

Assembly Bill No. 140

Passed the Assembly September 9, 1999

Chief Clerk of the Assembly

Passed the Senate September 7, 1999

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor



CHAPTER _____

An act to add Article 4.6 (commencing with Section 11415) to Chapter 3 of Title 1 of Part 4 the Penal Code, relating to terrorism.

LEGISLATIVE COUNSEL'S DIGEST

AB 140, Hertzberg. Prevention of terrorism.

Existing law proscribes various acts of terrorism.

This bill would enact the Hertzberg-Alarcon California Prevention of Terrorism Act to make it a crime for any person, with specified exceptions, to possess, develop, manufacture, produce, transfer, acquire, or retain any weapon of mass destruction, as defined. The bill would also penalize the use of a weapon of mass destruction against a person, an animal, the food or water supply, crops, or public natural resources; and the knowing threat to use, with specified intent, or attempt to develop or use, a weapon of mass destruction. With specified exceptions, the bill would furthermore make it a crime to possess restricted biological agents, as defined. The bill would require a peace officer who encounters any of the restricted biological agents to immediately notify and consult with a local public health officer to ensure proper consideration of any public health risk. By creating new crimes and expanding the duties of local peace officers and public health officers, this bill would impose a state-mandated local program.

The bill would also make it a crime, punishable as either a felony or a misdemeanor, for any person to knowingly threaten to use a weapon of mass destruction, as specified, and resulting in an isolation, quarantine, or decontamination effort. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund



to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Article 4.6 (commencing with Section 11415) is added to Chapter 3 of Title 1 of Part 4 of the Penal Code, to read:

Article 4.6. The Hertzberg-Alarcon California
Prevention of Terrorism Act

11415. This article shall be known and may be cited as the Hertzberg-Alarcon California Prevention of Terrorism Act.

11416. The Legislature hereby finds and declares that the threat of terrorism involving weapons of mass destruction, including, but not limited to, chemical, biological, nuclear, or radiological agents, is a significant public safety concern. The Legislature also recognizes that terrorism involving weapons of mass destruction could result in an intentional disaster placing residents of California in great peril. The Legislature also 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 against persons or animals.

11417. (a) For the purposes of this article, the following terms have the following meanings:



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

(2) “Chemical Warfare Agents” includes, but is not limited to, the following weaponized agents, or any analog of these agents:

(A) Nerve agents, including Tabun (GA), Sarin (GB), Soman (GD), GF, and VX.

(B) Choking agents, including Phosgene (CG) and Diphosgene (DP).

(C) Blood agents, including Hydrogen Cyanide (AC), Cyanogen Chloride (CK), and Arsine (SA).

(D) Blister agents, including mustards (H, HD [sulfur mustard], HN-1, HN-2, HN-3 [nitrogen mustard]), arsenicals, such as Lewisite (L), urticants, such as CX; and incapacitating agents, such as BZ.

(3) “Weaponized biological or biologic warfare agents” include weaponized pathogens, such as bacteria, viruses, rickettsia, yeasts, fungi, or genetically engineered pathogens, toxins, vectors, and endogenous biological regulators (EBRs).

(4) “Nuclear or radiological agents” includes any improvised nuclear device (IND) which is any explosive device designed to cause a nuclear yield; any radiological dispersal device (RDD) which is any explosive device utilized to spread radioactive material; or a simple radiological dispersal device (SRDD) which is any act or container designed to release radiological material as a weapon without an explosion.

(5) “Vector” means a living organism or a molecule, including a recombinant molecule, or a biological product that may be engineered as a result of biotechnology, that is capable of carrying a biological agent or toxin to a host.

(6) “Weaponization” is the deliberate processing, preparation, packaging, or synthesis of any substance for use as a weapon or munition. “Weaponized agents” are those agents or substances prepared for dissemination



through any explosive, thermal, pneumatic, or mechanical means.

(b) The intentional release of a dangerous chemical or hazardous material generally utilized in an industrial or commercial process shall be considered use of a weapon of mass destruction when a person knowingly utilizes those agents with the intent to cause harm and the use places persons or animals at risk of serious injury, illness, or death, or endangers the environment.

(c) The lawful use of chemicals for legitimate mineral extraction, industrial, agricultural, or commercial purposes is not proscribed by this article.

(d) No university, research institution, private company, individual, or hospital engaged in scientific or public health research and, as required, registered with the Centers for Disease Control and Prevention (CDC) pursuant to Part 113 (commencing with Section 113.1) of Subchapter E of Chapter 1 of Title 9 or pursuant to Part 72 (commencing with Section 72.1) of Subchapter E of Chapter 1 of Title 42 of the Code of Federal Regulations, or any successor provisions, shall be subject to this article.

11418. (a) Any person, without lawful authority, who possesses, develops, manufactures, produces, transfers, acquires, or retains any weapon of mass destruction, shall be guilty of a felony punishable in the state prison for 3, 6, or 9 years, provided that any person who has been previously convicted of Section 11411, 11412, 11413, 11460, 12303.1, 12303.2, or 12303.3 shall be punished by imprisonment in the state prison for a period of 4, 8, or 12 years.

(b) (1) Any person who uses or directly employs against another person a weapon of mass destruction in a form that may cause widespread, disabling illness, or injury in human beings shall be punished by life in prison.

