

Calendar No. 362

114TH CONGRESS
2^D SESSION

S. 2040

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 2015

Mr. CORNYN (for himself, Mr. SCHUMER, Mr. GRASSLEY, Mrs. FEINSTEIN, Mr. HATCH, Mr. MENENDEZ, Mr. GRAHAM, Mr. WHITEHOUSE, Mr. LEE, Ms. KLOBUCHAR, Mr. FLAKE, Mr. FRANKEN, Mr. CRUZ, Mr. COONS, Mr. TILLIS, Mr. BLUMENTHAL, Mr. PERDUE, Mr. MARKEY, Mrs. GILLIBRAND, and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

FEBRUARY 3, 2016

Reported by Mr. GRASSLEY, with an amendment

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

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”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

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

3 (1) International terrorism is a serious and
4 deadly problem that threatens the vital interests of
5 the United States.

6 (2) The Constitution confers upon Congress the
7 power to punish crimes against the law of nations
8 and therefore Congress may by law impose penalties
9 on those who provide material support to foreign or-
10 ganizations engaged in terrorist activity, and allow
11 for victims of international terrorism to recover
12 damages from those who have harmed them.

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

19 (4) Some foreign terrorist organizations, acting
20 through affiliated groups or individuals, raise signifi-
21 cant funds outside of the United States for conduct
22 directed and targeted at the United States.

23 (5) It is necessary to recognize the substantive
24 causes of action for aiding and abetting and con-
25 spiracy liability under the Anti-Terrorism Act of
26 1987 (22 U.S.C. 5201 et seq.).

1 (6) The decision of the United States Court of
2 Appeals for the District of Columbia in *Halberstam*
3 *v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), which has
4 been widely recognized as the leading case regarding
5 Federal civil aiding and abetting and conspiracy li-
6 ability, including by the Supreme Court of the
7 United States, provides the proper legal framework
8 for how such liability should function in the context
9 of the Anti-Terrorism Act of 1987 (22 U.S.C. 5201
10 et seq.).

11 (7) The United Nations Security Council de-
12 clared in Resolution 1373, adopted on September
13 28, 2001, that all countries have an affirmative obli-
14 gation to “[r]efrain from providing any form of sup-
15 port, active or passive, to entities or persons involved
16 in terrorist acts,” and to “[e]nsure that any person
17 who participates in the financing, planning, prepara-
18 tion or perpetration of terrorist acts or in supporting
19 terrorist acts is brought to justice”.

20 (8) Consistent with these declarations, no coun-
21 try has the discretion to engage knowingly in the fi-
22 nancing or sponsorship of terrorism, whether di-
23 rectly or indirectly.

24 (9) Persons, entities, or countries that know-
25 ingly or recklessly contribute material support or re-

1 sources, directly or indirectly, to persons or organi-
2 zations that pose a significant risk of committing
3 acts of terrorism that threaten the security of na-
4 tionals of the United States or the national security,
5 foreign policy, or economy of the United States, nec-
6 essarily direct their conduct at the United States,
7 and should reasonably anticipate being brought to
8 court in the United States to answer for such activi-
9 ties.

10 (10) The United States has a vital interest in
11 providing persons and entities injured as a result of
12 terrorist attacks committed within the United States
13 with full access to the court system in order to pur-
14 sue civil claims against persons, entities, or countries
15 that have knowingly or recklessly provided material
16 support or resources, directly or indirectly, to the
17 persons or organizations responsible for their inju-
18 ries.

19 (b) PURPOSE.—The purpose of this Act is to provide
20 civil litigants with the broadest possible basis, consistent
21 with the Constitution of the United States, to seek relief
22 against persons, entities, and foreign countries, wherever
23 acting and wherever they may be found, that have pro-
24 vided material support, directly or indirectly, to foreign

1 organizations or persons that engage in terrorist activities
2 against the United States.

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

4 Section 1605(a) of title 28, United States Code, is
5 amended—

6 (1) by amending paragraph (5) to read as fol-
7 lows:

8 “(5) not otherwise encompassed in paragraph
9 (2), in which money damages are sought against a
10 foreign state arising out of physical injury or death,
11 or damage to or loss of property, occurring in the
12 United States and caused by the tortious act or
13 omission of that foreign state or of any official or
14 employee of that foreign state while acting within
15 the scope of the office or employment of the official
16 or employee (regardless of where the underlying
17 tortious act or omission occurs), including any statu-
18 tory or common law tort claim arising out of an act
19 of extrajudicial killing, aircraft sabotage, hostage
20 taking, terrorism, or the provision of material sup-
21 port or resources for such an act, or any claim for
22 contribution or indemnity relating to a claim arising
23 out of such an act, except this paragraph shall not
24 apply to—

