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

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 Vict-
5 ims of China-Originated Viral Infections Diseases Act” or the “Civil Justice for Victims of COVID Act”.

6
SEC. 2. RESPONSIBILITY OF FOREIGN STATES FOR RECKLESS ACTIONS OR OMISSIONS CAUSING THE COVID–19 GLOBAL PANDEMIC IN THE UNITED STATES.

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

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

“(a) Responsibility of Foreign States.—A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which money damages are sought against a foreign state for death or physical or economic injury to person, property, or business occurring in the United States following any reckless action or omission (including a conscious disregard of the need to report information promptly or deliberately hiding relevant information) of a foreign state, or of any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, that caused or substantially contributed to the COVID–19 global pandemic in the United States, regardless of where the action or omission occurred.

“(b) Rule of Construction.—A foreign state shall not be subject to the jurisdiction of the courts of the
United States under subsection (a) on the basis of an omission or act that constitutes mere negligence.

“(c) JURISDICTION.—

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

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

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

“(e) STAY.—

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

“(2) DURATION.—

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

“(B) EXTENSION.—

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

“(ii) RECERTIFICATION.—A court
may grant an extension under subpara-
graph (A) if the Secretary of State recer-
tifies that the United States remains en-
gaged in good faith discussions with the
foreign state defendant concerning the res-
olution of the claims against the foreign
state, or any other parties as to whom a
stay of claims is sought. In choosing
whether to grant an extension, the court shall balance the interests of the United States with the interests of the plaintiffs in a timely review of their claims.”.

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

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

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

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

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

“(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action
brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if—

“(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver;

“(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction; or

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

(4) in subsection (g)(1), in the matter preceding subparagraph (A), by striking “1605A” and inserting “1605A or 1605C”.

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

(e) Enforcement by State Attorneys General.—Any State, on its own behalf or on behalf of the
citizens or residents of the State, may bring a civil action
under subsection (d) in a district court of the United
States. Nothing in this Act may be construed to prevent
a State from exercising its powers under State law.

(f) Time Limitation on the Commencement of
Civil Action.—Notwithstanding any other provision of
law, a civil action arising under subsection (d) may be
commenced up to 20 years after the cause of action ac-
crues.

(g) Technical and Conforming Amendment.—
The table of sections for chapter 97 of title 28, United
States Code, is amended by inserting after the item relat-
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.”.