

115TH CONGRESS  
2D SESSION

# H. R. 5037

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

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 2018

Mr. MACARTHUR (for himself, Mr. DAVIDSON, Ms. TENNEY, and Mr. MCHENRY) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To provide for exclusive Federal jurisdiction over 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 “Securities Fraud Act  
5 of 2018”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

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

1 States jurisdiction, under a variety of civil securities  
2 fraud statutes (“blue sky laws”) that can overlap or  
3 contradict each other and Federal law.

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

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

14 (4) Complying with dual regulatory regimes  
15 places America’s public companies at a unique com-  
16 petitive disadvantage in an increasing global market-  
17 place.

18 (5) Reputational risk for United States publicly  
19 traded companies accused of “civil fraud” in State  
20 civil enforcement actions, often based on State law  
21 standards that differ from Federal law that other-  
22 wise governs these national markets, can cause im-  
23 mediate and irreparable financial harm to share-  
24 holders and unnecessary loss of jobs, even after such  
25 allegations are later found to be baseless.

1           (6) As of June 2017, there were 5,734 public  
2 companies, little more than in 1982, when the econ-  
3 omy was less than half its current size. The lack of  
4 a uniform standard for public companies is a con-  
5 tributing factor to the declining interest in the  
6 United States public market, harming the United  
7 States economy and reducing investment opportuni-  
8 ties for the United States public.

9           (7) The Commerce Clause, found in article I,  
10 section 8, clause 3 of the Constitution, explicitly  
11 states that the United States Congress shall have  
12 power “To regulate Commerce with foreign Nations,  
13 and among the several States, and with the Indian  
14 Tribes”. Interstate Commerce is an explicitly Fed-  
15 eral responsibility, and companies actively engaging  
16 in commerce across State lines and raising capital  
17 on national markets should be primarily regulated  
18 by the Federal Government’s uniform anti-fraud  
19 standard.

20           (8) In the past, Congress has exercised this au-  
21 thority in regards to State securities preemption  
22 with both the Private Securities Litigation Reform  
23 Act (“PSLRA”), which was designed to curb abusive  
24 Federal class actions (Public Law 104–67), and the  
25 National Securities Markets Improvements Act

1 (“NSMLA”) to ensure that States could not impose  
2 their own views of what should or should not be in-  
3 cluded in registration statements filed in connection  
4 with nationally traded securities (Public Law 104–  
5 290).

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

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

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

15 **“SEC. 21G. FEDERAL JURISDICTION OVER SECURITIES**  
16 **FRAUD.**

17 “(a) IN GENERAL.—No law, rule, regulation, judg-  
18 ment, agreement, order, or other action of any State or  
19 political subdivision thereof, shall regulate securities fraud  
20 with respect to an issuer.

21 “(b) ACTIONS BROUGHT EXCLUSIVELY IN FEDERAL  
22 COURT.—The district courts of the United States shall  
23 have original and exclusive jurisdiction over any civil ac-  
24 tion alleging securities fraud with respect to an issuer, and  
25 any such action brought in any State court shall be remov-

1 able to the Federal district court for the district in which  
2 the action is pending.

3 “(c) PRESERVATION OF STATE AUTHORITY.—Con-  
4 sistent with this section, the securities commission (or  
5 agency or office performing like functions) of any State  
6 shall retain jurisdiction under the laws of such State to  
7 investigate and bring—

8 “(1) civil enforcement actions with respect to  
9 fraud or deceit, or unlawful conduct in connection  
10 with securities or securities transactions other than  
11 in connection with a covered security or transactions  
12 of a covered security; and

13 “(2) criminal enforcement actions with respect  
14 to fraud or deceit, or unlawful conduct in connection  
15 with a covered security or transactions of a covered  
16 security provided such State criminal enforcement  
17 actions shall comply in all respects with the legal re-  
18 quirements for securities fraud under Federal law.

19 “(d) EFFECT.—These provisions shall be effective  
20 notwithstanding any other provision of law and shall su-  
21 perse any previously enacted conflicting provisions.

