

STATE OF NEW YORK

7685

IN SENATE

July 20, 2004

Introduced by Sens. BALBONI, BRUNO, SPANO, ALESÌ, BONACIC, DeFRANCISCO,

FARLEY, FLANAGAN, FUSCHILLO, GOLDEN, HANNON, HOFFMANN, JOHNSON,
KUHL,

LARKIN, LAVALLE, LEIBELL, LIBOUS, LITTLE, MALTESE, MARCELLINO, MARCHI,

MAZIARZ, McGEE, MEIER, MENDEZ, MORAHAN, NOZZOLIO, PADAVAN, RATH,

ROBACH, SALAND, SEWARD, SKELOS, TRUNZO, VOLKER, WRIGHT -- (at request

of the Governor) -- (at request of the Attorney General) -- read twice

and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the criminal procedure law, in relation to life-long

prosecution for terrorism; to amend the criminal procedure law and the

penal law and the criminal procedure law, in relation to acts of

terrorism; to amend the penal law, in relation to creating the crimes

of criminal possession of a chemical or biological weapon in the

first, second and third degrees and criminal use of a chemical or

biological weapon in the first, second and third degrees; to amend the

public health law, in relation to promulgating a list of select

chemical agents and a list of select biological agents; to amend the

executive law, in relation to the definition of designated offender;

to amend the penal law, in relation to the placement of devices and

objects which falsely appear to be hazardous substances; to amend the

penal law, in relation to creating the crimes of money laundering in support of terrorism in the first, second, third and fourth degrees (Part A); to amend the executive law, in relation to establishing the state office of homeland security; and to repeal certain provisions of such law relating thereto (Part B); to amend the executive law, in relation to the creation of security measures for hazardous substances storage facilities (Part C); to amend the executive law, in relation to providing training to assure adequate response to incidents involving hazardous materials and weapons of mass destruction and protection of responders in all geographic areas of the state (Part D); to amend the state technology law, in relation to establishing the statewide wireless network advisory council (Part E); and to amend the transportation law, in relation to airport security (Part F)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act enacts into law major components of legislation which are necessary to enact this chapter of the laws of 2004. Each component is wholly contained within a Part identified as Parts A through F. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. Legislative intent. The tragic events of the September 11, 2001 attack, together with the more recent arrests of members of alleged terrorist cells in Erie county and elsewhere throughout the world, underscore the compelling need for further anti-terror measures to enhance public safety. It is our nation's profound commitment to the principles of democracy and the rule of law that enables us to respond efficiently and effectively to the outrageous criminal acts of terrorists. Creating new criminal offenses and increasing penalties to enhance the powers of law enforcement are necessary to combat their cowardly and inhumane acts of terror.

A chemical or biological attack against a civilian population or the threat of such an attack, however unimaginable before September 11, 2001, has become a stark and disturbing reality. The subsequent outbreaks of anthrax, a deadly disease that caused death and illness across our nation, awakened us to a new type of crime, a crime so indecent that it threatens our values as well as our lives. Terrorists committed to causing death and destruction with deadly or

incapacitating chemicals or biological weapons must be brought to justice and punished severely. Although federal law explicitly proscribes such monstrous conduct, state law does not. This act, modeled on federal law, punishes those who criminally use or possess chemical or biological weapons and imposes the penalty of life imprisonment without parole in appropriate cases.

The images of the savage attack on the World Trade Center and the Pentagon on September 11, 2001 will be forever emblazoned on the psyches of all Americans. The slaughter of innocent civilians, and the sacrifice of selfless police officers, brave firefighters, and other heroic emergency services personnel, will never be forgotten. A crime of unimaginable horror, terrorism tears at the very fabric of our society, threatening to rob us of our commitment to freedom, justice, and democracy. This act protects that commitment by providing law enforcement officials with appropriate and effective tools to investigate, prosecute, and punish terrorists.

§ 2. Subdivision 3 of section 30.10 of the criminal procedure law is amended by adding a new paragraph (g) to read as follows:

(g) A prosecution for any felony defined in article four hundred ninety of the penal law must be commenced within eight years after the commission thereof provided, however, that in a prosecution for a felony defined in article four hundred ninety of the penal law, if the commission of such felony offense resulted in, or created a foreseeable risk of, death or serious physical injury to another person, the prosecution may be commenced at any time; provided, however, that nothing in this paragraph shall be deemed to shorten or otherwise lessen the period, defined in any other applicable law, in which a prosecution for a felony designated in this paragraph may be commenced.

§ 3. Paragraph (q) of subdivision 8 of section 700.05 of the criminal procedure law, as added by chapter 300 of the laws of 2001, is amended to read as follows:

(q) Soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10 of the penal law, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15 of the penal law, making a terroristic threat as defined in section 490.20 of the penal law, crime of terrorism as defined in section 490.25 of the penal law, hindering prosecution of terrorism in the second degree as defined in section 490.30 of the penal law, ~~and~~ hindering prosecution of terrorism in the first degree as defined in section 490.35 of the penal law, **criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37 of the penal law, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40 of the penal law, criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of the penal law, criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47 of the penal law, criminal use of a chemical weapon or biological weapon in the second degree as defined in section 490.50 of the penal law, and criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of the penal law.**

§ 4. Section 60.06 of the penal law, as amended by chapter 1 of the laws of 1995, is amended to read as follows: § 60.06 Authorized disposition; murder in the first degree **offenders;**

certain terrorism offenders; criminal possession of a chemical

weapon or biological weapon offenders; criminal use of a

chemical weapon or biological weapon offenders.

When a **person** **defendant** is convicted of murder in the first degree as defined in section 125.27 of this chapter, the court shall, in accordance with the provisions of section 400.27 of the criminal procedure law, sentence the defendant to death, to life imprisonment without parole in accordance with subdivision five of section 70.00 of this **chapter** **title**, or to a term of imprisonment for a class A-I felony other than a sentence of life imprisonment without parole, in accordance with subdivisions one through three of section 70.00 of this **chapter** **title**. **When a defendant is convicted of the crime of terrorism as defined in section 490.25 of this chapter, and the specified offense the defendant committed is a class A-I felony offense, or when a defendant is convicted of the crime of criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of this chapter, or when a defendant is convicted of the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter, the court shall sentence the defendant to life imprisonment without parole in accordance with subdivision five of section 70.00 of this title; provided, however, that nothing in this section shall preclude or prevent a sentence of death when the defendant is also convicted of murder in the first degree as defined in section 125.27 of this chapter.**

§ 5. Subdivision 5 of section 70.00 of the penal law, as added by chapter 1 of the laws of 1995, is amended to read as follows:

5. Life imprisonment without parole. Notwithstanding any other provision of law, a defendant sentenced to life imprisonment without parole shall not be or become eligible for parole or conditional release. For purposes of commitment and custody, other than parole and conditional release, such sentence shall be deemed to be an indeterminate sentence. A defendant may be sentenced to life imprisonment without parole **[only]** upon conviction for the crime of murder in the first degree as defined in section 125.27 of this chapter and in accordance with the procedures provided by law for imposing a sentence for such crime. **A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of terrorism as defined in section 490.25 of this chapter, where the specified offense the defendant committed is a class A-I felony; the crime of criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of this chapter; or the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter; provided, however, that nothing in this subdivision shall preclude or prevent a sentence of death when the defendant is also convicted of the crime of murder in the first degree as defined in section 125.27 of this chapter.**

§ 6. Paragraphs (a) and (b) of subdivision 1 of section 70.02 of the penal law, paragraph (a) as amended by chapter 264 of the laws of 2003 and paragraph (b) as amended by chapter 300 of the laws of 2001, are amended to read as follows:

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, criminal possession of a dangerous weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, intimidating a victim or witness in the first

degree as defined in section 215.17, **[and] hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.**

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a); aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, gang assault in the second degree as defined in section 120.06, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15 **[and], hindering prosecution of terrorism in the second degree as defined in section 490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.**

§ 7. Subdivision 3 of section 490.05 of the penal law, as amended by chapter 619 of the laws of 2002, is amended to read as follows:

3. **(a) "Specified offense" for purposes of this article means a class A felony offense other than an offense as defined in article two hundred twenty, a violent felony offense as defined in section 70.02, manslaughter in the second degree as defined in section 125.15, criminal tampering in the first degree as defined in section 145.20, identity theft in the second degree as defined in section 190.79, identity theft in the first degree as defined in section 190.80, unlawful possession of personal identification information in the second degree as defined in section 190.82, [and] unlawful possession of personal identification information in the first degree as defined in section 190.83, money laundering in support of terrorism in the fourth degree as defined in section 470.21, money laundering in support of terrorism in the third degree as defined in section 470.22, money laundering in support of terrorism in the second degree as defined in section 470.23, money laundering in support of terrorism in the first degree as defined in section 470.24** of this chapter, and includes an attempt or conspiracy to commit any such offense.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, a specified offense shall not mean an offense defined in sections 490.37, 490.40, 490.45, 490.47, 490.50, and 490.55 of this article, nor shall a specified offense mean an attempt to commit any such offense.

§ 8. Section 490.05 of the penal law is amended by adding thirteen new subdivisions 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 to read as follows:

5. "Biological agent" means any micro-organism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such micro-organism, virus, infectious substance, or biological product, capable of causing:

(a) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(b) deterioration of food, water, equipment, supplies, or material of any kind; or

(c) deleterious alteration of the environment.

6. "Toxin" means the toxic material of plants, animals, micro-organisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

(a) any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(b) any poisonous isomer or biological product, homolog, or derivative of such a substance.

7. "Delivery system" means:

(a) any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or

(b) any vector.

8. "Vector" means a living organism, or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host.

9. "Biological weapon" means any biological agent, toxin, vector, or delivery system or combination thereof.

10. "Chemical weapon" means the following, together or separately:

(a) a toxic chemical or its precursors;

(b) a munition or device specifically designed to cause death or other harm through the toxic properties of a toxic chemical or its precursors, which would be released as a result of the employment of such munition or device;

(c) any equipment specifically designed for use directly in connection with the employment of munitions or devices; or

(d) any device that is designed to release radiation or radioactivity at a level dangerous to human life.

11. "Precursor" means any chemical reactant that takes part at any stage in the production by whatever method of a toxic chemical, including any key component of a binary or multicomponent chemical system, and includes precursors which have been identified for application of verification measures under article VI of the convention in schedules contained in the annex on chemicals of the chemical weapons convention.

12. "Key component of a binary or multicomponent chemical system" means the precursor which plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent system.

13. "Toxic chemical" means any chemical which through its chemical action on life processes can cause death, serious physical injury or permanent harm to humans or animals, including all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or

elsewhere, and includes toxic chemicals which have been identified by the commissioner of health and included on the list of toxic chemicals pursuant to subdivision twenty of section two hundred six of the public health law.

14. The terms "biological agent", "toxin", and "toxic chemical" do not include any biological agent, toxin or toxic chemical that is in its naturally occurring environment, if the biological agent, toxin or toxic chemical has not been cultivated, collected, or otherwise extracted from its natural source.

15. "Select chemical agent" shall mean a chemical weapon which has been identified in regulations promulgated pursuant to subdivision twenty of section two hundred six of the public health law.

16. "Select biological agent" shall mean a biological weapon which has been identified in regulations promulgated pursuant to subdivision twenty-one of section two hundred six of the public health law.

17. "Chemical weapons convention" and "convention" mean the convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, opened for signature on January thirteenth, nineteen hundred ninety-three.

§ 9. The penal law is amended by adding seven new sections 490.37, 490.40, 490.45, 490.47, 490.50, 490.55, and 490.70 to read as follows: § 490.37 Criminal possession of a chemical weapon or biological weapon in the third degree.

A person is guilty of criminal possession of a chemical weapon or biological weapon in the third degree when he or she possesses any select chemical agent or select biological agent under circumstances evincing an intent by the defendant to use such weapon to cause serious physical injury or death to another person.

Criminal possession of a chemical weapon or biological weapon in the third degree is a class C felony. § 490.40 Criminal possession of a chemical weapon or biological weapon in the second degree.

A person is guilty of criminal possession of a chemical weapon or biological weapon in the second degree when he or she possesses any chemical weapon or biological weapon with intent to use such weapon to:

1. (a) cause serious physical injury to, or the death of, another person; and

(b) (i) intimidate or coerce a civilian population;

(ii) influence the policy of a unit of government by intimidation or coercion; or

(iii) affect the conduct of a unit of government by murder, assassination, or kidnapping.

2. cause serious physical injury to, or the death of, more than two persons.

Criminal possession of a chemical weapon or biological weapon in the second degree is a class B felony. § 490.45 Criminal possession of a chemical weapon or biological weapon in the first degree.

A person is guilty of criminal possession of a chemical weapon or biological weapon in the first degree when he or she possesses:

1. any select chemical agent, with intent to use such agent to:

(a) cause serious physical injury to, or the death of, another person; and

(b) (i) intimidate or coerce a civilian population;

(ii) influence the policy of a unit of government by intimidation or coercion; or

(iii) affect the conduct of a unit of government by murder, assassination, or kidnapping.

2. any select chemical agent, with intent to use such agent to cause serious physical injury to, or the death of, more than two other persons; or

3. any select biological agent, with intent to use such agent to cause serious physical injury to, or the death of, another person.

Criminal possession of a chemical weapon or biological weapon in the first degree is a class A-I felony. § 490.47 Criminal use of a chemical weapon or biological weapon in the third degree.

A person is guilty of criminal use of a chemical weapon or biological weapon in the third degree when, under circumstances evincing a depraved indifference to human life, he or she uses, deploys, releases, or causes to be used, deployed, or released any select chemical agent or select biological agent, and thereby creates a grave risk of death or serious physical injury to another person not a participant in the crime.

