

Calendar No. 460

111TH CONGRESS
2^D SESSION**H. R. 2765**

 IN THE SENATE OF THE UNITED STATES

JUNE 16, 2009

Received; read twice and referred to the Committee on the Judiciary

JULY 14, 2010

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

AN ACT

To amend title 28, United States Code, to prohibit recognition and enforcement of foreign defamation judgments and certain foreign judgments against the providers of interactive computer services.

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. RECOGNITION OF FOREIGN DEFAMATION**
 4 **JUDGMENTS.**

5 (a) **IN GENERAL.**—Part VI of title 28, United States
 6 Code, is amended by adding at the end the following:

7 **“CHAPTER 181—FOREIGN JUDGMENTS**

“Sec.

“4101. Definitions.

“4102. Recognition of foreign defamation judgments.

“4103. Attorneys’ fees.

1 **“§ 4101. Definitions**

2 “In this chapter:

3 “(1) DOMESTIC COURT.—The term ‘domestic
4 court’ means a Federal court or a court of any
5 State.

6 “(2) FOREIGN COURT.—The term ‘foreign
7 court’ means a court, administrative body, or other
8 tribunal of a foreign country.

9 “(3) FOREIGN JUDGMENT.—The term ‘foreign
10 judgment’ means a final judgment rendered by a
11 foreign court.

12 “(4) STATE.—The term ‘State’ means each of
13 the several States, the District of Columbia, and any
14 commonwealth, territory, or possession of the United
15 States.

16 **“§ 4102. Recognition of foreign defamation judgments**

17 “(a) FIRST AMENDMENT CONSIDERATIONS.—Not-
18 withstanding any other provision of Federal or State law,
19 a domestic court shall not recognize or enforce a foreign
20 judgment for defamation whenever the party opposing rec-
21 ognition or enforcement of the judgment claims that the
22 judgment is inconsistent with the first amendment to the
23 Constitution of the United States, unless the domestic
24 court determines that the judgment is consistent with the

1 first amendment. The burden of establishing that the for-
2 eign judgment is consistent with the first amendment shall
3 lie with the party seeking recognition or enforcement of
4 the judgment.

5 “(b) JURISDICTIONAL CONSIDERATIONS.—Notwith-
6 standing any other provision of Federal or State law, a
7 domestic court shall not recognize or enforce a foreign
8 judgment for defamation if the party opposing recognition
9 or enforcement establishes that the exercise of personal
10 jurisdiction over such party by the foreign court that ren-
11 dered the judgment failed to comport with the due process
12 requirements imposed on domestic courts by the Constitu-
13 tion of the United States.

14 “(c) JUDGMENT AGAINST PROVIDER OF INTER-
15 ACTIVE COMPUTER SERVICE.—Notwithstanding any other
16 provision of Federal or State law, a domestic court shall
17 not recognize or enforce a foreign judgment for defama-
18 tion against the provider of an interactive computer serv-
19 ice, as defined in section 230 of the Communications Act
20 of 1934 (47 U.S.C. 230), whenever the party opposing rec-
21 ognition or enforcement of the judgment claims that the
22 judgment is inconsistent with such section 230, unless the
23 domestic court determines that the judgment is consistent
24 with such section 230. The burden of establishing that the
25 foreign judgment is consistent with such section 230 shall

1 lie with the party seeking recognition or enforcement of
 2 the judgment.

3 “(d) **APPEARANCES NOT A BAR.**—An appearance by
 4 a party in a foreign court rendering a foreign judgment
 5 to which this section applies for the purpose of contesting
 6 the foreign court’s exercise of jurisdiction in the case, mov-
 7 ing the foreign court to abstain from exercising jurisdic-
 8 tion in the case, defending on the merits any claims
 9 brought before the foreign court, or for any other purpose,
 10 shall not deprive such party of the right to oppose the
 11 recognition or enforcement of the judgment under this sec-
 12 tion.

13 **“§ 4103. Attorneys’ fees**

14 “**In any action brought in a domestic court to enforce**
 15 **a foreign judgment for defamation, the court may allow**
 16 **the party opposing recognition or enforcement of the judg-**
 17 **ment a reasonable attorney’s fee if such party prevails in**
 18 **the action on a ground specified in subsection (a), (b),**
 19 **or (c) of section 4102.”.**

20 **(b) CLERICAL AMENDMENT.**—The table of chapters
 21 for part VI of title 28, United States Code, is amended
 22 by adding at the end the following:

“181. Foreign Judgments 4101”.

