

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.**

**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 \_\_\_\_\_

Viz:

1       Strike all after the enacting clause and insert the fol-  
2       lowing:

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Justice Against Spon-  
5       sors of Terrorism Act”.

6       **SEC. 2. FINDINGS AND PURPOSE.**

7       (a) FINDINGS.—Congress finds the following:

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

11              (2) International terrorism affects the inter-  
12      state and foreign commerce of the United States by

1       harming international trade and market stability,  
2       and limiting international travel by United States  
3       citizens as well as foreign visitors to the United  
4       States.

5           (3) Some foreign terrorist organizations, acting  
6       through affiliated groups or individuals, raise signifi-  
7       cant funds outside of the United States for conduct  
8       directed and targeted at the United States.

9           (4) It is necessary to recognize the substantive  
10      causes of action for aiding and abetting and con-  
11      spiracy liability under chapter 113B of title 18,  
12      United States Code.

13          (5) The decision of the United States Court of  
14      Appeals for the District of Columbia in *Halberstam*  
15      *v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), which has  
16      been widely recognized as the leading case regarding  
17      Federal civil aiding and abetting and conspiracy li-  
18      ability, including by the Supreme Court of the  
19      United States, provides the proper legal framework  
20      for how such liability should function in the context  
21      of chapter 113B of title 18, United States Code.

22          (6) Persons, entities, or countries that know-  
23      ingly or recklessly contribute material support or re-  
24      sources, directly or indirectly, to persons or organi-  
25      zations that pose a significant risk of committing

1 acts of terrorism that threaten the security of na-  
2 tionals of the United States or the national security,  
3 foreign policy, or economy of the United States, nec-  
4 essarily direct their conduct at the United States,  
5 and should reasonably anticipate being brought to  
6 court in the United States to answer for such activi-  
7 ties.

8 (7) The United States has a vital interest in  
9 providing persons and entities injured as a result of  
10 terrorist attacks committed within the United States  
11 with full access to the court system in order to pur-  
12 sue civil claims against persons, entities, or countries  
13 that have knowingly or recklessly provided material  
14 support or resources, directly or indirectly, to the  
15 persons or organizations responsible for their inju-  
16 ries.

17 (b) PURPOSE.—The purpose of this Act is to provide  
18 civil litigants with the broadest possible basis, consistent  
19 with the Constitution of the United States, to seek relief  
20 against persons, entities, and foreign countries, wherever  
21 acting and wherever they may be found, that have pro-  
22 vided material support, directly or indirectly, to foreign  
23 organizations or persons that engage in terrorist activities  
24 against the United States.

1 **SEC. 3. RESPONSIBILITY OF FOREIGN STATES FOR INTER-**  
2 **NATIONAL TERRORISM AGAINST THE UNITED**  
3 **STATES.**

4 (a) IN GENERAL.—Chapter 97 of title 28, United  
5 States Code, is amended by inserting after section 1605A  
6 the following:

7 **“§ 1605B. Responsibility of foreign states for inter-**  
8 **national terrorism against the United**  
9 **States**

10 “(a) DEFINITION.—In this section, the term ‘inter-  
11 national terrorism’—

12 “(1) has the meaning given the term in section  
13 2331 of title 18, United States Code; and

14 “(2) does not include any act of war (as defined  
15 in that section).

16 “(b) RESPONSIBILITY OF FOREIGN STATES.—A for-  
17 eign state shall not be immune from the jurisdiction of  
18 the courts of the United States in any case in which money  
19 damages are sought against a foreign state for physical  
20 injury to person or property or death occurring in the  
21 United States and caused by—

22 “(1) an act of international terrorism in the  
23 United States; and

24 “(2) a tortious act or acts of the foreign state,  
25 or of any official, employee, or agent of that foreign  
26 state while acting within the scope of his or her of-

1        fice, employment, or agency, regardless where the  
2        tortious act or acts of the foreign state occurred.

3        “(c) CLAIMS BY NATIONALS OF THE UNITED  
4 STATES.—Notwithstanding section 2337(2) of title 18, a  
5 national of the United States may bring a claim against  
6 a foreign state in accordance with section 2333 of that  
7 title if the foreign state would not be immune under sub-  
8 section (b).

9        “(d) RULE OF CONSTRUCTION.—A foreign state shall  
10 not be subject to the jurisdiction of the courts of the  
11 United States under subsection (b) on the basis of an  
12 omission or a tortious act or acts that constitute mere neg-  
13 ligence.”.

