

107TH CONGRESS
1ST SESSION

H. R. 3160

IN THE SENATE OF THE UNITED STATES

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Read twice and referred to the Committee on the Judiciary

AN ACT

To amend the Antiterrorism and Effective Death Penalty Act of 1996 with respect to the responsibilities of the Secretary of Health and Human Services regarding biological agents and toxins, and to amend title 18, United States Code, with respect to such agents and toxins.

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 “Bioterrorism Preven-

5 tion Act of 2001”.

6 **SEC. 2. EXPANSION OF BIOLOGICAL WEAPONS STATUTE.**

7 (a) SELECT AGENTS.—

8 (1) IN GENERAL.—Section 175 of title 18,
9 United States Code, is amended—

10 (A) by redesignating subsection (b) as sub-

11 section (c); and

12 (B) by inserting after subsection (a) the

13 following subsection:

14 “(b) SELECT AGENTS.—

15 “(1) UNSAFE HANDLING.—

16 “(A) IN GENERAL.—Whoever possesses,
17 uses, or exercises control over a select agent in
18 a manner constituting reckless disregard for the
19 public health and safety, knowing the select
20 agent to be a biological agent or toxin, shall be
21 fined under this title, imprisoned for not more
22 than one year, or both.

23 “(B) AGGRAVATED OFFENSE.—Whoever,
24 in the course of a violation of subparagraph
25 (A), causes bodily injury to another shall be

1 fined under this title, or imprisoned for not
2 more than 10 years, or both; except that if
3 death results from such violation, the person
4 committing the violation shall be fined under
5 this title, or imprisoned for any term of years
6 or for life, or both.

7 “(2) UNREGISTERED FOR POSSESSION.—Who-
8 ever knowingly possesses a biological agent or toxin
9 where such agent or toxin is a select agent for which
10 such person has not obtained a registration under
11 section 511(f) of the Antiterrorism and Effective
12 Death Penalty Act of 1996 shall be fined under this
13 title, or imprisoned for not more than 5 years, or
14 both.

15 “(3) TRANSFER TO UNREGISTERED PERSON.—
16 Whoever knowingly transfers a select agent to a per-
17 son who has not obtained a registration under sec-
18 tion 511(e) of the Antiterrorism and Effective Death
19 Penalty Act of 1996 shall be fined under this title,
20 or imprisoned for not more than 5 years, or both.

21 “(4) RESTRICTED PERSONS.—Whoever is a re-
22 stricted person and knowingly ships or transports a
23 select agent in interstate or foreign commerce, or
24 knowingly receives a select agent so shipped or
25 transported, or knowingly possesses a select agent in

1 or affecting interstate or foreign commerce, shall be
2 fined under this title, or imprisoned for not more
3 than 5 years, or both. The preceding sentence does
4 not apply with respect to any duly authorized gov-
5 ernmental activity under title V of the National Se-
6 curity Act of 1947.”.

7 (2) DEFINITIONS.—Section 175 of title 18,
8 United States Code, as amended by paragraph (1)
9 of this subsection, is amended by amending sub-
10 section (c) to read as follows:

11 “(c) DEFINITIONS.—As used in this section:

12 “(1) The terms ‘biological agent’ and ‘toxin’
13 have the meanings given such terms in section 178,
14 except that, for purposes of subsection (b), such
15 terms do not encompass any biological agent or
16 toxin that is in its naturally occurring environment,
17 if the biological agent or toxin has not been cul-
18 tivated, cultured, collected, or otherwise extracted
19 from its natural source.

20 “(2) The term ‘bodily injury’ has the meaning
21 given such term in section 1365.

22 “(3) The term ‘for use as a weapon’ includes
23 the development, production, transfer, acquisition,
24 retention, or possession of any biological agent,

1 toxin, or delivery system, other than for prophylactic, protective, or other peaceful purposes.

2
3 “(4)(A) The term ‘restricted person’ means a
4 person—

5 “(i) who is described in section 922(g), as
6 such section was in effect on the day before the
7 effective date of this paragraph; or

8 “(ii) who is an alien, other than an alien
9 lawfully admitted for permanent residence or an
10 alien who under subparagraph (B) is considered
11 not to be a restricted person.

12 “(B) For purposes of subparagraph (A)(ii):

13 “(i) An alien is considered not to be a re-
14 stricted person if the alien is within a category
15 designated under clause (ii) of this subpara-
16 graph.

17 “(ii) The Secretary of Health and Human
18 Services, in consultation with the Attorney Gen-
19 eral, may designate categories of individuals
20 who have—

21 “(I) nonimmigrant visas as defined in
22 section 101(a)(26) of the Immigration and
23 Nationality Act; and

24 “(II) expertise valuable to the United
25 States regarding select agents.