Criminal use of a chemical weapon or biological weapon in the third degree is a class B felony. § 490.50 Criminal use of a chemical weapon or biological weapon in the second degree.

A person is guilty of criminal use of a chemical weapon or biological weapon in the second degree when he or she uses, deploys, releases, or causes to be used, deployed, or released, any chemical weapon or biological weapon, with intent to:

1. cause serious physical injury to, or the death of, another person; and

2. (a) intimidate or coerce a civilian population;

(b) influence the policy of a unit of government by intimidation or coercion; or

(c) to affect the conduct of a unit of government by murder, assassination, or kidnapping.

Criminal use of a chemical weapon or biological weapon in the second degree is a class A-II felony. § 490.55 Criminal use of a chemical weapon or biological weapon in the

first degree.

A person is guilty of criminal use of a chemical weapon or biological weapon in the first degree when:

1. with intent to:

(a) cause serious physical injury to, or the death of, another person; and

(b) (i) intimidate or coerce a civilian population;

(ii) influence the policy of a unit of government by intimidation or coercion; or

(iii) affect the conduct of a unit of government by murder, assassination, or kidnapping; he or she uses, deploys, releases, or causes to be used, deployed, or released any select chemical agent and thereby causes serious physical injury to, or the death of, another person who is not a participant in the crime.

2. with intent to cause serious physical injury to, or the death of, more than two persons, he or she uses, deploys, releases, or causes to be used, deployed, or released any select chemical agent and thereby causes serious physical injury to, or the death of, more than two persons who are not participants in the crime; or

3. with intent to cause serious physical injury to, or the death of, another person, he or she uses, deploys, releases, or causes to be used, deployed, or released any select biological agent and thereby causes serious physical injury to, or the death of, another person who is not a participant in the crime.

Criminal use of a chemical weapon or biological weapon in the first degree is a class A-I felony. § 490.70 Limitations.

1. The provisions of sections 490.37, 490.40, 490.45, 490.47, 490.50, and 490.55 of this article shall not apply where the defendant possessed or used:

(a) any household product generally available for sale to consumers in this state in the quantity and concentration available for such sale;

(b) a self-defense spray device in accordance with the provisions of paragraph fourteen of subdivision a of section 265.20 of this chapter;

(c) a chemical weapon solely for a purpose not prohibited under this chapter, as long as the type and quantity is consistent with such a purpose; or

(d) a biological agent, toxin, or delivery system solely for prophylactic, protective, bona fide research, or other peaceful purposes.

2. For the purposes of this section, the phrase "purposes not prohibited by this chapter" means the following:

(a) any peaceful purpose related to an industrial, agricultural, research, medical, or pharmaceutical activity or other peaceful activity;

(b) any purpose directly related to protection against toxic chemicals and to protection against chemical weapons;

(c) any military purpose of the United States that is not connected with the use of a chemical weapon or that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm; and

(d) any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment.

§ 10. Section 200.65 of the criminal procedure law, as added by chapter 516 of the laws of 1986, is amended to read as follows: § 200.65 Indictment; special information for enterprise corruption **and**

criminal possession or use of a biological weapon or chemical weapon.

When filing an indictment which charges enterprise corruption in violation of article four hundred sixty of the penal law, **criminal possession of a chemical weapon or biological weapon in violation of section 490.37, 490.40, or 490.45 of the penal law, or criminal use of a chemical weapon or biological weapon in violation of section 490.47, 490.50, or 490.55 of the penal law,** the district attorney must submit a statement to the court attesting that he **or she** has reviewed the substance of the evidence presented to the grand jury and concurs in the judgment that the charge is consistent with legislative findings in **[said] article four hundred sixty or four hundred ninety of the penal law, as applicable.** For purposes of this section only, "district attorney" means the district attorney of the county, the attorney general, or the deputy attorney general in charge of the organized crime task force, or where such person is actually absent or disabled, the person authorized to act in his **or her** stead.

§ 11. Subdivision 1 of section 110.05 of the penal law, as amended by chapter 367 of the laws of 1974, is amended to read as follows:

1. Class A-I felony when the crime attempted is the A-I felony of murder in the first degree, criminal possession of a controlled substance in the first degree **[or],** criminal sale of a controlled substance in the first degree, **criminal possession of a chemical or biological weapon in the first degree or criminal use of a chemical or biological weapon in the first degree;**

§ 12. Section 206 of the public health law is amended by adding two new subdivisions 20 and 21 to read as follows:

20. The commissioner shall, in consultation with the superintendent of state police, promulgate, by regulation, a list of "select chemical agents" which shall consist only of those toxic chemicals which have been identified, as of the effective date of this subdivision, for the application of verification measures under article VI of the convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, opened for signature on January thirteenth, nineteen hundred ninety-three, in schedules contained in the annex to said convention. The commissioner may, from time to time, promulgate regulations amending said list in the event that the schedules contained in the annex to the convention are amended, revised, modified or repealed, so that the list of select chemical agents promulgated pursuant to this subdivision conforms in whole or in part to any such amended, revised, modified or repealed list, if the commissioner determines that any such amendment, revision, modification or repeal is consistent with the purposes of this chapter.

21. The commissioner shall, in consultation with the superintendent of state police, promulgate, by regulation, a list of "select biological agents" which shall consist only of those select biological agents which have been identified, as of the effective date of this

subdivision, by the United States Secretary of Health and Human Services and placed on the select agent list established pursuant to section 511 (d) of the Antiterrorism and Effective Death Penalty Act, Pub. L. 104-132 at 42 C.F.R. Part 72. The commissioner may, from time to time, promulgate regulations amending said list in the event that the list of select biological agents promulgated by federal regulations is amended, revised, modified or repealed, so that the list of select biological agents promulgated pursuant to this subdivision conforms in whole or in part to any such amended, revised, modified or repealed list, if the commissioner determines that any such amendment, revision, modification or repeal is consistent with the purposes of this chapter.

§ 13. Paragraph (a) of subdivision 7 of section 995 of the executive law, as amended by chapter 560 of the laws of 1999, is amended to read as follows:

(a)[:] sections 120.05, 120.10, and 120.11, relating to assault; sections 125.15 through 125.27 relating to homicide; sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.67 and 130.70, relating to sex offenses; sections 205.10, 205.15, 205.17 and 205.19, relating to escape and other offenses, where the offender has been convicted within the previous five years of one of the other felonies specified in this subdivision; or section 255.25, relating to incest, a violent felony offense as defined in subdivision one of section 70.02 of the penal law, attempted murder in the first degree, as defined in section 110.00 and section 125.27 of the penal law, kidnapping in the first degree, as defined in section 135.25 of the penal law, arson in the first degree, as defined in section 150.20 of the penal law, burglary in the third degree, as defined in section 140.20 of the penal law [~~or~~], attempted burglary in the third degree, as defined in section 110.00 and section 140.20 of the penal law, a felony defined in article four hundred ninety of the penal law relating to terrorism or any attempt to commit an offense defined in such article relating to terrorism which is a felony; or

§ 14. Section 240.61 of the penal law, as amended by chapter 561 of the laws of 1999 and the closing paragraph as amended by chapter 301 of the laws of 2001, is amended to read as follows: § 240.61 Placing a false bomb or hazardous substance in the second degree.

