

Senate Bill 324

By: Senators Jackson of the 50th, Golden of the 8th, Brown of the 26th, Starr of the 44th,
Dean of the 31st and Gillis of the 20th

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 16, 26, 41, 44, and 51 of the Official Code of Georgia Annotated, relating
2 respectively to crimes and offenses; food, drugs, and cosmetics; nuisances; property; and
3 torts, so as to provide enhanced penalties and requirements for persons involved with or
4 property involved with substances used in connection with manufacturing methamphetamine;
5 to provide for the offense of unlawful endangerment of property; to provide for enhanced
6 penalties for theft or attempt or conspiracy to commit the theft of anhydrous ammonia; to
7 provide for penalties for unlawfully providing materials for production of controlled
8 substances; to provide for penalties for possession of ephedrine; to provide for marketing
9 ephedrine; to provide for penalties related to possession of anhydrous ammonia; to change
10 provisions relating to possession and use of drug related objects; to change provisions
11 relating to dangerous drugs; to change provisions relating to the sale, distribution, or
12 possession of dangerous drugs; to limit over-the-counter sales of methamphetamine precursor
13 drugs; to limit retail sales of methamphetamine precursor drugs; to change provisions relating
14 to drug activity on real property; to provide for definitions; to change and create provisions
15 relating to disclosures in real estate transactions; to create provisions relating to leasing
16 property used for certain purposes; to provide for limitations; to provide for the transfer of
17 anhydrous ammonia, tampering with the transfer, and assumption of risk; to provide for
18 related matters; to repeal conflicting laws; and for other purposes.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 style="text-align:center">**SECTION 1.**

21 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
22 amended by adding a new Code section to the end of Part 1 of Article 2 of Chapter 7, relating
23 to general provisions relative to criminal trespass and damage to property, to read as follows:
24 "16-7-30.

25 (a) A person commits the crime of unlawful endangerment of property if, while engaged
26 in or as a part of the enterprise for the production of a controlled substance as defined in

1 paragraph (4) of Code Section 16-13-21, the person protects or attempts to protect the
2 production of the controlled substance by creating, setting up, building, erecting, or using
3 any device or weapon which causes or is intended to cause damage to the property of, or
4 injury to, another person.

5 (b) A person convicted of the offense of unlawful endangerment of property shall be
6 punished by imprisonment for not less than one nor more than seven years, unless there is
7 physical injury to a person in which case the person shall be punished by imprisonment for
8 not less than one nor more than ten years."

9 SECTION 2.

10 Said title is further amended by striking the word "or" at the end of subparagraph (a)(5)(B)
11 of Code Section 16-8-12, relating to penalties for certain violations involving theft; by
12 striking the period at the end of paragraph (6) of subsection (a) of such Code section and
13 inserting in lieu thereof a semicolon; and by inserting immediately following paragraph (6)
14 of subsection (a) of such Code section the following:

15 "(7) If the property that was the subject of the theft is any controlled substance as defined
16 by paragraph (4) of of Code Section 16-13-21, anhydrous ammonia, or ammonium
17 nitrate, by imprisonment for not less than one nor more than seven years. An attempt or
18 conspiracy to commit a theft of any controlled substance, anhydrous ammonia, or
19 ammonium nitrate shall be punished as provided in Code Section 16-13-33;

20 (8) If the property that was the subject of the theft has a value of less than \$500.00 and
21 was taken with the intent to use the material to manufacture, compound, produce,
22 prepare, test, or analyze amphetamine or methamphetamine or any or their analogs, by
23 imprisonment for not less than one nor more than five years; or

24 (9) If the property that was the subject of the theft is any amount of anhydrous ammonia
25 taken by appropriation of a tank truck, tank trailer, rail tank car, bulk storage tank, field
26 (nurse) tank, or field applicator, by imprisonment of not less than one nor more than 20
27 years."

28 SECTION 3.

29 Said title is further amended by inserting new Code sections after Code Section 16-13-30.2,
30 relating to unlawful manufacture, distribution, or possession with the intent to distribute of
31 imitation controlled substances, to read as follows:

32 "16-13-30.3.

33 (a) No person shall provide any reagents, solvents, or precursor materials used in the
34 production of a controlled substance as defined in paragraph (1) of subsection (a) of Code
35 Section 16-13-1 to any other person knowing that the person to whom such materials are

1 provided intends to use the materials for the illegal production of a controlled substance.

2 (b) Any person who violates subsection (a) of this Code section shall be guilty of a felony
3 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor
4 more than five years.

