

108TH CONGRESS
2D SESSION

H. R. 4454

To amend title 18, United States Code, to protect and promote the public safety and interstate commerce by establishing Federal criminal penalties and civil remedies for certain violent, threatening, obstructive, and destructive conduct that is intended to injure, intimidate, or interfere with plant or animal enterprises, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 20, 2004

Mr. NETHERCUTT introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, and Science, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 18, United States Code, to protect and promote the public safety and interstate commerce by establishing Federal criminal penalties and civil remedies for certain violent, threatening, obstructive, and destructive conduct that is intended to injure, intimidate, or interfere with plant or animal enterprises, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as “Ecoterrorism Prevention
3 Act of 2004”.

4 **SEC. 2. PLANT ENTERPRISE TERRORISM.**

5 (a) IN GENERAL.—Section 43 of title 18, United
6 States Code, is amended—

7 (1) in the heading, by striking “**Animal en-**
8 **terprise terrorism**” and inserting “**Animal**
9 **and plant enterprise terrorism**”;

10 (2) by striking “animal enterprise” each place
11 it appears (other than in subsection (d)(1)) and in-
12 serting “animal or plant enterprise”;

13 (3) in subsection (a)(2)—

14 (A) by inserting “plants,” after “includ-
15 ing”; and

16 (B) by inserting a comma after “animals”;
17 and

18 (4) in subsection (d)—

19 (A) in paragraph (1), by striking “the
20 term” and all that follows through the end of
21 such paragraph and inserting the following:

22 “the term ‘animal or plant enterprise’ means—

23 “(A) a commercial or academic enterprise
24 that uses animals or plants for food or fiber
25 production, agriculture, breeding, processing,
26 research, or testing, or any commercial retail,

1 wholesale or distribution enterprise that uses,
2 purchases, or offers for sale a product that con-
3 tains animal or plant material;

4 “(B) a zoo, aquarium, circus, rodeo or
5 other entity that exhibits or uses animals or
6 plants for educational or entertainment pur-
7 poses;

8 “(C) any fair or similar event intended to
9 advance agricultural arts and sciences; or

10 “(D) a facility managed or occupied by an
11 association, federation, foundation, council, or
12 other group or entity of food or fiber producers,
13 processors, or agricultural or biomedical re-
14 searchers intended to advance agricultural or
15 biomedical arts and sciences, or the offices or
16 facilities of any other enterprise or event de-
17 scribed in subparagraph (A), (B), or (C);”;

18 (B) in paragraph (3), by striking “the loss
19 of profits” and inserting “the loss of revenue
20 (including costs related to business recovery) di-
21 rectly related to the disruption of a plant or
22 animal enterprise, and the cost of the tuition
23 and expenses of any student to complete an
24 academic program that was disrupted, or to
25 complete a replacement program, when the tui-

1 tion and expenses are incurred as a result of
2 the damage or loss of the property of an animal
3 or plant enterprise”;

4 (C) by striking “and” at the end of para-
5 graph (3);

6 (D) by striking the period at the end of
7 paragraph (4) and inserting “; and”; and

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

9 “(5) the term ‘plant’ means any plant (includ-
10 ing any plant part) used for, or that is capable of,
11 propagation, including a tree, a tissue culture, pol-
12 len, a shrub, a vine, a cutting, a graft, a scion, a
13 bud, a bulb, a root, a seed, or any plant genetic ma-
14 terial contained in bacteria, plasmids, viruses,
15 viroids, or any vector of biological origin that has
16 been modified for, or is capable of carrying genes
17 into plant cells using transgenic processes, or other
18 biological materials.”.

19 (b) CLERICAL AMENDMENT.—The item in the table
20 of sections at the beginning of chapter 3 of title 18, United
21 States Code, that relates to section 43 is amended to read
22 as follows:

“43. Animal and plant enterprise terrorism.”.

1 **SEC. 3. ENHANCEMENT OF PENALTIES FOR ANIMAL AND**
2 **PLANT ENTERPRISE TERRORISM.**

3 Section 43 of title 18, United States Code, is amend-
4 ed in subsection (b)—

5 (1) by redesignating paragraph (4) as para-
6 graph (5);

7 (2) by inserting after paragraph (3) the fol-
8 lowing:

9 “(4) EXPLOSIVES OR ARSON.—Whoever in the
10 course of a violation of subsection (a) maliciously
11 damages or destroys, or attempts to damage or de-
12 stroy, by means of fire or an explosive, any building,
13 vehicle, or other real or personal property used by
14 the animal or plant enterprise shall be imprisoned
15 for not less than 5 years and not more than 20
16 years, fined under this title, or both.”.

