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3-08CV0165-N.H.L.C.

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1 (2) such other findings, conclusions, and rec-
2 ommendations for improving the capabilities of the
3 Department for homeland defense as the advisory
4 panel considers appropriate.

5 **SEC. 1063. TERRORISM EXCEPTION TO IMMUNITY.**

6 (a) TERRORISM EXCEPTION TO IMMUNITY.—

7 (1) IN GENERAL.—Chapter 97 of title 28,
8 United States Code, is amended by inserting after
9 section 1605 the following:

10 **“§ 1605A. Terrorism exception to the jurisdictional
11 immunity of a foreign state**

12 “(a) IN GENERAL.—

13 “(1) NO IMMUNITY.—A foreign state shall not
14 be immune from the jurisdiction of courts of the
15 United States or of the States in any case not other-
16 wise covered by this chapter in which money dam-
17 ages are sought against a foreign state for personal
18 injury or death that was caused by an act of torture,
19 extrajudicial killing, aircraft sabotage, hostage tak-
20 ing, or the provision of material support or resources
21 for such an act if such act or provision of material
22 support or resources is engaged in by an official,
23 employee, or agent of such foreign state while acting
24 within the scope of his or her office, employment, or
25 agency.

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
FEB - 1 2008
CLERK, U.S. DISTRICT COURT
By [Signature] Deputy



1 “(2) CLAIM HEARD.—The court shall hear a
2 claim under this section if—

3 “(A)(i)(I) the foreign state was designated
4 as a state sponsor of terrorism at the time the
5 act described in paragraph (1) occurred, or was
6 so designated as a result of such act, and, sub-
7 ject to subclause (II), either remains so des-
8 ignated when the claim is filed under this sec-
9 tion or was so designated within the 6-month
10 period before the claim is filed under this sec-
11 tion; or

12 “(II) in the case of an action that is refiled
13 under this section by reason of section
14 1083(c)(2)(A) of the National Defense Author-
15 ization Act for Fiscal Year 2008 or is filed
16 under this section by reason of section
17 1083(c)(3) of that Act, the foreign state was
18 designated as a state sponsor of terrorism when
19 the original action or the related action under
20 section 1605(a)(7) (as in effect before the en-
21 actment of this section) or section 589 of the
22 Foreign Operations, Export Financing, and Re-
23 lated Programs Appropriations Act, 1997 (as
24 contained in section 101(c) of division A of
25 Public Law 104–208) was filed;



1 “(ii) the claimant or the victim was, at the
2 time the act described in paragraph (1)
3 occurred—

4 “(I) a national of the United States;

5 “(II) a member of the armed forces;

6 or

7 “(III) otherwise an employee of the
8 Government of the United States, or of an
9 individual performing a contract awarded
10 by the United States Government, acting
11 within the scope of the employee’s employ-
12 ment; and

13 “(iii) in a case in which the act occurred
14 in the foreign state against which the claim has
15 been brought, the claimant has afforded the
16 foreign state a reasonable opportunity to arbi-
17 trate the claim in accordance with the accepted
18 international rules of arbitration; or

19 “(B) the act described in paragraph (1) is
20 related to Case Number 1:00CV03110 (EGS)
21 in the United States District Court for the Dis-
22 trict of Columbia.

23 “(b) LIMITATIONS.—An action may be brought or
24 maintained under this section if the action is commenced,
25 or a related action was commenced under section



1 1605(a)(7) (before the date of the enactment of this sec-
2 tion) or section 589 of the Foreign Operations, Export Fi-
3 nancing, and Related Programs Appropriations Act, 1997
4 (as contained in section 101(c) of division A of Public Law
5 104-208) not later than the latter of—

6 “(1) 10 years after April 24, 1996; or

7 “(2) 10 years after the date on which the cause
8 of action arose.

