

116TH CONGRESS
2D SESSION

S. 3674

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

MAY 11, 2020

Mr. HAWLEY 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 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Civil Justice for Vic-
5 tims of Coronavirus Act”.

1 **SEC. 2. RESPONSIBILITY OF FOREIGN STATES FOR RECK-**
2 **LESS ACTIONS OR OMISSIONS CAUSING THE**
3 **COVID-19 GLOBAL PANDEMIC IN THE UNITED**
4 **STATES.**

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

8 **“§ 1605C. Responsibility of foreign states for reckless**
9 **actions or omissions causing the COVID-**
10 **19 global pandemic in the United States**

11 “(a) RESPONSIBILITY OF FOREIGN STATES.—A for-
12 eign state shall not be immune from the jurisdiction of
13 the courts of the United States in any case in which money
14 damages are sought against a foreign state for physical
15 or economic injury to person, property, or business occur-
16 ring in the United States following any reckless action or
17 omission (including a conscious disregard of the need to
18 report information promptly or deliberately hiding rel-
19 evant information) of a foreign state, or of any official,
20 employee, or agent of that foreign state while acting with-
21 in the scope of his or her office, employment, or agency,
22 that caused or substantially aggravated the COVID-19
23 global pandemic in the United States, regardless of where
24 the action or omission occurred.

25 “(b) RULE OF CONSTRUCTION.—A foreign state shall
26 not be subject to the jurisdiction of the courts of the

1 United States under subsection (a) on the basis of an
2 omission or act that constitutes mere negligence.

3 “(c) JURISDICTION.—

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

9 “(2) PERSONAL JURISDICTION.—The courts of
10 the United States shall have personal jurisdiction, to
11 the maximum extent permissible under the Constitu-
12 tion of the United States, over any defendant in an
13 action described in subsection (a).

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

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

1 certifies that the United States is engaged in good faith
2 discussions with the foreign state defendant concerning
3 the resolution of the claims against the foreign state, or
4 any other parties as to whom a stay of claims is sought.

5 “(e) DURATION OF STAY.—

6 “(1) IN GENERAL.—A stay under this section
7 may be granted for not more than 180 days.

8 “(2) EXTENSION.—

9 “(A) IN GENERAL.—The Attorney General
10 may petition the court for an extension of the
11 stay for additional periods not to exceed 180
12 days.

13 “(B) RECERTIFICATION.—A court shall
14 grant an extension under subparagraph (A) if
15 the Secretary of State recertifies that the
16 United States remains engaged in good faith
17 discussions with the foreign state defendant
18 concerning the resolution of the claims against
19 the foreign state, or any other parties as to
20 whom a stay of claims is sought.

21 “(f) DISMISSAL OF ACTIONS FOLLOWING FOREIGN
22 STATE AGREEMENT.—

23 “(1) INTERVENTION.—The Attorney General
24 may intervene in any action in which a foreign state
25 is subject to the jurisdiction of a court of the United

1 States under this section for the purpose of seeking
2 the dismissal of the case.

3 “(2) DISMISSAL WITH PREJUDICE.—Prior to
4 the entry of judgment, a court of the United States
5 may dismiss with prejudice a proceeding under this
6 section against a foreign state or any official, em-
7 ployee, or agent of the foreign state if the Secretary
8 of State certifies that the United States and the for-
9 eign state have entered into an agreement with re-
10 spect to the resolution of a claim against such a de-
11 fendant, regardless of whether the plaintiff is a
12 party to such agreement or consents to the dis-
13 missal.”.

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

19 (c) REMOVAL OF IMMUNITY FROM ATTACHMENT OR
20 EXECUTION.—Section 1610 of title 28, United States
21 Code, is amended—

22 (1) in subsection (a)(7), by striking “section
23 1605A or section 1605(a)(7) (as such section was in
24 effect on January 27, 2008)” and inserting “section

1 1605A, section 1605(a)(7) (as such section was in
2 effect on January 27, 2008), or section 1605C”;

3 (2) in subsection (b)(2), by striking “or
4 1605(b)” and inserting “, 1605(b), or 1605C”;

5 (3) by striking subsection (d) and inserting the
6 following:

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

14 “(1) the foreign state has explicitly waived its
15 immunity from attachment prior to judgment, not-
16 withstanding any withdrawal of the waiver the for-
17 eign state may purport to effect except in accord-
18 ance with the terms of the waiver;

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

23 “(3) the attachment relates to a claim for which
24 the foreign state is not immune under section
25 1605C.”; and

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

4 (d) CAUSE OF ACTION.—Any citizen or resident of
5 the United States injured in his or her person, property,
6 or business by reason of any reckless action or omission
7 (including a conscious disregard of the need to report in-
8 formation promptly or deliberately hiding relevant infor-
9 mation) of a foreign state, or of any official, employee,
10 or agent of that foreign state while acting within the scope
11 of his or her office, employment, or agency, that caused
12 or substantially aggravated the COVID–19 global pan-
13 demic in the United States, regardless of where the action
14 or omission occurred, may sue therefor in any appropriate
15 district court of the United States and shall recover three-
16 fold the damages he or she sustains and the cost of the
17 suit, including attorney’s fees.

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

24 (f) TIME LIMITATION ON THE COMMENCEMENT OF
25 CIVIL ACTION.—Notwithstanding any other provision of

1 law, a civil action arising under subsection (d) may be
2 commenced up to 20 years after the cause of action ac-
3 crues.

4 (g) TECHNICAL AND CONFORMING AMENDMENT.—
5 The table of sections for chapter 97 of title 28, United
6 States Code, is amended by inserting after the item relat-
7 ing to section 1605B the following:

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

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