

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

Amendment No. _____

Signature of Sponsor

AMEND Senate Bill No. 1028*

House Bill No. 1353

by deleting all language after the enacting clause and substituting instead the following:

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

39-13-901. This part shall be known and may be cited as the "Material Support to Designated Entities Act of 2011."

39-13-902. As used in this part, unless the context otherwise requires:

- (1) "Act of terrorism" has the same meaning as defined in § 39-13-803;
- (2) "Attorney general" means this state's attorney general and reporter;
- (3) "Domestic terrorist" means:
 - (A) An entity operating within the United States;
 - (B) An entity that engages in, or retains the capability and intent to engage in, terrorist activity, terrorism or an act of terrorism; and
 - (C) The terrorist activity, terrorism or act of terrorism threatens the security or safety of any resident of the United States;
- (4) "Engage in terrorist activity" or "engages in terrorist activity" has the same meaning as defined in 8 U.S.C. § 1182;
- (5) "Entity" means an individual who engages in terrorist activity, or two (2) or more individuals conspiring to support, or acting in concert to, engage in terrorist activity;
- (6) "Expert advice or assistance" means advice or assistance derived from scientific, technical, legal or other specialized knowledge;



(7) "Funds" means coin or currency of the United States or any other country, traveler's checks, personal checks, bank checks, money orders, stocks, bonds, debentures, drafts, letters of credit, any other negotiable instrument, and any electronic representation of any of the foregoing;

(8) "Legal" does not include legal services provided to a terrorist entity for the purposes of defending the entity, or any other person, relating to any criminal or civil action brought pursuant to this part, or pursuant to federal or state law;

(9) "Material support or resources":

(A) Means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel of one (1) or more individuals, including the entity, and transportation; and

(B) Does not include medicine or religious materials;

(10) "United States" means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States;

(11) "Terrorism" has the same meaning as defined in § 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, compiled in 22 U.S.C. § 2656f;

(12) "Terrorist activity" has the same meaning as defined in § 212 of the Immigration and Nationality Act, compiled in 8 U.S.C. § 1182;

(13) "Terrorist entity" means a foreign terrorist organization as described in § 39-13-904, a domestic terrorist as defined in this section, or both as applicable; and

(14) "Training" means instruction or teaching designed to impart a specific skill, as opposed to general knowledge.

39-13-903. The general assembly finds and declares that:

(1) The threat from terrorism continues to plague the United States, including this state, and has been documented to exist both outside and inside the United States, including within this state;

(2) This state has a compelling state interest in preventing violence and mayhem within its borders from the threat posed by terrorism, and the targeted prohibitions set forth in this part are meant to be a focused and least intrusive method for this state to protect its residents from such threat; and

(3) This part neither targets, nor incidentally prohibits or inhibits, the peaceful practice of any religion. Rather, this part only prohibits the knowing provision of material support or resources as defined in § 39-13-905, to designated terrorist entities, with the intent of furthering prohibited behavior.

39-13-904.

(a)

(1) After investigation and recommendation by the director of the Tennessee office of homeland security, the governor and the attorney general are authorized to jointly designate an entity as one (1) of the following under the law of this state:

(A) A domestic terrorist as defined in § 39-13-902; or

(B) A foreign terrorist organization, previously designated by the Secretary of State of the United States pursuant to federal law, including, but not limited to, § 219 of the Immigration and Nationality Act, compiled in 8 U.S.C. § 1189.

(2)

(A)

(i) Seven (7) days before making a designation under subdivision (a)(1), the governor and the attorney general shall, by confidential communication pursuant to § 10-7-504, jointly notify,

in writing, of the intent to designate an entity under subdivision (a)(1), together with the findings made under subdivision (a)(1) with respect to that entity, and the factual basis therefore, to the following persons:

(a) The secretary of state;

(b) The speaker, speaker pro tem, deputy speaker, and the majority and minority leaders of the senate; and

(c) The speaker, speaker pro tempore, and the majority and minority leaders of the house of representatives.

(ii) The secretary of state shall file such designations in the same general manner as agency rules as set forth in § 4-5-206, and shall publish such designations on the secretary of state's web site and in the appropriate monthly administrative register in a section devoted to such designations in the same general manner as required of administrative rules as set forth in §§ 4-5-220 and 4-5-221.

