

112TH CONGRESS
1ST SESSION

S. 1894

To deter terrorism, provide justice for victims, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2011

Mr. SCHUMER (for himself, Mr. WHITEHOUSE, Mr. GRAHAM, Mr. KYL, Mr. HATCH, and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To deter terrorism, provide justice for victims, 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 “Justice Against Spon-
5 sors of Terrorism Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) International terrorism is a serious and
9 deadly problem that threatens the vital interests of
10 the United States.

1 (2) The Constitution confers upon Congress the
2 power to punish crimes against the law of nations
3 and to carry out the treaty obligations of the United
4 States, and therefore Congress may by law impose
5 penalties relating to the provision of material sup-
6 port to foreign organizations engaged in terrorist ac-
7 tivity, and allow for victims of international ter-
8 rorism to recover damages from those who have
9 harmed them.

10 (3) International terrorism affects the inter-
11 state and foreign commerce of the United States by
12 harming international trade and market stability,
13 and limiting international travel by United States
14 citizens as well as foreign visitors to the United
15 States.

16 (4) Some foreign terrorist organizations, acting
17 through affiliated groups or individuals, raise signifi-
18 cant funds outside the United States for conduct di-
19 rected and targeted at the United States.

20 (5) Foreign organizations that engage in ter-
21 rorist activity are so tainted by their criminal con-
22 duct that any contribution to such an organization
23 facilitates that conduct.

24 (6) The imposition of civil liability at every
25 point along the causal chain of terrorism is nec-

1 essary to deter the flow of terrorism’s lifeblood,
2 money. As recognized by Judge Richard Posner in
3 *Boim v. Holy Land Foundation for Relief and De-*
4 *velopment*, Nos. 05–1815, 05–1816, 05–1821, 05–
5 1822, __ F.3d __ (7th Cir. 2008) (en banc), “Dam-
6 ages are a less effective remedy against terrorists
7 and their organizations than against their financial
8 angels . . . suits against financiers of terrorism can
9 cut the terrorists’ lifeline.” Moreover, the statute of
10 limitations for such claims must be extensive, for as
11 the Seventh Circuit notes, “Seed money for ter-
12 rorism can sprout acts of violence long after the in-
13 vestment”.

14 (7) The reasoning like that of the United States
15 Court of Appeals for the Second Circuit in *In Re:*
16 *Terrorists Attacks on September 11, 2001*, 538
17 F.3d 71 (2d Cir. 2008) undermine important
18 counter-terrorism policies of the United States, by
19 affording undue protection from civil liability to per-
20 sons, entities and states that provide material sup-
21 port or resources to foreign terrorist organizations,
22 and by depriving victims of international terrorism
23 of meaningful access to court to seek redress for
24 their injuries.

1 (8) The United Nations Security Council de-
2 clared in Resolution 1373, adopted on September
3 28, 2001, that all states have an affirmative obliga-
4 tion to “refrain from providing any form of support,
5 active or passive, to entities or persons involved in
6 terrorist acts,” and to “ensure that any person who
7 participates in the financing, planning, preparation
8 or perpetration of terrorist acts or in supporting ter-
9 rorist acts is brought to justice”.

10 (9) Consistent with these declarations, no state
11 possesses the discretion to engage knowingly in the
12 financing or sponsorship of terrorism, whether di-
13 rectly or indirectly.

14 (10) Persons, entities or states that knowingly
15 or recklessly contribute material support or re-
16 sources, directly or indirectly, to persons or organi-
17 zations that pose a significant risk of committing
18 acts of terrorism that threaten the security of
19 United States nationals or the national security, for-
20 eign policy, or economy of the United States, nec-
21 essarily direct their conduct at the United States,
22 and should reasonably anticipate being haled into
23 court in the United States to answer for such activi-
24 ties.

1 (11) The United States has a vital interest in
2 providing persons and entities injured as a result of
3 terrorist attacks committed within the United States
4 with full access to court to pursue civil claims
5 against persons, entities, or states that have know-
6 ingly or recklessly provided material support or re-
7 sources, directly or indirectly, to the persons or or-
8 ganizations responsible for their injuries.

9 (b) PURPOSE.—The purpose of this Act is to provide
10 civil litigants with the fullest possible basis, consistent
11 with the Constitution, to seek relief against persons, enti-
12 ties and foreign states, wherever acting and wherever they
13 may be found, which have provided material support or
14 resources, directly or indirectly, to foreign organizations
15 that engage in terrorist activities against the United
16 States.

17 **SEC. 3. FOREIGN SOVEREIGN IMMUNITY.**

18 (a) EXCEPTIONS.—Section 1605(a) of title 28,
19 United States Code, is amended—

20 (1) by amending paragraph (5) to read as fol-
21 lows:

22 “(5) not otherwise encompassed in paragraph
23 (2), in which money damages are sought against a
24 foreign state arising out of physical injury or death,
25 or damage to or loss of property, occurring in the

1 United States and caused by the tortious act or
2 omission of that foreign state or of any official or
3 employee of that foreign state while acting within
4 the scope of his office or employment (regardless of
5 where the underlying tortious act or omission oc-
6 curs), including any statutory or common law tort
7 claim arising out of an act of extrajudicial killing,
8 aircraft sabotage, hostage taking, terrorism, or the
9 provision of material support or resources for such
10 an act, or any claim for contribution or indemnity
11 relating to a claim arising out of such an act, except
12 this paragraph shall not apply to—

