

108TH CONGRESS  
2D SESSION

# H. R. 5118

To combat terrorism, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 2004

Mr. SESSIONS introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Energy and Commerce and International Relations, 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

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## A BILL

To combat terrorism, 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. SHORT TITLE.**

4 This Act may be cited as the “Prevention of Terrorist  
5 Access to Destructive Weapons Act of 2004”.

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

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

8 (1) The criminal use of man-portable air de-  
9 fense systems (MANPADS) presents a serious  
10 threat to civil aviation worldwide, especially in the

1 hands of terrorists or foreign states that harbor  
2 them.

3 (2) Atomic weapons or weapons designed to re-  
4 lease radiation (“dirty bombs”) could be used by ter-  
5 rorists to inflict enormous loss of life and damage to  
6 property and the environment.

7 (3) Variola virus is the causative agent of  
8 smallpox, an extremely serious, contagious, and  
9 sometimes fatal disease. Variola virus is classified as  
10 a Category A agent by the Centers for Disease Con-  
11 trol and Prevention, meaning that it is believed to  
12 pose the greatest potential threat for adverse public  
13 health impact and has a moderate to high potential  
14 for large-scale dissemination. The last case of small-  
15 pox in the United States was in 1949. The last nat-  
16 urally occurring case in the world was in Somalia in  
17 1977. Although smallpox has been officially eradi-  
18 cated after a successful worldwide vaccination pro-  
19 gram, there remain two official repositories of the  
20 variola virus for research purposes. Because it is so  
21 dangerous, the variola virus may appeal to terror-  
22 ists.

23 (4) The use, or even the threatened use, of  
24 MANPADS, atomic or radiological weapons, or the  
25 variola virus, against the United States, its allies, or

1 its people, poses a grave risk to the security, foreign  
2 policy, economy, and environment of the United  
3 States. Accordingly, the United States has a compel-  
4 ling national security interest in preventing unlawful  
5 activities that lead to the proliferation or spread of  
6 such items, including their unauthorized production,  
7 construction, acquisition, transfer, possession, im-  
8 port, or export. All of these activities markedly in-  
9 crease the chances that such items will be obtained  
10 by terrorist organizations or rogue states, which  
11 could use them to attack the United States, its al-  
12 lies, or United States nationals or corporations.

13 (5) There is no legitimate reason for a private  
14 individual or company, absent explicit government  
15 authorization, to produce, construct, otherwise ac-  
16 quire, transfer, receive, possess, import, export, or  
17 use MANPADS, atomic or radiological weapons, or  
18 the variola virus.

19 (b) PURPOSE.—The purpose of this Act is to combat  
20 the potential use of weapons that have the ability to cause  
21 widespread harm to United States persons and the United  
22 States economy (and that have no legitimate private use)  
23 and to threaten or harm the national security or foreign  
24 relations of the United States.

1 **SEC. 3. MISSILE SYSTEMS DESIGNED TO DESTROY AIR-**  
2 **CRAFT.**

3 Chapter 113B of title 18, United States Code, is  
4 amended by adding after section 2332f the following:

5 **“§ 2332g. Missile systems designed to destroy aircraft**

6 **“(a) UNLAWFUL CONDUCT.—**

7 **“(1) IN GENERAL.—**Except as provided in para-  
8 graph (3), it shall be unlawful for any person to  
9 knowingly produce, construct, otherwise acquire,  
10 transfer directly or indirectly, receive, possess, im-  
11 port, export, or use, or possess and threaten to  
12 use—

13 **“(A)** an explosive or incendiary rocket or  
14 missile that is guided by any system designed to  
15 enable the rocket or missile to—

16 **“(i)** seek or proceed toward energy ra-  
17 diated or reflected from an aircraft or to-  
18 ward an image locating an aircraft; or

19 **“(ii)** otherwise direct or guide the  
20 rocket or missile to an aircraft;

21 **“(B)** any device designed or intended to  
22 launch or guide a rocket or missile described in  
23 subparagraph (A); or

24 **“(C)** any part or combination of parts de-  
25 signed or redesigned for use in assembling or

1           fabricating a rocket, missile, or device described  
2           in subparagraph (A) or (B).

3           “(2) NONWEAPON.—Paragraph (1)(A) does not  
4           apply to any device that is neither designed nor re-  
5           designed for use as a weapon.

6           “(3) EXCLUDED CONDUCT.—This subsection  
7           does not apply with respect to—

8                   “(A) conduct by or under the authority of  
9                   the United States or any department or agency  
10                  thereof or of a State or any department or  
11                  agency thereof; or

12                  “(B) conduct pursuant to the terms of a  
13                  contract with the United States or any depart-  
14                  ment or agency thereof or with a State or any  
15                  department or agency thereof.

