

114TH CONGRESS  
2D SESSION

# S. 3442

To amend the Terrorism Risk Insurance Act of 2002 to provide for the release of certain blocked assets, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2016

Mr. BLUMENTHAL introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Terrorism Risk Insurance Act of 2002 to provide for the release of certain blocked assets, 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 “Terrorism Victims Pro-  
5 tection Act”.

6 **SEC. 2. EXECUTION OF PAYMENT.**

7 Section 201 of the Terrorism Risk Insurance Act of  
8 2002 (28 U.S.C. 1610 note) is amended—

9 (1) in subsection (a), by striking “subsection  
10 (b)” and inserting “subsections (b) and (e)”;

1           (2) by redesignating subsection (d) as sub-  
2           section (g);

3           (3) by inserting after subsection (c) the fol-  
4           lowing:

5           “(d) DISCHARGE FROM LIABILITY FOR FUNDS  
6 TRANSFERS.—The final order directing attachment in aid  
7 of execution or execution against an asset described in  
8 subsection (g)(3)(A)(iii), including any mid-stream elec-  
9 tronic funds transfer to a judgment creditor under this  
10 section, shall provide that—

11           “(1) any financial agency or financial institu-  
12           tion ordered to attach in aid of execution or execute  
13           against any such asset that is involved in processing  
14           any transfer related to those assets shall be dis-  
15           charged of any and all liability to any party with re-  
16           spect to such funds transfer;

17           “(2) for purposes of determining the liability of  
18           the originator of any mid-stream funds transfer to  
19           a terrorist party, or to the agency or instrumentality  
20           of such a terrorist party, the mid-stream funds  
21           transfer shall be treated as if it were completed and  
22           payment were received by the intended beneficiary;  
23           and

24           “(3) the terrorist party, and any agency or in-  
25           strumentality of that terrorist party, shall be barred

1 from pursuing any claims related to the assets  
2 turned over pursuant to this section against any en-  
3 tity discharged under paragraphs (1) and (2).

4 “(e) THIRD-PARTY INTEREST IN BLOCKED AS-  
5 SETS.—

6 “(1) IN GENERAL.—Except as provided in para-  
7 graph (2), if a court determines that a person other  
8 than a terrorist party or any agency or instrumen-  
9 tality of that terrorist party holds equitable title to,  
10 or a beneficial interest in, the blocked assets of that  
11 terrorist party (including the blocked assets of any  
12 agency or instrumentality of that terrorist party) or  
13 has a constitutionally protected interest in those  
14 blocked assets, the court may make the blocked as-  
15 sets available for execution or attachment in aid of  
16 execution under subsection (a) only to the extent  
17 that—

18 “(A) the terrorist party or any agency or  
19 instrumentality of a terrorist party has an own-  
20 ership interest, as described in subsection  
21 (g)(3)(A), in the blocked assets; and

22 “(B) the execution or attachment does not  
23 infringe upon the constitutionally protected in-  
24 terest in the assets.

1           “(2) EXCEPTION.—Paragraph (1) shall not  
2 apply to any custodial interest of a foreign securities  
3 intermediary or a related intermediary that holds  
4 the blocked assets outside of the United States for  
5 the benefit of the Government of Iran.

6           “(f) INTERNATIONAL TRANSFERS.—

7           “(1) IN GENERAL.—Except as provided in para-  
8 graph (2)(C)—

9           “(A) a transfer described in subsection  
10 (g)(3)(C) shall be null and void; and

11           “(B) the asset that is the subject of the  
12 transfer shall be treated as if the asset remains  
13 in the United States.

14           “(2) JURISDICTION.—Any court that has per-  
15 sonal jurisdiction over the transferee of an asset de-  
16 scribed in paragraph (1)(B) may—

17           “(A) order the transferee to return the  
18 asset to the United States; and

19           “(B) if the transferee fails to obey an  
20 order described in subparagraph (A)—

21           “(i) deem any asset in an account of  
22 the transferee in the United States that is  
23 an amount not greater than the value of  
24 the transferred asset described in para-  
25 graph (1)(B) to be an asset of a terrorist

1 party or any agency or instrumentality of  
2 that terrorist party; and

3 “(ii) issue an award against the trans-  
4 feree in an amount that is not greater than  
5 the value of the transferred asset described  
6 in paragraph (1)(B).