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Securing the Protection*
3 *of our Enduring and Established Constitutional Heritage*
4 *Act” or the “SPEECH Act”.*

5 **SEC. 2. FINDINGS.**

6 *Congress finds the following:*

7 *(1) The freedom of speech and the press is en-*
8 *shrined in the first amendment to the Constitution,*
9 *and is necessary to promote the vigorous dialogue nec-*
10 *essary to shape public policy in a representative de-*
11 *mocracy.*

12 *(2) Some persons are obstructing the free expres-*
13 *sion rights of United States authors and publishers,*
14 *and in turn chilling the first amendment to the Con-*
15 *stitution of the United States interest of the citizenry*
16 *in receiving information on matters of importance, by*
17 *seeking out foreign jurisdictions that do not provide*
18 *the full extent of free-speech protections to authors*
19 *and publishers that are available in the United*
20 *States, and suing a United States author or publisher*
21 *in that foreign jurisdiction.*

22 *(3) These foreign defamation lawsuits not only*
23 *suppress the free speech rights of the defendants to the*
24 *suit, but inhibit other written speech that might oth-*
25 *erwise have been written or published but for the fear*
26 *of a foreign lawsuit.*

“4104. Declaratory judgments.

“4105. Attorney’s fees.

1 **“§ 4101. Definitions**

2 *“In this chapter:*

3 *“(1) DEFAMATION.—The term ‘defamation’*
4 *means any action or other proceeding for defamation,*
5 *libel, slander, or similar claim alleging that forms of*
6 *speech are false, have caused damage to reputation or*
7 *emotional distress, have presented any person in a*
8 *false light, or have resulted in criticism, dishonor, or*
9 *condemnation of any person.*

10 *“(2) DOMESTIC COURT.—The term ‘domestic*
11 *court’ means a Federal court or a court of any State.*

12 *“(3) FOREIGN COURT.—The term ‘foreign court’*
13 *means a court, administrative body, or other tribunal*
14 *of a foreign country.*

15 *“(4) FOREIGN JUDGMENT.—The term ‘foreign*
16 *judgment’ means a final judgment rendered by a for-*
17 *ign court.*

18 *“(5) STATE.—The term ‘State’ means each of the*
19 *several States, the District of Columbia, and any*
20 *commonwealth, territory, or possession of the United*
21 *States.*

22 *“(6) UNITED STATES PERSON.—The term*
23 *‘United States person’ means—*

24 *“(A) a United States citizen;*

1 “(B) an alien lawfully admitted for perma-
2 nent residence to the United States;

3 “(C) an alien lawfully residing in the
4 United States at the time that the speech that is
5 the subject of the foreign defamation action was
6 researched, prepared, or disseminated; or

7 “(D) a business entity incorporated in, or
8 with its primary location or place of operation
9 in, the United States.

10 **“§ 4102. Recognition of foreign defamation judgments**

11 “(a) *FIRST AMENDMENT CONSIDERATIONS.*—

12 “(1) *IN GENERAL.*—Notwithstanding any other
13 provision of Federal or State law, a domestic court
14 shall not recognize or enforce a foreign judgment for
15 defamation unless the domestic court determines
16 that—

17 “(A) the defamation law applied in the for-
18 eign court’s adjudication provided at least as
19 much protection for freedom of speech and press
20 in that case as would be provided by the first
21 amendment to the Constitution of the United
22 States and by the constitution and law of the
23 State in which the domestic court is located; or

24 “(B) even if the defamation law applied in
25 the foreign court’s adjudication did not provide

1 *as much protection for freedom of speech and*
2 *press as the first amendment to the Constitution*
3 *of the United States and the constitution and*
4 *law of the State, the party opposing recognition*
5 *or enforcement of that foreign judgment would*
6 *have been found liable for defamation by a do-*
7 *mestic court applying the first amendment to the*
8 *Constitution of the United States and the con-*
9 *stitution and law of the State in which the do-*
10 *mestic court is located.*

11 “(2) *BURDEN OF ESTABLISHING APPLICATION OF*
12 *DEFAMATION LAWS.—The party seeking recognition or*
13 *enforcement of the foreign judgment shall bear the*
14 *burden of making the showings required under sub-*
15 *paragraph (A) or (B).*

16 “(b) *JURISDICTIONAL CONSIDERATIONS.—*

17 “(1) *IN GENERAL.—Notwithstanding any other*
18 *provision of Federal or State law, a domestic court*
19 *shall not recognize or enforce a foreign judgment for*
20 *defamation unless the domestic court determines that*
21 *the exercise of personal jurisdiction by the foreign*
22 *court comported with the due process requirements*
23 *that are imposed on domestic courts by the Constitu-*
24 *tion of the United States.*

1 “(2) *BURDEN OF ESTABLISHING EXERCISE OF*
2 *JURISDICTION.—The party seeking recognition or en-*
3 *forcement of the foreign judgment shall bear the bur-*
4 *den of making the showing that the foreign court’s ex-*
5 *ercise of personal jurisdiction comported with the due*
6 *process requirements that are imposed on domestic*
7 *courts by the Constitution of the United States.*

