEF.—

22 “(1) IN GENERAL.—When it appears to the At-  
23 torney General that any covered person, or officer,  
24 director, employee, agent, or stockholder of a cov-  
25 ered person, is engaged, or about to engage, in any



1 act or practice constituting a violation of subsection  
2 (a), the Attorney General may, in the discretion of  
3 the Attorney General, bring a civil action in an ap-  
4 propriate district court of the United States to en-  
5 join such act or practice, and upon a proper show-  
6 ing, a permanent injunction or a temporary restrain-  
7 ing order shall be granted without bond.

8 “(2) CIVIL INVESTIGATIONS.—For the purpose  
9 of any civil investigation that, in the opinion of the  
10 Attorney General, is necessary and proper to enforce  
11 this section, the Attorney General, or a designee  
12 thereof, may administer oaths and affirmations, sub-  
13 poena witnesses, take evidence, and require the pro-  
14 duction of any books, papers, or other documents  
15 that the Attorney General deems relevant or mate-  
16 rial to such investigation. The attendance of wit-  
17 nesses and the production of documentary evidence  
18 may be required from any place in the United  
19 States, or any territory, possession, or common-  
20 wealth of the United States, at any designated place  
21 of hearing.

22 “(3) SUBPOENAS.—In the case of contumacy  
23 by, or refusal to obey a subpoena issued to, any per-  
24 son, the Attorney General may invoke the aid of any  
25 court of the United States within the jurisdiction of

1       which such investigation or proceeding is carried on,  
2       or in which such person resides or carries on busi-  
3       ness, in requiring the attendance and testimony of  
4       witnesses and the production of books, papers, or  
5       other documents. Any such court may issue an order  
6       requiring such person to appear before the Attorney  
7       General, or a designee thereof, there to produce  
8       records, if so ordered, or to give testimony touching  
9       the matter under investigation. Any failure to obey  
10      such order of the court may be punished by such  
11      court as a contempt thereof.

12           “(4) PROCESS.—All process in any action re-  
13      ferred to in this subsection may be served in the ju-  
14      dicial district in which such person resides or may  
15      be found.

16           “(5) RULES.—The Attorney General may make  
17      such rules relating to civil investigations as may be  
18      necessary or appropriate to implement this sub-  
19      section.

20           “(e) PENALTIES.—

21           “(1) JURIDICAL PERSONS.—Any covered person  
22      that is a juridical person that violates subsection  
23      (a)—

24           “(A) shall be fined not more than  
25           \$2,000,000; and

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

4           “(2) NATURAL PERSON.—Any covered person  
5           who is a natural person and who—

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

9           “(B) violates subsection (a) shall be sub-  
10          ject to a civil penalty of not more than \$10,000,  
11          imposed in an action brought by the Attorney  
12          General.

13          “(3) PAYMENT OF FINES.—Whenever a fine is  
14          imposed under paragraph (2) upon any officer, di-  
15          rector, employee, agent, or stockholder of a covered  
16          person, such fine may not be paid, directly or indi-  
17          rectly, by that covered person.

18          “(f) APPLICABILITY; OTHER LAWS.—This section  
19          does not apply—

20                 “(1) to any issuer of securities to which section  
21                 30A of the Securities Exchange Act of 1934 applies;  
22                 or

23                 “(2) to any domestic concern to which section  
24                 104 of this Act applies.

25          “(g) DEFINITIONS.—For purposes of this section—

1 “(1) the term—

2 “(A) ‘foreign official’ means any officer or  
3 employee of a foreign government or any de-  
4 partment, agency, or instrumentality thereof, or  
5 of a public international organization, or any  
6 person acting in an official capacity for or on  
7 behalf of any such government or department,  
8 agency, or instrumentality, or for or on behalf  
9 of any such public international organization;  
10 and

11 “(B) ‘public international organization’  
12 means an organization that has been designated  
13 by Executive order pursuant to section 1 of the  
14 International Organizations Immunities Act (22  
15 U.S.C. 288);

16 “(2) the state of mind of a covered person is  
17 ‘knowing’ with respect to conduct, a circumstance,  
18 or a result if—

19 “(A) such covered person is aware that  
20 such covered person is engaging in such con-  
21 duct, that such circumstance exists, or that  
22 such result is substantially certain to occur; or

23 “(B) such covered person has a firm belief  
24 that such circumstance exists or that such re-  
25 sult is substantially certain to occur;

1           “(3) if knowledge of the existence of a particu-  
2 lar circumstance is required for an offense, such  
3 knowledge is established if a covered person is aware  
4 of a high probability of the existence of such cir-  
5 cumstance, unless the covered person actually be-  
6 lieves that such circumstance does not exist;

7           “(4) the term ‘covered person’ means—

8                   “(A) any natural person, other than a na-  
9 tional of the United States (as defined in sec-  
10 tion 101(a) of the Immigration and Nationality  
11 Act); and

12                   “(B) any corporation, partnership, associa-  
13 tion, joint-stock company, business trust, unin-  
14 corporated organization, or sole proprietorship  
15 that is organized under the law of a foreign na-  
16 tion or a political subdivision thereof; and

17           “(5) the term ‘routine governmental action’—

18                   “(A) means only an action that is ordi-  
19 narily and commonly performed by a foreign of-  
20 ficial—

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

24                   “(ii) in processing governmental pa-  
25 pers, such as visas and work orders;

1           “(iii) in providing police protection,  
2           mail pickup and delivery, or scheduling in-  
3           spections associated with contract perform-  
4           ance or inspections related to transit of  
5           goods across country;

6           “(iv) in providing phone service,  
7           power and water supply, loading and un-  
8           loading cargo, or protecting perishable  
9           products or commodities from deteriora-  
10          tion; or

11          “(v) in actions of a similar nature to  
12          those referred to in clauses (i) through  
13          (iv); and

14          “(B) does not include any decision by a  
15          foreign official regarding whether, or on what  
16          terms, to award new business to or to continue  
17          business with a particular party, or any action  
18          taken by a foreign official involved in the deci-  
19          sionmaking process to encourage a decision to  
20          award new business to or continue business  
21          with a particular party.”.

Calendar No. 510

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[Report No. 105-277]

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**A BILL**

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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JULY 30, 1998

Read twice and placed on the calendar