

Purpose: In the nature of a substitute.

S. 2040

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

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO BE PROPOSED BY MR. CORNYN

Viz:

Strike all after the enacting clause and insert the following:

~~Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,~~

SECTION 1. SHORT TITLE.

This Act may be cited as the “Justice Against Sponsors of Terrorism Act”.

SEC. 2. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds the following:

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

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

(3) International terrorism affects the interstate and foreign commerce of the United States by harming international trade and market stability, and limiting international travel by United States citizens as well as foreign visitors to the United States.

(4) Some foreign terrorist organizations, acting through affiliated groups or individuals, raise significant funds outside of the United States for conduct directed and targeted at the United States.

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

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

(7) The United Nations Security Council declared in Resolution 1373, adopted on September 28, 2001, that all countries have an affirmative obligation to “[r]efrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts,” and to “[e]nsure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice”.

(8) Consistent with these declarations, no country has the discretion to engage knowingly in the financing or sponsorship of terrorism, whether directly or indirectly.

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

(10) The United States has a vital interest in providing persons and entities injured as a result of terrorist attacks committed within the United States with full access to the court system in order to pursue civil claims against persons, entities, or countries that have knowingly or recklessly provided material support or resources, directly or indirectly, to the persons or organizations responsible for their injuries.

(b) Purpose.—The purpose of this Act is to provide civil litigants with the broadest possible basis, consistent with the Constitution of the United States, to seek relief against persons, entities, and foreign countries, wherever acting and wherever they may be found, that have provided material support, directly or indirectly, to foreign organizations or persons that engage in terrorist activities against the United States.

SEC. 3. FOREIGN SOVEREIGN IMMUNITY.

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

(1) by amending paragraph (5) to read as follows:

“(5) not otherwise encompassed in paragraph (2), in which money damages are sought against a foreign state arising out of physical injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of the office or employment of the official or employee (regardless of where the underlying tortious act or omission occurs), including any statutory or common law tort claim arising out of an act of extrajudicial killing, aircraft sabotage, hostage taking,

terrorism, or the provision of material support or resources for such an act, or any claim for contribution or indemnity relating to a claim arising out of such an act, except this paragraph shall not apply to—

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

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

(2) by inserting after subsection (d) the following:

“(e) Definitions.—For purposes of subsection (a)(5)—

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

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

SEC. 4. AIDING AND ABETTING LIABILITY FOR CIVIL ACTIONS REGARDING TERRORIST ACTS.

(a) In General.—Section 2333 of title 18, United States Code, is amended by adding at the end the following:

“(d) Liability.—In an action under subsection (a) for an injury arising from an act of international terrorism committed, planned, or authorized by an organization that had been designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189), as of the date on which such act of international terrorism was committed, planned, or authorized, ~~or that was so designated as a result of such act of international terrorism~~, liability may be asserted as to any person who ~~aided, abetted, or conspired~~ **aids and abets, by knowingly providing substantial assistance, or who conspires** with the person who committed such an act of international terrorism.”.

(b) Effect on Foreign Sovereign Immunities Act.—Nothing in the amendments made by this section affects immunity of a foreign state, as that term is defined in section 1603 of title 28, United States Code, from jurisdiction under other law.

SEC. 5. PERSONAL JURISDICTION FOR CIVIL ACTIONS REGARDING TERRORIST ACTS.

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

“(e) Personal Jurisdiction.—The district courts shall have personal jurisdiction, to the maximum extent permissible under the 5th Amendment to the Constitution of the United States, over any person who commits or aids and abets an act of international terrorism or ~~otherwise sponsors such act or~~ **who conspires with** the person who committed such act, for acts of international terrorism in which any national of the United States suffers injury in his or her person, property, or business by reason of such an act in violation of section 2333.”.

1 SEC. 6. LIABILITY FOR GOVERNMENT OFFICIALS IN
2 CIVIL ACTIONS REGARDING TERRORIST ACTS.

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

4 “2337. Suits against Government officials

5 “No action may be maintained under section 2333 against—

6 “(1) the United States;

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

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

10 SEC. 7. SEVERABILITY.

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

16 SEC. 8. EFFECTIVE DATE.

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

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

19 (2) arising out of an injury to a person, property, or business on or after September 11,
20 2001.

21 ~~Passed the Senate December 11, 2014.~~

22 ~~Attest:~~

23 ~~Secretary.66514~~

24 ~~113th CONGRESS~~

25 ~~2d Session~~

26 ~~S. 1535~~

27
28 ~~AN ACT~~

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