17 **SEC. 4. ECOTERRORISM PREVENTION.**

18 (a) RICO PREDICATE.—Section 1961(1) of title 18,
19 United States Code, is amended by striking “Section 201”
20 and inserting “Section 43 (relating to animal and plant
21 enterprise terrorism), section 201”.

22 (b) HOBBS ACT AMENDMENT.—Section 1951(b)(2)
23 of title 18, United States Code, is amended by inserting
24 “, and includes denying another the right to exercise con-
25 trol over that other’s property by threatening to violate
26 section 43” after “official right”.

1 **SEC. 5. NATIONAL ECOTERRORISM INCIDENT CLEARING-**
2 **HOUSE.**

3 (a) IN GENERAL.—The Director of the Federal Bu-
4 reau of Investigation (hereinafter in this section referred
5 to as the “Director”) shall establish and maintain a na-
6 tional clearinghouse for information on incidents of crime
7 and terrorism—

8 (1) committed against or directed at any animal
9 or plant enterprise;

10 (2) committed against or directed at any com-
11 mercial activity because of the perceived impact or
12 effect of such commercial activity on the environ-
13 ment; or

14 (3) committed against or directed at any person
15 because of such person’s perceived connection with
16 or support of any enterprise or activity described in
17 paragraph (1) or (2).

18 (b) CLEARINGHOUSE.—The clearinghouse established
19 under subsection (a) shall—

20 (1) accept, collect, and maintain information on
21 incidents described in subsection (a) that is sub-
22 mitted to the clearinghouse by Federal, State, and
23 local law enforcement agencies, by law enforcement
24 agencies of foreign countries, and by victims of such
25 incidents;

1 (2) collate and index such information for pur-
2 poses of cross-referencing;

3 (3) upon request from a Federal, State, or local
4 law enforcement agency, or from a law enforcement
5 agency of a foreign country, provide such informa-
6 tion to assist in the investigation of an incident de-
7 scribed in subsection (a); and

8 (4) provide all-source integrated analysis to
9 other Federal agencies and State and local law en-
10 forcement agencies.

11 (c) SCOPE OF INFORMATION.—The information
12 maintained by the clearinghouse for each incident shall,
13 to the extent practicable, include—

14 (1) the date, time, and place of the incident;

15 (2) details of the incident;

16 (3) any available information on suspects or
17 perpetrators of the incident; and

18 (4) any other relevant information.

19 (d) DESIGN OF CLEARINGHOUSE.—The clearing-
20 house shall be designed for maximum ease of use by par-
21 ticipating law enforcement agencies.

22 (e) PUBLICITY.—The Director shall publicize the ex-
23 istence of the clearinghouse to law enforcement agencies
24 by appropriate means.

1 (f) RESOURCES.—In establishing and maintaining
2 the clearinghouse, the Director may—

3 (1) through the Attorney General, utilize the re-
4 sources of any other department or agency of the
5 Federal Government; and

6 (2) accept assistance and information from pri-
7 vate organizations or individuals.

8 (g) COORDINATION.—The Director shall carry out
9 the Director’s responsibilities under this section in co-
10 operation with the Director of the Bureau of Alcohol, To-
11 bacco, and Firearms, the Department of Homeland Secu-
12 rity, and such other agencies as may be necessary.

13 (h) DEFINITION.—In this section the term “animal
14 or plant enterprise” has the same meaning given that term
15 in section 43 of title 18, United States Code.

16 (i) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated for each of fiscal years
18 2005 through 2009 such sums as are necessary to carry
19 out this section.

20 **SEC. 6. COLLEGE AND UNIVERSITY SECURITY ENHANCE-**
21 **MENTS.**

22 (a) IN GENERAL.—To enhance the security of public
23 research facilities in the United States against threats
24 posed by ecoterrorism, the Director of the National
25 Science Foundation (hereinafter in this section referred to

1 as the “Director”) shall make security upgrade and tech-
2 nical assistance grants on a competitive basis to colleges
3 and universities.

4 (b) LIMITATION ON GRANTS.—Grants to a recipient
5 under this section shall not exceed \$5,000,000 in any fis-
6 cal year.

7 (c) REQUIREMENTS FOR GRANTS.—The Director
8 shall make a grant under this section only if the grant
9 applicant provides satisfactory assurances to the Director
10 that—

11 (1) sufficient funds are available to pay the
12 non-Federal share of the cost of the proposed secu-
13 rity upgrades; and

14 (2) the proposed security upgrades meet such
15 reasonable qualifications as may be established by
16 the Director, including information relating to the
17 security needs of the institution and requirements
18 necessary to protect facilities, staff, and members of
19 the public.