(iii) The governor and attorney general shall publish the designation in a daily newspaper of general circulation in this state seven (7) days after providing the notification under subdivision (a)(2)(A)(i) and serve written notice on the entity designated. Service shall be accomplished as service of a summons and complaint under Rule 4 of the Tennessee Rules of Civil Procedure.

(B)

(i) For purposes of this section, a designation under subdivision (a)(1) shall take effect upon publication under subdivision (a)(2)(A)(ii), not service.

(ii) Any designation under subdivision (a)(1) shall cease to have effect upon an act of the general assembly disapproving such designation.

(C) Upon notification under subdivision (a)(2)(A)(i), the attorney general may petition financial institutions in this state, possessing or controlling any assets of any entity included in the notification under subdivision (a)(2)(A)(i), to block all, or a specified portion of, financial transactions involving those assets until further directive from the attorney general, an act of the general assembly, or an order of court.

(3)

(A) In making a designation under subdivision (a)(1), the governor and the attorney general shall create an administrative record.

(B) The governor and the attorney general may consider confidential information as set forth in § 10-7-504, or any other statutory authority in making a designation under subdivision (a)(1). Confidential information shall not be subject to disclosure for such time as it remains confidential, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c).

(4)

(A) A designation under subdivision (a)(1) shall be effective for all purposes until revoked under subdivision (a)(5) or (a)(6), or set aside pursuant to subsection (c).

(B)

(i) The governor and the attorney general shall jointly review a designation of a terrorist entity under the procedures in subdivisions (a)(4)(B)(iii) and (iv) if the designated entity files a petition for revocation within the petition period described in subdivision (a)(4)(B)(ii).

(ii) For purposes of subdivision (a)(4)(B)(i):

(a) If the designated entity has not previously filed a petition for revocation under this subdivision (a)(4)(B), then the petition period begins two (2) years after the date on which the designation was made; or

(b) If the designated entity has previously filed a petition for revocation under this subdivision (a)(4)(B), then the petition period begins two (2) years after the date of the determination made under subdivision (a)(4)(B)(iv) on that petition.

(iii) Any designated terrorist entity that submits a petition for revocation under this subdivision (a)(4)(B) must provide evidence in such petition that the relevant circumstances described in subdivision (a)(1) are sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to the entity is warranted.

(iv)

(a) No later than one hundred eighty (180) days after receiving a petition for revocation submitted under this subdivision (a)(4)(B), the governor and the attorney general shall jointly make a determination as to such revocation.

(b) The petition for revocation shall be deemed to be a contested case pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The governor and the attorney general may consider confidential information as set forth in § 10-7-504, or any other statutory authority in making a determination in response to a petition for revocation. No confidential information shall be subject to disclosure for such time as it remains confidential, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c).

(d) A determination jointly made by the governor and the attorney general under this subdivision (a)(4)(B)(iv) shall be filed with the secretary of state and published in the same fashion as required under subdivision (a)(2)(A)(ii).

(e) Any revocation by the governor and the attorney general shall be made in accordance with subdivision (a)(6).

(C)

(i) If in a five-year period, no review has taken place under subdivision (a)(4)(B), then the governor and the attorney general shall jointly review the designation of the terrorist entity in order to determine whether such designation should be revoked pursuant to subdivision (a)(6).

(ii) If a review does not take place pursuant to subdivision (a)(4)(B) in response to a properly filed petition for revocation, then the review shall be conducted pursuant to procedures jointly established by the governor and the attorney general. The results of such review and the applicable procedures shall not be reviewable in any court.

(iii) Any determination made pursuant to this subdivision (a)(4)(C) shall be filed and published in the same fashion as required under subdivision (a)(2)(A)(ii).

(5) The general assembly, by an act of the general assembly, may block or revoke a designation made under subdivision (a)(1).

(6)

(A) The governor and the attorney general may jointly revoke a designation made under subdivision (a)(1) at any time, and shall revoke a designation upon completion of a review conducted pursuant to subdivisions (a)(4)(B) and (C) if the governor and the attorney general finds that:

(i) The circumstances that were the basis for the designation have changed in such a manner as to warrant revocation; or

(ii) The security of this state warrants a revocation.

(B) The procedural requirements of subdivisions (a)(2) and (3) shall apply to a revocation under this subdivision (a)(6). Any revocation shall take effect on the date specified in the revocation or upon filing and publication as required under subdivision (a)(2)(A)(ii) if no effective date is specified.

