

106TH CONGRESS
2D SESSION

S. 3202

To amend title 18, United States Code, with respect to biological weapons.

IN THE SENATE OF THE UNITED STATES

OCTOBER 12 (legislative day, SEPTEMBER 22), 2000

Mr. BIDEN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, with respect to biological weapons.

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 “Dangerous Biological
5 Agent and Toxin Control Act of 2000”.

6 **SEC. 2. EXPANSION OF THE BIOLOGICAL WEAPONS STAT-**
7 **UTE.**

8 (a) FINDINGS AND PURPOSES.—

9 (1) FINDINGS.—Congress finds that—

10 (A) certain biological agents and toxins
11 have the potential to pose a severe threat to the

1 Nation's public health and safety, and thereby
2 affect interstate and foreign commerce;

3 (B) the Secretary of Health and Human
4 Services has published a list of biological agents
5 and toxins that pose a severe threat to the Na-
6 tion's public health and safety as an appendix
7 to part 72 of title 42, Code of Federal Regula-
8 tions;

9 (C) biological agents and toxins can be
10 used as weapons by individuals or organizations
11 for the purpose of domestic or international ter-
12 rorism or for other criminal purposes;

13 (D) terrorists and other criminals can also
14 harm national security, drain the limited re-
15 sources of all levels of government devoted to
16 thwarting biological weapons, and damage
17 interstate and foreign commerce by threatening
18 to use, and by falsely reporting efforts to use,
19 biological agents and toxins as weapons;

20 (E) the Biological Weapons Convention ob-
21 ligates the United States to take necessary
22 measures within the United States to prohibit
23 and prevent the development, production, stock-
24 piling, acquisition, or retention of biological
25 agents and toxins of types and in quantities

1 that have no justification for prophylactic, pro-
2 tective, or other peaceful purposes;

3 (F) the mere possession of biological
4 agents and toxins is a potential danger that af-
5 fects the obligations of the United States under
6 the Biological Weapons Convention and affects
7 interstate and foreign commerce; and

8 (G) persons in possession of harmful bio-
9 logical agents and toxins should handle them in
10 a safe manner and, in the case of agents and
11 toxins listed by the Department of Health and
12 Human Services as posing a severe threat to
13 the Nation's public health and safety, report
14 their possession and the purpose for their pos-
15 session to the appropriate Federal agency in
16 order to ensure that such possession is for
17 peaceful scientific research or development.

18 (2) PURPOSES.—The purposes of this section
19 are to—

20 (A) strengthen the implementation by the
21 United States of the Biological Weapons Con-
22 vention and to ensure that biological agents and
23 toxins are possessed for only prophylactic, pro-
24 tective, or other peaceful purposes;

1 (B) establish penalties for the false report-
2 ing of violations of chapter 10 of title 18,
3 United States Code (relating to biological weap-
4 ons); and

5 (C) improve the statutory definitions relat-
6 ing to biological weapons.

7 (b) ADDITIONAL MEASURES.—

8 (1) IN GENERAL.—Section 175 of title 18,
9 United States Code, is amended by adding at the
10 end the following:

11 “(c) ADDITIONAL PROHIBITIONS RELATING TO BIO-
12 LOGICAL AGENTS, TOXINS, AND DELIVERY SYSTEMS.—

13 “(1) UNLAWFUL POSSESSION.—Whoever know-
14 ingly possesses any biological agent, toxin, or deliv-
15 ery system of a type or in a quantity that, under the
16 circumstances, is not reasonably justified by a pro-
17 phylactic, protective, or other peaceful purpose, shall
18 be fined under this title, imprisoned not more than
19 10 years, or both. Knowledge of whether the type or
20 quantity of any biological agent, toxin, or delivery
21 system is reasonably justified by a prophylactic, pro-
22 tective, or other peaceful purpose is not an element
23 of the offense. For purposes of this paragraph, the
24 terms ‘biological agent’ and ‘toxin’ do not encompass
25 any biological agent or toxin that is in its naturally

1 occurring environment, if such agent or toxin has
2 not been cultivated, collected, or otherwise extracted
3 from its natural source.