9 “(c) PRIVATE RIGHT OF ACTION.—A foreign state
10 that is or was a state sponsor of terrorism as described
11 in subsection (a)(2)(A)(i), and any official, employee, or
12 agent of that foreign state while acting within the scope
13 of his or her office, employment, or agency, shall be liable
14 to—

15 “(1) a national of the United States,

16 “(2) a member of the armed forces,

17 “(3) an employee of the Government of the
18 United States, or of an individual performing a con-
19 tract awarded by the United States Government,
20 acting within the scope of the employee’s employ-
21 ment, or

22 “(4) the legal representative of a person de-
23 scribed in paragraph (1), (2), or (3),

24 for personal injury or death caused by acts described in
25 subsection (a)(1) of that foreign state, or of an official,



1 employee, or agent of that foreign state, for which the
2 courts of the United States may maintain jurisdiction
3 under this section for money damages. In any such action,
4 damages may include economic damages, solatium, pain
5 and suffering, and punitive damages. In any such action,
6 a foreign state shall be vicariously liable for the acts of
7 its officials, employees, or agents.

8 “(d) ADDITIONAL DAMAGES.—After an action has
9 been brought under subsection (c), actions may also be
10 brought for reasonably foreseeable property loss, whether
11 insured or uninsured, third party liability, and loss claims
12 under life and property insurance policies, by reason of
13 the same acts on which the action under subsection (c)
14 is based.

15 “(e) SPECIAL MASTERS.—

16 “(1) IN GENERAL.—The courts of the United
17 States may appoint special masters to hear damage
18 claims brought under this section.

19 “(2) TRANSFER OF FUNDS.—The Attorney
20 General shall transfer, from funds available for the
21 program under section 1404C of the Victims of
22 Crime Act of 1984 (42 U.S.C. 10603c), to the Ad-
23 ministrator of the United States district court in
24 which any case is pending which has been brought
25 or maintained under this section such funds as may



1 be required to cover the costs of special masters ap-
2 pointed under paragraph (1). Any amount paid in
3 compensation to any such special master shall con-
4 stitute an item of court costs.

5 “(f) APPEAL.—In an action brought under this sec-
6 tion, appeals from orders not conclusively ending the liti-
7 gation may only be taken pursuant to section 1292(b) of
8 this title.

9 “(g) PROPERTY DISPOSITION.—

10 “(1) IN GENERAL.—In every action filed in a
11 United States district court in which jurisdiction is
12 alleged under this section, the filing of a notice of
13 pending action pursuant to this section, to which is
14 attached a copy of the complaint filed in the action,
15 shall have the effect of establishing a lien of lis
16 pendens upon any real property or tangible personal
17 property that is—

18 “(A) subject to attachment in aid of execu-
19 tion, or execution, under section 1610;

20 “(B) located within that judicial district;
21 and

22 “(C) titled in the name of any defendant,
23 or titled in the name of any entity controlled by
24 any defendant if such notice contains a state-
25 ment listing such controlled entity.



1 “(2) NOTICE.—A notice of pending action pur-
2 suant to this section shall be filed by the clerk of the
3 district court in the same manner as any pending
4 action and shall be indexed by listing as defendants
5 all named defendants and all entities listed as con-
6 trolled by any defendant.

7 “(3) ENFORCEABILITY.—Liens established by
8 reason of this subsection shall be enforceable as pro-
9 vided in chapter 111 of this title.

10 “(h) DEFINITIONS.—For purposes of this section—

11 “(1) the term ‘aircraft sabotage’ has the mean-
12 ing given that term in Article 1 of the Convention
13 for the Suppression of Unlawful Acts Against the
14 Safety of Civil Aviation;

15 “(2) the term ‘hostage taking’ has the meaning
16 given that term in Article 1 of the International
17 Convention Against the Taking of Hostages;

18 “(3) the term ‘material support or resources’
19 has the meaning given that term in section 2339A
20 of title 18;

21 “(4) the term ‘armed forces’ has the meaning
22 given that term in section 101 of title 10;

