

JUSTICE FOR VICTIMS OF TERRORISM ACT

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JULY 18, 2000.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
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Mr. HYDE, from the Committee on the Judiciary,
submitted the following

SUPPLEMENTAL REPORT

[To accompany H.R. 3485]

Pursuant to the provisions of rule XIII, clause 3(a)(2), the Committee on the Judiciary, to whom was referred the bill (H.R. 3485), modifying the enforcement of certain anti-terrorism judgments, and for other purposes, herein files a supplemental report on the bill for the correction of a technical error in its previous report on the bill.

House Report 106-733 inadvertently contained language which was not considered by the committee. This supplemental report merely strikes section 2 of the original report 106-733 relating to paygo adjustment.

For an explanation of the bill, and for the additional views submitted therewith, please refer to House Report 106-733.

The committee having considered the bill reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

SECTION 1. ENFORCEMENT OF CERTAIN ANTI-TERRORISM JUDGMENTS.

(a) SHORT TITLE.—This Act may be cited as the “Justice for Victims of Terrorism Act”.

(b) DEFINITION.—

(1) IN GENERAL.—Section 1603(b) of title 28, United States Code, is amended—

(A) in paragraph (3) by striking the period and inserting a semicolon and “and”;

(B) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(C) by striking “(b)” through “entity—” and inserting the following:

“(b) An ‘agency or instrumentality of a foreign state’ means—
“(1) any entity—”; and

(D) by adding at the end the following:

“(2) for purposes of sections 1605(a)(7) and 1610 (a)(7) and (f), any entity as defined under subparagraphs (A) and (B) of paragraph (1), and subparagraph (C) of paragraph (1) shall not apply.”.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 1391(f)(3) of title 28, United States Code, is amended by striking “1603(b)” and inserting “1603(b)(1)”.

(c) ENFORCEMENT OF JUDGMENTS.—Section 1610(f) of title 28, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (A) by striking “(including any agency or instrumentality or such state)” and inserting “(including any agency or instrumentality of such state)”; and

(B) by adding at the end the following:

“(C) Notwithstanding any other provision of law, moneys due from or payable by the United States (including any agency, subdivision or instrumentality thereof) to any state against which a judgment is pending under section 1605(a)(7) shall be subject to attachment and execution, in like manner and to the same extent as if the United States were a private person.”; and

(2) by adding at the end the following:

“(3)(A) Subject to subparagraph (B), upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the President may waive this subsection in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against any property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

“(B) A waiver under this paragraph shall not apply to—

“(i) if property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations has been used for any nondiplomatic purpose (including use as rental property), the proceeds of such use; or

“(ii) if any asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations is sold or otherwise transferred for value to a third party, the proceeds of such sale or transfer.

“(C) In this paragraph, the term ‘property subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations’ and the term ‘asset subject to the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations’ mean any property or asset, respectively, the attachment in aid of execution or execution of which would result in a violation of an obligation of the United States under the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations, as the case may be.

“(4) For purposes of this subsection, all assets of any agency or instrumentality of a foreign state shall be treated as assets of that foreign state.”.

(d) TECHNICAL AND CONFORMING AMENDMENT.—Section 117(d) of the Treasury Department Appropriations Act, 1999 (Public Law 105–277; 112 Stat. 2681–492) is repealed.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to any claim for which a foreign state is not immune under section 1605(a)(7) of title 28, United States Code, arising before, on, or after the date of enactment of this Act.

SEC. 2. TECHNICAL AMENDMENTS TO IMPROVE LITIGATION PROCEDURES AND REMOVE LIMITATIONS ON LIABILITY.

(a) GENERAL EXCEPTIONS TO JURISDICTIONAL IMMUNITY OF FOREIGN STATE.—Section 1605 of title 28, United States Code, is amended by adding at the end the following:

“(h) If a foreign state, or its agency or instrumentality, is a party to an action pursuant to subsection (a)(7) and fails to furnish any testimony, document, or other thing upon a duly issued discovery order by the court in the action, such failure shall be deemed an admission of any fact with respect to which the discovery order relates. Nothing in this subsection shall supersede the limitations set forth in subsection (g).”.