4 “(2) UNSAFE HANDLING.—

5 “(A) IN GENERAL.—Whoever, with con-
6 scious disregard of an unreasonable risk to pub-
7 lic health and safety, handles an item knowing
8 it to be a biological agent, toxin, or delivery sys-
9 tem in a manner that grossly deviates from ac-
10 cepted norms, shall be fined under this title,
11 imprisoned not more than 1 year, or both.

12 “(B) AGGRAVATED OFFENSE.—Whoever in
13 the course of a violation of subparagraph (A)
14 causes bodily injury (as defined in section
15 1365(g)(4) of this title) to any individual (other
16 than the perpetrator)—

17 “(i) shall be fined under this title, im-
18 prisoned not more than 10 years, or both;
19 and

20 “(ii) if death results from the offense,
21 shall be fined under this title, imprisoned
22 for any term of years or for life, or both
23 fined and imprisoned.

24 “(d) FALSE INFORMATION.—

1 “(1) CRIMINAL VIOLATION.—Whoever commu-
2 nicates information, knowing the information to be
3 false and under circumstances in which such infor-
4 mation may reasonably be believed, concerning the
5 existence of activity that would constitute a violation
6 of subsection (a) or (c) shall be fined under this
7 title, imprisoned not more than 5 years, or both.

8 “(2) CIVIL PENALTY.—Whoever communicates
9 information, knowing the information to be false,
10 concerning the existence of activity that would con-
11 stitute a violation of subsection (a) or (c) is liable
12 to the United States or any State for a civil penalty
13 of the greater of \$10,000 or the amount of money
14 expended by the United States or the State in re-
15 sponding to the false information.

16 “(e) REPORTING, TRANSFER, AND POSSESSION OF
17 SELECT AGENTS.—

18 “(1) OBLIGATION TO REPORT.—Any person
19 who possesses a select agent shall report such pos-
20 session to the designated agency, in the manner pre-
21 scribed by the designated agency, within 72 hours of
22 the effective date of the regulation issued by that
23 agency pursuant to this paragraph or within 72
24 hours of subsequently obtaining possession of the
25 agent or toxin, except that, if such person is a reg-

1 istered entity, the reporting, if any, shall be in the
2 manner as otherwise directed by regulation by the
3 designated agency. If a person complies with this
4 paragraph, there is no obligation for any employee
5 of such person to file a separate report concerning
6 the employee's possession of a select agent in the
7 workplace of such person.

8 “(2) CRIMINAL PENALTY FOR WILLFUL FAIL-
9 URE TO REPORT.—Any person who willfully fails to
10 make the report required by paragraph (1) within
11 the prescribed period shall be fined under this title,
12 imprisoned not more than 3 years, or both. In this
13 paragraph, the term ‘willfully’ means an intentional
14 violation of a known duty to report.

15 “(3) CIVIL PENALTY FOR FAILURE TO RE-
16 PORT.—Any person who fails to make the report re-
17 quired by paragraph (1) within the prescribed period
18 is liable to the United States for a civil penalty of
19 \$5,000.

20 “(4) PENALTY FOR POSSESSION OF UNRE-
21 PORTED SELECT AGENTS.—Any person who know-
22 ingly possesses a biological agent or toxin that is a
23 select agent for which a report required by para-
24 graph (1) has not been made shall be fined under
25 this title, imprisoned not more than 1 year, or both.

1 “(5) UNAUTHORIZED TRANSFER OF SELECT
2 AGENTS.—Whoever knowingly transfers a select
3 agent to any person who is not a registered entity
4 shall be fined under this title, imprisoned not more
5 than 5 years, or both. For purposes of this para-
6 graph, the term ‘transfers’ does not encompass the
7 transfer of a select agent within the workplace be-
8 tween employees of the same registered entity, or be-
9 tween employees of any person who has filed the re-
10 port required by paragraph (1), if the transfer is au-
11 thORIZED by such entity or person.

12 “(6) POSSESSION OF SELECT AGENTS BY RE-
13 STRICTED INDIVIDUALS.—

14 “(A) PROHIBITION ON POSSESSION.—EX-
15 cept as otherwise provided in this section or in
16 section 2(b)(3)(G) of the Dangerous Biological
17 Agent and Toxin Control Act of 2000, no re-
18 stricted individual shall knowingly possess or
19 attempt to possess any biological agent or toxin
20 if that biological agent or toxin is a select
21 agent.