(2) Any person who uses a weapon of mass destruction in a form that may cause widespread damage to and disruption of the water or food supply shall be punished by imprisonment in the state prison for a term of 4, 8, or 12 years, and a fine of not more than one hundred thousand dollars (\$100,000).



(3) Any person who maliciously uses against animals or crops a weapon of mass destruction in a form that may cause widespread and substantial diminution in the value of stock animals or crops shall be punished by a fine of not more than one hundred thousand dollars (\$100,000), imprisonment in the state prison for 4, 8, or 12 years, or both.

(c) Any person who uses a weapon of mass destruction in a form that may cause widespread and significant damage to public natural resources, including coastal waterways and beaches, public parkland, surface waters, ground water, and wildlife, shall be punished by imprisonment in the state prison for 3, 4, or 6 years.

(d) Any person who uses recombinant technology or any other biological advance to create new pathogens or more virulent forms of existing pathogens for the purposes specified in this section, shall be punished by imprisonment in a county jail for up to one year or in the state prison for 3, 6, or 9 years, or by a fine of not more than two hundred fifty thousand dollars (\$250,000), or by both that fine and imprisonment.

(e) Nothing in this section shall be construed to prevent punishment instead pursuant to any other provision of law that imposes a greater or more severe punishment.

11418.5. (a) Any person who knowingly threatens to use a weapon of mass destruction, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety, or for his or her immediate family's safety, which results in an isolation, quarantine, or decontamination effort, shall be punished by imprisonment in a county jail for up to one year or in the state prison for 3, 4, or 6 years, or by a fine of not more



than two hundred fifty thousand dollars (\$250,000), or by both that fine and imprisonment.

(b) For the purposes of this section, “sustained fear” can be established by, but is not limited to, conduct such as evacuation of any building by any occupant, evacuation of any school by any employee or student, evacuation of any home by any resident or occupant, or any other action taken in direct response to the threat to use a weapon of mass destruction.

(c) The fact that the person who allegedly violated this section did not actually possess a biological agent, toxin, or chemical weapon does not constitute a defense to the crime specified in this section.

(d) Nothing in this section shall be construed to prevent punishment instead pursuant to any other provision of law that imposes a greater or more severe punishment.

11419. (a) Any person or entity possessing any of the restricted biological agents enumerated in subdivision (b) shall be punished by a fine of not more than two hundred fifty thousand dollars (\$250,000), imprisonment in the state prison for 4, 8, or 12 years, or by both that fine and imprisonment.

(b) For the purposes of this section, “restricted biological agents” means the following:

(1) Viruses: Crimean-Congo hemorrhagic fever virus, eastern equine encephalitis virus, ebola viruses, equine morbilli virus, lassa fever virus, marburg virus, Rift Valley fever virus, South African hemorrhagic fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito), tick-borne encephalitis complex viruses, variola major virus (smallpox virus), Venezuelan equine encephalitis virus, viruses causing hantavirus pulmonary syndrome, yellow fever virus.

(2) Bacteria: bacillus anthracis (commonly known as anthrax), brucella abortus, brucella melitensis, brucella suis, burkholderia (pseudomonas) mallei, burkholderia (pseudomonas) pseudomallei, clostridium botulinum, francisella tularensis, yersinia pestis (commonly known as plague).



(3) Rickettsiae: coxiella burnetii, rickettsia prowazekii, rickettsia rickettsii.

(4) Fungi: coccidioides immitis.

(5) Toxins: abrin, aflatoxins, botulinum toxins, clostridium perfringens epsilon toxin, conotoxins, diacetoxyscirpenol, ricin, saxitoxin, shigatoxin, staphylococcal enterotoxins, tetrodotoxin, T-2 toxin.

(c) (1) This section shall not apply to any physician, veterinarian, pharmacist, or licensed medical practitioner authorized to dispense a prescription under Section 11026 of the Health and Safety Code, or universities, research institutions, or pharmaceutical corporations, or any person possessing the agents pursuant to a lawful prescription issued by a person defined in Section 11026 of the Health and Safety Code, if the person possesses vaccine strains of the viral agents Junin virus strain #1, Rift Valley fever virus strain MP-12, Venezuelan equine encephalitis virus strain TC-83 and yellow fever virus strain 17-D; any vaccine strain described in Section 78.1 of Subpart A of Part 78 of Subchapter C of Chapter 1 of Title 9 of the Code of Federal Regulations, or any successor provisions, and any toxin for medical use, inactivated for use as vaccines, or toxin preparation for biomedical research use at a median lethal dose for vertebrates of more than 100 ng/kg, as well as any national standard toxin required for biologic potency testing as described in Part 113 (commencing with Section 113.1) of Subchapter E of Chapter 1 of Title 9 of the Code of Federal Regulations, or any successor provisions.

(2) For the purposes of this section, no person shall be deemed to be in possession of an agent if the person is naturally exposed to, or innocently infected or contaminated with, the agent.

(d) Any peace officer who encounters any of the restricted agents mentioned above shall immediately notify and consult with a local public health officer to ensure proper consideration of any public health risk.

(e) Nothing in this section shall be construed to prevent punishment instead pursuant to any other



provision of law that imposes a greater or more severe punishment.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.



Approved _____, 1999

Governor