16          “(b) JURISDICTION.—Conduct prohibited by sub-  
17          section (a) is within the jurisdiction of the United States  
18          if—

19                  “(1) the offense occurs in or affects interstate  
20                  or foreign commerce;

21                  “(2) the offense occurs outside of the United  
22                  States and is committed by a national of the United  
23                  States;

1           “(3) the offense is committed against a national  
2           of the United States while the national is outside the  
3           United States;

4           “(4) the offense is committed against any prop-  
5           erty that is owned, leased, or used by the United  
6           States or by any department or agency of the United  
7           States, whether the property is within or outside the  
8           United States; or

9           “(5) an offender aids or abets any person over  
10          whom jurisdiction exists under this subsection in  
11          committing an offense under this section or con-  
12          spires with any person over whom jurisdiction exists  
13          under this subsection to commit an offense under  
14          this section.

15          “(c) CRIMINAL PENALTIES.—

16               “(1) IN GENERAL.—Any person who violates, or  
17               attempts or conspires to violate, subsection (a) shall  
18               be fined not more than \$2,000,000 and shall be sen-  
19               tenced to a term of imprisonment not less than 30  
20               years or to imprisonment for life.

21               “(2) LIFE IMPRISONMENT.—Any person who,  
22               in the course of a violation of subsection (a), uses,  
23               attempts or conspires to use, or possesses and  
24               threatens to use, any item or items described in sub-

1 section (a), shall be fined not more than \$2,000,000  
 2 and imprisoned for life.

3 “(3) DEATH PENALTY.—If the death of another  
 4 results from a person’s violation of subsection (a),  
 5 the person shall be fined not more than \$2,000,000  
 6 and punished by death or imprisoned for life.

7 “(d) DEFINITION.—As used in this section, the term  
 8 ‘aircraft’ has the definition set forth in section  
 9 40102(a)(6) of title 49, United States Code.”.

#### 10 **SEC. 4. ATOMIC WEAPONS.**

11 (a) PROHIBITIONS.—Section 92 of the Atomic En-  
 12 ergy Act of 1954 (42 U.S.C. 2122) is amended by—

13 (1) inserting at the beginning “a.” before “It”;

14 (2) inserting “knowingly” after “for any person  
 15 to”;

16 (3) striking “or” before “export”;

17 (4) striking “transfer or receive in interstate or  
 18 foreign commerce,” before “manufacture”;

19 (5) inserting “receive,” after “acquire,”;

20 (6) inserting “, or use, or possess and threaten  
 21 to use,” before “any atomic weapon”;

22 (7) inserting at the end the following:

23 “b. Conduct prohibited by subsection a. is within the  
 24 jurisdiction of the United States if—

1           “(1) the offense occurs in or affects interstate  
2           or foreign commerce; the offense occurs outside of  
3           the United States and is committed by a national of  
4           the United States;

5           “(2) the offense is committed against a national  
6           of the United States while the national is outside the  
7           United States;

8           “(3) the offense is committed against any prop-  
9           erty that is owned, leased, or used by the United  
10          States or by any department or agency of the United  
11          States, whether the property is within or outside the  
12          United States; or

13          “(4) an offender aids or abets any person over  
14          whom jurisdiction exists under this subsection in  
15          committing an offense under this section or con-  
16          spires with any person over whom jurisdiction exists  
17          under this subsection to commit an offense under  
18          this section.”.

19          (b) VIOLATIONS.—Section 222 of the Atomic Energy  
20          Act of 1954 (42 U.S.C. 2272) is amended by—

21                 (1) inserting at the beginning “a.” before  
22                 “Whoever”;

23                 (2) striking “, 92,”; and

24                 (3) inserting at the end the following:



1       “b. Any person who violates, or attempts or conspires  
 2 to violate, section 92 shall be fined not more than  
 3 \$2,000,000 and sentenced to a term of imprisonment not  
 4 less than 30 years or to imprisonment for life. Any person  
 5 who, in the course of a violation of section 92, uses, at-  
 6 tempts or conspires to use, or possesses and threatens to  
 7 use, any atomic weapon shall be fined not more than  
 8 \$2,000,000 and imprisoned for life. If the death of an-  
 9 other results from a person’s violation of section 92, the  
 10 person shall be fined not more than \$2,000,000 and pun-  
 11 ished by death or imprisoned for life.”.