A person is guilty of placing a false bomb or hazardous substance in the second degree when he or she places, or causes to be placed, any device or object that by its design, construction, content or characteristics appears to be or to contain, a bomb, destructive device [~~or~~], explosive or hazardous substance, but is, in fact, an inoperative facsimile or imitation of such a bomb, destructive device [~~or~~], explosive or hazardous substance and which he or she knows, intends or reasonably believes will appear to be a bomb, destructive device, explosive or hazardous substance under circumstances in which it is likely to cause public alarm or inconvenience.

Placing a false bomb or hazardous substance in the second degree is a class E felony.

§ 15. Section 240.62 of the penal law, as amended by chapter 301 of the laws of 2001, is amended to read as follows: § 240.62 Placing a false bomb or hazardous substance in the first degree.

A person is guilty of placing a false bomb or hazardous substance in the first degree when he or she places, or causes to be placed, in or upon school grounds, a public building, or a public place any device or object that by its design, construction, content or characteristics appears to be or to contain, a bomb, destructive device [~~or~~], explosive or hazardous substance, but is, in fact, an inoperative facsimile or imitation of such a bomb, destructive device [~~or~~], explosive or hazardous substance and which he or she knows, intends or reasonably believes will appear to be a bomb, destructive device, explosive or hazardous substance under circumstances in which it is likely to cause public alarm or inconvenience. For purposes of this

section the term "public building" shall have the meaning set forth in section four hundred one of the executive law.

Placing a false bomb **or hazardous substance** in the first degree is a class D felony.

§ 16. Section 240.63 of the penal law, as amended by chapter 301 of the laws of 2001, is amended to read as follows: § 240.63 Placing a false bomb **or hazardous substance** in a sports stadium

or arena, mass transportation facility or enclosed shopping mall.

A person is guilty of placing a false bomb **or hazardous substance** in a sports stadium or arena, mass transportation facility or enclosed shopping mall when he or she places, or causes to be placed, in a sports stadium or arena, mass transportation facility or enclosed shopping mall, in which it is likely that persons are present, any device or object that by its design, construction, content or characteristics appears to be or to contain a bomb, destructive device ~~[or]~~, explosive **or hazardous substance**, but is, in fact, an inoperative facsimile or imitation of such a bomb, destructive device ~~[or]~~, explosive **or hazardous substance** and which he or she knows, intends or reasonably believes will appear to be a bomb, **destructive device, explosive or hazardous substance** under circumstances in which it is likely to cause public alarm or inconvenience. For purposes of this section, "sports stadium or arena, mass transportation facility or enclosed shopping mall" shall have its natural meaning.

Placing a false bomb **or hazardous substance** in a sports stadium or arena, mass transportation facility or enclosed shopping mall is a class D felony.

§ 17. Section 470.03 of the penal law, as added by chapter 489 of the laws of 2000, is amended to read as follows: § 470.03 Money laundering: aggregation of value; other matters.

1. For purposes of subdivisions one and three of sections 470.05, 470.10, ~~[and]~~ 470.15, **470.21, 470.22 and 470.23**, and for purposes of subdivisions one and two of ~~[section]~~ **sections 470.20^[r] and 470.24** of this article, financial transactions may be considered together and the value of the property involved may be aggregated, provided that the transactions are all part of a single "criminal transaction" as defined in subdivision two of section 40.10 of the criminal procedure law.

2. For purposes of subdivision two of sections 470.05, 470.10 ~~[and]~~, 470.15, **470.21, 470.22 and 470.23** of this article, separate occasions involving the transport, transmittal or transfer of monetary instruments may be considered together and the value of the monetary instruments involved may be aggregated, provided that the occasions are all part of a single "criminal transaction" as defined in subdivision two of section 40.10 of the criminal procedure law.

3. Nothing in ~~[section]~~ **sections 470.05, 470.21, 470.22, 470.23 and 470.24**; paragraph (b) of subdivision one, paragraph (b) of subdivision two and paragraph (b) of subdivision three of section 470.10; paragraph (b) of subdivision one, paragraph (b) of subdivision two and paragraph (b) of subdivision three of section 470.15; or paragraph (b) of subdivision one and paragraph (b) of subdivision two of section 470.20 of this article shall make it unlawful to return funds held in escrow:

(a) as a portion of a purchase price for real property pursuant to a contract of sale; or

(b) to satisfy the tax or other lawful obligations arising out of an administrative or judicial proceeding concerning the person who provided the escrow funds.

§ 18. The penal law is amended by adding four new sections 470.21, 470.22, 470.23 and 470.24 to read as follows: **§ 470.21 Money laundering in support of terrorism in the fourth degree.**

A person is guilty of money laundering in support of terrorism in the fourth degree when:

1. Knowing that the property involved in one or more financial transactions represents either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(a) he or she conducts one or more such financial transactions which in fact involve either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(i) With intent to:

(A) promote the carrying on of criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section eighteen hundred two, eighteen hundred three, eighteen hundred four, eighteen hundred five, eighteen hundred seven or eighteen hundred eight of the tax law; or

(ii) Knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(B) avoid any transaction reporting requirement imposed by law; and

(b) the total value of the property involved in such financial transaction or transactions exceeds one thousand dollars; or

2. Knowing that one or more monetary instruments represents either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(a) he or she transports, transmits, or transfers on one or more occasions, monetary instruments which in fact represent either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(i) With intent to promote the carrying on of criminal conduct; or

(ii) Knowing that such transportation, transmittal, or transfer is designed in whole or in part to:

(A) conceal or disguise the nature, the location, the source, the ownership, or the control of either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(B) avoid any transaction reporting requirement imposed by law; and

(b) the total value of such monetary instrument or instruments exceeds two thousand dollars; or

3. He or she conducts one or more financial transactions:

(a) involving property represented to be either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part, with intent to:

(i) promote the carrying on of specified criminal conduct; or

(ii) conceal or disguise the nature, the location, the source, the ownership or the control of property believed to be either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(iii) avoid any transaction reporting requirement imposed by law; and

(b) the total value of the property involved in such financial transaction or transactions exceeds two thousand dollars.

Money laundering in support of terrorism in the fourth degree is a class E felony. § 470.22 Money laundering in support of terrorism in the third degree.