23 “(5) the term ‘national of the United States’
24 has the meaning given that term in section



1 101(a)(22) of the Immigration and Nationality Act
2 (8 U.S.C. 1101(a)(22));

3 “(6) the term ‘state sponsor of terrorism’
4 means a country the government of which the Sec-
5 retary of State has determined, for purposes of sec-
6 tion 6(j) of the Export Administration Act of 1979
7 (50 U.S.C. App. 2405(j)), section 620A of the For-
8 eign Assistance Act of 1961 (22 U.S.C. 2371), sec-
9 tion 40 of the Arms Export Control Act (22 U.S.C.
10 2780), or any other provision of law, is a govern-
11 ment that has repeatedly provided support for acts
12 of international terrorism; and

13 “(7) the terms ‘torture’ and ‘extrajudicial kill-
14 ing’ have the meaning given those terms in section
15 3 of the Torture Victim Protection Act of 1991 (28
16 U.S.C. 1350 note).”.

17 (2) AMENDMENT TO CHAPTER ANALYSIS.—The
18 table of sections at the beginning of chapter 97 of
19 title 28, United States Code, is amended by insert-
20 ing after the item relating to section 1605 the fol-
21 lowing:

“1605A. Terrorism exception to the jurisdictional immunity of a foreign state.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) GENERAL EXCEPTION.—Section 1605 of
24 title 28, United States Code, is amended—

25 (A) in subsection (a)—



1 (i) in paragraph (5)(B), by inserting
2 “or” after the semicolon;

3 (ii) in paragraph (6)(D), by striking
4 “; or” and inserting a period; and

5 (iii) by striking paragraph (7);

6 (B) by repealing subsections (e) and (f);

7 and

8 (C) in subsection (g)(1)(A), by striking
9 “but for subsection (a)(7)” and inserting “but
10 for section 1605A”.

11 (2) COUNTERCLAIMS.—Section 1607(a) of title
12 28, United States Code, is amended by inserting “or
13 1605A” after “1605”.

14 (3) PROPERTY.—Section 1610 of title 28,
15 United States Code, is amended—

16 (A) in subsection (a)(7), by striking
17 “1605(a)(7)” and inserting “1605A”;

18 (B) in subsection (b)(2), by striking “(5),
19 or (7), or 1605(b)” and inserting “or (5),
20 1605(b), or 1605A”;

21 (C) in subsection (f), in paragraphs (1)(A)
22 and (2)(A), by inserting “(as in effect before
23 the enactment of section 1605A) or section
24 1605A” after “1605(a)(7)”; and

25 (D) by adding at the end the following:



1 “(g) PROPERTY IN CERTAIN ACTIONS.—

2 “(1) IN GENERAL.—Subject to paragraph (3),
3 the property of a foreign state against which a judg-
4 ment is entered under section 1605A, and the prop-
5 erty of an agency or instrumentality of such a state,
6 including property that is a separate juridical entity
7 or is an interest held directly or indirectly in a sepa-
8 rate juridical entity, is subject to attachment in aid
9 of execution, and execution, upon that judgment as
10 provided in this section, regardless of—

11 “(A) the level of economic control over the
12 property by the government of the foreign state;

13 “(B) whether the profits of the property go
14 to that government;

15 “(C) the degree to which officials of that
16 government manage the property or otherwise
17 control its daily affairs;

18 “(D) whether that government is the sole
19 beneficiary in interest of the property; or

20 “(E) whether establishing the property as
21 a separate entity would entitle the foreign state
22 to benefits in United States courts while avoid-
23 ing its obligations.

24 “(2) UNITED STATES SOVEREIGN IMMUNITY IN-
25 APPLICABLE.—Any property of a foreign state, or



1 agency or instrumentality of a foreign state, to
2 which paragraph (1) applies shall not be immune
3 from attachment in aid of execution, or execution,
4 upon a judgment entered under section 1605A be-
5 cause the property is regulated by the United States
6 Government by reason of action taken against that
7 foreign state under the Trading With the Enemy
8 Act or the International Emergency Economic Pow-
9 ers Act.