20 (e) AMOUNT OF GRANT.—The amount of a grant
21 awarded under this section shall be determined by the Sec-
22 retary.

23 (f) FEDERAL SHARE.—The Federal share of the cost
24 of any security upgrade carried out using funds from a

1 grant provided under this section shall not exceed 50 per-
2 cent.

3 (g) **ADDITIONAL REQUIREMENT.**—The Director shall
4 develop a comprehensive security report for colleges, uni-
5 versities and nonprofit organizations which examines the
6 threat posed by animal and plant enterprise terrorism on
7 research activities, and includes strategies for reducing
8 this threat, including education, facility hardening, and co-
9 ordination with law enforcement officials.

10 **SEC. 7. NO SAFE HARBOR OR MATERIAL SUPPORT TO DO-**
11 **MESTIC TERRORISTS.**

12 (a) **HARBORING OR CONCEALING TERRORISTS.**—Sec-
13 tion 2339 of Title 18 is amended by striking “section 32
14 (relating to destruction of aircraft or aircraft facilities),”
15 and inserting “section 32 (relating to destruction of air-
16 craft or aircraft facilities, Section 43 (relating to animal
17 and plant enterprise terrorism),”.

18 (b) **PROVIDING MATERIAL SUPPORT TO TERROR-**
19 **ISTS.**—Section 2339A of Title 18 is amended by striking
20 “37,” and inserting “37, 43,”.

21 **SEC. 8. DESIGNATION OF DOMESTIC TERRORIST ORGANI-**
22 **ZATIONS.**

23 (a) **DESIGNATION.**—

24 (1) **IN GENERAL.**—The Attorney General is au-
25 thorized to designate an organization as a domestic

1 terrorist organization in accordance with this sub-
2 section if the Attorney General finds that—

3 (A) the organization is a domestic organi-
4 zation;

5 (B) the organization engages in terrorist
6 activity or retains the capability and intent to
7 engage in terrorist activity; and

8 (C) the terrorist activity or terrorism of
9 the organization threatens the security of
10 United States nationals or the national security
11 of the United States.

12 (2) PROCEDURE.—

13 (A) NOTICE.—

14 (i) TO CONGRESSIONAL LEADERS.—

15 Seven days before making a designation
16 under this subsection, the Attorney Gen-
17 eral shall, by classified communication, no-
18 tify the Speaker and Minority Leader of
19 the House of Representatives, the Presi-
20 dent pro tempore, Majority Leader, and
21 Minority Leader of the Senate, and the
22 members of the relevant committees of the
23 House of Representatives and the Senate,
24 in writing, of the intent to designate an or-
25 ganization under this subsection, together

1 with the findings made under paragraph
2 (1) with respect to that organization, and
3 the factual basis therefore.

4 (ii) PUBLICATION IN FEDERAL REG-
5 ISTER.—The Secretary shall publish the
6 designation in the Federal Register seven
7 days after providing the notification under
8 clause (i).

9 (B) EFFECT OF DESIGNATION.—

10 (i) For purposes of section 2339B of
11 title 18, a designation under this sub-
12 section shall take effect upon publication
13 under subparagraph (A)(ii).

14 (ii) Any designation under this sub-
15 section shall cease to have effect upon an
16 Act of Congress disapproving such des-
17 ignation.

18 (C) FREEZING OF ASSETS.—Upon notifica-
19 tion under paragraph (2)(A)(i), the Secretary of
20 the Treasury may require United States finan-
21 cial institutions possessing or controlling any
22 assets of any organization included in the noti-
23 fication to block all financial transactions in-
24 volving those assets until further directive from

1 either the Secretary of the Treasury, Act of
2 Congress, or order of court.

3 (3) RECORD.—

4 (A) IN GENERAL.—In making a designa-
5 tion under this subsection, the Attorney Gen-
6 eral shall create an administrative record.

7 (B) CLASSIFIED INFORMATION.—The At-
8 torney General may consider classified informa-
9 tion in making a designation under this sub-
10 section. Classified information shall not be sub-
11 ject to disclosure for such time as it remains
12 classified, except that such information may be
13 disclosed to a court *ex parte* and *in camera* for
14 purposes of judicial review under subsection (b)
15 of this section.

16 (4) PERIOD OF DESIGNATION.—

17 (A) IN GENERAL.—Subject to paragraphs
18 (5) and (6), a designation under this subsection
19 shall be effective for all purposes for a period
20 of 2 years beginning on the effective date of the
21 designation under paragraph (2)(B).