A person is guilty of money laundering in support of terrorism in the third degree when:

1. Knowing that the property involved in one or more financial transactions represents either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(a) he or she conducts one or more such financial transactions which in fact involve either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(i) With intent to:

(A) promote the carrying on of specified criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section eighteen hundred two, eighteen hundred three, eighteen hundred four, eighteen hundred five, eighteen hundred seven or eighteen hundred eight of the tax law; or

(ii) Knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(B) avoid any transaction reporting requirement imposed by law; and

(b) the total value of the property involved in such financial transaction or transactions exceeds five thousand dollars; or

2. Knowing that one or more monetary instruments represent either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(a) he or she transports, transmits, or transfers or attempts to transport, transmit or transfer, on one or more occasions, monetary instruments which in fact represent either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part from a place in any county in this state to or through a place outside that county or to a place in any county in this state from or through a place outside that county:

(i) With intent to promote the carrying on of specified criminal conduct; or

(ii) Knowing that such transportation, transmittal or transfer is designed in whole or in part to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(B) avoid any transaction reporting requirement imposed by law; and

(b) The total value of such monetary instrument or instruments exceeds five thousand dollars; or

3. He or she conducts one or more financial transactions involving property represented to be either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(a) With intent to:

(i) promote the carrying on of specified criminal conduct; or

(ii) conceal or disguise the nature, the location, the source, the ownership or the control of property believed to be either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(iii) avoid any transaction reporting requirement imposed by law; and

(b) The total value of the property involved in such financial transaction or transactions exceeds five thousand dollars.

Money laundering in support of terrorism in the third degree is a class D felony. § 470.23 Money laundering in support of terrorism in the second degree.

A person is guilty of money laundering in support of terrorism in the second degree when:

1. Knowing that the property involved in one or more financial transactions represents either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(a) he or she conducts one or more such financial transactions which in fact involve either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(i) With intent to:

(A) promote the carrying on of specified criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section eighteen hundred two, eighteen hundred three, eighteen hundred four, eighteen hundred five, eighteen hundred seven or eighteen hundred eight of the tax law; or

(ii) Knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(B) avoid any transaction reporting requirement imposed by law; and

(b) the total value of the property involved in such financial transaction or transactions exceeds twenty-five thousand dollars; or

2. Knowing that one or more monetary instruments represent either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(a) he or she transports, transmits, or transfers or attempts to transport, transmit or transfer, on one or more occasions, monetary instruments which in fact represent either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part from a place in any county in this state to or through a place outside that county or to a place in any county in this state from or through a place outside that county:

(i) With intent to promote the carrying on of specified criminal conduct; or

(ii) Knowing that such transportation, transmittal or transfer is designed in whole or in part to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(B) avoid any transaction reporting requirement imposed by law; and

(b) the total value of such monetary instrument or instruments exceeds twenty-five thousand dollars; or

3. He or she conducts one or more financial transactions involving property represented to be either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(a) With intent to:

(i) promote the carrying on of specified criminal conduct; or

(ii) conceal or disguise the nature, the location, the source, the ownership or the control of property believed to be either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(iii) avoid any transaction reporting requirement imposed by law; and

(b) The total value of the property involved in such financial transaction or transactions exceeds twenty-five thousand dollars.

Money laundering in support of terrorism in the second degree is a class C felony. § 470.24 Money laundering in support of terrorism in the first degree.

A person is guilty of money laundering in support of terrorism in the first degree when:

1. Knowing that the property involved in one or more financial transactions represents either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(a) he or she conducts one or more financial transactions which in fact involve either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(i) With intent to:

(A) promote the carrying on of specified criminal conduct; or

(B) engage in conduct constituting a felony as set forth in section eighteen hundred two, eighteen hundred three, eighteen hundred four, eighteen hundred five, eighteen hundred seven or eighteen hundred eight of the tax law; or

(ii) Knowing that the transaction or transactions in whole or in part are designed to:

(A) conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(B) avoid any transaction reporting requirement imposed by law; and

(iii) The total value of the property involved in such financial transaction or transactions exceeds seventy-five thousand dollars.

2. He or she conducts one or more financial transactions involving property represented to be either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part:

(a) With intent to:

(i) promote the carrying on of specified criminal conduct; or

(ii) conceal or disguise the nature, the location, the source, the ownership or the control of property believed to be either the proceeds of an act of terrorism as defined in subdivision one of section 490.05 of this part, or a monetary instrument given, received or intended to be used to support a violation of article four hundred ninety of this part; or

(iii) avoid any transaction reporting requirement imposed by law; and

(b) The total represented value of the property involved in such financial transaction or transactions exceeds one hundred twenty-five thousand dollars.

Money laundering in support of terrorism in the first degree is a class B felony.

§ 19. This act shall take effect immediately.

PART B

Section 1. The article heading of article 26 of the executive law is REPEALED and a new article heading is added to read as follows:

STATE OFFICE OF HOMELAND SECURITY

§ 2. Section 710 of the executive law is renumbered section 713 and four new sections 709, 710, 711 and 712 are added to read as follows:

§ 709. State office of homeland security; creation; powers and duties. 1. There is hereby created within the executive department the office of homeland security, which

shall have and exercise the powers and duties set forth in this article. Any reference to the 'office of public security' in the laws of New York state, executive orders, or contracts entered into on behalf of the state shall be deemed to refer to the state office of homeland security.

2. The office shall have the power and duty to:

(a) oversee and coordinate the state's homeland security resources, subject to any laws, rules or regulations governing the budgeting and appropriation of funds;

(b) review homeland security policies, protocols and strategies of state agencies. The agencies shall include, but not be limited to, the division of state police, division of military and naval affairs, state emergency management office, department of health, department of environmental conservation, division of criminal justice services, department of state, office for technology, and the department of transportation;

(c) develop policies, protocols and strategies, which may be used to prevent, detect, respond to and recover from terrorist acts or threats;

(d) identify potential inadequacies in the state's policies, protocols and strategies to detect, respond to and recover from terrorist acts or threats;

(e) undertake periodic drills and simulations designed to assess and prepare responses to terrorist acts or threats;

(f) coordinate state resources for the collection and analysis of information relating to terrorist threats and terrorist activities throughout the state subject to any applicable laws, rules, or regulations;

(g) coordinate and facilitate information sharing among local, state, and federal law enforcement agencies to ensure appropriate intelligence to assist in the early identification of and response to potential terrorist activities, subject to any applicable laws, rules, or regulations governing the release, disclosure or sharing of any such information;

(h) assess the preparedness of state and local public health systems to respond to terrorist acts, including ensuring the availability of early warning systems designed to detect potential threats and determining adequacy and availability of necessary vaccines and pharmaceuticals and hospital capacity;

(i) coordinate strategies, protocols and first-responder equipment needs that may be used to monitor, detect, respond to and mitigate the consequences of a potential biological, chemical or radiological terrorist act or threat;

(j) work with local, state and federal agencies and private entities to conduct assessments of the vulnerability of critical infrastructure to terrorist attack, including, but not limited to, nuclear facilities, power plants, telecommunications systems, mass transportation systems, public roadways, railways, bridges and tunnels, and develop strategies that may be used to protect such infrastructure from terrorist attack;

(k) develop plans that may be used to promote rapid recovery from terrorist attacks, to ensure prompt restoration of transportation, utilities, critical communications and information systems and to protect such infrastructure;

(l) develop plans that may be used to contain and remove hazardous materials used in a terrorist attack;

(m) act as primary contact with the federal department of homeland security;

(n) adopt, promulgate, amend and rescind rules and regulations to effectuate the provisions and purposes of this article and the powers and duties of the office in connection therewith;

(o) consult with appropriate state and local governments, institutions of higher learning, first responders, health care providers and private entities as necessary to effectuate the provisions of this article, and work with those entities to establish, facilitate and foster cooperation to better prepare the state to prevent and respond to threats and acts of terrorism;

(p) to serve as a clearinghouse for the benefit of municipalities regarding information relating to available federal, state and regional grant programs in connection with homeland security, disaster preparedness, communication infrastructure and emergency first responder services, and to promulgate rules and regulations necessary to ensure that grant information is timely posted on the office's website; and

(q) request from any department, division, office, commission or other agency of the state or any political subdivision thereof, and the same are authorized to provide, such assistance, services and data as may be required by the office of homeland security in carrying out the purposes of this article, subject to applicable laws, rules, and regulations.

