

A BILL

To require the disclosure of payments to foreign officials and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Payments Disclosure Act".

DEFINITIONS

SEC. 2. For purposes of this Act:

(a) "person" means:

(1) an individual who is a citizen of the United States;

(2) an individual who has been lawfully admitted for permanent residence as described in section 101(a)(20) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(20)); or

(3) a legal entity, other than a noncommercial government entity, organized under the laws of the United States or a State or political subdivision thereof;

(b) "anything of value" means any direct or indirect gain or advantage, or anything that might reasonably be regarded by the beneficiary as a direct or indirect gain or advantage, including a direct or indirect gain or advantage to any other individual or entity;

(c) "foreign affiliate" means a legal entity organized under the laws of a foreign country, or political subdivision thereof, at least 50 per cent of which is beneficially owned directly or indirectly by a person or persons subject to the provisions of this Act;

(d) "Secretary", unless otherwise specified, means the Secretary of Commerce;

(e) "foreign public official" means:

- (1) an officer or employee, whether elected or appointed, of a foreign government; or
- (2) an individual acting for or on behalf of a foreign government;

and includes an individual who has been nominated or appointed to be a foreign public official or who has been officially informed that he will be so nominated or appointed;

(f) "official action" means a decision, opinion, recommendation, judgment, vote, or other conduct involving an exercise of discretion by a foreign public official in the course of his employment;

(g) "State" means a State of the United States, the District of Columbia, Puerto Rico, or any territory or possession of the United States; and

(h) "foreign government" means:

- (1) the government of a foreign country, irrespective of recognition by the United States;
- (2) a department, agency, or branch of a foreign government;
- (3) a corporation or other legal entity established or owned by, and subject to control by, a foreign government;

- (4) a political subdivision of a foreign government, or a department, agency, or branch of the political subdivision; or
- (5) a public international organization.

REPORTING REQUIREMENTS

SEC. 3. A person shall report to the Secretary, in accordance with regulations promulgated by the Secretary, payments hereafter

made on behalf of the person or the person's foreign affiliate to any other individual or entity in connection with: an official action, or sale to or contract with a foreign government, for the commercial benefit of the person or his foreign affiliate.

RECORDKEEPING REQUIREMENTS

SEC. 4. In order to insure that a person who is required to report under section 3 of this Act has sufficient information in his possession to report accurately, the Secretary may promulgate rules and regulations requiring such person to keep such records, in the form and manner prescribed by the Secretary, as he deems necessary to carry out the purposes of this Act. In devising the record keeping requirements, the Secretary shall consult with other federal agencies to eliminate unnecessary duplication in records required by the agencies. The agencies are authorized, where appropriate, to combine in a single form the records required under this Act and under any other Act.

ENFORCEMENT; COMPLIANCE WITH
REQUIREMENTS

SEC. 5. To the extent necessary or appropriate to the enforcement of this Act, the Secretary, and officers and employees of the Department of Commerce specifically designated by the Secretary, may make such investigations and obtain such information from, make such inspections of the books, records, and other writings of, and take the sworn testimony of, any individual or entity. In addition, such officers or employees may administer oaths or affirmations, and may by subpoena require any individual or entity to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpoena issued to, any such individual or entity, the district court of the United States for any district in which such individual or entity is found or resides or transacts business, upon application by the Attorney General, and after notice to any such individual or entity and hearing, shall have jurisdiction to issue an order requiring such individual or entity to appear and give testimony, or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

CIVIL REMEDIES

SEC. 6. (a) Civil Penalties.-- A person who fails to file a report required under section 3 of this Act, or who fails to maintain the records required under section 4, or who files a report under section 3 but negligently omits information required to be reported under section 3 or negligently states false information required to be reported under section 3, shall

be subject to a civil penalty of not more than \$100,000.

(b) Injunction.-- Upon evidence satisfactory to the Attorney General that a person is engaged in an act or practice that constitutes a violation of this Act, the Attorney General may bring an action in a district court of the United States to enjoin such an act or practice, and, upon a proper showing, a permanent or temporary injunction or restraining order shall be granted by the court together with such other equitable relief as may be appropriate.

CRIMINAL PENALTIES

SEC. 7. (a) Failure to File.-- A person who knowingly:

- (1) fails to file a report required under section 3 of this Act;
- (2) fails to maintain records required under section 4 of this Act; or
- (3) omits required information from, or falsifies information in, records kept under section 4 of this Act;

shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, except that a legal entity shall be fined not more than \$100,000.