(7) The revocation of a designation under subdivision (a)(5) or (6) shall not affect any action or proceeding based on conduct committed prior to the effective date of such revocation.

(8) If a designation under subdivision (a)(1) becomes effective under subdivision (a)(2)(B), a defendant in a criminal or civil action shall not be permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection at any trial or hearing.

(b)

(1) The governor and the attorney general may jointly amend a designation under subdivision (a)(1) if the governor and the attorney general jointly find that the entity has changed its name, adopted a new alias, dissolved and then reconstituted itself under a different name or names, or merged with another person.

(2) Amendments made to a designation in accordance with subdivision (b)(1) shall be effective upon filing and publication as required under subdivision (a)(2)(A)(ii). Subdivisions (a)(2)(A)(i), (a)(2)(B) and (C), (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8) shall also apply to an amended designation.

(3) The administrative record shall be corrected to include the amendments as well as any additional relevant information that supports those amendments.

(4) The governor and the attorney general may consider confidential information as set forth in § 10-7-504 or any other statutory authority in amending a designation in accordance with this subsection (b). No confidential information shall be subject to disclosure for such time as it remains confidential, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c).

(c)

(1) No later than thirty (30) days after filing and publication as required under subdivision (a)(2)(A)(ii) of a designation, an amended designation, or a determination in response to a petition for revocation, the designated entity may seek judicial review only in the court of appeals of Tennessee.

(2) Review under this subsection (c) shall be based solely upon the administrative record, except that the governor and the attorney general may submit, for ex parte and in camera review, confidential information used in making the designation, amended designation, or determination in response to a petition for revocation.

(3) The court shall hold unlawful and set aside a designation, amended designation, or determination in response to a petition for revocation the court finds to be:

(A) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) Contrary to constitutional right, power, privilege, or immunity;

(C) In excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(D) Lacking substantial support in the administrative record taken as a whole or in confidential information submitted to the court under subdivision (c)(2); or

(E) Not in accord with the procedures required by law.

(4) The pendency of an action for judicial review of a designation, amended designation, or determination in response to a petition for revocation shall not affect the application of this section, unless the court issues a final order setting aside the designation, amended designation, or determination in response to a petition for revocation.

(a)

(1)

(A) Any person who knowingly provides material support or resources to a terrorist entity as designated pursuant to § 39-13-904, or attempts or conspires to do so, shall commit an offense.

(B) A violation of subdivision (a)(1)(A) is a Class B felony; provided, that if the death of any individual results, then a violation of subdivision (a)(1)(A) is a Class A felony, punishable by imprisonment for life without possibility of parole or by imprisonment for life.

(C) To violate subdivision (a)(1)(A), a person must have knowledge that the entity:

(i) Is a terrorist entity as designated pursuant to § 39-13-904, or

(ii) Has engaged or engages in:

(a) One (1) or more acts of terrorism;

(b) Terrorist activity; or

(c) Terrorism.

(2) Except as jointly authorized by the governor and attorney general, any financial institution that becomes aware that it has possession of, or control over, any funds in which a terrorist entity, or its agent, has an interest, shall report the existence of such funds to the governor and attorney general in accordance with regulations jointly issued by the governor and attorney general.

(3) No person may be prosecuted under this section as "personnel" of a terrorist entity unless that person has knowingly provided, attempted to provide, or conspired to provide a terrorist entity with one (1) or more individuals, including the defendant, to work under that terrorist entity's direction or control or to organize, manage, supervise, or otherwise direct the operation of that terrorist

entity. Individuals who act entirely independently of the terrorist entity to advance its goals or objectives shall not be considered to be working under the terrorist entity's direction and control.

(b) If the attorney general believes that any person is engaged in, or is about to engage in, any act that constitutes, or would constitute, a violation of this section, then the attorney general may initiate civil action in a court of this state to enjoin such violation.

(c) If the violation of subdivision (a)(1)(A) involves a foreign terrorist organization, then the attorney general or local law enforcement agency shall notify the United States department of state and any other appropriate federal department or agency.

(d)

(1)

(A) In any civil proceeding under this section, upon request made ex parte and in writing by the attorney general, a court, upon a sufficient showing, may authorize the attorney general to:

(i) Redact specified items of confidential information from documents to be introduced into evidence or made available to the defendant through discovery under the Tennessee Rules of Civil Procedure;

(ii) Substitute a summary of the information for such confidential documents; or

(iii) Substitute a statement admitting relevant facts that the confidential information would tend to prove.