14        (b) TECHNICAL AND CONFORMING AMENDMENTS.—

15            (1) The table of sections for chapter 97 of title  
16 28, United States Code, is amended by inserting  
17 after the item relating to section 1605A the fol-  
18 lowing:

“1605B. Responsibility of foreign states for international terrorism against the  
United States.”.

19            (2) Subsection 1605(g)(1)(A) of title 28,  
20 United States Code, is amended by inserting “or  
21 section 1605B” after “but for section 1605A”.

1   **SEC. 4. AIDING AND ABETTING LIABILITY FOR CIVIL AC-**  
2                   **TIONS REGARDING TERRORIST ACTS.**

3           (a) IN GENERAL.—Section 2333 of title 18, United  
4 States Code, is amended by adding at the end the fol-  
5 lowing:

6           “(d) LIABILITY.—

7                   “(1) DEFINITION.—In this subsection, the term  
8 ‘person’ has the meaning given the term in section  
9 1 of title 1.

10                   “(2) LIABILITY.—In an action under subsection  
11 (a) for an injury arising from an act of international  
12 terrorism committed, planned, or authorized by an  
13 organization that had been designated as a foreign  
14 terrorist organization under section 219 of the Im-  
15 migration and Nationality Act (8 U.S.C. 1189), as  
16 of the date on which such act of international ter-  
17 rorism was committed, planned, or authorized, liabil-  
18 ity may be asserted as to any person who aids and  
19 abets, by knowingly providing substantial assistance,  
20 or who conspires with the person who committed  
21 such an act of international terrorism.”.

22           (b) EFFECT ON FOREIGN SOVEREIGN IMMUNITIES  
23 ACT.—Nothing in the amendment made by this section  
24 affects immunity of a foreign state, as that term is defined  
25 in section 1603 of title 28, United States Code, from juris-  
26 diction under other law.

1 **SEC. 5. STAY OF ACTIONS PENDING STATE NEGOTIATIONS.**

2 (a) **EXCLUSIVE JURISDICTION.**—The courts of the  
3 United States shall have exclusive jurisdiction in any ac-  
4 tion in which a foreign state is subject to the jurisdiction  
5 of a court of the United States under section 1605B of  
6 title 28, United States Code, as added by section 3(a) of  
7 this Act.

8 (b) **INTERVENTION.**—The Attorney General may in-  
9 tervene in any action in which a foreign state is subject  
10 to the jurisdiction of a court of the United States under  
11 section 1605B of title 28, United States Code, as added  
12 by section 3(a) of this Act, for the purpose of seeking a  
13 stay of the civil action, in whole or in part.

14 (c) **STAY.**—

15 (1) **IN GENERAL.**—A court of the United States  
16 may stay a proceeding against a foreign state if the  
17 Secretary of State certifies that the United States is  
18 engaged in good faith discussions with the foreign  
19 state defendant concerning the resolution of the  
20 claims against the foreign state, or any other parties  
21 as to whom a stay of claims is sought.

22 (2) **DURATION.**—

23 (A) **IN GENERAL.**—A stay under this sec-  
24 tion may be granted for not more than 180  
25 days.

26 (B) **EXTENSION.**—

1 (i) IN GENERAL.—The Attorney Gen-  
2 eral may petition the court for an exten-  
3 sion of the stay for additional 180-day pe-  
4 riods.

5 (ii) RECERTIFICATION.—A court shall  
6 grant an extension under clause (i) if the  
7 Secretary of State recertifies that the  
8 United States remains engaged in good  
9 faith discussions with the foreign state de-  
10 fendant concerning the resolution of the  
11 claims against the foreign state, or any  
12 other parties as to whom a stay of claims  
13 is sought.

14 **SEC. 6. SEVERABILITY.**

15 If any provision of this Act or any amendment made  
16 by this Act, or the application of a provision or amend-  
17 ment to any person or circumstance, is held to be invalid,  
18 the remainder of this Act and the amendments made by  
19 this Act, and the application of the provisions and amend-  
20 ments to any other person not similarly situated or to  
21 other circumstances, shall not be affected by the holding.

22 **SEC. 7. EFFECTIVE DATE.**

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



- 1           (1) pending on, or commenced on or after, the
- 2           date of enactment of this Act; and
- 3           (2) arising out of an injury to a person, prop-
- 4           erty, or business on or after September 11, 2001.