

108TH CONGRESS
2D SESSION

S. 2664

To combat terrorism, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 15, 2004

Mr. CORNYN introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

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
11 hands of terrorists or foreign states that harbor
12 them.

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

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

21 (4) The use, or even the threatened use, of
22 MANPADS, atomic or radiological weapons, or the
23 variola virus, against the United States, its allies, or
24 its people, poses a grave risk to the security, foreign
25 policy, economy, and environment of the United

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

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

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

 “Sec. 2332g. Missile systems designed to destroy aircraft.
 “Sec. 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:

“Sec. 175c. Variola virus.”.

