

## **Analysis of the Animal Enterprise Terrorism Act H.R. 4239, S. 3880**

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By WILL POTTER

The Animal Enterprise Terrorism Act pushed by animal industry groups, corporations, and the politicians that represent them is ostensibly meant to target underground, illegal actions committed in the name of animal rights. It’s been in the works, in various forms, since the passage of the [Animal Enterprise Protection Act](#) in 1992: proponents say AEPA didn’t go far enough, and they need more sweeping legislation to crack down on illegal actions by underground groups like the Animal Liberation Front.

But underground activists won’t lose much sleep over this bill. Their actions are already illegal (and they know it). The government has already labeled them the [“number one domestic terrorist threat.”](#) And yet they continue to [demonstrate that heavy-handed police tactics will not deter them.](#)

Legal, above-ground activists are the ones that should be most concerned about this vague and overly broad legislation. And as we’ll see, it’s not just animal rights activists that should worry.

You can download [H.R. 4239](#), [S. 3880](#), and the [original AEPA](#), and take a look at exactly how this Green Scare legislation operates.

### **WHAT WOULD QUALIFY AS “TERRORISM”?**

Let’s start with the offense section of the bill, and take it apart in chunks.

- (a) Offense- Whoever travels in interstate or foreign commerce, or uses or causes to be used the mail or any facility of interstate or foreign commerce—
  - (1) for the purpose of damaging or interfering with the operations of an animal enterprise; and

Hold up, we already have a problem. AEPA, the original legislation, spelled out that the bill targets anyone who

- (2) intentionally causes physical disruption to the functioning of an animal enterprise by intentionally stealing, damaging, or causing the loss of, any property (including animals or records) used by the animal enterprise, and thereby causes economic damage exceeding \$10,000 to that enterprise, or conspires to do so;

From the outset the new legislation expands the types of activism wrapped up in the bill to include anything “interfering with” business.

## **PROTECTING CORPORATE PROPERTY, AND PROFITS**

The government must show that someone had the purpose of “damaging or interfering with” an animal enterprise and also

- (2) in connection with such purpose—

the individual must do one of a few things.

- (A) intentionally damages, or causes the loss of any property (including animals or records) used by an animal enterprise, or any property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise;

The big problem here is that this section, the offense section, uses the term “damages” and elsewhere, in the penalty section, the bill says “economic damage”

- (A) means the replacement costs of lost or damaged property or records, the costs of repeating an interrupted or invalidated experiment, *the loss of profits*, or increased costs, including losses and increased costs resulting from threats, acts or vandalism, property damage, trespass, harassment, or intimidation...[emphasis added]

That clause, “loss of profits,” would sweep in not only property crimes, but other activity like undercover investigations and whistleblowing. It would also include campaigns of non-violent civil disobedience, like blocking entrances to a laboratory where controversial animal testing takes place.

Those aren’t acts of terrorism. They are effective activism. Businesses exist to make money, and if activists want to change a business practice, they must make that practice unprofitable. That principle guided the lunch-counter civil disobedience of civil rights activists and the divestment campaigns of anti-apartheid groups. Those tactics all hurt profits. And those tactics, if directed at an animal enterprise, would all be considered “terrorism” under this bill.

When I [testified before Congress](#) on this legislation, some lawmakers adamantly

maintained that “damages” means physical damage to physical property, and not the “loss of profits,” as defined by “economic damage.” If that’s the case, why does the penalty section spell out sentences for “non-violent physical obstruction,” and for a crime that “does not instill in another the reasonable fear of serious bodily injury or death” and “results in *no* economic damage or bodily injury”? If this bill only targets property destruction and violence, which by definition would have to cause economic damage or instill fear, how does the penalty section include sentences for crimes that do neither?

I’m not the only one asking these questions. If groups like the American Civil Liberties Union, Humane Society of the United States, and others are confused by language like this, then an everyday person will be confused as well.

Lawmakers could spell out the definition of “damage,” and note that “economic damage” (including the loss of profits) only applies to the penalty section of the legislation. In other words, spell out that the offense must include physically damaging property, but penalties for that can take into account the amount of impact that property destruction had on a corporation’s “loss of profits.” To be clear, I still would not support this bill, because “terrorism” legislation shouldn’t be used to target vandals and people that release animals from fur farms. But this change would at least narrow the scope of the bill to its purported focus. [UPDATE: The Senate version of this legislation now includes some minor tweaks in this section, but still has many problems. [Please see the separate analysis on the Senate bill.](#)]

What’s worse, that section *expands* the law to include “any property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise.” This is one of the biggest changes sought by industry groups. They say it’s in response to “tertiary targeting,” like how [SHAC](#) activists managed to cripple Huntingdon Life Sciences by targeting the businesses that do business with Huntingdon Life Sciences. That’s not a novel concept. Anti-apartheid activists, for instance, did the same thing with their divestment campaigns. The effect here is that this clause broadens the scope of legislation that is already overly broad.