22 “(B) PENALTY.—Any individual who vio-
23 lates subparagraph (A) shall be fined under this
24 title, imprisoned not more than 5 years, or
25 both.

1 “(C) EMPLOYERS OF INDIVIDUALS WHO
2 POSSESS SELECT AGENTS.—Employers of indi-
3 viduals who will possess select agents in the
4 course of their employment shall require such
5 individuals, prior to being given access to select
6 agents, to complete a form in which the indi-
7 vidual affirms or denies the existence of each of
8 the restrictions set forth in section 178(8) of
9 this title. In the case of individuals already em-
10 ployed as of the date of enactment of this sub-
11 section who possess select agents in the course
12 of their employment, employers shall, not later
13 than 90 days after the date of enactment of
14 this subsection, require those individuals to
15 complete such a form. Such form shall be re-
16 tained by the employer for not less than 5 years
17 after the individual terminates his employment
18 with that employer.

19 “(D) EMPLOYEES.—

20 “(i) Whoever willfully and knowingly
21 falsifies or conceals a material fact or
22 makes any materially false, fictitious, or
23 fraudulent statement or representation in
24 completing the form required under sub-
25 paragraph (C) shall be fined under this

1 title, imprisoned not more than 5 years, or
2 both.

3 “(ii) The prohibition of subparagraph
4 (A) does not apply to possession by a re-
5 stricted individual of a select agent in the
6 workplace of his employer if the basis for
7 the prohibition relates solely to subpara-
8 graph (A) or (B)(i) of section 178(8) of
9 this title and a determination is made to
10 waive the prohibition in accordance with
11 the rules and procedures established pursu-
12 ant to subsection (f).

13 “(iii) The prohibition of subparagraph
14 (A) does not apply to possession by a re-
15 stricted individual of a select agent in the
16 workplace of his employer if the basis for
17 the prohibition relates solely to subpara-
18 graph (B)(ii) or (G) of section 178(8) of
19 this title and is more than 5 years old (not
20 counting time served while in custody), and
21 a determination is made to waive the pro-
22 hibition in accordance with the rules and
23 procedures established pursuant to sub-
24 section (f).

1 “(iv) For the purposes of this sub-
2 paragraph, the term ‘employer’ means any
3 person who is a registered entity or has
4 filed the report required by section
5 175(e)(1) of this title and employs a re-
6 stricted individual.

7 “(E) CERTAIN NONPERMANENT RESIDENT
8 ALIENS.—The prohibition of subparagraph (A)
9 does not apply to possession by a restricted in-
10 dividual of a select agent if the basis for the
11 prohibition relates solely to subparagraph (F)
12 of section 178(8) of this title, and the restricted
13 individual has received a waiver from the agen-
14 cy designated to carry out the functions of this
15 subparagraph. The designated agency may issue
16 a waiver if it determines, in consultation with
17 the Attorney General, that a waiver is in the
18 public interest.

19 “(f) WAIVERS OF RESTRICTIONS ON POSSESSION OF
20 SELECT AGENTS IN COURSE OF EMPLOYMENT.—The
21 agency designated to carry out this subsection, after con-
22 sultation with appropriate agencies, with representatives
23 of the scientific and medical community, and with other
24 appropriate public and private entities and organizations
25 (including consultation concerning employment practices

1 in working with select agents), shall establish the rules
2 and procedures governing waivers of the provisions of sub-
3 section (e)(6)(A) with respect to possession of select
4 agents by restricted individuals in the course of employ-
5 ment. Such rules and procedures shall address, among
6 other matters as found appropriate by the designated
7 agency, whether (or the circumstances under or the extent
8 to which) the determination to grant a waiver shall be re-
9 served to the Government, or may be made by the em-
10 ployer (either with or without consultation with the Gov-
11 ernment).

12 “(g) REIMBURSEMENT OF COSTS.—

13 “(1) CONVICTED DEFENDANT.—

14 “(A) SUBSECTION (a), (c), OR (e).—The
15 court shall order any person convicted of an of-
16 fense under subsection (a), (c), or (e) to reim-
17 burse the United States or any State for any
18 expenses incurred by the United States or the
19 State incident to the seizure, storage, handling,
20 transportation, and destruction or other dis-
21 posal of any property that was seized in connec-
22 tion with an investigation of the commission of
23 such offense by that person.