5 16-13-30.4.

6 (a) It is unlawful for any person to possess any methamphetamine precursor drug with the
7 intent to manufacture amphetamine or methamphetamine or any of their analogs.

8 (b) Possession of more than 24 grams of any methamphetamine precursor drug or
9 combination of methamphetamine precursor drugs shall be prima facie evidence of intent
10 to violate this Code section. This subsection shall not apply to any practitioner or to any
11 product possessed in the course of a legitimate business.

12 (c) Any person who violates subsection (a) of this Code section shall be guilty of a felony
13 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor
14 more than five years.

15 16-13-30.5.

16 (a) It is unlawful for any person to market, sell, distribute, advertise, or label any drug
17 product containing ephedrine, its salts, optical isomers, and salts of optical isomers, or
18 pseudoephedrine, its salts, optical isomers, and salts of optical isomers, for indication of
19 stimulation, mental alertness, weight loss, appetite control, energy, or other indications not
20 approved pursuant to the pertinent federal over-the-counter drug Final Monograph or
21 Tentative Final Monograph or approved new drug application.

22 (b) Any person who violates subsection (a) of this Code section shall be guilty of a felony
23 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor
24 more than five years.

25 16-13-30.6.

26 (a) A person commits the crime of possession of anhydrous ammonia in a nonapproved
27 container if he or she possesses any quantity of anhydrous ammonia in any container other
28 than a tank truck, tank trailer, rail tank car, bulk storage tank, field (nurse) tank, field
29 applicator, or any container approved for anhydrous ammonia by the Department of
30 Agriculture or the United States Department of Transportation.

31 (b) Any person who violates subsection (a) of this Code section shall be guilty of a felony
32 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor
33 more than five years."

1 "(b) In addition to the prohibition contained in subsection (a) of this Code section, it shall
2 be unlawful for any person to possess chemicals listed Code Section 16-13-71 or any other
3 chemicals proven to be precursor ingredients of methamphetamine or amphetamine, as
4 established by expert testimony pursuant to subsection (d) of this Code section, with the
5 intent to manufacture, compound, convert, produce, process, prepare, test, or otherwise
6 alter that chemical to create a controlled substance or a controlled substance analog in
7 violation of Article 2 of this chapter.

8 (c) A person who violates subsection (b) of this Code section shall be guilty of a felony
9 and, upon conviction thereof, shall be punished by imprisonment for not less than one nor
10 more than five years.

11 (d) The state may present expert testimony to provide a prima facie case that any chemical,
12 whether or not listed in Code Section 16-13-71, is an immediate precursor ingredient for
13 producing methamphetamine or amphetamine."

14 **SECTION 7.**

15 Title 26 of the Official Code of Georgia Annotated, relating to food, drugs, and cosmetics,
16 is amended in Chapter 3, relating to standards, labeling, and adulteration of drugs and
17 cosmetics, by inserting new two Code sections to read as follows:

18 "26-3-3.1.

19 (a) No person shall deliver in any single over-the-counter sale more than three packages
20 of any methamphetamine precursor drug or any combination of methamphetamine
21 precursor drugs.

22 (b) This Code section shall not apply to any product labeled pursuant to federal regulation
23 for use only in children under 12 years of age or to any product that the state Department
24 of Human Resources, upon application of a manufacturer, exempts by rule from this Code
25 section because the product has been formulated in such a way as to effectively prevent the
26 conversion of the active ingredient into methamphetamine or its salts or precursors.

27 (c) Any person who is considered the general owner or operator of the outlet where
28 ephedrine, pseudoephedrine, or phenylpropanolamine products are available for sale who
29 violates subsection (a) of this Code section shall not be penalized pursuant to this Code
30 section if the person documents that an employee training program was in place to provide
31 the employee with information on the state and federal regulations regarding ephedrine,
32 pseudoephedrine, or phenylpropanolamine.

33 (d) Any person who knowingly or recklessly violates this Code section shall be guilty of
34 a misdemeanor.

1 26-3-3.2.

2 (a) The retail sale of methamphetamine precursor drugs shall be limited to:

3 (1) Sales in packages containing not more than a total of 3 grams of one or more
4 methamphetamine precursor drugs, calculated in terms of ephedrine base,
5 pseudoephedrine base, and phenylpropanolamine base; and

6 (2) For nonliquid products, sales in blister packs, each blister containing not more than
7 two dosage units, or, where the use of blister packs is not technically feasible, sales in
8 unit dose packets or pouches.