1 “(5) The term ‘select agent’ means a biological
2 agent or toxin, as defined in paragraph (1), that—

3 “(A) is on the list that is in effect pursu-
4 ant to section 511(d)(1) of the Antiterrorism
5 and Effective Death Penalty Act of 1996 (Pub-
6 lic Law 104–132); and

7 “(B) has not been exempted from the ap-
8 plicability of regulations under section 511(e) of
9 such Act.”.

10 (3) EFFECTIVE DATE REGARDING RESTRICTED
11 PERSONS; REGULATIONS.—

12 (A) EFFECTIVE DATE.—Section 175(b)(4)
13 of title 18, United States Code, as added by
14 subsection (a)(1)(B) of this section, takes effect
15 upon the expiration of the 90-day period begin-
16 ning on the date of the enactment of this Act.

17 (B) REGULATIONS.—Not later than 30
18 days after the date of the enactment of this
19 Act, the Secretary of Health and Human Serv-
20 ices shall determine whether the Secretary will
21 designate any categories or individuals for pur-
22 poses of section 175(c)(4)(B) of title 18, United
23 States Code, as added by subsection (a)(1)(B)
24 of this section. If the Secretary determines that
25 one or more such categories will be designated,

1 the Secretary shall promulgate an interim final
2 rule for purposes of such section not later than
3 60 days after such date of enactment.

4 (4) CONFORMING AMENDMENT.—Section
5 175(a) of title 18, United States Code, is amended
6 in the second sentence by striking “under this sec-
7 tion” and inserting “under this subsection”.

8 (b) AMENDMENTS TO ANTITERRORISM AND EFFEC-
9 TIVE DEATH PENALTY ACT OF 1996.—

10 (1) POSSESSION AND USE.—

11 (A) IN GENERAL.—Section 511 of the
12 Antiterrorism and Effective Death Penalty Act
13 of 1996 (Public Law 104–132) is amended—

14 (i) by striking subsection (f);

15 (ii) by redesignating subsection (g) as
16 subsection (i); and

17 (iii) by inserting after subsection (e)

18 the following subsection:

19 “(f) POSSESSION AND USE OF LISTED BIOLOGICAL
20 AGENTS AND TOXINS.—

21 “(1) IN GENERAL.—The Secretary shall by reg-
22 ulation provide for the establishment and enforce-
23 ment of standards and procedures governing the
24 possession and use of biological agents and toxins
25 listed pursuant to subsection (d)(1) in order to pro-

1 tect the public health and safety, including safe-
2 guards to prevent access to such agents and toxins
3 for use in domestic or international terrorism or for
4 any other criminal purpose.

5 “(2) REGISTRATION.—Regulations under para-
6 graph (1) shall provide for registration requirements
7 regarding the possession and use of biological agents
8 and toxins listed pursuant to subsection (d)(1).”.

9 (B) REGULATIONS.—

10 (i) DATE CERTAIN FOR PROMULGA-
11 TION; EFFECTIVE DATE REGARDING CRIMI-
12 NAL AND CIVIL PENALTIES.—Not later
13 than 30 days after the date of the enact-
14 ment of this Act, the Secretary of Health
15 and Human Services shall promulgate an
16 interim final rule for carrying out section
17 511(f) of the Antiterrorism and Effective
18 Death Penalty Act of 1996, as added by
19 subparagraph (A) of this paragraph. Such
20 interim final rule takes effect 60 days after
21 the date on which such rule is promul-
22 gated, including for purposes of—

23 (I) section 175(b)(2) of title 18,
24 United States Code (relating to crimi-

1 nal penalties), as added by subsection
2 (a)(1)(B) of this section; and

3 (II) section 511(h) of the
4 Antiterrorism and Effective Death
5 Penalty Act of 1996 (relating to civil
6 penalties), as added by paragraph (3)
7 of this subsection.

8 (ii) SUBMISSION OF REGISTRATION
9 APPLICATIONS.—In the case of a person
10 who, as of the date of the enactment of
11 this Act, is in possession of a biological
12 agent or toxin that is listed pursuant to
13 section 511(d)(1) of the Antiterrorism and
14 Effective Death Penalty Act of 1996, such
15 person shall, in accordance with the in-
16 terim final rule promulgated under clause
17 (i), submit an application for a registration
18 to possess such agent or toxin not later
19 than 30 days after the date on which such
20 rule is promulgated.

21 (2) DISCLOSURES OF INFORMATION.—

22 (A) IN GENERAL.—Section 511 of the
23 Antiterrorism and Effective Death Penalty Act
24 of 1996, as amended by paragraph (1) of this

1 subsection, is amended by inserting after sub-
2 section (f) the following subsection:

3 “(g) DISCLOSURE OF INFORMATION.—

4 “(1) IN GENERAL.—Any information in the
5 possession of any Federal agency that identifies a
6 person, or the geographic location of a person, who
7 is registered pursuant to regulations under this sec-
8 tion (including regulations promulgated before the
9 effective date of this subsection), and any site-spe-
10 cific information relating to the type, quantity, or
11 identity of a biological agent or toxin listed pursuant
12 to subsection (d)(1) or the site-specific security
13 mechanisms in place to protect such agents and tox-
14 ins, shall not be disclosed under section 552(a) of
15 title 5, United States Code.