§ 710. Director of the office of homeland security; appointment of the director; powers and duties. 1. The director of the office of homeland security (director) shall be appointed by the governor, by and with the advice and consent of the senate, and hold office at the pleasure of the governor. The salary of the director shall be fixed at a level commensurate with that of the state officers identified in paragraph (a) of subdivision one of section one hundred sixty-nine of this chapter.

2. The director, acting by and through the office, shall have the power and duty to:

(a) administer the duties of the office pursuant to this section;

(b) administer such other duties as may be devolved upon the office from time to time pursuant to law;

(c) cooperate with and assist other state and federal departments, boards, commissions, agencies and public authorities in the development and administration of policies and protocols which will enhance the security of the citizens of the state;

(d) enter into contracts with any person, firm, corporation or governmental agency, and do all things necessary to carry out the functions, powers and duties expressly set forth in this article, subject to any applicable laws, rules or regulations;

(e) establish offices, departments and bureaus and make changes therein as he or she may deem necessary to carry out the functions of the office. One of the divisions within the office shall be the office of cyber security and critical infrastructure coordination which shall be dedicated to the identification and mitigation of the state's cyber security infrastructure vulnerabilities; and

(f) subject to the provisions of this article and the civil service law, and the rules and regulations adopted pursuant thereto, the director may appoint other officers, employees, agents and consultants as may be necessary, prescribe their duties, fix their compensation, and provide for payment of their reasonable expenses, all within amounts available therefor by appropriation. The director may transfer officers or employees from their positions to other positions in the office, or abolish or consolidate such positions.

§ 711. Reports. 1. On or before January thirty-first of each year, the director shall appear before and deliver a report to representatives of each house of the legislature. The temporary president of the senate and the speaker of the assembly shall each appoint three members of their respective houses, and the minority leader of each house shall each appoint one member, to hear the director's report. The appointed members may hear the report in a joint meeting of the members of the senate and assembly or in separate meetings attended by the members from one house. The report shall provide information including, but not limited to: the state's current threat level, imminent threats to New York state, the state's current threat posture and collaborative efforts among localities, regions and with other states to prepare for and defend against acts of terrorism.

2. The director shall appear and give testimony before the annual legislative hearing on public protection held jointly by the assembly committee on ways and means and the senate finance committee as provided for in section three of article VII of the New York state constitution and section thirty-one of the legislative law.

3. The director shall report to the temporary president of the senate, speaker of the assembly and/or their designees within five days of an elevation of the state homeland security advisory system threat level as to the circumstances of the elevation.

4. Before the receipt of any report issued pursuant to this section, each recipient of such report shall develop confidentiality protocols in consultation with the director which shall be binding upon the recipient who issues the protocols and anyone to whom the recipient shows the report, for the maintenance and use of such report so as to ensure the confidentiality of all sensitive information contained therein, provided, however, that such protocols shall not be binding upon a person who is provided access to such report or any information contained therein pursuant to section eighty-nine of the public officers law after a final determination that access to such report or any information contained therein could not be denied pursuant to subdivision two of section eighty-seven of the public officers law. The director shall also develop protocols for his or her office related to the maintenance and use of the report so as to ensure the confidentiality of all sensitive information contained in the report. On each copy of written reports, the director shall prominently display the following statement: "This report may contain information that if disclosed could endanger the life or safety of the public, and therefore, pursuant to section seven hundred eleven of the executive law, this report is to be maintained and used in a manner consistent with protocols established to preserve the confidentiality of the information contained herein in a manner consistent with law."

§ 712. Miscellaneous. The office shall be subject to the laws, rules and regulations of the state including, but not limited to, the state finance law, the state administrative procedure act, and article six of the public officers law.

§ 3. This act shall take effect immediately.

PART C

Section 1. The executive law is amended by adding a new section 714 to read as follows:

§ 714. Protection of critical infrastructure: storage facilities for hazardous substances. 1. Notwithstanding any other provision of law and subject to the availability of an appropriation, the director of the office of homeland security shall conduct a review and analysis of measures being taken by the owners and operators of facilities identified pursuant to paragraph (b) of subdivision two of this section to protect the security of critical infrastructure related to such facilities. The director of the office of homeland security shall have the authority to review all audits or reports related to the security of such critical infrastructure, including all such audits or reports mandated by state and federal law or regulation, including spill prevention reports and risk management plans, audits and reports conducted at the request of the department of environmental conservation or at the request of any federal entity, or any other agency or authority of the state or any political subdivision thereof, and reports prepared by owners and operators of such facilities as required in this subdivision. The owners and operators of such facilities shall, in compliance with any federal and state requirements regarding the dissemination of such information, provide access to the director of the office of homeland security to such audits and reports regarding such critical infrastructure provided, however, exclusive custody and control of such audits and reports shall remain solely with the owners and operators of such facilities to the extent not inconsistent with any other law. For the purposes of this section, the term "critical infrastructure" has the meaning ascribed to that term in subdivision five of section eighty-six of the public officers law.

2. To effectuate his or her duties pursuant to this section and identify risks to the public, the director of the office of homeland security shall:

(a) within six months of the effective date of this section, in consultation with the commissioner of environmental conservation, the commissioner of health, and such representatives of the chemical industry and higher education as may be appropriate, prepare a list that identifies toxic or hazardous substances, including but not limited to those substances listed as hazardous to public health, safety or the environment in regulations promulgated pursuant to article thirty-seven of the environmental conservation law, as well as those substances for which the state possesses insufficient or limited toxicological information but for which there exists preliminary evidence that the substance or the class of chemicals with similar physical and chemical properties to which it belongs has the potential to cause death, injury, or serious adverse effects to human health or the environment, based on the severity of the threat posed to the public by the unauthorized release of such substances. Such list will be promulgated in accord with the provisions of the state administrative procedure act;

(b) upon completion of the list required pursuant to paragraph (a) of this subdivision, but no later than one hundred twenty days after such date, in consultation with the commissioner of environmental conservation, the commissioner of health and such representatives of the chemical industry and any state, local and municipal officials as may be appropriate, identify facilities, including facilities regulated pursuant to title nine and title eleven of article twenty-seven and article forty of the environmental conservation law, but excluding facilities that hold liquified petroleum gas for fuel at retail sale as described in section 112(1)(4)(B) of the Clean Air Act (42 U.S.C. section 7412(r)(4)(b)) and those facilities that are defined as "water suppliers" in subdivision one of section eleven hundred twenty-five of the public health law, which because of their storage of or relationship to such substances identified pursuant to paragraph (a) of this subdivision pose risks to the public should an unauthorized release of such hazardous substances occur; and

(c) require such facilities identified pursuant to paragraph (b) of this subdivision, as the director so determines, to prepare a vulnerability assessment of the security measures taken by such facilities to prevent and respond to the unauthorized release of hazardous

substances as may be stored therein, which assessments the director of the office of homeland security shall review and consider in light of the seriousness of the risk posed and vulnerability of such facility and, where appropriate, make recommendations with respect thereto.

