

109TH CONGRESS
1ST SESSION

H. R. 865

To amend title 28, United States Code, to clarify that persons may bring private rights of actions against foreign states for certain terrorist acts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2005

Mr. SAXTON (for himself, Mr. ANDREWS, Ms. JACKSON-LEE of Texas, Mr. COBLE, Ms. ROS-LEHTINEN, Mrs. JO ANN DAVIS of Virginia, Mr. ENGEL, Mr. WEINER, Mr. LANGEVIN, Mr. ETHERIDGE, Mr. FORTUÑO, and Mr. HOSTETTLER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to clarify that persons may bring private rights of actions against foreign states for certain terrorist acts, 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. CLARIFICATION OF PRIVATE RIGHT OF ACTION**

4 **AGAINST TERRORIST STATES; DAMAGES.**

5 (a) RIGHT OF ACTION.—Section 1605 of title 28,
6 United States Code, is amended—

7 (1) in subsection (f), in the first sentence, by
8 inserting “or (h)” after “subsection (a)(7)”; and

1 (2) by adding at the end the following:

2 “(h) CERTAIN ACTIONS AGAINST FOREIGN STATES
3 OR OFFICIALS, EMPLOYEES, OR AGENTS OF FOREIGN
4 STATES.—

5 “(1) CAUSE OF ACTION.—

6 “(A) CAUSE OF ACTION.—A foreign state
7 designated as a state sponsor of terrorism
8 under section 6(j) of the Export Administration
9 Act of 1979 (50 U.S.C. App. 2405(j)) or sec-
10 tion 620A of the Foreign Assistance Act of
11 1961 (22 U.S.C. 2371), or an official, em-
12 ployee, or agent of such a foreign state, shall be
13 liable to a national of the United States (as
14 that term is defined in section 101(a)(22) of
15 the Immigration and Nationality Act) or the
16 national’s legal representative for personal in-
17 jury or death caused by acts of that foreign
18 state, or by that official, employee, or agent
19 while acting within the scope of his or her of-
20 fice, employment, or agency, for which the
21 courts of the United States may maintain juris-
22 diction under subsection (a)(7) for money dam-
23 ages. The removal of a foreign state from des-
24 ignation as a state sponsor of terrorism under
25 section 6(j) of the Export Administration Act of

1 1979 (50 U.S.C. App. 2405(j)), section 620A of
2 the Foreign Assistance Act of 1961 (22 U.S.C.
3 2371), or other provision of law shall not termi-
4 nate a cause of action arising under this sub-
5 paragraph during the period of such designa-
6 tion.

7 “(B) DISCOVERY.—The provisions of sub-
8 section (g) apply to actions brought under sub-
9 paragraph (A).

10 “(C) NATIONALITY OF CLAIMANT.—No ac-
11 tion shall be maintained under subparagraph
12 (A) arising from acts of a foreign state or an
13 official, employee, or agent of a foreign state if
14 neither the claimant nor the victim was a na-
15 tional of the United States (as that term is de-
16 fined in section 101(a)(22) of the Immigration
17 and Nationality Act) when such acts occurred.

18 “(2) DAMAGES.—In an action brought under
19 paragraph (1) against a foreign state or an official,
20 employee, or agent of a foreign state, the foreign
21 state, official, employee, or agent, as the case may
22 be, may be held liable for money damages in such
23 action, which may include economic damages,
24 solatium, damages for pain and suffering, and, not-
25 withstanding section 1606, punitive damages. In all

1 actions brought under paragraph (1), a foreign state
2 shall be vicariously liable for the actions of its offi-
3 cials, employees, or agents.

4 “(3) APPEALS.—An appeal in the courts of the
5 United States in an action brought under paragraph
6 (1) may be made—

7 “(A) only from a final decision under sec-
8 tion 1291 of this title, and then only if filed
9 with the clerk of the district court within 30
10 days after the entry of such final decision; and

11 “(B) in the case of an appeal from an
12 order denying the immunity of a foreign state,
13 a political subdivision thereof, or an agency of
14 instrumentality of a foreign state, only if filed
15 under section 1292 of this title.”.

16 (b) CONFORMING AMENDMENT.—Section 589 of the
17 Foreign Operations, Export Financing, and Related Pro-
18 grams Appropriations Act, 1997, as contained in section
19 101(a) of Division A of Public Law 104–208 (110 Stat.
20 3009–172; 28 U.S.C. 1605 note), is repealed.