9 (b) Any person who pays sales and use taxes pursuant to Chapter 8 of Title 48 who
10 knowingly violates subsection (a) of this Code section shall be guilty of a misdemeanor.

11 (c) Any person who is considered the general owner or operator of the outlet where
12 ephedrine, pseudoephedrine, or phenylpropanolamine products are available for sale who
13 violates subsection (a) of this Code section shall not be penalized pursuant to this Code
14 section if the person documents that an employee training program was in place to provide
15 the employee with information on the state and federal regulations regarding ephedrine,
16 pseudoephedrine, or phenylpropanolamine."

17 **SECTION 8.**

18 Title 41 of the Official Code of Georgia Annotated, relating to nuisances, is amended by
19 striking Code Section 41-3-1.1, relating to substantial drug related activity upon real property
20 and knowledge of the owner, and inserting in lieu thereof the following:

21 "41-3-1.1.

22 (a) As used in this Code section, the term:

23 (1) 'Drug related indictment' means an indictment ~~by a grand jury~~ for an offense
24 involving violation of ~~Code Section 16-13-30~~ Article 2 of Chapter 13 of Title 16
25 involving possessing, storing, transporting, distributing, or manufacturing controlled
26 substances as that term is defined by paragraph (4) of Code Section 16-13-21; provided,
27 however, that any ~~such~~ indictments which result directly from cooperation between the
28 property owner and a law enforcement agency shall not be considered a drug related
29 indictment for purposes of this Code section.

30 (2) 'Personal property' means a vehicle, boat, or aircraft.

31 ~~(2)(3)~~ (3) 'Substantial drug related activity' means activity resulting in ~~six~~ three or more
32 separate incidents resulting in drug related indictments involving violations occurring
33 within a 12 month period on the same parcel of real property or in the same personal
34 property.

35 (b) Any owner of real or personal property who has actual knowledge that substantial drug
36 related activity is being conducted on such property shall be guilty of maintaining a

1 nuisance, and such ~~real~~ property shall be deemed a nuisance and may be enjoined or
 2 otherwise abated as provided in this chapter.

3 (c) The owner of real or personal property shall be deemed to have actual knowledge of
 4 substantial drug related activity occurring on a parcel of real property or in personal
 5 property if the district attorney of the county in which the property is located notifies the
 6 owner in writing of ~~three~~ two or more separate incidents within a 12 month period which
 7 result in drug related indictments and, after the receipt of such notice and within 12 months
 8 of the first of the incidents resulting in a drug related indictment which are the subject of
 9 such notice, ~~three~~ one or more separate incidents occur which result in drug related
 10 indictments.

11 (d) The provisions of this Code section are cumulative of any other remedies and shall not
 12 be construed to repeal any other existing remedies for drug related nuisances."

13 SECTION 9.

14 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by
 15 striking subsection (a) of Code Section 44-1-16, relating to failure to disclose in a real estate
 16 transaction that property certain information about the property, and inserting in lieu thereof
 17 the following:

18 "(a)(1) No cause of action shall arise against an owner of real property, a real estate
 19 broker, or any affiliated licensee of the broker for the failure to disclose in any real estate
 20 transaction the fact or suspicion that such property:

21 (A) Is or was occupied by a person who was infected with a virus or any other disease
 22 which has been determined by medical evidence as being highly unlikely to be
 23 transmitted through the occupancy of a dwelling place presently or previously occupied
 24 by such an infected person; or

25 (B) Was the site of a homicide or other felony, except as provided in Code Section
 26 44-1-16.1, or a suicide or a death by accidental or natural causes;
 27 provided, however, that an owner, real estate broker, or affiliated licensee of the broker
 28 shall, except as provided in paragraph (2) of this subsection, answer truthfully to the best
 29 of that person's individual knowledge any question concerning the provisions of
 30 subparagraph (A) or (B) of this paragraph.

31 (2) An owner, real estate broker, or affiliated licensee of the broker shall not be required
 32 to answer any question if answering such question or providing such information is
 33 prohibited by or constitutes a violation of any federal or state law or rule or regulation,
 34 expressly including without limitation the federal Fair Housing Act as now or hereafter
 35 amended or the state's fair housing law as set forth in Code Sections 8-3-200 through
 36 8-3-223."

SECTION 10.

Said title is further amended by inserting a new Code section to follow Code Section 44-1-16 to read as follows:

"44-1-16.1.

