

SENATE BILL 1028

By Ketron

AN ACT to amend Tennessee Code Annotated, Title 38;
Title 39; Title 40; Title 45; Title 55 and Title 58,
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 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.

The general assembly finds as follows:

(1) The threat from terrorism continues to plague the United States generally and Tennessee in particular. The threat from terrorism has been documented to exist both outside our national borders and within the homeland;

(2) The threat from terrorism within the homeland, including from within this state, otherwise known as “homegrown terrorism,” is primarily the result of a legal-political-military doctrine and system adhered to, or minimally advocated by, tens of millions if not hundreds of millions of its followers around the world. This legal-political-military doctrine and system is known as sharia to its adherents, authoritative leaders and scholars;

(3) Sharia, as defined and understood by traditional and authoritative sharia scholars and leaders, is a legal-political-military doctrinal system combined with certain religious beliefs; further, sharia is based historically and traditionally on a full corpus of law and jurisprudence termed fiqh and usul al-fiqh,

respectively, dealing with all aspects of a sharia-adherent's personal and social life and political society. Sharia serves as national and local law in several foreign jurisdictions;

(4) Sharia as a political doctrine requires all its adherents to actively support the establishment of a political society based upon sharia as foundational or supreme law and the replacement of any political entity not governed by sharia with a sharia political order;

(5) Sharia requires all its adherents to actively and passively support the replacement of America's constitutional republic, including the representative government of this state with a political system based upon sharia;

(6) Sharia in particular includes a war doctrine known as jihad, which is an organic, intrinsic and central feature of the laws and traditions of sharia due to a consensus among sharia authorities throughout the ages;

(7) Jihad and sharia are inextricably linked, with sharia formulating and commanding jihad, and jihad being waged for the purpose of imposing and instituting sharia;

(8) The unchanging and ultimate aim of jihad is the imposition of sharia on all states and nations, including the United States and this state; further, pursuant to its own dictates, sharia requires the abrogation, destruction, or violation of the United States and Tennessee Constitutions and the imposition of sharia through violence and criminal activity;

(9) The jihad groups identified by the federal government as designated terrorist organizations pursuant to § 219 of the Immigration and Nationality Act, all profess publicly their adherence to sharia and its laws of jihad as the legal-political-military justification for their acts of terrorism;

(10) The imposition of sharia on non-sharia adherent states is to be brought about both by criminal and violent means, including acts of terrorism as defined in part 8 of this chapter, and by lawful and non-violent means, including immigration-fed population growth and the resulting increase of sharia-centric political influence and power;

(11) The knowing adherence to sharia and to foreign sharia authorities constitutes a conspiracy to further the legal, political, and military doctrine and system which embraces the law of jihad;

(12) Furthering the legal, political, and military doctrines and law of jihad poses an imminent likelihood of violent jihad and acts of terrorism; and

(13) The knowing adherence to sharia and to foreign sharia authorities is prima facie evidence of an act in support of the overthrow of the United States government and the government of this state through the abrogation, destruction, or violation of the United States and Tennessee Constitutions by the likely use of imminent criminal violence and terrorism with the aim of imposing sharia on the people of this state.

39-13-903.

The general assembly declares as follows:

(1) The threat from sharia-based jihad and terrorism presents a real and present danger to the lawful governance of this state and to the peaceful enjoyment of citizenship by the residents of this state;

(2) The response to this threat from sharia-based jihad and terrorism and this state's interest in interdicting and preventing violence and mayhem within its borders is a compelling state interest;

(3) The targeted criminal prohibitions set forth in this part are meant to be a focused and least intrusive method for the state to protect its citizens and residents from the threat posed by sharia-based jihad and terrorist persons and organizations; and

(4) This part neither targets, nor incidentally prohibits or inhibits, the peaceful practice of any religion, and in particular, the practice of Islam by its adherents. Rather, this part criminalizes only the knowing provision of material support or resources, as defined in § 39-13-803, to designated sharia organizations, as defined in § 39-13-904, or to known sharia-jihad organizations with the intent of furthering their criminal behavior.

39-13-904.

As used in this part, unless the context otherwise requires:

(1) "Sharia" means the set of rules, precepts, instructions, or edicts which are said to emanate directly or indirectly from the god of Allah or the prophet Mohammed and which include directly or indirectly the encouragement of any person to support the abrogation, destruction, or violation of the United States or Tennessee Constitutions, or the destruction of the national existence of the United States or the sovereignty of this state, and which includes among other methods to achieve these ends, the likely use of imminent violence. Any rule, precept, instruction, or edict arising directly from the extant rulings of any of the authoritative schools of Islamic jurisprudence of Hanafi, Maliki, Shafi'i, Hanbali, Ja'afariya, or Salafi, as those terms are used by sharia adherents, is prima facie sharia without any further evidentiary showing;

(2) "Sharia organization" means any two (2) or more persons conspiring to support, or acting in concert in support of, sharia or in furtherance of the imposition of sharia within any state or territory of the United States; and

(3) "Territory of the United States" means any territory under the civilian or military control or governance of personnel acting for and on behalf of the United States government.

39-13-905.

(a)

(1) The attorney general and reporter is authorized to designate an organization as a sharia organization in accordance with this subsection (a) if the attorney general and reporter finds that:

(A) The organization knowingly adheres to sharia;

(B) The organization engages in, or retains the capability and intent to engage in, an act of terrorism as defined in § 39-13-803; and

(C) The act of terrorism of the organization threatens the security or public safety of this state's residents.

(2)

(A)

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

(a) The governor;

(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 attorney general and reporter 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 organization designated. Service shall be accomplished as service of a summons and complaint under Rule 4 of the Tennessee Rules of Civil Procedure.

(iii) 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 – 4-5-221.