7 “(C) EXCEPTIONS.—A transfer of an asset  
8 that would otherwise be null and void under  
9 paragraph (1) may not be deemed to be null  
10 and void with respect to any person who held  
11 or maintained the property before the transfer  
12 if that person establishes that—

13 “(i) the person no longer has posses-  
14 sion or control of the asset;

15 “(ii) the transfer of the asset was not  
16 a willful violation by the person—

17 “(I) of the provisions of any or-  
18 ders or regulations issued by the  
19 United States that seized or froze as-  
20 sets under section 5(b) of the Trading  
21 With the Enemy Act (50 U.S.C.  
22 4305(b)); or

23 “(II) under sections 202 and 203  
24 of the International Emergency Eco-

1            nomic Powers Act (50 U.S.C. 1701  
2            and 1702);

3            “(iii) the person did not have reason-  
4            able cause to know or suspect, in view of  
5            all the facts and circumstances known by  
6            or available to the person—

7                       “(I) that the transfer required a  
8                       license or authorization issued by the  
9                       Office of Foreign Assets Control of  
10                       the Department of the Treasury (in  
11                       this subparagraph referred to as the  
12                       ‘Office’); or

13                       “(II) that a license or authoriza-  
14                       tion described in subclause (I), if the  
15                       license or authorization purports to  
16                       cover the transfer, had been obtained  
17                       by—

18                                  “(aa) the misrepresentation  
19                                  of a third party;

20                                  “(bb) withholding material  
21                                  facts; or

22                                  “(cc) other fraudulent  
23                                  means; and

24                                  “(iv) the person submitted to the Of-  
25                                  fice a report containing a full description

1 of the circumstances relating to the trans-  
 2 fer promptly upon discovering that—

3 “(I) the transfer violated any of  
 4 the provisions described in clause (ii);

5 “(II) the transfer was not li-  
 6 censed or authorized by the Office; or

7 “(III) if the person had obtained  
 8 a license or authorization that pur-  
 9 ported to apply to the transfer, the li-  
 10 cense had been obtained under cir-  
 11 cumstances described in clause  
 12 (iii)(II).”; and

13 (4) in subsection (g), as so redesignated—

14 (A) by redesignating paragraphs (3) and  
 15 (4) as paragraphs (4) and (9), respectively;

16 (B) by inserting after paragraph (2) the  
 17 following:

18 “(3) BLOCKED ASSET OF THAT TERRORIST  
 19 PARTY.—The term ‘blocked assets of that terrorist  
 20 party (including the blocked assets of any agency or  
 21 instrumentality of that terrorist party)’ means—

22 “(A) any blocked asset in which the ter-  
 23 rorist party or any agency or instrumentality of  
 24 that terrorist party has a direct, indirect, bene-

1            ficial, equitable, or legal ownership interest  
2            under State or Federal law, including—

3            “(i) a financial asset beneficially  
4            owned by a terrorist party or any agency  
5            or instrumentality of that terrorist party;

6            “(ii) any interest, sale, and redemp-  
7            tion payment related to a financial asset  
8            described in clause (i) that is received in  
9            an account maintained in the United  
10           States at a financial agency or financial in-  
11           stitution regardless of where the terrorist  
12           party or any agency or instrumentality of  
13           that terrorist party maintains an account  
14           in the name to which the financial asset  
15           has been credited; and

16           “(iii) a transfer of funds, including  
17           any mid-stream electronic funds transfer in  
18           possession of an intermediary bank if—

19           “(I) the terrorist party or any  
20           agency or instrumentality of the ter-  
21           rorist party is the originator or the  
22           beneficiary of the fund transfer; or

23           “(II) the transfer was conducted  
24           for the direct or indirect benefit of the  
25           terrorist party or any agency or in-



1                   strumentality of that terrorist party,  
2                   including the central bank or mone-  
3                   tary authority of the terrorist party,  
4                   regardless of whether the transfer was  
5                   initiated by a non-state-owned, non-  
6                   U.S. financial institution located out-  
7                   side of the United States and only  
8                   passes through the financial system of  
9                   the United States to another non-  
10                  state-owned, non-U.S. financial insti-  
11                  tution located outside of the United  
12                  States;

13                  “(B) any asset located outside the United  
14                  States that, if located in the United States,  
15                  would be subject to an order or regulation seiz-  
16                  ing or freezing assets under section 5(b) of the  
17                  Trading With the Enemy Act (50 U.S.C.  
18                  4305(b)) or sections 202 and 203 of the Inter-  
19                  national Emergency Economic Powers Act (50  
20                  U.S.C. 1701 and 1702), if a court in the  
21                  United States has personal jurisdiction over the  
22                  person in possession or custody of the asset lo-  
23                  cated outside the United States; and

24                  “(C) any attempted direct or indirect  
25                  transfer from an account located in the United

1 States to an account located outside of the  
2 United States that—

3 “(i) relates to any financial asset de-  
4 scribed in subparagraph (A); and

5 “(ii) is for the direct or indirect ben-  
6 efit of the terrorist party or any agency or  
7 instrumentality of the terrorist party, re-  
8 gardless of whether the transfer is com-  
9 pleted by a book entry, a wire transfer, or  
10 any other means.”; and

11 (C) by inserting after paragraph (4), as so  
12 redesignated, the following:

13 “(5) FINANCIAL AGENCY.—The term ‘financial  
14 agency’ has the meaning given the term in section  
15 5312(a) of title 31, United States Code.