10 “(3) THIRD-PARTY JOINT PROPERTY HOLD-
11 ERS.—Nothing in this subsection shall be construed
12 to supersede the authority of a court to prevent ap-
13 propriately the impairment of an interest held by a
14 person who is not liable in the action giving rise to
15 a judgment in property subject to attachment in aid
16 of execution, or execution, upon such judgment.”.

17 (4) VICTIMS OF CRIME ACT.—Section
18 1404C(a)(3) of the Victims of Crime Act of 1984
19 (42 U.S.C. 10603c(a)(3)) is amended by striking
20 “December 21, 1988 with respect to which an inves-
21 tigation or” and inserting “October 23, 1983, with
22 respect to which an investigation or civil or crimi-
23 nal”.

24 (c) APPLICATION TO PENDING CASES.—



1 (1) IN GENERAL.—The amendments made by
2 this section shall apply to any claim arising under
3 section 1605A of title 28, United States Code.

4 (2) PRIOR ACTIONS.—

5 (A) IN GENERAL.—With respect to any ac-
6 tion that—

7 (i) was brought under section
8 1605(a)(7) of title 28, United States Code,
9 or section 589 of the Foreign Operations,
10 Export Financing, and Related Programs
11 Appropriations Act, 1997 (as contained in
12 section 101(c) of division A of Public Law
13 104–208), before the date of the enact-
14 ment of this Act,

15 (ii) relied upon either such provision
16 as creating a cause of action,

17 (iii) has been adversely affected on the
18 grounds that either or both of these provi-
19 sions fail to create a cause of action
20 against the state, and

21 (iv) as of such date of enactment, is
22 before the courts in any form, including on
23 appeal or motion under rule 60(b) of the
24 Federal Rules of Civil Procedure,



1 that action, and any judgment in the action
2 shall, on motion made by plaintiffs to the
3 United States district court where the action
4 was initially brought, or judgment in the action
5 was initially entered, be given effect as if the
6 action had originally been filed under section
7 1605A(c) of title 28, United States Code.

8 (B) DEFENSES WAIVED.—The defenses of
9 res judicata, collateral estoppel, and limitation
10 period are waived—

11 (i) in any action with respect to which
12 a motion is made under subparagraph (A),
13 or

14 (ii) in any action that was originally
15 brought, before the date of the enactment
16 of this Act, under section 1605(a)(7) of
17 title 28, United States Code, or section
18 589 of the Foreign Operations, Export Fi-
19 nancing, and Related Programs Appropria-
20 tions Act, 1997 (as contained in section
21 101(c) of division A of Public Law 104-
22 208), and is refiled under section 1605A(c)
23 of title 28, United States Code,

24 to the extent such defenses are based on the
25 claim in the action.



1 (C) TIME LIMITATIONS.—A motion may be
2 made or an action may be refiled under sub-
3 paragraph (A) only—

4 (i) if the original action was com-
5 menced not later than the latter of—

6 (I) 10 years after April 24, 1996;

7 or

8 (II) 10 years after the cause of
9 action arose; and

10 (ii) within the 60-day period begin-
11 ning on the date of the enactment of this
12 Act.

13 (3) RELATED ACTIONS.—If an action arising
14 out of an act or incident has been timely commenced
15 under section 1605(a)(7) of title 28, United States
16 Code, or section 589 of the Foreign Operations, Ex-
17 port Financing, and Related Programs Appropria-
18 tions Act, 1997 (as contained in section 101(c) of
19 division A of Public Law 104–208), any other action
20 arising out of the same act or incident may be
21 brought under section 1605A of title 28, United
22 States Code, if the action is commenced not later
23 than the latter of 60 days after—

24 (A) the date of the entry of judgment in
25 the original action; or



1 (B) the date of the enactment of this Act.