## **CORPORATE SCARE-MONGERING WOULD HELP EXPAND THE SCOPE OF THE LEGISLATION**

The second part of the offense section targets anyone who

- (B) intentionally places a person in reasonable fear of the death of, or serious bodily injury to that person, a member of the immediate family (as defined in section 115) of that person, or a spouse or intimate partner of that person by a course of conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation

There are two huge problems here. One is the use of “reasonable fear.” The word “eco-terrorism” is batted around recklessly by industry groups, in a scare-mongering campaign that has included [full-page ads in major newspapers](#) and even stooping so low as to [call a](#)

[children's movie "soft-core eco-terrorism for kids."](#) They are doing everything they can to *create* this fear through scare-mongering; that's the point. In light of this political climate, it's impossible to discuss "reasonable fear," because industry groups are throwing all their weight into making the unreasonable seem reasonable--into making the public afraid of non-violent activists, so they can push a political agenda.

Here's a very likely scenario: A group of activists holds a loud protest outside an executive's home or office on a daily basis, as part of a national campaign. Activists yell and chant as people enter the building. Some wear masks or bandanas (which are increasingly common at protests, because activists fear being ["blacklisted"](#)). There have also been illegal actions like "vandalism" and "property damage" in the name of the same cause (which has been the case in every social movement, ever).

Activists clearly intend to "interfere with" the operations of animal enterprise. Toss in the climate of fear that industry groups have created, plus the raucous nature of the protest and the fact that it's part of a coordinated campaign, and suddenly this First Amendment activity becomes "terrorism" under the law (through a "course of conduct" involving harassment, intimidation, vandalism... whatever they can get to stick). Through scare-mongering, the unreasonable becomes reasonable.

#### **PENALTIES FOR NON-VIOLENT CIVIL DISOBEDIENCE IN A "TERRORISM" BILL**

The penalties section of AETA is like a Christmas list for industry groups, making the penalties in AEPA look tame by comparison. AEPA spelled out that an individual who "causes economic damage exceeding \$10,000 to that enterprise, or conspires to do so; shall be fined under this title or imprisoned not more than one year, or both."

Even the penalty for causing "serious bodily injury" was a fine, or not more than 10 years in prison, or both. And causing the death of an individual—which has never happened—could earn a sentence up to life in prison.

AETA, though, starts out with penalties for non-violent civil disobedience, and works its way up.

- (1) for an offense involving *exclusively a non-violent physical obstruction* of an animal enterprise or a business having a connection to, or relationship with, an animal enterprise, that *may result in loss of profits but does not result in bodily injury or death or property damage or loss*—
  - (A) not more than \$10,000 and the length of imprisonment shall be not more than 6 months, or both, for the first offense; and
  - (B) not more than \$25,000 and the length of imprisonment shall be not more than 18 months, or both, for a subsequent offense; [emphasis added]

That's right: "non-violent physical obstruction," also known as civil-disobedience, could earn an activist 18 months in prison, plus fines, in a *terrorism* bill.

The next sentencing sections spells out penalties of

- (2) a fine under this title or imprisonment not more than 1 year, or both, if the offense *does not instill in another the reasonable fear of serious bodily injury or death* and—
  - (A) the offense results in *no economic damage or bodily injury*; or
  - (B) the offense results in economic damage that does not exceed \$10,000; [emphasis added]

Remember, we're looking at a terrorism bill here, that industry groups say is needed to combat "violent" animal rights "extremists," and we're still only dealing with non-violent crimes that don't even "instill" a "reasonable fear."

The penalties go up from there, predictably, and you can take a look for yourself. What's most important to note is not the specific amount of years in prison, but the fact that the penalties revolve around money. They operate in terms of corporate property and profits. That's what this bill is about. It's not about stopping "violence," because violence hasn't taken place. It's about classifying "non-violent physical obstruction," crimes that do not "instill in another the reasonable fear of serious bodily injury," and property crimes as "terrorism," in order to demonize and silence dissent.

### **FIRST AMENDMENT "PROTECTIONS" IN THE BILL ARE JUST WINDOW DRESSING**

Lawmakers have attempted to silence pesky activists who have spoken up for their First Amendment rights by paying lip service to their concerns. Namely, the definition of "economic damage":

- (A) does not include any lawful economic disruption (including a lawful boycott) that results from lawful public, governmental, or business reaction to the disclosure of information about an animal enterprise

This is no safeguard. For instance, undercover investigators and whistleblowers may cause financial loss for a company beyond the losses related to third party reactions. Companies may argue that salaries for undercover investigators, increased internal security, and extensive employee background checks are added costs of doing business because of activists.

The other First Amendment "protection" in the bill is even more absurd.