8 “(c) *JUDGMENT AGAINST PROVIDER OF INTERACTIVE*
9 *COMPUTER SERVICE.—*

10 “(1) *IN GENERAL.—Notwithstanding any other*
11 *provision of Federal or State law, a domestic court*
12 *shall not recognize or enforce a foreign judgment for*
13 *defamation against the provider of an interactive*
14 *computer service, as defined in section 230 of the*
15 *Communications Act of 1934 (47 U.S.C. 230) unless*
16 *the domestic court determines that the judgment*
17 *would be consistent with section 230 if the informa-*
18 *tion that is the subject of such judgment had been pro-*
19 *vided in the United States.*

20 “(2) *BURDEN OF ESTABLISHING CONSISTENCY*
21 *OF JUDGMENT.—The party seeking recognition or en-*
22 *forcement of the foreign judgment shall bear the bur-*
23 *den of establishing that the judgment is consistent*
24 *with section 230.*

1 “(d) *APPEARANCES NOT A BAR.*—An appearance by
2 a party in a foreign court rendering a foreign judgment
3 to which this section applies shall not deprive such party
4 of the right to oppose the recognition or enforcement of the
5 judgment under this section, or represent a waiver of any
6 jurisdictional claims.

7 “(e) *RULE OF CONSTRUCTION.*—Nothing in this sec-
8 tion shall be construed to—

9 “(1) affect the enforceability of any foreign judg-
10 ment other than a foreign judgment for defamation;
11 or

12 “(2) limit the applicability of section 230 of the
13 Communications Act of 1934 (47 U.S.C. 230) to
14 causes of action for defamation.

15 **“§ 4103. Removal**

16 “In addition to removal allowed under section 1441,
17 any action brought in a State domestic court to enforce a
18 foreign judgment for defamation in which—

19 “(1) any plaintiff is a citizen of a State different
20 from any defendant;

21 “(2) any plaintiff is a foreign state or a citizen
22 or subject of a foreign state and any defendant is a
23 citizen of a State; or

1 “(3) any plaintiff is a citizen of a State and any
2 defendant is a foreign state or citizen or subject of a
3 foreign state,
4 may be removed by any defendant to the district court of
5 the United States for the district and division embracing
6 the place where such action is pending without regard to
7 the amount in controversy between the parties.

8 **“§ 4104. Declaratory judgments**

9 “(a) CAUSE OF ACTION.—

10 “(1) IN GENERAL.—Any United States person
11 against whom a foreign judgment is entered on the
12 basis of the content of any writing, utterance, or other
13 speech by that person that has been published, may
14 bring an action in district court, under section
15 2201(a), for a declaration that the foreign judgment
16 is repugnant to the Constitution or laws of the United
17 States. For the purposes of this paragraph, a judg-
18 ment is repugnant to the Constitution or laws of the
19 United States if it would not be enforceable under sec-
20 tion 4102 (a), (b), or (c).

21 “(2) BURDEN OF ESTABLISHING UNENFORCE-
22 ABILITY OF JUDGMENT.—The party bringing an ac-
23 tion under paragraph (1) shall bear the burden of es-
24 tablishing that the foreign judgment would not be en-
25 forceable under section 4102 (a), (b), or (c).

1 “(b) *NATIONWIDE SERVICE OF PROCESS.*—Where an
 2 *action under this section is brought in a district court of*
 3 *the United States, process may be served in the judicial dis-*
 4 *trict where the case is brought or any other judicial district*
 5 *of the United States where the defendant may be found, re-*
 6 *sides, has an agent, or transacts business.*

7 “**§4105. Attorneys’ fees**

8 “*In any action brought in a domestic court to enforce*
 9 *a foreign judgment for defamation, including any such ac-*
 10 *tion removed from State court to Federal court, the domestic*
 11 *court shall, absent exceptional circumstances, allow the*
 12 *party opposing recognition or enforcement of the judgment*
 13 *a reasonable attorney’s fee if such party prevails in the ac-*
 14 *tion on a ground specified in section 4102 (a), (b), or (c).”.*

15 (b) *SENSE OF CONGRESS.*—*It is the Sense of the Con-*
 16 *gress that for the purpose of pleading a cause of action for*
 17 *a declaratory judgment, a foreign judgment for defamation*
 18 *or any similar offense as described under chapter 181 of*
 19 *title 28, United States Code, (as added by this Act) shall*
 20 *constitute a case of actual controversy under section*
 21 *2201(a) of title 28, United States Code.*

22 (c) *TECHNICAL AND CONFORMING AMENDMENT.*—*The*
 23 *table of chapters for part VI of title 28, United States Code,*
 24 *is amended by adding at the end the following:*

“**181. Foreign judgments** **4101.**”.

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