2 (4) PRESERVING THE JURISDICTION OF THE
3 COURTS.—Nothing in section 1503 of the Emer-
4 gency Wartime Supplemental Appropriations Act,
5 2003 (Public Law 108–11, 117 Stat. 579) has ever
6 authorized, directly or indirectly, the making inappli-
7 cable of any provision of chapter 97 of title 28,
8 United States Code, or the removal of the jurisdic-
9 tion of any court of the United States.

10 (d) APPLICABILITY TO IRAQ.—

11 (1) APPLICABILITY.—The President may waive
12 any provision of this section with respect to Iraq, in-
13 sofar as that provision may, in the President's deter-
14 mination, affect Iraq or any agency or instrumen-
15 tality thereof, if the President determines that—

16 (A) the waiver is in the national security
17 interest of the United States;

18 (B) the waiver will promote the reconstruc-
19 tion of, the consolidation of democracy in, and
20 the relations of the United States with, Iraq;
21 and

22 (C) Iraq continues to be a reliable ally of
23 the United States and partner in combating
24 acts of international terrorism.



1 (2) TEMPORAL SCOPE.—The authority under
2 paragraph (1) shall apply—

3 (A) with respect to any conduct or event
4 occurring before or on the date of the enact-
5 ment of this Act;

6 (B) with respect to any conduct or event
7 occurring before or on the date of the exercise
8 of that authority; and

9 (C) regardless of whether, or the extent to
10 which, the exercise of that authority affects any
11 action filed before, on, or after the date of the
12 exercise of that authority or of the enactment
13 of this Act.

14 (3) NOTIFICATION TO CONGRESS.—A waiver by
15 the President under paragraph (1) shall cease to be
16 effective 30 days after it is made unless the Presi-
17 dent has notified Congress in writing of the basis for
18 the waiver as determined by the President under
19 paragraph (1).


20 (4) SENSE OF CONGRESS.—It is the sense of
21 the Congress that the President, acting through the
22 Secretary of State, should work with the Govern-
23 ment of Iraq on a state-to-state basis to ensure com-
24 pensation for any meritorious claims based on ter-
25 rorist acts committed by the Saddam Hussein re-



1 gime against individuals who were United States na-
2 tionals or members of the United States Armed
3 Forces at the time of those terrorist acts and whose
4 claims cannot be addressed in courts in the United
5 States due to the exercise of the waiver authority
6 under paragraph (1).

7 (e) SEVERABILITY.—If any provision of this section
8 or the amendments made by this section, or the applica-
9 tion of such provision to any person or circumstance, is
10 held invalid, the remainder of this section and such
11 amendments, and the application of such provision to
12 other persons not similarly situated or to other cir-
13 cumstances, shall not be affected by such invalidation.

14 **TITLE XI—CIVILIAN PERSONNEL**
15 **MATTERS**

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- Sec. 1101. Extension of authority to waive annual limitation on total compensa-
tion paid to Federal civilian employees working overseas under
areas of United States Central Command.
- Sec. 1102. Continuation of life insurance coverage for Federal employees called
to active duty.
- Sec. 1103. Transportation of dependents, household effects, and personal prop-
erty to former home following death of Federal employee where
death resulted from disease or injury incurred in the Central
Command area of responsibility.
- Sec. 1104. Special benefits for civilian employees assigned on deployment tem-
porary change of station.
- Sec. 1105. Death gratuity authorized for Federal employees.
- Sec. 1106. Modifications to the National Security Personnel System.
- Sec. 1107. Requirement for full implementation of personnel demonstration
project.
- Sec. 1108. Authority for inclusion of certain Office of Defense Research and
Engineering positions in experimental personnel program for
scientific and technical personnel.
- Sec. 1109. Pilot program for the temporary assignment of information tech-
nology personnel to private sector organizations.
- Sec. 1110. Compensation for Federal wage system employees for certain travel
hours.