3. (a) On or before June first, two thousand five, the director of homeland security shall make a preliminary report to the governor, the temporary president of the senate, the speaker of the assembly, the commissioner of environmental conservation, the commissioner of health and the chief executive officer of any such affected facility or his or her designee, and on or before December thirty-first, two thousand five, and not later than three years after such date, and every five years thereafter, the director of the office of homeland security shall report to the governor, the temporary president of the senate, the speaker of the assembly, the commissioner of environmental conservation, the commissioner of health and the chief executive officer of any such affected facility or his or her designee. Such report shall review the security measures being taken regarding critical infrastructure related to such facilities, assess the effectiveness thereof, and include recommendations to the legislature, the department of environmental conservation or the department of health if the director of the office of homeland security determines that additional measures are required to be implemented.

(b) Before the receipt of such report identified in paragraph (a) of this subdivision, each recipient of such report shall develop confidentiality protocols which shall be binding upon the recipient who issues the protocols and anyone to whom the recipient shows a copy of the report in consultation with the director of the office of homeland security, for the maintenance and use of such report so as to ensure the confidentiality of the report and all information contained therein, provided, however, that such protocols shall not be binding upon a person who is provided access to such report or any information contained therein pursuant to section eighty-nine of the public officers law after a final determination that access to such report or any information contained therein could not be denied pursuant to subdivision two of section eighty-seven of the public officers law. The director of the office of homeland security shall also develop protocols for such office related to the maintenance and use of such report so as to ensure the confidentiality of all sensitive information contained in such report. On each report, the director of the office of homeland security shall prominently display the following statement: "This report may contain information that if disclosed could endanger the life or safety of the public, and therefore, pursuant to section seven hundred eleven of the executive law, as added by a chapter of the laws of two thousand four, this report is to be maintained and used in a manner consistent with protocols established to preserve the confidentiality of the information contained herein in a manner consistent with law."

(c) The department of environmental conservation shall have the discretion to require that recommendations of the director of the office of homeland security be implemented by any owner or operator of a hazardous substances storage facility as defined in this section.

§ 2. This act shall take effect immediately.

PART D

Section 1. Section 156-a of the executive law, as added by chapter 793 of the laws of 1982, is amended to read as follows:

§ 156-a. Establishment of a specialized hazardous ~~[material]~~ **materials** emergency response training program. 1. The state fire administrator shall, in his **or her** discretion, consult with the fire fighting and code enforcement personnel standards and education commission established pursuant to section one hundred fifty-nine-a of this article, to establish a specialized hazardous ~~[material]~~ **materials** emergency response training program for individuals responsible

for providing emergency response recovery following [~~accidents~~] **incidents** involving hazardous materials as defined in accordance with section fourteen-f of the transportation law. The state fire administrator shall inform all fire companies, municipal corporations and districts, including agencies and departments thereof and all firefighters, both paid and volunteer, and related officers and employees and police officers of the implementation and availability of the hazardous [~~material~~] **materials** emergency response training program **and shall, subject to the availability of an appropriation, conduct such training with sufficient frequency to assure adequate response to incidents involving hazardous materials and protection of responders in all geographic areas of the state.**

2. The state fire administrator, in consultation with the aforementioned commission shall prescribe the curriculum of the hazardous [~~material~~] **materials** emergency response training program, which shall include, but shall not be limited to:

(a) hands-on training, including information in regard to leak and spill control, product neutralization, pickup and disposal, fire control, decontamination procedures and use and application of foam agents;

(b) hazard assessment with emphasis on incident scene decision-making, including: potential threat to public safety and need for evacuation, calculation of the effect of weather on certain chemicals and evaluation of the result of chemical exposures to air, water, soil, vegetation, lives and property and impact on the personal safety of those working in the accident area;

(c) calibration and use of emergency equipment; [~~and~~]

(d) chemical and biological properties of various classes of chemicals, for example, flammables, oxidizers, corrosives, poisons[-]; **and**

(e) weapons of mass destruction and response to terrorism.

3. The state fire administrator is hereby directed to issue a report to the governor, speaker of the assembly, temporary president of the senate, chairman of the assembly transportation committee and the chairman of the senate transportation committee by April first of each year on the operations of the program set forth in this section.

4. The state fire administrator shall promulgate such rules and regulations as are necessary to carry out the provisions of this section. § 2. This act shall take effect immediately.

PART E

Section 1. The state technology law is amended by adding a new article 3 to read as follows:

ARTICLE 3

STATEWIDE WIRELESS NETWORK

ADVISORY COUNCIL Section 301. Statewide wireless network advisory council.

302. Powers and duties of advisory council.

§ 301. Statewide wireless network advisory council. There is hereby established within the office for technology a statewide wireless network advisory council. The advisory council shall consist of twenty-seven members. The governor shall appoint two members and the temporary president of the senate and the speaker of the assembly shall each appoint four members. One of the governor's appointments and three of the appointments of the temporary president of the senate and of the speaker of the assembly shall be a member, officer, or employee of a first responder organization that serves a municipal corporation. One each of the appointments of the temporary president of the senate and of the speaker of the assembly shall possess expertise in the field of communications technology but no appointee shall be the owner, principal, or employee of an entity that has a contract with the state of New York or that vends communications products to any state or local government. An organization shall be considered a first responder organization if it provides policing, firefighting, or emergency medical services, as defined in subdivision eleven of section three hundred two of the retirement and social security law, subdivision two of section one hundred of the general municipal law, subdivisions one, two, three, four, five, six, and seven of section three thousand one of the public health law, and section six hundred fifty of the county law. In addition, the temporary president of the senate and the speaker of the assembly shall each designate one member of their respective houses to serve on the advisory council. Ex officio members of the council shall be the director of the office of homeland security, the superintendent of the state police, the director of the office for technology, the commissioner of the department of health, the commissioner of the department of correctional services, the commissioner of the department of transportation, the commissioner of the department of environmental conservation, the chairperson of the thruway authority, the state fire administrator of the office of fire prevention and control, the chief judge of the state, the commissioner of the division of criminal justice services, the chairperson of the metropolitan transportation authority, a designee of the law enforcement council and the designee of the mayor of the city of New York, or their designees. The chief information officer of New York state shall be the chair of the advisory council.

