

115TH CONGRESS
2D SESSION

S. 3421

To provide for exclusive Federal jurisdiction over certain civil securities fraud actions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 6, 2018

Mr. PERDUE introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for exclusive Federal jurisdiction over certain civil securities fraud actions, and for other purposes.

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 “Blue Sky Harmoni-
5 zation Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Companies that are engaged in interstate
9 commerce and publicly traded on national exchanges
10 face unique challenges, often operating in every

1 United States jurisdiction under a variety of civil se-
2 curities fraud statutes (commonly known as “blue
3 sky laws”) that can overlap or contradict each other
4 and Federal law.

5 (2) Civil and criminal fraud have inherent dif-
6 ferences in affect and burden of proof. States have
7 a unique interest in prosecuting criminal fraud that
8 should be maintained.

9 (3) Imposing differing State regulatory require-
10 ments for civil securities fraud on national markets
11 increases risk, creates inefficiencies, raises costs, and
12 can harm the efficient operation of those critical
13 markets without providing material investor protec-
14 tion benefits.

15 (4) Complying with dual regulatory regimes
16 places public companies in the United States at a
17 unique competitive disadvantage in an increasingly
18 global marketplace.

19 (5) Reputational risk for United States publicly
20 traded companies accused of civil fraud in State civil
21 enforcement actions, often based on State law stand-
22 ards that differ from Federal law that otherwise
23 governs those national markets, can cause imme-
24 diate and irreparable financial harm to shareholders

1 and an unnecessary loss of jobs, even after those al-
2 legations are later found to be baseless.

3 (6) As of June 2017, there were 5,734 public
4 companies in the United States, few more than in
5 1982, when the economy of the United States was
6 less than $\frac{1}{2}$ of its size as of the date of enactment
7 of this Act. The lack of a uniform standard for pub-
8 lic companies is a contributing factor to the declin-
9 ing interest in the United States public market,
10 harming the economy of the United States and re-
11 ducing investment opportunities for the public in the
12 United States.

13 (7) Article I, section 8, clause 3 of the Con-
14 stitution of the United States (commonly known as
15 the “Commerce Clause”) explicitly states that Con-
16 gress shall have power “To regulate Commerce with
17 foreign Nations, and among the several States, and
18 with the Indian Tribes”. The regulation of interstate
19 commerce is an explicitly Federal responsibility and
20 companies actively engaging in commerce across
21 State lines and raising capital on national markets
22 should be primarily regulated by the uniform anti-
23 fraud standard of the Federal Government.

24 (8) In the past, Congress has exercised this au-
25 thority in regards to State securities preemption

1 with both the Private Securities Litigation Reform
 2 Act of 1995 (Public Law 104–67; 109 Stat. 737),
 3 which was designed to curb abusive Federal class ac-
 4 tions, and the National Securities Markets Improve-
 5 ment Act of 1996 (Public Law 104–290; 110 Stat.
 6 3416) to ensure that States could not impose their
 7 own views of what should or should not be included
 8 in registration statements filed in connection with
 9 nationally traded securities.

10 (9) It is in the public interest to establish pre-
 11 emption of Federal regulators and courts over civil
 12 securities fraud, eliminating concurrent Federal and
 13 State jurisdiction over the specific companies cov-
 14 ered by this Act.

15 **SEC. 3. FEDERAL JURISDICTION OVER SECURITIES FRAUD.**

16 (a) SECURITIES EXCHANGE ACT OF 1934.—The Se-
 17 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
 18 is amended by inserting after section 21F (15 U.S.C.
 19 78u–6) the following:

20 **“SEC. 21G. FEDERAL JURISDICTION OVER SECURITIES**
 21 **FRAUD.**

22 “(a) DEFINITIONS.—In this section:

23 “(1) COVERED SECURITY.—The term ‘covered
 24 security’ means a security that is—

1 “(A)(i) listed, or authorized for listing, on
 2 the New York Stock Exchange or the National
 3 Market System of the Nasdaq Stock Market (or
 4 any successor to either such entity);

5 “(ii) listed, or authorized for listing, on a
 6 national securities exchange (or a tier or seg-
 7 ment of a national securities exchange) that has
 8 listing standards that the Commission deter-
 9 mines by rule (upon its own initiative or upon
 10 the basis of a petition) are substantially similar
 11 to the listing standards applicable to a security
 12 described in clause (i); or

13 “(iii) a security of the same issuer that is
 14 equal in seniority, or that is a senior security,
 15 to a security described in clause (i) or (ii); and

16 “(B) issued by a company that is engaged
 17 in interstate commerce.