(a) In the event that any parcel of real property to be sold, exchanged, or transferred is or was used as a site for methamphetamine production, the seller or transferor shall disclose in writing to the buyer or transferee the fact that methamphetamine was produced on the premises, provided that the seller or transferor had knowledge of such prior methamphetamine production. The seller or transferor shall disclose any prior knowledge of methamphetamine production, regardless of whether the persons involved in the production were convicted for such production.

(b) A seller or transferor of any parcel of real property shall disclose in writing the fact that any premises to be sold or transferred either was the place of residence of a person convicted of any of the following crimes, or was the storage site or laboratory for any of the substances for which a person was convicted of any of the following crimes, provided that the seller or transferor knew or should have known of such convictions:

(1) Creation or possession of a controlled substance as that term is defined by paragraph (4) of Code Section 16-13-21;

(2) Unlawful use of drug paraphernalia with the intent to manufacture methamphetamine in violation of subsection (b) of Code Section 16-13-32.2; or

(3) Any other crime related to methamphetamine, its salts, optical isomers, and salts of optical isomers either in Article 2 of Chapter 13 of Title 16 or in any other provision of law."

SECTION 11.

Said title is further amended by adding a new Code section to follow Code Section 44-7-20, relating to notification to prospective tenant of property's propensity toward flooding, to read as follows:

"44-7-20.1.

(a) When the owner of real property, either directly or through an agent, seeks to lease or rent property for residential occupancy, prior to entering a written agreement for the leasehold of that property, the owner shall, either directly or through an agent, notify the prospective tenant in writing that the property to be leased or rented is or was used as a site for methamphetamine production. The owner or agent shall disclose in writing to the tenant the fact that methamphetamine was produced on the premises, provided that the owner had knowledge of such prior methamphetamine production. The owner shall disclose any prior

1 knowledge of methamphetamine production, regardless of whether the persons involved
2 in the production were convicted for such production.

3 (b) An owner of real property, either directly or through an agent, shall disclose in writing
4 the fact that any property to be leased or rented either was the place of residence of a
5 person convicted of any of the following crimes, or was the storage site or laboratory for
6 any of the substances for which a person was convicted of any of the following crimes,
7 provided that the owner knew or should have known of such convictions:

8 (1) Creation or possession of a controlled substance as that term is defined by
9 paragraph (4) of Code Section 16-13-21;

10 (2) Unlawful use of drug paraphernalia with the intent to manufacture methamphetamine
11 in violation of subsection (b) of Code Section 16-13-32.2; or

12 (3) Any other crime related to methamphetamine, its salts, optical isomers, and salts of
13 optical isomers either in Article 2 of Chapter 13 of Title 16 or in any other provision of
14 law."

15 SECTION 12.

16 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding
17 a new Code section to the end of Chapter 1, relating to general provisions, to read as follows:
18 "51-1-50.

19 (a) As used in this Code section, the term:

20 (1) 'Owner' means all of the following persons:

21 (A) Any person who lawfully owns anhydrous ammonia;

22 (B) Any person who lawfully owns a container, equipment, or storage facility
23 containing anhydrous ammonia;

24 (C) Any person responsible for the installation or operation of containers, equipment,
25 or storage facilities for anhydrous ammonia;

26 (D) Any person lawfully selling anhydrous ammonia;

27 (E) Any person lawfully purchasing anhydrous ammonia for agricultural purposes; and

28 (F) Any person who operates or uses anhydrous ammonia containers, equipment, or
29 storage facilities when lawfully applying anhydrous ammonia for agricultural purposes.

30 (2) 'Tamperer' means a person who commits or assists in the commission of tampering.

31 (3) 'Tampering' means transferring or attempting to transfer anhydrous ammonia from
32 its present container, equipment, or storage facility to another container, equipment, or
33 storage facility without prior authorization from the owner.

34 (b) A tamperer assumes the risk of any personal injury, death, and other economic and
35 noneconomic loss arising from his or her participation in the act of tampering. A tamperer
36 or any person related to a tamperer shall not commence a direct or derivative action against

1 any owner as it relates to the act of tampering. Owners are immune from suit by a tamperer
2 or any person related to a tamperer and shall not be held liable for any negligent act or
3 omission which may cause personal injury, death, or other economic or noneconomic loss
4 to a tamperer as it relates to the act of tampering.

5 (c) The immunity from liability and suit authorized by this Code section is expressly
6 waived for owners whose acts or omissions constitute willful or wanton negligence."

7 **SECTION 13.**

8 All laws and parts of laws in conflict with this Act are repealed.