13 “(A) any claim based upon the exercise or
14 performance or the failure to exercise or per-
15 form a discretionary function, regardless of
16 whether the discretion is abused; or

17 “(B) any claim arising out of malicious
18 prosecution, abuse of process, libel, slander,
19 misrepresentation, deceit, interference with con-
20 tract rights, or any claim for emotional distress
21 or derivative injury suffered as a result of an
22 event or injury to another person that occurs
23 outside of the United States; or”; and

24 (2) by inserting after subsection (d) the fol-
25 lowing:

1 “(e) DEFINITIONS.—For purposes of subsection
2 (a)(5)—

3 “(1) the terms ‘aircraft sabotage’, ‘hostage tak-
4 ing’, and ‘material support or resources’ have the
5 meanings given those terms in section 1605A(h);
6 and

7 “(2) the term ‘terrorism’ means international
8 terrorism, and domestic terrorism, as those terms
9 are defined in section 2331 of title 18.”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 subsection (a) shall apply to all proceedings pending in
12 any form on the date of the enactment of this Act and
13 to all proceedings commenced on or after such date of en-
14 actment.

15 **SEC. 4. AIDING AND ABETTING LIABILITY FOR CIVIL AC-**
16 **TIONS REGARDING TERRORIST ACTS.**

17 (a) IN GENERAL.—Section 2333 of title 18, United
18 States Code, is amended by adding at the end the fol-
19 lowing:

20 “(d) LIABILITY.—In an action arising under sub-
21 section (a), liability may be asserted as to the person or
22 persons who committed such act of international terrorism
23 or any person or entity that aided, abetted, provided mate-
24 rial support or resources (as defined in section

1 2339A(b)(1)) to, or conspired with the person or persons
 2 who committed such an act of international terrorism.

3 “(e) NON-APPLICABILITY OF LAW OF PRE-
 4 CLUSION.—Any civil action or claim that seeks recovery
 5 under this chapter for conduct that was the basis of a
 6 civil action or claim previously dismissed for lack of sub-
 7 ject matter jurisdiction for failure to meet the require-
 8 ments for an exception under section 1605(a) of title 28
 9 is not subject to dismissal under the law of preclusion.”.

10 (b) EFFECTIVE DATE.—The amendment made by
 11 subsection (a) shall apply to all proceedings pending in
 12 any form on the date of the enactment of this Act and
 13 to all proceedings commenced on or after such date of en-
 14 actment.

15 (c) EFFECT ON FOREIGN SOVEREIGN IMMUNITIES
 16 ACT.—Nothing in the amendments made by this section
 17 affects a foreign state’s immunity from jurisdiction under
 18 other law.

19 **SEC. 5. JURISDICTION FOR CIVIL ACTIONS REGARDING**
 20 **TERRORIST ACTS.**

21 (a) IN GENERAL.—Section 2334 of title 18, United
 22 States Code, is amended by inserting at the end the fol-
 23 lowing:

24 “(e) JURISDICTION.—The district courts shall have
 25 personal jurisdiction, to the maximum extent permissible

1 under the Fifth Amendment of the United States Con-
2 stitution, over any person who aids and abets an act of
3 international terrorism or who provides material support
4 or resources as set forth in sections 2339A, 2339B, or
5 2339C of this title, for acts of international terrorism in
6 which any national of the United States suffers injury in
7 his or her person, property or business by reason of such
8 an act in violation of section 2333 of this title.”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to all proceedings pending in any
11 form on the date of the enactment of this Act and to all
12 proceedings commenced on or after such the date of enact-
13 ment.

14 **SEC. 6. LIABILITY FOR GOVERNMENT OFFICIALS IN CIVIL**
15 **ACTIONS REGARDING TERRORIST ACTS.**

16 (a) IN GENERAL.—Section 2337 of title 18, United
17 States Code, is amended to read as follows:

18 **“§ 2337. Suits against Government officials**

19 “No action shall be maintained under section 2333
20 of this title against the United States, an agency of the
21 United States, or an officer or employee of the United
22 States or any agency thereof acting within his or her offi-
23 cial capacity or under color of legal authority.”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 this section shall apply to all proceedings pending in any

1 form on the date of the enactment of this Act and to all
2 proceedings commenced on or after such date of enact-
3 ment.

4 **SEC. 7. STATUTE OF LIMITATIONS FOR CIVIL ACTIONS RE-**
5 **GARDING TERRORIST ACTS.**

6 (a) IN GENERAL.—Section 2335 of title 18, United
7 States Code, is amended—

8 (1) in subsection (a), by striking “four years”
9 and inserting “15 years”; and

10 (2) in subsection (b), by striking “four years”
11 and inserting “15 years”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to all proceedings pending in any
14 form on the date of the enactment of this Act and to all
15 proceedings commenced on or after such date of enact-
16 ment.

17 (c) EFFECT ON DISMISSED CAUSES OF ACTION.—
18 Any private civil action arising from a violation of the
19 Anti-Terrorism Act of 1991—

20 (1) that was dismissed as time barred prior to
21 the date of enactment of this Act, and

22 (2) that would have been timely filed pursuant
23 to section 2335 of title 18, United States Code, as
24 amended by this section,

1 may be refiled not later than 90 days after the date of
2 enactment of this Act.

3 **SEC. 8. SEVERABILITY.**

4 If any provision of this Act or the amendments made
5 by this Act or the application thereof to any person or
6 circumstance is held invalid, the remainder of this Act,
7 the amendments made by this Act, or the application
8 thereof to other persons not similarly situated or to other
9 circumstances shall not be affected by such invalidation.

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