16 “(6) FINANCIAL ASSET.—The term ‘financial  
17 asset’—

18 “(A) has the meaning given the term in  
19 Article 8–102 of the Uniform Commercial Code;  
20 and

21 “(B) includes cash.

22 “(7) FINANCIAL INSTITUTION.—The term ‘fi-  
23 nancial institution’ has the meaning given the term  
24 in section 5312(a) of title 31, United States Code.

1           “(8) INTERMEDIARY BANK.—The term ‘inter-  
2           mediary bank’ has the meaning given the term in  
3           Article 4A–104 of the Uniform Commercial Code.”.

4 **SEC. 3. EXCEPTIONS TO THE IMMUNITY FROM ATTACH-**  
5 **MENT OR EXECUTION.**

6           Section 1610 of title 28, United States Code, is  
7           amended by striking subsection (g) and inserting the fol-  
8           lowing:

9           “(g) PROPERTY IN CERTAIN ACTIONS.—

10           “(1) DEFINITIONS.—In this subsection—

11           “(A) the term ‘financial agency’ has the  
12           meaning given the term in section 5312(a) of  
13           title 31;

14           “(B) the term ‘financial asset’—

15           “(i) has the meaning given the term  
16           in Article 8–102 of the Uniform Commer-  
17           cial Code; and

18           “(ii) includes cash;

19           “(C) the term ‘financial institution’ has  
20           the meaning given the term in section 5312(a)  
21           of title 31;

22           “(D) the term ‘intermediary bank’ has the  
23           meaning given the term in Article 4A–104 of  
24           the Uniform Commercial Code; and

1           “(E) the term ‘property of a foreign state  
2 against which a judgment is entered under sec-  
3 tion 1605A, and the property of an agency or  
4 instrumentality of such a state’ includes—

5           “(i) a financial asset beneficially  
6 owned by a terrorist party or its agency or  
7 instrumentality;

8           “(ii) any interest, sale, and redemp-  
9 tion payment related to a financial asset  
10 described in clause (i) that is received in  
11 an account maintained in the United  
12 States at a financial agency or financial in-  
13 stitution regardless of where the terrorist  
14 party or its agency or instrumentality  
15 maintains an account in its name to which  
16 the financial asset has been credited; and

17           “(iii) a transfer of funds, including  
18 any mid-stream electronic funds transfer in  
19 possession of an intermediary bank if—

20           “(I) such terrorist party or its  
21 agency or instrumentality is the origi-  
22 nator or the beneficiary of the fund  
23 transfer; or

24           “(II) the transfer was conducted  
25 for the direct or indirect benefit of

1 such terrorist party or its agency or  
2 instrumentality, including the central  
3 bank or monetary authority of the ter-  
4 rorist party, regardless of whether the  
5 transfer was initiated by a non-state-  
6 owned, non-U.S. financial institution  
7 located outside of the United States  
8 and only passes through the financial  
9 system of the United States to an-  
10 other non-state-owned, non-U.S. fi-  
11 nancial institution located outside of  
12 the United States.

13 “(2) TRANSFERS NULL AND VOID.—

14 “(A) IN GENERAL.—Except as provided in  
15 subparagraph (C), any attempted direct or indi-  
16 rect transfer from an account located in the  
17 United States to an account located outside of  
18 the United States shall be null and void, and  
19 the asset that is the subject of the transfer  
20 shall be treated as if the asset remains in the  
21 United States, if the transfer—

22 “(i) relates to any financial asset de-  
23 scribed in paragraph (1)(E);

24 “(ii) is for the direct or indirect ben-  
25 efit of a foreign state or an agency or in-

1           instrumentality of that foreign state, regard-  
2           less of whether the transfer is completed  
3           by means of a book entry, wire transfer, or  
4           otherwise; and

5           “(iii) violates any court order, retrain-  
6           ing notice, judgment lien, or other process  
7           in aid of enforcement of, or that con-  
8           stitutes a fraudulent conveyance or trans-  
9           fer with respect to, a judgment under sec-  
10          tion 1605A against that foreign state or  
11          the agency or instrumentality of that for-  
12          eign state.

