

SENATE BILL 2574

By Clabough

AN ACT to amend Tennessee Code Annotated, Title 3; Title 4; Title 5; Title 6; Title 7; Title 8; Title 9; Title 10; Title 11; Title 12; Title 13; Title 16; Title 17; Title 18; Title 19; Title 20; Title 21; Title 22; Title 23; Title 24; Title 28; Title 29; Title 33; Title 37; Title 38; Title 39; Title 40; Title 41; Title 42; Title 43; Title 45; Title 50; Title 53; Title 54; Title 55; Title 56; Title 57; Title 58; Title 59; Title 60; Title 63; Title 64; Title 65; Title 66; Title 67; Title 68; Title 69 and Title 71, relative to terrorism.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 13, is amended by adding the following new part:

39-13-801. This act shall be known and may be cited as the "Terrorism Prevention and Response Act of 2002."

39-13-802. The general assembly hereby finds and declares that the threat of terrorism involving weapons of mass destruction, including, but not limited to, biological,

chemical, nuclear, or radiological agents, is a compelling public safety and health concern. The general assembly recognizes that terrorism involving weapons of mass destruction could result in a disaster placing residents of Tennessee in great peril. The general assembly finds it necessary to sanction the possession, manufacture, use, or threatened use of chemical, biological, nuclear, or radiological weapons, as well as the intentional use or threatened use of industrial or commercial chemicals as weapons, to take other steps to prevent the occurrence of terrorist acts to the fullest extent possible, and to respond rapidly and effectively to any terrorist acts. The general assembly further finds and declares that hoaxes involving terrorist threats create a substantial drain on governmental resources and are a significant disruption to the operation of government as well as a disruption of the right of persons to a sense of personal security.

39-13-803.

(a) The intentional release of a dangerous chemical or hazardous material utilized in a lawful industrial or commercial process shall be considered use of a weapon of mass destruction when a person knowingly utilizes such agents with intent and for the purpose of causing harm to persons either directly or indirectly through harm to animals or the environment. The release of dangerous chemicals or hazardous materials for any purpose shall remain subject to regulation under federal and state environmental laws.

(b) The lawful use of chemicals for legitimate mineral extraction, industrial, agricultural, commercial, or private purposes (such as gasoline used to power engines or propane used for heating or cooking) is not proscribed by this part.

(c) No university, research institution, private company, individual, hospital, or other health care facility engaged in scientific or public health research and, as required, registered with the Centers for Disease Control and

Prevention (CDC) pursuant to the Code of Federal Regulations shall be subject to this part for actions taken in furtherance of research objectives undertaken for a lawful purpose.

39-13-804. As used in this part, unless the context otherwise requires:

(a) "Act of terrorism" means an act or acts constituting a violation of this part, any other offense under the laws of Tennessee, or an act or acts constituting an offense in any other jurisdiction within or outside the territorial boundaries of the United States that contains all of the elements constituting a violation of this part or is otherwise an offense under the laws of such jurisdiction, that is intended, directly or indirectly, to:

(1) Intimidate or coerce a civilian population;

(2) Influence the policy of a unit of government by intimidation or coercion; or

(3) Affect the conduct of a unit of government by murder, assassination, torture, kidnapping, or mass destruction.

(b) "Biological warfare agents" mean agents intended for use in war or other attack to cause disease or death in humans, animals, or plants that depend for their effect on multiplication within the target organism, and includes, but is not limited to, the following agents, or any analog of these agents:

(1) Bacteria

(A) *Bacillus anthracis* (anthrax);

(B) *Bartonella quintana* (trench fever);

(C) *Brucella* species (brucellosis);

(D) *Burkholderia mallei* (glanders);

(E) *Burkholderia pseudomallei* (melioidosis);

(F) *Franciscella tularensis* (tularemia);