(b) Knowing Falsification.--A person who files a report required by this Act which he knows or should know contains a false statement, or which he knows or should know omits required information, shall be fined not more than \$100,000 and imprisoned not more than three years, except that a legal entity shall be fined not more than \$500,000.

DISSEMINATION OF REPORTS

SEC. 8. (a) Dissemination within the United States.-- The Secretary shall, upon receipt of a report, disseminate copies of the report to the Department of Justice, the Department of State, and the Internal Revenue Service. If the person who filed the report is subject to the jurisdiction of the Securities and Exchange Commission, the Secretary shall also transmit a copy of the report to the Securities and Exchange Commission. Until the report is released to the public, it shall be maintained in accordance with section 1905 of title 18, United States Code. The report shall be transmitted, upon request, subject to an appropriate arrangement to assure its confidentiality, to Committees of the Congress having legislative jurisdiction over the subject matter of the report. A report shall be made public one year after receipt in accordance with rules and regulations promulgated by the Secretary, unless the Secretary of State makes a specific determination in writing that foreign policy interests dictate against disclosure, or unless the Attorney General makes a specific determination in writing that the status of an ongoing investigation or prosecution dictates against public disclosure through other than conventional judicial processes.

(b) Dissemination to a Foreign Government. The Attorney General, with the concurrence of the Secretary of State, may furnish any information contained in a report made under this Act to the appropriate law enforcement authorities of the foreign government concerned in accordance with applicable procedures and international agreements. The Secretary of State, with the concurrence of the Attorney General, may provide any such information to the foreign government concerned.

REGULATIONS

SEC. 9(a). Promulgation of Regulations.-- The Secretary shall promulgate such regulations as are necessary to carry out the purposes of this Act. The regulations shall include:

- (1) a requirement that the report include the name of every recipient who receives anything of value over a specified amount and the amount received by each such recipient;
- (2) a requirement that the report include information concerning multiple payments with respect to a single transaction which total over a specified amount; and
- (3) a definition of certain types of payments which are not required to be reported because they are regular business payments not inconsistent with the purposes of this Act, or are bona fide payments to

a foreign government, such as taxes or fees paid pursuant to duly promulgated laws, regulations, decrees, or other legal action.

(b) Consultation with Other Agencies.-- In devising the reporting regulations, the Secretary shall consult with other federal agencies to eliminate unnecessary duplication in reports required by the agencies. The agencies are authorized, where appropriate, to combine in a single form the reports required under this Act and under any other act.

CONFORMING AMENDMENT

SEC. 10. The provisions of this Act, other than section 9(b), shall not apply to payments made in connection with (a) sales of defense articles or defense services under section 22 of the Arms Export Control Act or (b) commercial sales of defense articles or defense services licensed or approved under section 38 of the Arms Export Control Act.

PROVISIONS OF LAW NOT AFFECTED

SEC. 11. (a) Rights and Duties Under Certain Other Laws Unaffected.-- Nothing in this Act shall be construed as affecting the rights or duties arising under the Securities Act of 1933, 15 U.S.C. 77a et seq., the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq., the Public Utilities Holding Company Act of 1935, 15 U.S.C. 79a et seq., the Trust Indenture Act of 1939, 15 U.S.C. 77aaa, the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., and the Investment Advisers Act of 1940, 15 U.S.C. 80b-1 et seq., and any subsequent amendments thereto. Persons subject to this Act shall be required to

make such public disclosure of the matters described in section 3 of this Act as may be otherwise required under the statutes listed above. Nothing in this Act shall preclude persons reporting pursuant to the provisions of this Act from making public disclosure of any payment described in section 3.

(b) Authority of Securities and Exchange Commission.-- Nothing in this Act shall be construed as affecting or conditioning the authority of the Securities and Exchange Commission to enforce the statutes listed in subsection (a) or to investigate violations thereof. The Commission shall have the authority to premise such enforcement or investigation on information received pursuant to section 8(a) of this Act.

RIGHTS AND REMEDIES PRESERVED

SEC. 12. The rights and remedies provided by this title shall be in addition to, and shall not be in derogation of, any and all other rights and remedies that may exist at law or in equity.