1 “(A) any claim based upon the exercise or
2 performance of, or the failure to exercise or
3 perform, a discretionary function, regardless of
4 whether the discretion is abused; or

5 “(B) any claim arising out of malicious
6 prosecution, abuse of process, libel, slander,
7 misrepresentation, deceit, interference with con-
8 tract rights, or any claim for emotional distress
9 or derivative injury suffered as a result of an
10 event or injury to another person that occurs
11 outside of the United States; or”;

12 (2) by inserting after subsection (d) the fol-
13 lowing:

14 “(e) DEFINITIONS.—For purposes of subsection
15 (a)(5)—

16 “(1) the terms ‘aircraft sabotage’, ‘extrajudicial
17 killing’, ‘hostage taking’, and ‘material support or
18 resources’ have the meanings given those terms in
19 section 1605A(h); and

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

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

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

6 “(d) **LIABILITY.**—In an action under subsection (a)
7 for an injury arising from an act of international terrorism
8 committed, planned, or authorized by an organization that
9 had been designated as a foreign terrorist organization
10 under section 219 of the Immigration and Nationality Act
11 (8 U.S.C. 1189), as of the date on which such act of inter-
12 national terrorism was committed, planned, or authorized,
13 or that was so designated as a result of such act of inter-
14 national terrorism, liability may be asserted as to any per-
15 son who aided, abetted, or conspired with the person who
16 committed such an act of international terrorism.”.

17 (b) **EFFECT ON FOREIGN SOVEREIGN IMMUNITIES**
18 **ACT.**—Nothing in the amendments made by this section
19 affects immunity of a foreign state, as that term is defined
20 in section 1603 of title 28, United States Code, from juris-
21 diction under other law.

22 **SEC. 5. PERSONAL JURISDICTION FOR CIVIL ACTIONS RE-**
23 **GARDING TERRORIST ACTS.**

24 Section 2334 of title 18, United States Code, is
25 amended by inserting at the end the following:

1 “(e) **PERSONAL JURISDICTION.**—The district courts
 2 shall have personal jurisdiction, to the maximum extent
 3 permissible under the 5th Amendment to the Constitution
 4 of the United States, over any person who commits or aids
 5 and abets an act of international terrorism or otherwise
 6 sponsors such act or the person who committed such act,
 7 for acts of international terrorism in which any national
 8 of the United States suffers injury in his or her person,
 9 property, or business by reason of such an act in violation
 10 of section 2333.”.

11 **SEC. 6. LIABILITY FOR GOVERNMENT OFFICIALS IN CIVIL**
 12 **ACTIONS REGARDING TERRORIST ACTS.**

13 Section 2337 of title 18, United States Code, is
 14 amended to read as follows:

15 **“§ 2337. Suits against Government officials**

16 “**No action may be maintained under section 2333**
 17 **against—**

18 “(1) the United States;

19 “(2) an agency of the United States; or

20 “(3) an officer or employee of the United States
 21 or any agency of the United States acting within the
 22 official capacity of the officer or employee or under
 23 color of legal authority.”.

1 **SEC. 7. SEVERABILITY.**

2 If any provision of this Act or any amendment made
 3 by this Act, or the application of a provision or amend-
 4 ment to any person or circumstance, is held to be invalid,
 5 the remainder of this Act and the amendments made by
 6 this Act, and the application of the provisions and amend-
 7 ments to any other person not similarly situated or to
 8 other circumstances, shall not be affected by the holding.

9 **SEC. 8. EFFECTIVE DATE.**

10 The amendments made by this Act shall apply to any
 11 civil action—

12 (1) pending on, or commenced on or after, the
 13 date of enactment of this Act; and

14 (2) arising out of an injury to a person, prop-
 15 erty, or business on or after September 11, 2001.

16 **SECTION 1. SHORT TITLE.**

17 *This Act may be cited as the “Justice Against Spon-*
 18 *sors of Terrorism Act”.*

19 **SEC. 2. FINDINGS AND PURPOSE.**

20 (a) *FINDINGS.*—*Congress finds the following:*

21 (1) *International terrorism is a serious and*
 22 *deadly problem that threatens the vital interests of the*
 23 *United States.*

24 (2) *The Constitution confers upon Congress the*
 25 *power to punish crimes against the law of nations*
 26 *and therefore Congress may by law impose penalties*

1 *on those who provide material support to foreign or-*
2 *ganizations engaged in terrorist activity, and allow*
3 *for victims of international terrorism to recover dam-*
4 *ages from those who have harmed them.*

5 *(3) International terrorism affects the interstate*
6 *and foreign commerce of the United States by harm-*
7 *ing international trade and market stability, and*
8 *limiting international travel by United States citi-*
9 *zens as well as foreign visitors to the United States.*