24 “(B) SUBSECTION (d)(1).—The court shall
25 order any person convicted of an offense under

1 subsection (d)(1) to reimburse the United
2 States for any expenses incurred by the United
3 States incident to the investigation of the com-
4 mission by that person of such offense, includ-
5 ing the cost of any response made by any Fed-
6 eral military or civilian agency to protect public
7 health or safety.

8 “(2) OWNER LIABILITY.—The owner or pos-
9 sessor of any property seized and forfeited under
10 this chapter shall be liable to the United States for
11 any expenses incurred incident to the seizure and
12 forfeiture, including any expenses relating to the
13 handling, storage, transportation, and destruction or
14 other disposition of the seized and forfeited property.

15 “(3) JOINTLY AND SEVERALLY LIABLE.—A
16 person ordered to reimburse the United States for
17 expenses under this chapter shall be jointly and sev-
18 erally liable for such expenses with each other per-
19 son, if any, who is ordered under this subsection to
20 reimburse the United States for the same ex-
21 penses.”.

22 (2) TECHNICAL CLARIFICATIONS.—

23 (A) SECTION 175.—Section 175(a) of title
24 18, United States Code, is amended by striking
25 “section” and inserting “subsection”.

1 (B) SECTION 176.—Section 176(a)(1)(A)
2 of title 18, United States Code, is amended by
3 striking “exists by reason of” and inserting
4 “pertains to”.

5 (3) DESIGNATION OF RESPONSIBLE AGEN-
6 CIES.—

7 (A) IN GENERAL.—Not later than 60 days
8 after the date of enactment of this Act, the
9 President shall designate—

10 (i) the agency responsible for pre-
11 scribing the regulation required by section
12 175(e)(1) of title 18, United States Code;

13 (ii) the agency responsible for grant-
14 ing the waivers under section 175(e)(6)(E)
15 of title 18, United States Code; and

16 (iii) the agency responsible for imple-
17 menting the waiver provisions of section
18 175(f) of title 18, United States Code.

19 (B) REGULATIONS.—The agencies des-
20 ignated pursuant to subparagraph (A)—

21 (i) shall issue proposed rules not later
22 than 90 days after the date of the Presi-
23 dent’s designation; and

1 (ii) shall issue final rules not later
2 than 270 days after the date of enactment
3 of this Act.

4 (C) INSPECTIONS.—The agency designated
5 pursuant to subparagraph (A)(i) may inspect
6 the facilities of any person who files a report re-
7 quired by section 175(e)(1) of title 18, United
8 States Code, to determine whether the person is
9 handling the select agent in a safe manner,
10 whether he is holding such agent for a prophyl-
11 lactic, protective, or other peaceful purpose, and
12 whether the type and quantity being held are
13 reasonable for that purpose. Any agency des-
14 ignated pursuant to subparagraph (A) may in-
15 spect any form required by section 175(e)(6)(C)
16 of title 18, United States Code, and any docu-
17 mentation relating to a determination made
18 pursuant to section 175(e)(6)(D) of that title.
19 The designated agency shall endeavor to not
20 interfere with the normal business operations of
21 any such facility.

22 (D) FREEDOM OF INFORMATION ACT EX-
23 EMPTION.—Any information provided to the
24 Secretary of Health and Human Services pur-
25 suant to regulations issued under section 511(f)

1 of the Antiterrorism and Effective Death Pen-
2 alty Act of 1996 (42 C.F.R. 72.6) or to the
3 designated agency under section 175(e)(1) of
4 title 18, United States Code, shall not be dis-
5 closed under section 552 of title 5, United
6 States Code. The Secretary or the designated
7 agency may use and disclose such information
8 to protect the public health, and shall also dis-
9 close any such relevant information to the At-
10 torney General for use in any investigation or
11 other proceeding to enforce any law relating to
12 select agents or any other law. Any such infor-
13 mation shall be made available to any com-
14 mittee or subcommittee of Congress with appro-
15 priate jurisdiction upon the written request of
16 the Chairman or Ranking Member of such com-
17 mittee or subcommittee, except that no such
18 committee or subcommittee, and no member
19 and no staff member of such committee or sub-
20 committee, shall disclose such information ex-
21 cept as otherwise required or authorized by law.

