

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.

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## 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

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## 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 China-Originated Viral Infections Diseases Act”  
6 or the “Civil Justice for Victims of COVID 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 death or  
15 physical or economic injury to person, property, or busi-  
16 ness occurring in the United States following any reckless  
17 action or omission (including a conscious disregard of the  
18 need to report information promptly or deliberately hiding  
19 relevant 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 contributed to the COVID-  
23 19 global pandemic in the United States, regardless of  
24 where 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) ADDITIONAL AUTHORITY TO ISSUE OR-  
10 DERS.—In addition to authority already granted by  
11 other laws, the courts of the United States shall  
12 have jurisdiction to make and issue any writ or  
13 order of injunction necessary or appropriate for the  
14 enforcement of this section, including pre-judgment  
15 injunctions related to transfer or disposal of assets.

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

21 “(e) STAY.—

22 “(1) IN GENERAL.—A court of the United  
23 States may stay a proceeding against a foreign state  
24 if the Secretary of State certifies that the United  
25 States is engaged in good faith discussions with the

1 foreign state defendant concerning the resolution of  
2 the claims against the foreign state, or any other  
3 parties as to whom a stay of claims is sought. In ex-  
4 ercising its discretion under this subsection, the  
5 court shall balance the interests of the United States  
6 with the interests of the plaintiffs in a timely review  
7 of their claims.

8 “(2) DURATION.—

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

12 “(B) EXTENSION.—

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

17 “(ii) RECERTIFICATION.—A court  
18 may grant an extension under subpara-  
19 graph (A) if the Secretary of State recer-  
20 tifies that the United States remains en-  
21 gaged in good faith discussions with the  
22 foreign state defendant concerning the res-  
23 olution of the claims against the foreign  
24 state, or any other parties as to whom a  
25 stay of claims is sought. In choosing

1           whether to grant an extension, the court  
2           shall balance the interests of the United  
3           States with the interests of the plaintiffs in  
4           a timely review of their claims.”.

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

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

13           (1) in subsection (a)(7), by striking “section  
14           1605A or section 1605(a)(7) (as such section was in  
15           effect on January 27, 2008)” and inserting “section  
16           1605A, section 1605(a)(7) (as such section was in  
17           effect on January 27, 2008), or section 1605C”;

18           (2) in subsection (b)(2), by striking “or  
19           1605(b)” and inserting “, 1605(b), or 1605C”;

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

22           “(d) The property of a foreign state, as defined in  
23 section 1603(a) of this chapter, used for a commercial ac-  
24 tivity in the United States, shall not be immune from at-  
25 tachment prior to the entry of judgment in any action

1 brought in a court of the United States or of a State,  
2 or prior to the elapse of the period of time provided in  
3 subsection (c) of this section, if—

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

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

13 “(3) the attachment relates to a claim for which  
14 the foreign state is not immune under section  
15 1605C.”; and

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

19 (d) CAUSE OF ACTION.—Any citizen or resident of  
20 the United States injured in his or her person, property,  
21 or business by reason of any reckless action or omission  
22 (including a conscious disregard of the need to report in-  
23 formation promptly or deliberately hiding relevant infor-  
24 mation) of a foreign state, or of any official, employee,  
25 or agent of that foreign state while acting within the scope

1 of his or her office, employment, or agency, that caused  
 2 or substantially contributed to the COVID–19 global pan-  
 3 demic in the United States, regardless of where the action  
 4 or omission occurred, may sue therefor in any appropriate  
 5 district court of the United States and shall recover three-  
 6 fold the damages he or she sustains and the cost of the  
 7 suit, including attorney’s fees.

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

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

19 (g) TECHNICAL AND CONFORMING AMENDMENT.—  
 20 The table of sections for chapter 97 of title 28, United  
 21 States Code, is amended by inserting after the item relat-  
 22 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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