12 **SEC. 5. RADIOLOGICAL DISPERSAL DEVICES.**

13       Chapter 113B of title 18, United States Code, is  
 14 amended by adding after section 2332g the following:

15 **“§ 2332h. Radiological dispersal devices**

16       “(a) UNLAWFUL CONDUCT.—

17               “(1) IN GENERAL.—Except as provided in para-  
 18 graph (2), it shall be unlawful for any person to  
 19 knowingly produce, construct, otherwise acquire,  
 20 transfer directly or indirectly, receive, possess, im-  
 21 port, export, or use, or possess and threaten to  
 22 use—

23                       “(A) any weapon that is designed or in-  
 24 tended to release radiation or radioactivity at a  
 25 level dangerous to human life; or

1           “(B) or any device or other object that is  
2           capable of and designed or intended to endan-  
3           ger human life through the release of radiation  
4           or radioactivity.

5           “(2) EXCEPTION.—This subsection does not  
6           apply with respect to—

7           “(A) conduct by or under the authority of  
8           the United States or any department or agency  
9           thereof; or

10           “(B) conduct pursuant to the terms of a  
11           contract with the United States or any depart-  
12           ment or agency thereof.

13           “(b) JURISDICTION.—Conduct prohibited by sub-  
14           section (a) is within the jurisdiction of the United States  
15           if—

16           “(1) the offense occurs in or affects interstate  
17           or foreign commerce;

18           “(2) the offense occurs outside of the United  
19           States and is committed by a national of the United  
20           States;

21           “(3) the offense is committed against a national  
22           of the United States while the national is outside the  
23           United States;

24           “(4) the offense is committed against any prop-  
25           erty that is owned, leased, or used by the United

1 States or by any department or agency of the United  
2 States, whether the property is within or outside the  
3 United States; or

4 “(5) an offender aids or abets any person over  
5 whom jurisdiction exists under this subsection in  
6 committing an offense under this section or con-  
7 spires with any person over whom jurisdiction exists  
8 under this subsection to commit an offense under  
9 this section.

10 “(c) CRIMINAL PENALTIES.—

11 “(1) IN GENERAL.—Any person who violates, or  
12 attempts or conspires to violate, subsection (a) shall  
13 be fined not more than \$2,000,000 and shall be sen-  
14 tenced to a term of imprisonment not less than 30  
15 years or to imprisonment for life.

16 “(2) LIFE IMPRISONMENT.—Any person who,  
17 in the course of a violation of subsection (a), uses,  
18 attempts or conspires to use, or possesses and  
19 threatens to use, any item or items described in sub-  
20 section (a), shall be fined not more than \$2,000,000  
21 and imprisoned for life.

22 “(3) DEATH PENALTY.—If the death of another  
23 results from a person’s violation of subsection (a),  
24 the person shall be fined not more than \$2,000,000  
25 and punished by death or imprisoned for life.”.

1 **SEC. 6. VARIOLA VIRUS.**

2 Chapter 10 of title 18, United States Code, is amend-  
3 ed by inserting after section 175b the following:

4 **“§ 175c. Variola virus**

5 “(a) UNLAWFUL CONDUCT.—

6 “(1) IN GENERAL.—Except as provided in para-  
7 graph (2), it shall be unlawful for any person to  
8 knowingly produce, engineer, synthesize, acquire,  
9 transfer directly or indirectly, receive, possess, im-  
10 port, export, or use, or possess and threaten to use,  
11 variola virus.

12 “(2) EXCEPTION.—This subsection does not  
13 apply to conduct by, or under the authority of, the  
14 Secretary of Health and Human Services.

15 “(b) JURISDICTION.—Conduct prohibited by sub-  
16 section (a) is within the jurisdiction of the United States  
17 if—

18 “(1) the offense occurs in or affects interstate  
19 or foreign commerce;

20 “(2) the offense occurs outside of the United  
21 States and is committed by a national of the United  
22 States;

23 “(3) the offense is committed against a national  
24 of the United States while the national is outside the  
25 United States;

1           “(4) the offense is committed against any prop-  
2       erty that is owned, leased, or used by the United  
3       States or by any department or agency of the United  
4       States, whether the property is within or outside the  
5       United States; or

6           “(5) an offender aids or abets any person over  
7       whom jurisdiction exists under this subsection in  
8       committing an offense under this section or con-  
9       spires with any person over whom jurisdiction exists  
10      under this subsection to commit an offense under  
11      this section.

12      “(c) CRIMINAL PENALTIES.—

13           “(1) IN GENERAL.—Any person who violates, or  
14      attempts or conspires to violate, subsection (a) shall  
15      be fined not more than \$2,000,000 and shall be sen-  
16      tenced to a term of imprisonment not less than 30  
17      years or to imprisonment for life.