22 (E) CLARIFICATION OF THE SCOPE OF
23 THE SELECT AGENT RULE.—Section 511 of the
24 Antiterrorism and Effective Death Penalty Act

1 of 1996 (Public Law 104–132; 110 Stat. 1284)
2 is amended—

3 (i) in each of subsections (a), (d), and
4 (e)—

5 (I) by inserting “and toxins”
6 after “agents” each place it appears;
7 and

8 (II) by inserting “or toxin” after
9 “agent” each place it appears; and

10 (ii) in subsection (g)(1), by striking
11 “the term ‘biological agent’ has” and in-
12 serting “the terms ‘biological agent’ and
13 ‘toxin’ have”.

14 (F) EFFECTIVE DATES.—

15 (i) Subparagraph (D) shall take effect
16 on the effective date for the final rule
17 issued pursuant to section 511(d)(1) of the
18 Antiterrorism and Effective Death Penalty
19 Act of 1996 (Public Law 104–132; 110
20 Stat. 1284).

21 (ii) The amendments made by sub-
22 paragraph (E) shall take effect as if in-
23 cluded in the enactment of section 511 of
24 the Antiterrorism and Effective Death

1 Penalty Act of 1996 (Public Law 104–132;
2 110 Stat. 1284).

3 (G) TRANSITIONAL EXEMPTIONS.—

4 (i) The prohibition created by section
5 175(e)(6)(A) of title 18, United States
6 Code, shall not apply to the possession of
7 a select agent in the workplace of an em-
8 ployer (as defined in section
9 175(e)(6)(D)(iv) of title 18, United States
10 Code) by a restricted individual (as defined
11 in subparagraph (A), (B), or (G) of section
12 178(8) of title 18, United States Code),
13 until the effective date of the regulations
14 issued to implement section 175(f) of title
15 18, United States Code, or 270 days after
16 the date of enactment of this Act, which-
17 ever occurs earlier.

18 (ii) The prohibition created by section
19 175(e)(6)(A) of title 18, United States
20 Code, shall not apply to the possession of
21 a select agent by a restricted individual (as
22 defined in section 178(8)(F) of title 18,
23 United States Code), until the effective
24 date of the regulations issued to implement
25 section 175(e)(6)(E) of title 18, United

1 States Code, or 270 days after the enact-
2 ment of this Act, whichever occurs earlier.

3 (c) DEFINITIONAL AMENDMENTS.—

4 (1) SECTION 178.—Section 178 of title 18,
5 United States Code, is amended—

6 (A) in paragraph (1), by striking “means
7 any microorganism, virus, or infectious sub-
8 stance, or biological product that may be engi-
9 neered as a result of biotechnology, or any nat-
10 urally occurring or bioengineered component of
11 any such microorganism, virus, infectious sub-
12 stance, or biological product” and inserting the
13 following: “means any microorganism (includ-
14 ing, but not limited to, bacteria, viruses, fungi,
15 rickettsiae, or protozoa), or infectious sub-
16 stance, or any naturally occurring, bioengi-
17 neered or synthesized component of any such
18 microorganism or infectious substance”;

19 (B) in paragraph (2), by striking “means
20 the toxic material of plants, animals, microorga-
21 nisms, viruses, fungi, or infectious substances,
22 or a recombinant molecule, whatever its origin
23 or method of production, including” and insert-
24 ing the following: “means the toxic material or
25 product of plants, animals, microorganisms (in-

1 cluding, but not limited to, bacteria, viruses,
2 fungi, rickettsiae, or protozoa), or infectious
3 substances, or a recombinant or synthesized
4 molecule, whatever their origin and method of
5 production, and includes”;

6 (C) in paragraph (4)—

7 (i) by striking “recombinant molecule,
8 or biological product that may be engi-
9 neered as a result of biotechnology” and
10 inserting “recombinant or synthesized mol-
11 ecule”; and

12 (ii) by striking “and” at the end;

13 (D) in paragraph (5), by striking the pe-
14 riod at the end and inserting a semicolon; and

15 (E) by adding at the end the following:

16 “(6) the term ‘select agent’ means a biological
17 agent or toxin that is on the list established by the
18 Secretary of Health and Human Services pursuant
19 to section 511(d)(1) of the Antiterrorism and Effec-
20 tive Death Penalty Act of 1996 (Public Law 104–
21 132; 110 Stat. 1284) that is not exempted under
22 part 72.6(h) of title 42, Code of Federal Regulations
23 or appendix A to such part (or any successor to ei-
24 ther such provision), except that the term does not
25 include any such biological agent or toxin that is in

1 its naturally occurring environment, if the biological
2 agent or toxin has not been cultivated, collected, or
3 otherwise extracted from its natural source;

4 “(7) the term ‘registered entity’ means a reg-
5 istered facility, or a certified laboratory exempted
6 from registration, pursuant to the regulations pro-
7 mulgated by the Secretary of Health and Human
8 Services under section 511(f) of the Antiterrorism
9 and Effective Death Penalty Act of 1996 (42 C.F.R.
10 72.6(a), 72.6(h));

11 “(8) the term ‘restricted individual’ means an
12 individual who—

13 “(A) is under indictment for a crime pun-
14 ishable by imprisonment for a term exceeding 1
15 year;

16 “(B) has been convicted in any court of a
17 crime—

18 “(i) punishable by imprisonment for a
19 term exceeding 1 year but not more than
20 5 years; or

21 “(ii) punishable by imprisonment for
22 a term exceeding 5 years;

23 “(C) is a fugitive from justice;

1 “(D) is an unlawful user of any controlled
2 substance (as defined in section 102 of the Con-
3 trolled Substances Act (21 U.S.C. 802));

4 “(E) is an alien illegally or unlawfully in
5 the United States;

6 “(F) is an alien (other than an alien law-
7 fully admitted for permanent residence) who is
8 a national of a country as to which the Sec-
9 retary of State, pursuant to section 6(j) of the
10 Export Administration Act of 1979 (50 U.S.C.
11 App. 2405(j)) (or its successor law), section
12 620A of the Foreign Assistance Act of 1961
13 (22 U.S.C. 2371), or section 40(d) of the Arms
14 Export Control Act (22 U.S.C. 2780(d)), has
15 made a determination, which remains in effect,
16 that such country has repeatedly provided sup-
17 port for acts of international terrorism; or

18 “(G) has been discharged from the Armed
19 Forces of the United States under dishonorable
20 conditions;

21 “(9) the term ‘alien’ has the same meaning as
22 in section 101(a)(3) of the Immigration and Nation-
23 ality Act (8 U.S.C. 1101(a)(3));

24 “(10) the term ‘lawfully admitted for perma-
25 nent residence’ has the same meaning as in section

1 101(a)(20) of the Immigration and Nationality Act
2 (8 U.S.C. 1101(a)(20));

3 “(11) the term ‘designated agency’ means—

4 “(A) except as provided in subparagraphs
5 (B) and (C) of this paragraph, the agency des-
6 ignated by the President under section
7 2(b)(3)(A)(i) of the Dangerous Biological Agent
8 and Toxin Control Act of 2000”;

9 “(B) for purposes of section 175(e)(6)(E)
10 of this title, the agency designated by the Presi-
11 dent under section 2(b)(3)(A)(ii) of the Dan-
12 gerous Biological Agent and Toxin Control Act
13 of 2000; and

14 “(C) for purposes of section 175(f) of this
15 title, the agency designated by the President
16 under section 2(b)(3)(A)(iii) of the Dangerous
17 Biological Agent and Toxin Control Act of
18 2000; and

19 “(12) the term ‘State’ includes a State of the
20 United States, the District of Columbia, and any
21 commonwealth, territory, or possession of the United
22 States, including any political subdivision thereof.”.

23 (2) SECTION 2332a.—Section 2332a of title 18,
24 United States Code, is amended—

1 (A) in subsection (a), by striking “, includ-
2 ing any biological agent, toxin, or vector (as
3 those terms are defined in section 178)”;

4 (B) in subsection (c)(2)(C), by striking “a
5 disease organism” and inserting “any biological
6 agent, toxin, or vector (as those terms are de-
7 fined in section 178 of this title)”.

○