18 “(2) SECURITIES FRAUD.—The term ‘securities
 19 fraud’ means any misrepresentation, omission, or
 20 manipulative or deceptive conduct knowingly or un-
 21 knowingly made or engaged in in connection with a
 22 covered security or transaction of a covered security.

23 “(b) PREEMPTION.—No law, rule, regulation, judg-
 24 ment, agreement, order, or other action of any State, or

1 political subdivision of a State, may regulate securities
2 fraud with respect to an issuer.

3 “(c) ORIGINAL JURISDICTION FOR FEDERAL
4 COURTS.—The district courts of the United States shall
5 have original jurisdiction over any civil action alleging se-
6 curities fraud with respect to an issuer and any such ac-
7 tion brought in any State court may be removed to the
8 Federal district court for the district in which the action
9 is pending.

10 “(d) PRESERVATION OF STATE AUTHORITY.—Con-
11 sistent with this section, the securities commission (or
12 agency or office performing like functions) of any State
13 shall retain jurisdiction under the laws of that State to
14 investigate and bring—

15 “(1) a civil enforcement action with respect to
16 fraud, deceit, or unlawful conduct in connection with
17 securities or securities transactions other than in
18 connection with a covered security or transactions of
19 a covered security; and

20 “(2) a criminal enforcement action with respect
21 to fraud, deceit, or unlawful conduct in connection
22 with a covered security or transactions of a covered
23 security if that enforcement action complies in all re-
24 spects with the legal requirements for securities
25 fraud under Federal law.

1 “(e) EFFECT.—This section shall be effective not-
 2 withstanding any other provision of law and shall super-
 3 sede any previously enacted conflicting provision.”.

4 (b) SECURITIES ACT OF 1933.—The Securities Act
 5 of 1933 (15 U.S.C. 77a et seq.) is amended by inserting
 6 after section 28 (15 U.S.C. 77z–3) the following:

7 **“SEC. 29. FEDERAL JURISDICTION OVER SECURITIES**
 8 **FRAUD.**

9 “(a) DEFINITIONS.—In this section:

10 “(1) COVERED SECURITY.—The term ‘covered
 11 security’ means a security that is—

12 “(A)(i) listed, or authorized for listing, on
 13 the New York Stock Exchange or the National
 14 Market System of the Nasdaq Stock Market (or
 15 any successor to either such entity);

16 “(ii) listed, or authorized for listing, on a
 17 national securities exchange (or a tier or seg-
 18 ment of a national securities exchange) that has
 19 listing standards that the Commission deter-
 20 mines by rule (upon its own initiative or upon
 21 the basis of a petition) are substantially similar
 22 to the listing standards applicable to a security
 23 described in clause (i); or

1 “(iii) a security of the same issuer that is
 2 equal in seniority, or that is a senior security,
 3 to a security described in clause (i) or (ii); and

4 “(B) issued by a company that is engaged
 5 in interstate commerce.

6 “(2) SECURITIES FRAUD.—The term ‘securities
 7 fraud’ means any misrepresentation, omission, or
 8 manipulative or deceptive conduct knowingly or un-
 9 knowingly made or engaged in in connection with a
 10 covered security or transaction of a covered security.

11 “(b) PREEMPTION.—No law, rule, regulation, judg-
 12 ment, agreement, order, or other action of any State, or
 13 political subdivision of a State, may regulate securities
 14 fraud with respect to an issuer.

15 “(c) ORIGINAL JURISDICTION FOR FEDERAL
 16 COURTS.—The district courts of the United States shall
 17 have original jurisdiction over any civil action alleging se-
 18 curities fraud with respect to an issuer and any such ac-
 19 tion brought in any State court may be removed to the
 20 Federal district court for the district in which the action
 21 is pending.

22 “(d) PRESERVATION OF STATE AUTHORITY.—Con-
 23 sistent with this section, the securities commission (or
 24 agency or office performing like functions) of any State

1 shall retain jurisdiction under the laws of that State to
2 investigate and bring—

3 “(1) a civil enforcement action with respect to
4 fraud, deceit, or unlawful conduct in connection with
5 securities or securities transactions other than in
6 connection with a covered security or transactions of
7 a covered security; and

8 “(2) a criminal enforcement action with respect
9 to fraud, deceit, or unlawful conduct in connection
10 with a covered security or transactions of a covered
11 security if that enforcement action complies in all re-
12 spects with the legal requirements for securities
13 fraud under Federal law.

14 “(e) EFFECT.—This section shall be effective not-
15 withstanding any other provision of law and shall super-
16 sede any previously enacted conflicting provision.”.

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