(B)

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

(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 and reporter may require financial institutions doing business in this state, possessing or controlling any assets of any organization included in the notification, to block all financial transactions involving those assets until further directive from either the attorney general and reporter, an act of the general assembly, or an order of court.

(3)

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

(B) The attorney general and reporter 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 attorney general and reporter shall review the designation of a sharia organization under the procedures in subdivisions (a)(4)(B)(iii) and (iv) if the designated organization 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 organization has not previously filed a petition for revocation under this subdivision (a)(4)(B), the petition period begins two (2) years after the date on which the designation was made; or

(b) If the designated organization has previously filed a petition for revocation under this subdivision (a)(4)(B), 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 organization 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 organization is warranted.

(iv)

(a) Not later than one hundred eighty (180) days after receiving a petition for revocation submitted under this subdivision (a)(4)(B), the attorney general and reporter shall make a determination as to such revocation.

(b) The attorney general and reporter shall conduct the petition for revocation as a contested case pursuant to

the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The attorney general and reporter 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 made by the attorney general and reporter under this subdivision (a)(4)(B)(iv) shall be filed with the secretary of state and published in the same fashion as required under subdivisions (a)(2)(A)(ii) and (iii).

(e) Any revocation by the attorney general and reporter 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), the attorney general and reporter shall review the designation of the sharia organization 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 established by the attorney general and reporter. 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 subdivisions (a)(2)(A)(ii) and (iii).

(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 attorney general and reporter may 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 attorney general and reporter 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 and public safety 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 subdivisions (a)(2)(A)(ii) and (iii) 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 attorney general and reporter may amend a designation under subdivision (a)(1) if the attorney general and reporter finds that the organization has changed its name, adopted a new alias, dissolved and then reconstituted itself under a different name or names, or merged with another organization.

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

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

(4) The attorney general and reporter 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 service 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 organization 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 attorney general and reporter 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.

39-13-906.

(a)

(1)

(A) Any person who knowingly provides material support or resources to a designated sharia organization, or attempts or conspires to do so, shall commit an offense.

(B) A violation of subdivision (a)(1)(A) is a Class B felony, punishable by fine, imprisonment of not less than fifteen (15) years or both; provided, that if the death of any person results from a violation of subdivision (a)(1)(A), then the offense is a Class A felony, punishable by imprisonment for life or imprisonment for life without possibility of parole.

(C) To violate this subsection (a), a person must have knowledge that the organization:

(i) Is a designated sharia organization, or

(ii) Has engaged or engages in:

(a) One (1) or more acts of terrorism, as defined in § 39-13-803, targeting a person or institution in Tennessee;

(b) Terrorist activity in this state or from within this state, as defined by federal law pursuant to § 212(a)(3)(B) of the Immigration and Nationality Act; or

(c) Terrorism in this state or from within this state as defined in § 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989.

(2) As used in this section:

(A) "Expert advice or assistance" means advice or assistance derived from scientific, technical, legal or other specialized knowledge;

(B) "Material support or resources":

(i) 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 person himself or herself, and transportation; and

(ii) Does not include medicine or religious materials; and

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

(3) As used in subdivision (a)(2):

(A) No person may be prosecuted under this section as "personnel" unless that person has knowingly provided, attempted to provide, or conspired to provide a sharia organization with one (1) or more individuals, including the person himself or herself, to work under

that organization's direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization. Persons who act entirely independently of the sharia organization to advance its goals or objectives shall not be considered to be working under the sharia organization's direction and control.

(B) "Legal" does not include legal services provided to the sharia organization for the purposes of defending the organization or any person relating to any criminal prosecution or civil action brought pursuant to this section or pursuant to any other federal or state law.

(4) Except as authorized by the attorney general and reporter, any financial institution doing business in this state that becomes aware that it has possession of, or control over, any funds in which a sharia organization, or its agent, has an interest, shall:

(A) Retain possession of, or maintain control over, such funds;

and

(B) Report to the attorney general and reporter the existence of such funds in accordance with regulations issued by the attorney general and reporter.

(b) Any financial institution doing business in this state that knowingly fails to comply with subdivision (a)(4) shall be subject to a civil penalty in an amount that is the greater of:

(1) Fifty thousand dollars (\$50,000) per violation; or

(2) Twice the amount of which the financial institution was required under subdivision (a)(4) to retain possession or control.

(c) If the attorney general and reporter 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, the attorney general and reporter may initiate civil action in a circuit court of this state to enjoin such violation.

(d)

(1)

(A) In any civil proceeding under this section, upon request made ex parte and in writing by the attorney general and reporter, a court, upon a sufficient showing, may authorize the attorney general and reporter 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), 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 and reporter under this subdivision (d)(1), the attorney general and reporter 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 and reporter under this section, the attorney general and reporter 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 and reporter under this subsection (d), the attorney general and reporter 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 and reporter 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 and reporter under this subsection (d), the attorney general and reporter may take an immediate interlocutory appeal in accordance with subdivision (d)(5).

(5)

(A) The attorney general and reporter shall file an interlocutory appeal with the court of appeals from a decision or order of a circuit 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 and reporter 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 not 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 not 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 not 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 and reporter from seeking protective orders or asserting privileges ordinarily available to this state, including the invocation of the military and state secrets privilege as those privileges have been developed under state or federal common law, or to a plaintiff in any civil action to protect against the disclosure of confidential information.

39-13-907.

(a) Any individual injured in the individual's person, property, or business by reason of an act in violation of § 39-13-906, or the individual's estate, survivors, or heirs, may sue in any appropriate circuit 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 or civil proceeding under § 39-13-906 shall stop 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 foreign 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, stop the defendant from denying the essential allegations of the offense in any subsequent civil proceeding under this section.

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.