16 “(2) DISCLOSURES FOR PUBLIC HEALTH AND
17 SAFETY; CONGRESS.—Nothing in this section may be
18 construed as preventing the head of any Federal
19 agency—

20 “(A) from making disclosures of informa-
21 tion described in paragraph (1) for purposes of
22 protecting the public health and safety; or

23 “(B) from making disclosures of such in-
24 formation to any committee or subcommittee of

1 the Congress with appropriate jurisdiction,
2 upon request.”.

3 (B) EFFECTIVE DATE.—The effective date
4 for the amendment made by subparagraph (A)
5 shall be the same as the effective date for the
6 final rule issued pursuant to section 511(d)(1)
7 of the Antiterrorism and Effective Death Pen-
8 alty Act of 1996 (Public Law 104–132).

9 (3) CIVIL PENALTIES.—Section 511 of the
10 Antiterrorism and Effective Death Penalty Act of
11 1996, as amended by paragraphs (1) and (2) of this
12 subsection, is amended by inserting after subsection
13 (g) the following subsection:

14 “(h) CIVIL PENALTY.—Any person who violates a
15 regulation under subsection (e) or (f) shall be subject to
16 the United States for a civil penalty in an amount not
17 exceeding \$250,000 in the case of an individual and
18 \$500,000 in the case of any other person.”.

19 (4) CLARIFICATION OF SCOPE OF SELECT
20 AGENT RULE; TERRORISM; RESPONSIBILITIES OF
21 SECRETARY OF HEALTH AND HUMAN SERVICES.—

22 (A) IN GENERAL.—Section 511 of the
23 Antiterrorism and Effective Death Penalty Act
24 of 1996 (Public Law 104–132) is amended—

1 (i) in each of subsections (d) and
2 (e)—

3 (I) by inserting “and toxins”
4 after “agents” each place such term
5 appears; and

6 (II) by inserting “or toxin” after
7 “agent” each place such term ap-
8 pears; and

9 (ii) in subsection (i) (as redesignated
10 by paragraph (1) of this subsection), in
11 paragraph (1), by striking “the term ‘bio-
12 logical agent’ has” and inserting “the
13 terms ‘biological agent’ and ‘toxin’ have”.

14 (B) EFFECTIVE DATE.—The effective date
15 for the amendments made by subparagraph (A)
16 shall be as if the amendments had been in-
17 cluded in the enactment of section 511 of the
18 Antiterrorism and Effective Death Penalty Act
19 of 1996 (Public Law 104–132).

20 (5) CONFORMING AMENDMENTS.—Section 511
21 of the Antiterrorism and Effective Death Penalty
22 Act of 1996 (Public Law 104–132) is amended—

23 (A) in subsection (d)(1)(A), by striking
24 “shall, through regulations promulgated under

1 subsection (f),” and inserting “shall by regula-
2 tion”;

3 (B) in subsection (e), in the matter pre-
4 ceding paragraph (1), by striking “shall,
5 through regulations promulgated under sub-
6 section (f),” and inserting “shall by regula-
7 tion”;

8 (C) in subsection (d)—

9 (i) in the heading for the subsection,
10 by striking “AGENTS” and inserting
11 “AGENTS AND TOXINS”; and

12 (ii) in the heading for paragraph (1),
13 by striking “AGENTS” and inserting
14 “AGENTS AND TOXINS”; and

15 (D) in the heading for subsection (e), by
16 striking “AGENTS” and inserting “AGENTS AND
17 TOXINS”.

18 (c) REPORT TO CONGRESS.—Not later than one year
19 after the date of the enactment of this Act, the Secretary
20 of Health and Human Services, after consultation with
21 other appropriate Federal agencies, shall submit to the
22 Congress a report that—

23 (1) describes the extent to which there has been
24 compliance by governmental and private entities
25 with applicable regulations under section 511 of the

1 Antiterrorism and Effective Death Penalty Act of
2 1996 (Public Law 104–132), including the extent of
3 compliance before the date of the enactment of this
4 Act, and including the extent of compliance with
5 regulations promulgated after such date of enact-
6 ment;

7 (2) describes the future plans of the Secretary
8 for determining compliance with regulations under
9 such section 511 and for taking appropriate enforce-
10 ment actions; and

11 (3) provides any recommendations of the Sec-
12 retary for administrative or legislative initiatives re-
13 garding such section 511.

Passed the House of Representatives October 23,
2001.

Attest:

JEFF TRANDAHL,

Clerk.