

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1257

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.

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## IN THE SENATE OF THE UNITED STATES

JUNE 16, 2005

Mr. SPECTER (for himself and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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

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

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

4               “(1) CAUSE OF ACTION.—

5                       “(A) CAUSE OF ACTION.—A foreign state  
6 designated as a state sponsor of terrorism  
7 under section 6(j) of the Export Administration  
8 Act of 1979 (50 U.S.C. App. 2405(j)) or sec-  
9 tion 620A of the Foreign Assistance Act of  
10 1961 (22 U.S.C. 2371), or an official, em-  
11 ployee, or agent of such a foreign state, shall be  
12 liable to a national of the United States (as  
13 that term is defined in section 101(a)(22) of  
14 the Immigration and Nationality Act (8 U.S.C.  
15 1101(a)(22)) or the national’s legal representa-  
16 tive for personal injury or death caused by an  
17 act of that foreign state, or by that official, em-  
18 ployee, or agent while acting within the scope of  
19 his or her office, employment, or agency, for  
20 which the courts of the United States may  
21 maintain jurisdiction under subsection (a)(7)  
22 for money damages. The removal of a foreign  
23 state from designation as a state sponsor of ter-  
24 rorism under section 6(j) of the Export Admin-  
25 istration Act of 1979 (50 U.S.C. App. 2405(j)),

1 section 620A of the Foreign Assistance Act of  
2 1961 (22 U.S.C. 2371), or other provision of  
3 law shall not terminate a cause of action arising  
4 under this subparagraph during the period of  
5 such designation.

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

9 “(C) NATIONALITY OF CLAIMANT.—No ac-  
10 tion shall be maintained under subparagraph  
11 (A) arising from an act of a foreign state or an  
12 official, employee, or agent of a foreign state if  
13 neither the claimant nor the victim was a na-  
14 tional of the United States (as that term is de-  
15 fined in section 101(a)(22) of the Immigration  
16 and Nationality Act (8 U.S.C. 1101(a)(22))  
17 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, dam-  
24 ages for pain and suffering, or, notwithstanding sec-  
25 tion 1606, punitive damages. In all actions brought

1 under paragraph (1), a foreign state shall be vicari-  
2 ously liable for the actions of its officials, employees,  
3 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 subsection (a)(7) or (h) of section 1605, in-  
5 cluding a property interest that is a separate jurid-  
6 ical entity, is subject to execution upon that judg-  
7 ment as provided in this 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 control 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) UNITED STATES SOVEREIGN IMMUNITY IN-  
24 APPLICABLE.—Any property interest of a foreign  
25 state, or agency or instrumentality of a foreign

1 state, to which paragraph (1) applies shall not be  
2 immune from execution upon a judgment entered  
3 under subsection (a)(7) or (h) of section 1605 be-  
4 cause the property interest is regulated by the  
5 United States Government by reason of action taken  
6 against that foreign state under the Trading With  
7 the Enemy Act or the International Emergency Eco-  
8 nomic Powers Act.”.

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

10 (a) VICTIMS OF CRIME ACT.—Section 1404C(a)(3)  
11 of the Victims of Crime Act of 1984 (42 U.S.C.  
12 10603c(a)(3)) is amended by striking “December 21,  
13 1988, with respect to which an investigation or” and in-  
14 serting “October 23, 1983, with respect to which an inves-  
15 tigation or a civil or criminal”.

16 (b) JUSTICE FOR MARINES.—The Attorney General  
17 shall transfer, from funds available for the program under  
18 sections 1404C of the Victims of Crime Act of 1984 (42  
19 U.S.C. 10603c), to the Administrator of the United States  
20 District Court for the District of Columbia such funds as  
21 may be required to carry out the orders of United States  
22 District Judge Royce C. Lamberth appointing Special  
23 Masters in the matter of Peterson, et al. v. The Islamic  
24 Republic of Iran, Case No. 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 sub-  
4 section (a)(7) or (h) of section 1605 of title 28, United  
5 States Code, the filing of a notice of pending action pursu-  
6 ant to such subsection, to which is attached a copy of the  
7 complaint filed in the action, shall have the effect of estab-  
8 lishing a lien of lis pendens upon any real property or tan-  
9 gible personal property located within that judicial district  
10 that is titled in the name of any defendant, or titled in  
11 the name of any entity controlled by any such defendant  
12 if such notice contains a statement listing those controlled  
13 entities. A notice of pending action pursuant to subsection  
14 (a)(7) or (h) of section 1605 of title 28, United States  
15 Code, shall be filed by the clerk of the district court in  
16 the same manner as any pending action and shall be in-  
17 dexed by listing as defendants all named defendants and  
18 all entities listed as controlled by any defendant.

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

22 **SEC. 5. APPLICABILITY.**

23 (a) IN GENERAL.—The amendments made by this  
24 Act apply to any claim for which a foreign state is not  
25 immune under subsection (a)(7) or (h) of section 1605

1 of title 28, United States Code, arising before, on, or after  
2 the date of the 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, the 10-year limita-  
10 tion period provided under section 1605(f) of title  
11 28, United States Code, shall be tolled during the  
12 period beginning on the date on which the action  
13 was first brought and ending 60 days after the date  
14 of the enactment of this Act.

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