- (G) *Salmonella typhi* (typhoid fever);
  - (H) *Shigella* species (shigellosis);
  - (I) *Vibrio cholerae* (cholera);
  - (J) *Yersinia pestis* (plague);
  - (K) *Coxiella burnetii* (Q fever);
  - (L) *Orientia tsutsugamushi* (scrub typhus);
  - (M) *Rickettsia prowazeki* (typhus fever);
  - (N) *Rickettsia rickettsii* (Rocky Mountain spotted fever);
  - (O) *Chlamydia psittaci* (psittacosis);
  - (P) *Clostridium botulinum* (botulism);
  - (Q) *Mycobacterium tuberculosis* (tuberculosis);
  - (R) *Staphylococcus aureus* (staphylococcal enterotoxin B);
- and
- (S) *Escherichia coli* (E. coli);

(2) Fungi

- (A) *Coccidioides immitis* (coccidioidomycosis);
- (B) *Histoplasma capsulata* (histoplasmosis); and
- (C) Aflatoxin

(3) Viruses

- (A) Hantaan/Korean haemorrhagic fever and related viruses;
- (B) Sin Nombre;
- (C) Crimean-Congo haemorrhagic fever;
- (D) Rift Valley fever;
- (E) Ebola fever;
- (F) Marburg;

- (G) Lymphocytic choriomeningitis;
- (H) Junin (Argentinian haemorrhagic fever);
- (I) Machupo (Bolivian haemorrhagic fever);
- (J) Lassa fever;
- (K) Tick-borne encephalitis/Russian spring-summer encephalitis;
- (L) Dengue;
- (M) Yellow fever;
- (N) Omsk haemorrhagic fever;
- (O) Japanese encephalitis;
- (P) Western equine encephalomyelitis;
- (Q) Eastern equine encephalomyelitis;
- (R) Chikungunya;
- (S) O'nyong-nyong;
- (T) Venezuelan equine encephalomyelitis;
- (U) Variola major (smallpox);
- (V) Monkey pox;
- (W) White pox (variant of variola virus);
- (X) Influenza; and
- (Y) Hantavirus;

(4) Protozoa

- (A) *Naegleria fowleri* (naegleriasis);
- (B) *Toxoplasma gondii* (toxoplasmosis);
- (C) *Schistosoma* species (bilharziasis); and
- (D) *Cryptosporidium parvum* (cryptosporidiosis); and

(5) Other toxins, including, but not limited to:

(A) Ricin; and

(B) Saxitoxin.

(c) "Chemical warfare agents" include, but are not limited to, the following agents, or any analog of these agents, intended for use in war or other attack to cause disease or death in humans, animals, or plants:

(1) Nerve agents, including, but not limited to:

(A) Ethyl NN-dimethylphosphoramidocyanidate (Tabun, or GA);

(B) O-isopropyl methylphosphonofluoridate (Sarin, or GB);

(C) O-1,2,2-trimethylpropyl methylphosphonofluoridate (Soman, or GD);

(D) O-cyclohexyl methylphosphonofluoridate (cyclosarin, or GF);

(E) O-ethyl S-2-diisopropylaminoethyl methylphosphonothiolate (VX);

(F) O-ethyl S-2-dimethylaminoethyl methylphosphonothiolate (medemo); and

(G) O-isobutyl S-2-diethylaminoethyl methylphosphonothiolate (VR);

(2) Blood agents, including, but not limited to:

(A) Hydrogen cyanide (AC);

(B) Cyanogen chloride (CK); and

(C) Arsine (SA);

(3) Blister agents, including, but not limited to:

(A) Mustards (H, HD (sulfur mustard), HN-1, HN-2, HN-3 (nitrogen mustard));

(B) Arsenicals, including, but not limited to, Lewisite (L);

(C) Urticants, including, but not limited to, CX;

(D) Bis(2-chloroethylthioethyl) ether (agent T); and

(E) Incapacitating agents, including, but not limited to, BZ;

provided, that "incapacitating agents" shall not include any agent, the possession of which is otherwise lawful, that is intended for use for self-defense or defense of others;

(4) Choking agents, including, but not limited to:

(A) Phosgene (CG);

(B) Diphosgene (DP); and

(C) Chloropicrin;

(5) Pesticides;

(6) Dioxins;

(7) Polychlorinated biphenyls (PCBs);