21 **SEC. 2. PROPERTY SUBJECT TO ATTACHMENT EXECUTION.**

22 Section 1610 of title 28, United States Code, is
23 amended by adding at the end the following:

24 “(g) PROPERTY INTERESTS IN CERTAIN ACTIONS.—

1 “(1) IN GENERAL.—A property interest of a
2 foreign state, or agency or instrumentality of a for-
3 eign state, against which a judgment is entered
4 under section 1605(a)(7), including a property inter-
5 est that is a separate juridical entity, is subject to
6 execution upon that judgment as provided in this
7 section, regardless of—

8 “(A) the level of economic control over the
9 property interest by the government of the for-
10 eign state;

11 “(B) whether the profits of the property
12 interest go to that government;

13 “(C) the degree to which officials of that
14 government manage the property interest or
15 otherwise have a hand in its daily affairs;

16 “(D) whether that government is the real
17 beneficiary of the conduct of the property inter-
18 est; or

19 “(E) whether establishing the property in-
20 terest as a separate entity would entitle the for-
21 eign state to benefits in United States courts
22 while avoiding its obligations.

23 “(2) U.S. SOVEREIGN IMMUNITY INAPPLI-
24 CABLE.—Any property interest of a foreign state, or
25 agency or instrumentality of a foreign state, to

1 which paragraph (1) applies shall not be immune
2 from execution upon a judgment entered under sec-
3 tion 1605(a)(7) because the property interest is reg-
4 ulated by the United States Government by reason
5 of action taken against that foreign state under the
6 Trading With the Enemy Act or the International
7 Emergency Economic Powers Act.”.

8 **SEC. 3. APPOINTMENT OF SPECIAL MASTERS.**

9 (a) VICTIMS OF CRIME ACT.—Section 1404C(a)(3)
10 of the Victims of Crime Act of 1984 (42 U.S.C.
11 10603c(a)(3)) is amended by striking “December 21,
12 1988, with respect to which an investigation or” and in-
13 serting “October 23, with respect to which an investiga-
14 tion or a civil or criminal”.

15 (b) JUSTICE FOR MARINES.—The Attorney General
16 of the United States shall transfer, from funds available
17 for the program under sections 1404C of the Victims of
18 Crime Act of 1984 (42 U.S.C. 10603c), to the Adminis-
19 trator of the United States District Court for the District
20 of Columbia such funds as may be required to carry out
21 the orders of United States District Judge Royce C.
22 Lamberth appointing Special Masters in the matter of
23 Person, et al. v. The Islamic Republic of Iran, Case No.
24 01CV02094 (RCL).

1 **SEC. 4. LIS PENDENS.**

2 (a) LIENS.—In every action filed in a United States
3 district court in which jurisdiction is alleged under section
4 1605(a)(7) of title 28, United States Code, the filing of
5 a notice of pending action pursuant to section 1605(a)(7)
6 of title 28, United States Code, to which is attached a
7 copy of the complaint filed in the action, shall have the
8 effect of establishing a lien of lis pendens upon any real
9 property or tangible personal property located within that
10 judicial district that is titled in the name of any defendant,
11 or titled in the name of any entity controlled by any such
12 defendant, if, in the case of such controlled entities, such
13 notice contains a statement listing those controlled enti-
14 ties. A notice of pending action pursuant to section
15 1605(a)(7) of title 28, United States Code, shall be filed
16 by the clerk of the district court in the same manner as
17 any pending action and shall be indexed by listing as de-
18 fendants all named defendants and all entities listed as
19 controlled by any defendant.

20 (b) ENFORCEMENT.—Liens established by reason of
21 subsection (a) shall be enforceable as provided in chapter
22 111 of title 28, United States Code.

23 **SEC. 5. APPLICABILITY.**

24 (a) IN GENERAL.—The amendments made by this
25 Act apply to any claim for which a foreign state is not
26 immune under section 1605(a)(7) of title 28, United

1 States Code, arising before, on, or after the date of the
2 enactment of this Act.

3 (b) PRIOR CAUSES OF ACTION.—In the case of any
4 action that—

5 (1) was brought in a timely manner but was
6 dismissed before the enactment of this Act for fail-
7 ure to state of cause of action, and

8 (2) would be cognizable by reason of the
9 amendments made by this Act,

10 the 10-year limitation period provided under section
11 1605(f) of title 28, United States Code, shall be tolled dur-
12 ing the period beginning on the date on which the action
13 was first brought and ending 60 days after the date of
14 the enactment of this Act.

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