22 (B) REDESIGNATION.—The Attorney Gen-
23 eral may redesignate an organization as a do-
24 mestic terrorist organization for an additional
25 2-year period at the end of the 2-year period re-

1 ferred to in subparagraph (A) (but not sooner
2 than 60 days prior to the termination of such
3 period) upon a finding that the relevant cir-
4 cumstances described in paragraph (1) still
5 exist. The Attorney General also may redesign-
6 nate such organization at the end of any 2-year
7 redesignation period (but not sooner than 60
8 days prior to the termination of such period)
9 for an additional 2-year period upon a finding
10 that the relevant circumstances described in
11 paragraph (1) still exist. Any redesignation
12 shall be effective immediately following the end
13 of the prior 2-year designation or redesignation
14 period unless a different effective date is pro-
15 vided in such redesignation. The procedural re-
16 quirements of paragraphs (2) and (3) shall
17 apply to a redesignation under this subpara-
18 graph.

19 (5) REVOCATION BY ACT OF CONGRESS.—The
20 Congress, by an Act of Congress, may block or re-
21 voke a designation made under paragraph (1).

22 (6) REVOCATION BASED ON CHANGE IN CIR-
23 CUMSTANCES.—

24 (A) IN GENERAL.—The Attorney General
25 may revoke a designation made under para-

1 graph (1) or a redesignation made under para-
2 graph (4)(B) if the Attorney General finds
3 that—

4 (i) the circumstances that were the
5 basis for the designation or redesignation
6 have changed in such a manner as to war-
7 rant revocation; or

8 (ii) the national security of the United
9 States warrants a revocation.

10 (B) PROCEDURE.—The procedural require-
11 ments of paragraphs (2) and (3) shall apply to
12 a revocation under this paragraph. Any revoca-
13 tion shall take effect on the date specified in
14 the revocation or upon publication in the Fed-
15 eral Register if no effective date is specified.

16 (7) EFFECT OF REVOCATION.—The revocation
17 of a designation under paragraph (5) or (6), or the
18 revocation of a redesignation under paragraph (6),
19 shall not affect any action or proceeding based on
20 conduct committed prior to the effective date of such
21 revocation.

22 (8) USE OF DESIGNATION IN TRIAL OR HEAR-
23 ING.—If a designation under this subsection has be-
24 come effective under paragraph (2)(B), or if a red-
25 esignation under this subsection has become effective

1 under paragraph (4)(B), a defendant in a criminal
2 action or an alien in a removal proceeding shall not
3 be permitted to raise any question concerning the
4 validity of the issuance of such designation or redesi-
5 gnation as a defense or an objection at any trial
6 or hearing.

7 (b) JUDICIAL REVIEW OF DESIGNATION.—

8 (1) IN GENERAL.—Not later than 30 days after
9 publication of the designation in the Federal Reg-
10 ister, an organization designated as a domestic ter-
11 rorist organization may seek judicial review of the
12 designation in the United States Court of Appeals
13 for the District of Columbia Circuit.

14 (2) BASIS OF REVIEW.—Review under this sub-
15 section shall be based solely upon the administrative
16 record, except that the Government may submit, for
17 ex parte and in camera review, classified information
18 used in making the designation.

19 (3) SCOPE OF REVIEW.—The Court shall hold
20 unlawful and set aside a designation the court finds
21 to be—

22 (A) arbitrary, capricious, an abuse of dis-
23 cretion, or otherwise not in accordance with
24 law;

1 (B) contrary to constitutional right, power,
2 privilege, or immunity;

3 (C) in excess of statutory jurisdiction, au-
4 thority, or limitation, or short of statutory
5 right;

6 (D) lacking substantial support in the ad-
7 ministrative record taken as a whole or in clas-
8 sified information submitted to the court under
9 paragraph (2); or

10 (E) not in accord with the procedures re-
11 quired by law.

12 (4) JUDICIAL REVIEW INVOKED.—The pend-
13 ency of an action for judicial review of a designation
14 shall not affect the application of this section, unless
15 the court issues a final order setting aside the des-
16 ignation.

17 (c) DEFINITIONS.—As used in this section—

18 (1) the term “terrorist activity” has the mean-
19 ing given that term in section 212 of the Immigra-
20 tion and Nationality Act (18 U.S.C. 1182);

21 (2) the term “classified information” has the
22 meaning given that term in section 1(a) of the Clas-
23 sified Information Procedures Act (18 U.S.C. App.);

1 (3) A review of major domestic
2 counterterrorism efforts undertaken in the previous
3 year.