(8) Flammable industrial gases and liquids including, but not

limited to,

(A) Gasoline; and

(B) Propane; and

(9) Tear gases and other disabling chemicals including, but not

limited to:

(A) 10-chloro-5, 10-dihydrophenarsazine (adamsite, or DM);

(B) 1-chloroacetophenone (CN);

(C) a-bromophenylacetonitrile (Iarmine, BBC or CA);

(D) 2-chlorobenzalmalononitrile (CS);

(E) Dibenzoxazepine (CR);

(F) Oleoresin capsicum (OC); and

(G) 3-quinuclidinyl benzilate (BZ); provided, that "tear gases and other disabling chemicals" shall not include any agent, the possession of which is otherwise lawful, that is intended for use for self-defense or defense of others.

(d) "Material support or resources" means currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

(e) "Nuclear or radiological agents" includes, but is not limited to:

(1) Any explosive device designed to cause a nuclear yield, also known as an improvised nuclear device (IND);

(2) Any explosive device utilized to spread radioactive material, also known as a radiological dispersal device (RDD); and

(3) Any act or container designed to release radiological material as a weapon without an explosion, also known as a simple radiological dispersal device (SRDD).

(f) "Weapon of mass destruction" includes chemical warfare agents, biological or biologic warfare agents, weaponized agents, weaponized biological or biologic warfare agents, nuclear agents, radiological agents, or the intentional release of industrial agents as a weapon.

(g) "Weaponization" is the deliberate processing, preparation, packaging, or synthesis of any substance for use as a weapon or munition.

(h) "Weaponized agents" are those agents or substances prepared for dissemination through any explosive, thermal, pneumatic, or mechanical means.

(i) "Weaponized biological or biologic warfare agents" include, but are not limited to, weaponized pathogens, such as bacteria, viruses, rickettsia, yeasts, fungi, or genetically engineered pathogens, toxins, vectors, and endogenous biological regulators (EBRs).

39-13-805.

(a) It is an offense for any person to commit an act of terrorism in this state.

(b) An act of terrorism is a Class A felony.

39-13-806.

(a) It is an offense for any person, without lawful authority, to possess, develop, manufacture, produce, transfer, acquire, weaponize, or retain any weaponized agent, biological warfare agent, weaponized biological or biologic warfare agent, chemical warfare agent, nuclear or radiological agent, or any other weapon of mass destruction.

(b) A violation of subsection (a) of this section is a Class B felony.

39-13-807.

(a) It is an offense for any person to provide material support or resources to any person known by the person providing such material support or resources to be planning or carrying out an act of terrorism in this state, or concealing or attempting to escape after committing or attempting to commit an act of terrorism.

(b) A violation of subsection (a) of this section is a Class B felony.

39-13-808.

(a) It is an offense for any person to distribute or to deliver, as an act of terrorism or as a hoax, any substance that is intended to, or that such person has reason to believe may, create a fear or apprehension on the part of any other

person that such substance may be a biological warfare agent, a chemical warfare agent, or a nuclear or radiological agent, without regard to whether such substance is in fact a biological warfare agent, chemical warfare agent, or a nuclear or radiological agent.

(b)

(1) A violation of subsection (a) of this section as an act of terrorism is a Class A felony.

(2) A violation of subsection (a) of this section as a hoax is a Class C felony.

(c) In addition to the penalties otherwise provided by law, any person convicted of a violation of subsection (a), either as an act of terrorism or as a hoax, shall make restitution of the costs incurred by any public or private entity or person resulting from such offense.

## SECTION 2.

(a) Tennessee Code Annotated, Section 39-13-202(a), is amended by deleting subdivision (2) in its entirety and by substituting instead the following language:

(2) A killing of another committed in the perpetration of or attempt to perpetrate any first degree murder, act of terrorism, arson, rape, robbery, burglary, theft, kidnapping, aggravated child abuse, aggravated child neglect or aircraft piracy; or

(b) Tennessee Code Annotated, Section 39-13-204(i), is amended by adding the following new subdivision and by renumbering the remaining subdivisions accordingly:

(1) The murder was committed in the course of an act of terrorism;

(c) Tennessee Code Annotated, Section 40-35-114, is amended by adding the following new subdivision (1) and by renumbering the remaining subdivisions appropriately:

(1) The offense was an act of terrorism, or was related to an act of terrorism;

SECTION 3. Tennessee Code Annotated, Section 55-50-602(b) is amended by adding the following language at the end of the subsection:

A violation of subsection (a) in connection with an act of terrorism, a planned act of terrorism, or an attempted act of terrorism, is a Class B felony, with a permanent and irrevocable suspension of driving privileges; provided, that the defendant knew or should have known at the time of the offense that the driver's license or facsimile would be used in such manner.