18           “(2) LIFE IMPRISONMENT.—Any person who,  
19      in the course of a violation of subsection (a), uses,  
20      attempts or conspires to use, or possesses and  
21      threatens to use, any item or items described in sub-  
22      section (a), shall be fined not more than \$2,000,000  
23      and imprisoned for life.

24           “(3) DEATH PENALTY.—If the death of another  
25      results from a person’s violation of subsection (a),

1 the person shall be fined not more than \$2,000,000  
 2 and punished by death or imprisoned for life.

3 “(d) DEFINITION.—As used in this section, the term  
 4 ‘variola virus’ means a virus that can cause human small-  
 5 pox or any derivative of the variola major virus that con-  
 6 tains more than 85 percent of the gene sequence of the  
 7 variola major virus or the variola minor virus.”.

8 **SEC. 7. INTERCEPTION OF COMMUNICATIONS.**

9 Section 2516(1) of title 18, United States Code, is  
 10 amended—

11 (1) in paragraph (a), by inserting “2122 and”  
 12 after “sections”;

13 (2) in paragraph (c), by inserting “section 175c  
 14 (relating to variola virus),” after “section 175 (relat-  
 15 ing to biological weapons),”; and

16 (3) in paragraph (q), by inserting “2332g,  
 17 2332h,” after “2332f.”.

18 **SEC. 8. AMENDMENTS TO SECTION 2332b(g)(5)(B) OF TITLE**  
 19 **18, UNITED STATES CODE.**

20 Section 2332b(g)(5)(B) of title 18, United States  
 21 Code, is amended—

22 (1) in clause (i)—

23 (A) by inserting before “2339 (relating to  
 24 harboring terrorists)” the following: “2332g  
 25 (relating to missile systems designed to destroy

1 aircraft), 2332h (relating to radiological dis-  
 2 persal devices),”; and

3 (B) by inserting “175c (relating to variola  
 4 virus),” after “175 or 175b (relating to biologi-  
 5 cal weapons),”; and

6 (2) in clause (ii)—

7 (A) by striking “section” and inserting  
 8 “sections 92 (relating to prohibitions governing  
 9 atomic weapons) or”; and

10 (B) by inserting “2122 or” before “2284”.

11 **SEC. 9. AMENDMENTS TO SECTION 1956(c)(7)(D) OF TITLE**  
 12 **18, UNITED STATES CODE.**

13 Section 1956(c)(7)(D), title 18, United States Code,  
 14 is amended—

15 (1) by inserting after “section 152 (relating to  
 16 concealment of assets; false oaths and claims; brib-  
 17 ery),” the following: “section 175c (relating to the  
 18 variola virus),”;

19 (2) by inserting after “section 2332(b) (relating  
 20 to international terrorist acts transcending national  
 21 boundaries),” the following: “section 2332g (relating  
 22 to missile systems designed to destroy aircraft), sec-  
 23 tion 2332h (relating to radiological dispersal de-  
 24 vices),”; and

1           (3) striking “or” after “any felony violation of  
 2           the Foreign Agents Registration Act of 1938,” and  
 3           after “any felony violation of the Foreign Corrupt  
 4           Practices Act”, striking “;” and inserting “, or sec-  
 5           tion 92 of the Atomic Energy Act of 1954 (42  
 6           U.S.C. 2122) (relating to prohibitions governing  
 7           atomic weapons)”.

8   **SEC. 10. EXPORT LICENSING PROCESS.**

9           Section 38(g)(1)(A) of the Arms Export Control Act  
 10          (22 U.S.C. 2778) is amended—

11                  (1) by striking “or” before “(xi)”; and

12                  (2) by inserting after clause (xi) the following:

13           “or (xii) section 3, 4, 5, and 6 of the Prevention of  
 14           Terrorist Access to Destructive Weapons Act of  
 15           2004, relating to missile systems designed to destroy  
 16           aircraft (18 U.S.C. 2332g), prohibitions governing  
 17           atomic weapons (42 U.S.C. 2122), radiological dis-  
 18           persal devices (18 U.S.C. 2332h), and variola virus  
 19           (18 U.S.C. 175b);”.

20   **SEC. 11. CLERICAL AMENDMENTS.**

21           (a) CHAPTER 113B.—The table of sections for chap-  
 22           ter 113B of title 18, United States Code, is amended by  
 23           inserting the following after the item for section 2332f:

“2332g. Missile systems designed to destroy aircraft.  
 “2332h. Radiological dispersal devices.”.



- 1 (b) CHAPTER 10.—The table of sections for chapter
- 2 10 of title 18, United States Code, is amended by inserting
- 3 the following item after the item for section 175b:

“175e. Variola virus.”.