13          “(B) JURISDICTION.—A court that has  
14          personal jurisdiction over the transferee of a  
15          transfer described in subparagraph (A) may—

16               “(i) order the transferee to return the  
17               financial asset to the United States; and

18               “(ii) if the transferee fails to obey an  
19               order under clause (i)—

20                       “(I) deem any asset that is an  
21                       amount not greater than the value of  
22                       the transferred asset to be an asset of  
23                       a foreign state or an agency or instru-  
24                       mentality of the foreign state; and

1                   “(II) issue an award against the  
2                   transferee in an amount that is not  
3                   greater than the value of the trans-  
4                   ferred asset.

5                   “(C) EXCEPTION.—Any transfer that oth-  
6                   erwise would be null and void under subpara-  
7                   graph (A) shall not be deemed to be null and  
8                   void if the person who held or maintained the  
9                   asset that was the subject of the transfer estab-  
10                  lishes that the transfer did not represent a will-  
11                  ful violation of the provisions of any court  
12                  order, retraining notice, judgment lien, or other  
13                  process in aid of enforcement of a judgment  
14                  under section 1605A against a foreign state or  
15                  an agency or instrumentality of that foreign  
16                  state.

17                  “(3) APPLICABLE PROPERTY.—Subject to para-  
18                  graph (4) and notwithstanding any other provision  
19                  of law, including any provision of law relating to sov-  
20                  ereign immunity and the provisions of section 1611,  
21                  the property of a foreign state against which a judg-  
22                  ment is entered under section 1605A or under sec-  
23                  tion 1605(a)(7) (as such section was in effect on  
24                  January 27, 2008), and the property of an agency  
25                  or instrumentality of such a state, including prop-

1       erty that is a separate juridical entity or is an inter-  
2       est held directly or indirectly in a separate juridical  
3       entity, is subject to attachment in aid of execution,  
4       and execution, upon that judgment as provided in  
5       this subsection, regardless of—

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

8               “(B) whether the profits of the property go  
9               to that government;

10              “(C) the degree to which officials of that  
11              government manage the property or otherwise  
12              control its daily affairs;

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

15              “(E) whether establishing the property as  
16              a separate entity would entitle the foreign state  
17              to benefits in United States courts while avoid-  
18              ing its obligations.

19              “(4) UNITED STATES SOVEREIGN IMMUNITY IN-  
20              APPLICABLE.—Any property of a foreign state, or  
21              agency or instrumentality of a foreign state, to  
22              which paragraph (1) applies shall not be immune  
23              from attachment in aid of execution, or execution,  
24              upon a judgment entered under section 1605A or  
25              under section 1605(a)(7) (as such section was in ef-



1       fect on January 27, 2008), because the property is  
2       regulated by the United States Government by rea-  
3       son of action taken against that foreign state under  
4       the Trading With the Enemy Act (50 U.S.C. 4301  
5       et seq.) or the International Emergency Economic  
6       Powers Act (50 U.S.C. 1701 et seq.).

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

14              “(6) DISCHARGE FROM LIABILITY.—The final  
15      judgment directing attachment in aid of execution or  
16      execution against an asset described in paragraph  
17      (1)(E)(iii), including any mid-stream electronic  
18      funds transfer to a judgment creditor under this sec-  
19      tion shall provide that—

20                      “(A) any financial agency or financial in-  
21                      stitution ordered to attach in aid of execution  
22                      or execute against any such asset that is in-  
23                      volved in processing any transfer related to  
24                      those assets shall be discharged of any and all

1 liability to any party with respect to such funds  
2 transfer;

3 “(B) for purposes of determining the liabil-  
4 ity of the originator of any mid-stream funds  
5 transfer to a foreign state against which a judg-  
6 ment has been entered under section 1605A or  
7 under section 1605(a)(7) (as such section was  
8 in effect on January 27, 2008), or to the agen-  
9 cy or instrumentality of such a state, the mid-  
10 stream transfer shall be treated as if it were  
11 completed and payment were received by the in-  
12 tended beneficiary; and

13 “(C) the foreign state against which a  
14 judgment has been entered under section  
15 1605A or under section 1605(a)(7) (as such  
16 section was in effect on January 27, 2008), and  
17 each agency and instrumentality of such a state  
18 shall be barred from pursuing any claim related  
19 to the assets turned over pursuant to this sub-  
20 section against any entity discharged pursuant  
21 to subparagraphs (A) and (B).

22 “(7) STATE PREEMPTION.—To the extent that  
23 any State or local law is inconsistent with the re-  
24 quirements of this subsection, the requirements of

1       this subsection shall preempt such State or local  
2       law.”.

○