10 *(4) Some foreign terrorist organizations, acting*
11 *through affiliated groups or individuals, raise signifi-*
12 *cant funds outside of the United States for conduct*
13 *directed and targeted at the United States.*

14 *(5) It is necessary to recognize the substantive*
15 *causes of action for aiding and abetting and con-*
16 *spiracy liability under the Anti-Terrorism Act of*
17 *1987 (22 U.S.C. 5201 et seq.).*

18 *(6) The decision of the United States Court of*
19 *Appeals for the District of Columbia in Halberstam*
20 *v. Welch, 705 F.2d 472 (D.C. Cir. 1983), which has*
21 *been widely recognized as the leading case regarding*
22 *Federal civil aiding and abetting and conspiracy li-*
23 *ability, including by the Supreme Court of the United*
24 *States, provides the proper legal framework for how*

1 *such liability should function in the context of the*
2 *Anti-Terrorism Act of 1987 (22 U.S.C. 5201 et seq.).*

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4 *clared in Resolution 1373, adopted on September 28,*
5 *2001, that all countries have an affirmative obliga-*
6 *tion to “[r]efrain from providing any form of sup-*
7 *port, active or passive, to entities or persons involved*
8 *in terrorist acts,” and to “[e]nsure that any person*
9 *who participates in the financing, planning, prepara-*
10 *tion or perpetration of terrorist acts or in supporting*
11 *terrorist acts is brought to justice”.*

12 *(8) Consistent with these declarations, no coun-*
13 *try has the discretion to engage knowingly in the fi-*
14 *nancing or sponsorship of terrorism, whether directly*
15 *or indirectly.*

16 *(9) Persons, entities, or countries that knowingly*
17 *or recklessly contribute material support or resources,*
18 *directly or indirectly, to persons or organizations that*
19 *pose a significant risk of committing acts of terrorism*
20 *that threaten the security of nationals of the United*
21 *States or the national security, foreign policy, or*
22 *economy of the United States, necessarily direct their*
23 *conduct at the United States, and should reasonably*
24 *anticipate being brought to court in the United States*
25 *to answer for such activities.*

1 (10) *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 the court system in order to pursue*
5 *civil claims against persons, entities, or countries*
6 *that have knowingly or recklessly provided material*
7 *support or resources, directly or indirectly, to the per-*
8 *sons or organizations responsible for their injuries.*

9 (b) *PURPOSE.*—*The purpose of this Act is to provide*
10 *civil litigants with the broadest possible basis, consistent*
11 *with the Constitution of the United States, to seek relief*
12 *against persons, entities, and foreign countries, wherever*
13 *acting and wherever they may be found, that have provided*
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16 *the United States.*

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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 omis-*
2 *sion of that foreign state or of any official or em-*
3 *ployee of that foreign state while acting within the*
4 *scope of the office or employment of the official or em-*
5 *ployee (regardless of where the underlying tortious act*
6 *or omission occurs), including any statutory or com-*
7 *mon law tort claim arising out of an act of*
8 *extrajudicial killing, aircraft sabotage, hostage taking,*
9 *terrorism, or the provision of material support or re-*
10 *sources for such an act, or any claim for contribution*
11 *or indemnity relating to a claim arising out of such*
12 *an act, except this paragraph shall not apply to—*

13 *“(A) any claim based upon the exercise or*
14 *performance of, 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, mis-*
19 *representation, deceit, interference with contract*
20 *rights, or any claim for emotional distress or de-*
21 *rivative injury suffered as a result of an event*
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23 *of the United States; or”;* and

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 11 *shall have personal jurisdiction, to the maximum extent*
 12 *permissible under the 5th Amendment to the Constitution*
 13 *of the United States, over any person who commits or aids*
 14 *and abets an act of international terrorism or who con-*
 15 *spires with the person who committed such act, for acts of*
 16 *international terrorism in which any national of the*
 17 *United States suffers injury in his or her person, property,*
 18 *or business by reason of such an act in violation of section*
 19 *2333.”.*

20 **SEC. 6. LIABILITY FOR GOVERNMENT OFFICIALS IN CIVIL**
 21 **ACTIONS REGARDING TERRORIST ACTS.**

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7 or any agency of the United States acting within the
8 official capacity of the officer or employee or under
9 color of legal authority.”.

10 **SEC. 7. SEVERABILITY.**

11 *If any provision of this Act or any amendment made*
12 *by this Act, or the application of a provision or amendment*
13 *to any person or circumstance, is held to be invalid, the*
14 *remainder of this Act and the amendments made by this*
15 *Act, and the application of the provisions and amendments*
16 *to any other person not similarly situated or to other cir-*
17 *cumstances, shall not be affected by the holding.*

18 **SEC. 8. EFFECTIVE DATE.**

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20 *civil action—*

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22 *date of enactment of this Act; and*

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