(B) If the court enters an order granting a request under this subdivision (d)(1), then the entire text of the documents to which the

request relates shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(C) If the court enters an order denying a request of the attorney general under this subdivision (d)(1), then the attorney general may take an immediate, interlocutory appeal in accordance with subdivision (d)(5). For purposes of such an appeal, the entire text of the documents to which the request relates, together with any transcripts of arguments made ex parte to the court in connection therewith, shall be maintained under seal and delivered to the appellate court.

(2)

(A) To prevent unnecessary or inadvertent disclosure of confidential information in a civil proceeding brought by the attorney general under this section, the attorney general may petition the court ex parte to admit, in lieu of confidential writings, recordings, or photographs, one (1) or more of the following:

(i) Copies of items from which confidential information has been redacted;

(ii) Stipulations admitting relevant facts that specific confidential information would tend to prove; or

(iii) A non-confidential summary of the specific confidential information.

(B) The court shall grant a request under this subdivision (d)(2) if the court finds that the redacted item, stipulation, or summary is sufficient to allow the defendant to prepare a defense.

(3)

(A) During the examination of a witness in any civil proceeding brought by the attorney general under this subsection (d), the attorney

general may object to any question or line of inquiry that may require the witness to disclose confidential information not previously found to be admissible.

(B) In determining whether a response is admissible, the court shall take precautions to guard against the compromise of any confidential information, including:

(i) Permitting the attorney general to provide the court, ex parte, with a proffer of the witness's response to the question or line of inquiry; and

(ii) Requiring the defendant to provide the court with a proffer of the nature of the information that the defendant seeks to elicit.

(C) In any civil proceeding under this section, it shall be the defendant's obligation to establish the relevance and materiality of any confidential information sought to be introduced.

(4) If the court enters an order denying a request of the attorney general under this subsection (d), then the attorney general may take an immediate interlocutory appeal in accordance with subdivision (d)(5).

(5)

(A) The attorney general shall file an interlocutory appeal with the court of appeals from a decision or order of a court:

(i) Authorizing the disclosure of confidential information;

(ii) Imposing sanctions for nondisclosure of confidential information; or

(iii) Refusing a protective order sought by the attorney general to prevent the disclosure of confidential information.

(B)

(i) An appeal taken pursuant to this subdivision (d)(5), either before or during trial, shall be expedited by the court of appeals.

(ii) If an appeal is of an order made prior to trial, an appeal shall be taken no later than fourteen (14) days after the decision or order appealed from, and the trial shall not commence until the appeal is resolved.

(iii) If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved, and the court of appeals:

(a) Shall hear argument on such appeal no later than four (4) days after the adjournment of the trial, excluding intermediate weekends and holidays;

(b) May dispense with written briefs other than the supporting materials previously submitted to the trial court;

(c) Shall render its decision no later than four (4) days after argument on appeal, excluding intermediate weekends and holidays; and

(d) May dispense with the issuance of a written opinion in rendering its decision.

(C) An interlocutory appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a final judgment, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

(6) Nothing in this subsection (d) shall prevent the attorney general from seeking protective orders or asserting privileges ordinarily available to this state

or to a plaintiff in any civil action, to protect against the disclosure of confidential information.

39-13-906.

(a) Any individual, in the individual's person, property, or business, or the individual's estate, survivors, or heirs, or this state or a political subdivision of this state, injured by reason of terrorist activity, terrorism or an act of terrorism, may sue in any appropriate court of this state and shall recover three (3) times the damages sustained and the cost of the suit, including, but not limited to, attorney's fees.

(b) A final judgment or decree rendered in favor of this state in any criminal proceeding under § 39-13-905 shall estop the defendant from denying the essential allegations of the offense in any subsequent civil proceeding under this section.

(c) A final judgment or decree rendered in favor of any other state, or in favor of the United States, in any criminal proceeding shall, to the extent that such judgment or decree may be accorded full faith and credit under the law of this state, estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

39-13-907.

Justifying any conduct prohibited by this part on a doctrine that may include a religious justification for violence or criminal activity shall not exempt a person or entity from designation, prosecution or civil liability pursuant to this part.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect July 1, 2011, the public welfare requiring it.