SECTION 4. Tennessee Code Annotated, Section 39-14-602, is amended by adding the following new subsection:

(d) Any person who violates subsections (a), (b), or (c) of this section in connection with an act of terrorism commits a Class A felony.

SECTION 5. Tennessee Code Annotated, Section 39-17-1302, is amended by deleting subsection (d) in its entirety and by substituting instead the following language:

(d)

(1) An offense under subdivision (a)(1) is a Class B felony.

(2) An offense under subdivisions (a)(2)-(5) is a Class E felony.

(3) An offense under subdivision (a)(6) is a Class C felony.

(4) An offense under subdivisions (a)(7)-(8) is a Class A misdemeanor.

SECTION 6. Tennessee Code Annotated, Section 39-16-502, is amended by deleting subsection (b) in its entirety and by substituting instead the following language:

(b)

(1) A violation of subdivision (a)(1) or (a)(2) is a Class D felony.

(2) A violation of subdivision (a)(3) is a Class C felony.

SECTION 7.

(a) Tennessee Code Annotated, Section 58-2-106(b)(1)(C), is amended by deleting subitem (vii) in its entirety and by substituting instead the following:

(vii) Provide for a comprehensive communications plan, including, but not limited to, a computerized telephone emergency warning system;

(b) Tennessee Code Annotated, Section 58-2-102(c), is amended by deleting the language "Therefore, the general assembly hereby determines and declares that the provisions of this chapter fulfill an important state interest." and by substituting instead the following language:

Therefore, the general assembly hereby determines and declares that the provisions of this chapter fulfill a compelling state interest.

SECTION 8. Tennessee Code Annotated, Section 47-18-104(b), is amended by adding the following new subdivision:

(34) Unreasonably raising prices or restricting supplies of goods, commodities or services as a result of any crime, act of terrorism, war, or natural disaster, regardless of whether such crime, act of terrorism, war, or natural disaster occurred in the state of Tennessee.

SECTION 9. Tennessee Code Annotated, Title 3, Chapter 1, Part 1, is amended by adding the following new section:

3-1-115. Any materials, including but not limited to books, records, notes, memoranda, audio tapes, video tapes, or computer records, generated or prepared by or in connection with any security measures adopted by the general assembly are not public records and shall not be subject to the provisions of Title 10, Chapter 7, Part 5.

SECTION 10.

(a) Tennessee Code Annotated, Section 8-44-101, is amended by deleting subsection (a) in its entirety and by substituting instead the following language:

(a) The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and, except in circumstances in which public safety, health or security may be jeopardized by a public meeting, shall not be conducted in secret. It is the legislative intent that the public safety and security exception be strictly construed to safeguard the right of the public to open government.

(b) Tennessee Code Annotated, Section 8-44-102, is amended by deleting subsection (a) in its entirety and by substituting instead the following language:

(a)

(1) Except as provided in subdivision (2) of this subsection, all meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.

(2) Notwithstanding any provision of law to the contrary, if a governing body determines, in the exercise of its reasonable discretion, that the public safety and security may be jeopardized by a public meeting, the governing body may meet in executive session concerning such matters of public safety and security. Such executive sessions are exempt from the provisions of this part; provided, that no other matters shall be discussed at such executive session; provided further, that notice of the executive session shall be given in accordance with the requirements of Section 8-44-103.

SECTION 11. Tennessee Code Annotated, Section 38-6-102(b), is amended by adding the following new item (C) to subdivision (1) and by relettering the remaining items accordingly:

(C) An act of terrorism;

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.