4 (b) CLASSIFICATION OF REPORT.—The report re-
5 quired in paragraph (a) shall, to the extent practicable,
6 be submitted in an unclassified form and may be accom-
7 panied by a classified annex.

8 (c) DEFINITIONS.—

9 (1) In this section, the term “domestic ter-
10 rorism” has the same definition as at 18 U.S.C.
11 2331.

12 **SEC. 10. SUSPENSION OF TAX-EXEMPT STATUS OF TER-**
13 **RORIST ORGANIZATIONS.**

14 (a) IN GENERAL.—Section 501 of the Internal Rev-
15 enue Code of 1986 (relating to exemption from tax on cor-
16 porations, certain trusts, etc.) is amended by redesign-
17 ating subsection (p) as subsection (q) and by inserting
18 after subsection (o) the following new subsection:

19 “(p) SUSPENSION OF TAX-EXEMPT STATUS OF TER-
20 RORIST ORGANIZATIONS.—

21 “(1) IN GENERAL.—The exemption from tax
22 under subsection (a) with respect to any organiza-
23 tion described in paragraph (2), and the eligibility of
24 any organization described in paragraph (2) to apply
25 for recognition of exemption under subsection (a),

1 shall be suspended during the period described in
2 paragraph (3).

3 “(2) TERRORIST ORGANIZATIONS.—An organi-
4 zation is described in this paragraph if such organi-
5 zation is designated or otherwise individually identi-
6 fied by the Attorney General as a domestic terrorist
7 organization under section 8 of the Ecoterrorism
8 Prevention Act.

9 “(3) PERIOD OF SUSPENSION.—With respect to
10 any organization described in paragraph (2), the pe-
11 riod of suspension—

12 “(A) begins on the later of—

13 “(i) the date of the first publication of
14 a designation or identification described in
15 paragraph (2) with respect to such organi-
16 zation, or

17 “(ii) the date of the enactment of this
18 subsection, and

19 “(B) ends on the first date that all des-
20 ignations and identifications described in para-
21 graph (2) with respect to such organization are
22 rescinded pursuant to the law or Executive
23 order under which such designation or identi-
24 fication was made.

1 “(4) DENIAL OF DEDUCTION.—No deduction
2 shall be allowed under section 170, 545(b)(2),
3 556(b)(2), 642(e), 2055, 2106(a)(2), or 2522 for
4 any contribution to an organization described in
5 paragraph (2) during the period described in para-
6 graph (3).

7 “(5) DENIAL OF ADMINISTRATIVE OR JUDICIAL
8 CHALLENGE OF SUSPENSION OR DENIAL OF DEDUC-
9 TION.—Notwithstanding section 7428 or any other
10 provision of law, no organization or other person
11 may challenge a suspension under paragraph (1), a
12 designation or identification described in paragraph
13 (2), the period of suspension described in paragraph
14 (3), or a denial of a deduction under paragraph (4)
15 in any administrative or judicial proceeding relating
16 to the Federal tax liability of such organization or
17 other person.

18 “(6) ERRONEOUS DESIGNATION.—

19 “(A) IN GENERAL.—If—

20 “(i) the tax exemption of any organi-
21 zation described in paragraph (2) is sus-
22 pended under paragraph (1);

23 “(ii) each designation and identifica-
24 tion described in paragraph (2) which has
25 been made with respect to such organiza-

1 tion is determined to be erroneous pursu-
2 ant to the law or Executive order under
3 which such designation or identification
4 was made; and

5 “(iii) the erroneous designations and
6 identifications result in an overpayment of
7 income tax for any taxable year by such
8 organization,

9 credit or refund (with interest) with respect to
10 such overpayment shall be made.

11 “(B) WAIVER OF LIMITATIONS.—If the
12 credit or refund of any overpayment of tax de-
13 scribed in subparagraph (A)(iii) is prevented at
14 any time by the operation of any law or rule of
15 law (including *res judicata*), such credit or re-
16 fund may nevertheless be allowed or made if the
17 claim therefore is filed before the close of the
18 1-year period beginning on the date of the last
19 determination described in subparagraph
20 (A)(ii).

21 “(7) NOTICE OF SUSPENSIONS.—If the tax ex-
22 emption of any organization is suspended under this
23 subsection, the Internal Revenue Service shall up-
24 date the listings of tax-exempt organizations and
25 shall publish appropriate notice to taxpayers of such

1 suspension and of the fact that contributions to such
2 organization are not deductible during the period of
3 such suspension.”.

4 (b) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to designations made before, on,
6 or after the date of the enactment of this Act.

○