§ 302. Powers and duties of advisory council. 1. The advisory council shall have the following functions, powers, and duties:

(a) To assist in the development and implementation of an integrated statewide communications system, using the most effective technology currently available, that would link state and local first responders to each other and allow them to communicate reliably during emergency situations and that would ensure that all first responders would have both access to and the capability to participate in the system;

(b) To consult with and advise the office for technology regarding state purchases of information and communications technology intended to implement communications networks or systems that function among state agencies, between state agencies and local governments and first responders, and among local agencies and first responders, including but not limited to the statewide wireless network;

(c) To examine and make recommendations to the governor, the temporary president of the senate, and the speaker of the assembly regarding the availability and reliability of means by which residents of the state receive a timely response in all geographic areas of the state, including areas in which some communications technology functions unreliably, such as underground mass transit systems and remote or mountainous regions of the state, and to explore ways in which new technologies may be introduced or enhanced so that such communications effectively lead to timely assistance; and

(d) To submit a preliminary report by June first, two thousand five, and to submit annual reports on or before December thirty-first, two thousand five and each year thereafter, to the governor, the temporary president of the senate, and the speaker of the assembly that details the recommendations of the advisory council regarding an integrated statewide emergency communications system and the issues examined pursuant to paragraphs (a), (b), and (c) of this subdivision. The advisory council shall as part of its report evaluate existing state efforts to enhance emergency communications.

2. The advisory council shall meet as necessary to carry out its functions and duties. Members of the advisory council shall receive no compensation for their services as members but shall be allowed their actual and necessary expenses incurred in the performance of their duties. The office for technology shall provide the staff and support necessary for the advisory council to carry out its duties and responsibilities. § 2.

This act shall take effect immediately.

PART F

Section 1. The transportation law is amended by adding a new section 14-m to read as follows:

§ 14-m. Airport security. 1. For the purposes of this section, the following terms shall have the following meanings: (a) the term "airport" shall have the same meaning as such term is defined in subdivision five of section two hundred forty of the general business law except that such term shall not include any airport operated by a bi-state authority nor any airport with scheduled commercial air carrier service;

(b) the term "aircraft" shall have the same meaning as such term is defined in subdivision one of section two hundred forty of the general business law;

(c) the term "private-use airport" shall mean an airport used exclusively by the owner thereof and persons authorized by such owner;

(d) the term "public-use airport" shall mean an airport available for use by the general public without a requirement for the prior approval of the owner or operator thereof except as may be required by federal law or regulation.

This section shall not be construed to replace or supersede airport security standards required by the United States department of homeland security or transportation security administration or safety standards required by the United States department of transportation or federal aviation administration.

2. Notwithstanding any provision of law to the contrary, in order to enhance security at the airports of the state, each private-use and public-use airport located, in whole or in part, in New York state shall:

(a)(i) Register with the department within one year from the effective date of this section. Such registration shall be valid for a period of three years, and shall be submitted on forms provided by the department which shall contain the following information: the physical and mailing addresses of such airport; the telephone number, facsimile number, and e-mail address of such airport; the name or names and telephone number or numbers of one or more twenty-four hour security contact persons, as designated by such airport; a map showing the location and general boundaries of such airport; and such other information as the department may reasonably prescribe. Such registration also shall be accompanied by the written security plan required pursuant to paragraph (b) of this subdivision.

(ii) Each such airport shall renew its registration with the department every three years. Requests for renewal shall be made on forms supplied by the department and shall not be accepted unless accompanied with an updated written security plan as provided in paragraph (b) of this subdivision.

(iii) Every original and renewal application for registration shall be accompanied by a registration fee of twenty-five dollars for private-use airports, and of fifty dollars for public-use airports.

(b) (i) Each private-use and public-use airport shall document its security procedures in a written security plan that is consistent with the most recent security guidelines for general aviation airports published by the United States transportation security administration. Such plan shall be updated every three years and submitted to the department with each such airport's renewal application for registration. In developing such plan, each airport shall consider the applicable security enhancement recommendations contained in the most recent security guidelines for general aviation airports published by the United States transportation security administration. Each written plan shall include a description of how the airport has addressed each applicable recommendation of such guidelines, and a justification for not adopting any applicable recommendation suggested by such guidelines for the airport's security characteristics. Applicable recommendations from such document should be determined by such airport by using the airport characteristics self-assessment measurement tool available in such document and any other self-assessment tools subsequently issued by the transportation security administration.

(ii) In addition to submitting such plan to the department in compliance with paragraph (a) of this subdivision, each airport shall submit a copy of such plan and all updates thereof to local law enforcement agencies having jurisdiction over such airport, the New York state police, and the New York state office of homeland security.

(c)(i) In addition to the other provisions of this section, private-use airports shall:

(A) require all aircraft to be double-locked, with one lock internal to the aircraft, and one lock external to the aircraft, when such aircraft is not in operation; and

(B) provide that all hangars be locked when not in use.

(ii) In addition to the other provisions of this section, public-use airports shall:

(A) meet all the requirements of private-use airports set forth in subparagraph (i) of this paragraph;

(B) require verification of the identity of all aircraft passengers by the aircraft crew;

(C) maintain a log of all transient aircraft for a minimum of five years;

(D) develop a written list of emergency contacts and telephone numbers, to be available to airport personnel;

(E) restrict the access of unlicensed persons and student pilots to aircraft keys;

(F) require persons renting aircraft to present government-issued identification, which identification shall be in addition to any pilot's license;

(G) post airport security warning signs and advisories where appropriate;

(H) create an emergency locator map, which may be hand-drawn generally to scale, identifying areas such as runways, ramp areas, fence lines, gates, hydrants, emergency shelters, buildings and hazardous materials sites, and provide copies of such map to emergency response agencies serving such airport, to law enforcement agencies having jurisdiction over such airport, and appropriate airport personnel. Whenever there is a physical change involving such areas, such map shall be revised and resubmitted to the aforementioned emergency response and law enforcement agencies and airport personnel within sixty days of such change; and

(I) familiarize local law enforcement with the airport and consult with them in the airport's development of appropriate security procedures.

3. The map required to be created pursuant to clause (H) of subparagraph (ii) of paragraph (c) of subdivision two of this section and the written security plan required pursuant to paragraph (b) of subdivision two of this section shall prominently display the following statement: "This document may contain information that if disclosed could endanger the life or safety of the public, and therefore this document is to be maintained and used in a manner which preserves the confidentiality of the information contained herein in a manner consistent with law."

4. A person or entity who submits or otherwise makes available to any state agency or agency of any subdivision thereof the registrations and security plans produced pursuant to the requirements of this section may at any time identify those records or portions thereof that contain critical security information and request that the agency that maintains such records except such information from disclosure pursuant to subparagraph one-a of paragraph (a) of subdivision five of section eighty-nine of the public officers law.

§ 2. This act shall take effect immediately.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through F of this act shall be as specifically set forth in the last section of such Parts.