- (e) **RULES OF CONSTRUCTION.**—Nothing in this section shall be construed—
  - (1) to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution;

The fact that lawmakers note the legislation doesn't prohibit conduct "protected from legal prohibition by the First Amendment" shows that they realize it is vague and overly broad. It's a red herring to distract from the content of the bill, and the politics behind it, and ease public fears. But simply proclaiming "this legislation is Constitutional!" doesn't make it so.

## **MUCH BIGGER CONCERNS REMAIN**

The specific wording of different sections of the legislation may or may not be hashed out in Congress. But in many ways, those are the least significant issues with this legislation. Regardless of the nitty gritty and the legal jargon that's used, bigger problems with the bill make it fatally flawed.

***\*It chills free speech.*** Even if we buy the rhetoric of industry groups and lawmakers that this legislation won't directly target First Amendment activity, the damage is still done. This legislation will impact all animal activists, even if they never enter the courtroom. It will add to the chilling effect that already exists because of "eco-terrorism" rhetoric by corporations, lawmakers and law enforcement. Through my interviews with grassroots animal rights activists, national organizations, and their attorneys, I have heard widespread fears that the word "terrorist" could one day be turned against them, even though they use legal tactics.

This legislation will add to this fear and distrust, and will force Americans to decide if speaking up for animals is really worth the risk of being labeled a "terrorist," either in the media or the courtroom. That's not a choice anyone should have to make.

***\*It puts all activists at risk.*** Animal rights activists have been among the first victims of this terrorist scaremongering, but if it continues they will not be the last. Changes in the Supreme Court seem to have revitalized the anti-abortion movement, which, unlike the animal rights movement, has a documented history of bloodshed. But there's also a potential for backlash if upcoming elections alter the balance of power in Washington. Some anti-abortion organizations, like the Thomas More Society, have already raised concerns that this legislation could become a model for labeling other activists as terrorists. The word terrorism should not be batted around against the enemy of the hour, to push a partisan political agenda. Public fears of terrorism since the tragedy of September 11th should not be exploited for political points.

***\*It puts the general public at risk.*** Targeting property crimes and other non-violent activity as "terrorism" wastes valuable law enforcement resources. [According to Congressional Quarterly](#), the Department of Homeland Security does not list right-wing terrorists on a list of national security threats. Those groups have been responsible for the Oklahoma City bombing, the Olympic Park bombing in Atlanta, violence against doctors, and admittedly creating weapons of mass destruction, but animal rights activists still top the domestic terrorist list.

With the threat of another terrorist attack constantly looming, scarce anti-terrorism resources should be used to combat true threats to national security, not protect corporate interests.

***\*It's not about the crime, it's about the politics behind the crime.*** All of the actions targeted by this legislation (with the exception of First Amendment activity) are already crimes. The problem that law enforcement agents have encountered is not that there's a shortage of statutes available, but that they just can't catch underground activists. This legislation won't solve that. It will, however, stray into the dangerous territory of prosecuting intent. This bill is not about the crimes (or First Amendment activity) but about the beliefs of the individuals, and the social movements, behind them. Conservative lawmakers who opposed hate crimes legislation because it mandated disproportionate sentences based on ideology should logically oppose AETA on the same grounds.

***\*It's a solution in search of a problem.*** You probably have noted that I have not focused on the clauses of this legislation dealing with significant bodily injury or death caused by activists. Those provisions are each problematic, but they are also, in some ways, non-issues. It's unlikely that even illegal, underground activists like the Animal Liberation Front would be impacted. Their actions, such as releasing mink from fur farms, spray-painting buildings, and even arson, have not claimed a single human life.

It's clear that the government already has sweeping powers to harass and prosecute the animal rights and environmental movements. The SHAC 7 were convicted under AEPA, the original law, [for running a website](#). And environmental activists have been rounded up as part of "Operation Backfire" and [charged with serious property crimes](#), including arson. It's simply dishonest for business groups and Department of Justice officials to say their "hands are tied" in light of this massive government repression.

## CONCLUSION

Industry groups have pushed this legislation for years, and with Republican control of the White House, Senate and House of Representatives, they've never been closer to victory. But just as AEPA only briefly sated their appetites, this legislation will only control their hunger for so long. The objective of animal industry groups, corporations, and the politicians that represent them is not to merely prevent vandalism and theft: it is to neutralize a threat to their profits and their power. To silence dissent. This legislation must be rejected in its entirety because if it is not, industry groups will push for even more, and other post-9/11 political opportunists will follow the trail they have blazed.

*Will Potter is an award-winning reporter who focuses on how lawmakers and corporations have labeled animal rights and environmental activists as "eco-terrorists." Will has written for publications including The Chicago Tribune, The Dallas Morning News and Legal Affairs, and has testified before the U.S. Congress about his reporting. He is the creator of [GreenIsTheNewRed.com](#), where he blogs about the Green Scare and history repeating itself.*