22 “(e) DEFINITIONS.—In this section—

23 “(1) SECURITIES FRAUD.—The term ‘securities  
24 fraud’ means any misrepresentation, omission, or  
25 manipulative or deceptive conduct knowingly or un-

1 knowingly made or engaged in connection with a  
2 covered security or transaction of a covered security.

3 “(2) COVERED SECURITY.—A security is a ‘cov-  
4 ered security’ if such security is—

5 “(A)(i) listed, or authorized for listing, on  
6 the New York Stock Exchange or the National  
7 Market System of the Nasdaq Stock Market (or  
8 any successor to such entities);

9 “(ii) listed, or authorized for listing, on a  
10 national securities exchange (or tier or segment  
11 thereof) that has listing standards that the  
12 Commission determines by rule (on its own ini-  
13 tiative or on the basis of a petition) are sub-  
14 stantially similar to the listing standards appli-  
15 cable to securities described in subparagraph  
16 (A); or

17 “(iii) a security of the same issuer that is  
18 equal in seniority or that is a senior security to  
19 a security described in subparagraph (A) or  
20 (B); and

21 “(B) issued by a company engaged in  
22 interstate commerce.”.

23 (b) SECURITIES ACT OF 1933.—The Securities Act  
24 of 1933 is amended by inserting after section 28 (15  
25 U.S.C. 77z-3) the following new section:

1 **“SEC. 29. FEDERAL JURISDICTION OVER SECURITIES**  
2 **FRAUD.**

3 “(a) IN GENERAL.—No law, rule, regulation, judg-  
4 ment, agreement, order, or other action of any State or  
5 political subdivision thereof, shall regulate securities fraud  
6 with respect to an issuer.

7 “(b) ACTIONS BROUGHT EXCLUSIVELY IN FEDERAL  
8 COURT.—The district courts of the United States shall  
9 have original and exclusive jurisdiction over any civil ac-  
10 tion alleging securities fraud with respect to an issuer, and  
11 any such action brought in any State court shall be remov-  
12 able to the Federal district court for the district in which  
13 the action is pending.

14 “(c) PRESERVATION OF STATE AUTHORITY.—Con-  
15 sistent with this section, the securities commission (or  
16 agency or office performing like functions) of any State  
17 shall retain jurisdiction under the laws of such State to  
18 investigate and bring—

19 “(1) civil enforcement actions with respect to  
20 fraud or deceit, or unlawful conduct in connection  
21 with securities or securities transactions other than  
22 in connection with a covered security or transactions  
23 of a covered security; and

24 “(2) criminal enforcement actions with respect  
25 to fraud or deceit, or unlawful conduct in connection  
26 with a covered security or transactions of a covered

1 security provided such State criminal enforcement  
2 actions shall comply in all respects with the legal re-  
3 quirements for securities fraud under Federal law.

4 “(d) EFFECT.—These provisions shall be effective  
5 notwithstanding any other provision of law and shall su-  
6 perse any previously enacted conflicting provisions.

7 “(e) DEFINITIONS.—In this section—

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

13 “(2) COVERED SECURITY.—A security is a ‘cov-  
14 ered security’ if such security is—

15 “(A)(i) listed, or authorized for listing, on  
16 the New York Stock Exchange or the National  
17 Market System of the Nasdaq Stock Market (or  
18 any successor to such entities);

19 “(ii) listed, or authorized for listing, on a  
20 national securities exchange (or tier or segment  
21 thereof) that has listing standards that the  
22 Commission determines by rule (on its own ini-  
23 tiative or on the basis of a petition) are sub-  
24 stantially similar to the listing standards appli-

1 cable to securities described in subparagraph  
2 (A); or

3 “(iii) a security of the same issuer that is  
4 equal in seniority or that is a senior security to  
5 a security described in subparagraph (A) or  
6 (B); and

7 “(B) issued by a company engaged in  
8 interstate commerce.”.

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