(b) EXTENT OF LIABILITY.—Section 1606 of title 28, United States Code, is amended by adding at the end the following: “No Federal or State statutory limits shall apply to the amount of compensatory, actual, or punitive damages permitted to be awarded to persons under section 1605(a)(7) and this section.”.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

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PART IV—JURISDICTION AND VENUE

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CHAPTER 87—DISTRICT COURTS; VENUE

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§ 1391. Venue generally

(a) * * *

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(f) A civil action against a foreign state as defined in section 1603(a) of this title may be brought—

(1) * * *

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(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b)(1) of this title; or

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CHAPTER 97—JURISDICTIONAL IMMUNITIES OF FOREIGN STATES

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§ 1603. Definitions

For purposes of this chapter—

(a) * * *

[(b) An “agency or instrumentality of a foreign state” means any entity—] (b) An “agency or instrumentality of a foreign state” means—

(1) any entity—

[(1)] (A) which is a separate legal person, corporate or otherwise, and

[(2)] (B) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

[(3)] (C) which is neither a citizen of a State of the United States as defined in section 1332(c) and (d) of this title, nor created under the laws of any third country[.]; and

(2) for purposes of sections 1605(a)(7) and 1610 (a)(7) and (f), any entity as defined under subparagraphs (A) and (B) of

paragraph (1), and subparagraph (C) of paragraph (1) shall not apply.

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§ 1605. General exceptions to the jurisdictional immunity of a foreign state

(a) * * *

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(h) If a foreign state, or its agency or instrumentality, is a party to an action pursuant to subsection (a)(7) and fails to furnish any testimony, document, or other thing upon a duly issued discovery order by the court in the action, such failure shall be deemed an admission of any fact with respect to which the discovery order relates. Nothing in this subsection shall supersede the limitations set forth in subsection (g).

§ 1606. Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages, except any action under section 1605(a)(7) or 1610(f); if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought. *No Federal or State statutory limits shall apply to the amount of compensatory, actual, or punitive damages permitted to be awarded to persons under section 1605(a)(7) and this section.*

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§ 1610. Exceptions to the immunity from attachment or execution

(a) * * *

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(f)(1)(A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701-1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state [(including any agency or instrumentality or

such state)] (including any agency or instrumentality of such state) claiming such property is not immune under section 1605(a)(7).

* * * * *

(C) Notwithstanding any other provision of law, moneys due from or payable by the United States (including any agency, subdivision or instrumentality thereof) to any state against which a judgment is pending under section 1605(a)(7) shall be subject to attachment and execution, in like manner and to the same extent as if the United States were a private person.

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(3)(A) Subject to subparagraph (B), upon determining on an asset-by-asset basis that a waiver is necessary in the national security interest, the President may waive this subsection in connection with (and prior to the enforcement of) any judicial order directing attachment in aid of execution or execution against the premises of a foreign diplomatic mission to the United States, or any funds held by or in the name of such foreign diplomatic mission determined by the President to be necessary to satisfy actual operating expenses of such foreign diplomatic mission.

(B) A waiver under this paragraph shall not apply to—

(i) if the premises of a foreign diplomatic mission has been used for any nondiplomatic purpose (including use as rental property), the proceeds of such use; or

(ii) if any asset of a foreign diplomatic mission is sold or otherwise transferred for value to a third party, the proceeds of such sale or transfer.

(4) For purposes of this subsection, all assets of any agency or instrumentality of a foreign state shall be treated as assets of that foreign state.

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**SECTION 117 OF THE TREASURY DEPARTMENT
APPROPRIATIONS ACT, 1999**

EXCEPTION TO IMMUNITY FROM ATTACHMENT OR EXECUTION

SEC. 117. (a) * * *

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[(d) WAIVER.—The President may waive the requirements of this section in the interest of national security.]

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