

Senate Bill 205

By: Senators Stephens of the 51st and Lee of the 29th

AS PASSED

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and
2 offenses, so as to provide for an increased criminal penalty with respect to the theft of
3 anhydrous ammonia; to prohibit certain activities with respect to anhydrous ammonia; to
4 provide for criminal penalties; to change certain provisions regarding the purchase,
5 possession, manufacture, distribution, or sale of controlled substances or marijuana; to
6 prohibit certain activities with respect to methamphetamine or amphetamine; to provide for
7 criminal penalties; to amend Code Section 40-16-6 of the Official Code of Georgia
8 Annotated, relating to civil monetary penalties, so as to provide for such penalties against
9 persons who transport methamphetamine, amphetamine, or anhydrous ammonia; to provide
10 for related matters; to provide an effective date; to repeal conflicting laws; and for other
11 purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

14 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
15 amended by striking Code Section 16-8-12, relating to penalties for certain acts of theft, and
16 inserting in its place a new Code Section 16-8-12 to read as follows:

17 "16-8-12.

18 (a) A person convicted of a violation of Code Sections 16-8-2 through 16-8-9 shall be
19 punished as for a misdemeanor except:

20 (1) If the property which was the subject of the theft exceeded \$500.00 in value, by
21 imprisonment for not less than one nor more than ten years or, in the discretion of the trial
22 judge, as for a misdemeanor;

23 ~~(2) If the property was taken by a fiduciary in breach of a fiduciary obligation or by an~~
24 ~~officer or employee of a government or a financial institution in breach of his or her~~
25 ~~duties as such officer or employee, by imprisonment for not less than one nor more than~~
26 ~~15 years, a fine not to exceed the amount provided by Code Section 17-10-8, or both; If~~
27 the property was any amount of anhydrous ammonia, as defined in Code Section

1 16-11-111, by imprisonment for not less than one nor more than ten years, a fine not to
 2 exceed the amount provided by Code Section 17-10-8, or both;

3 (3) If the property was taken by a fiduciary in breach of a fiduciary obligation or by an
 4 officer or employee of a government or a financial institution in breach of his or her
 5 duties as such officer or employee, by imprisonment for not less than one nor more than
 6 15 years, a fine not to exceed the amount provided by Code Section 17-10-8, or both;

7 ~~(3)~~(4) If the crime committed was a violation of Code Section 16-8-2 and if the property
 8 which was the subject of the theft was a memorial to the dead or any ornamentation,
 9 flower, tree, or shrub placed on, adjacent to, or within any enclosure of a memorial to the
 10 dead, by imprisonment for not less than one nor more than three years. Nothing in this
 11 paragraph shall be construed as to cause action taken by a cemetery, cemetery owner,
 12 lessee, trustee, church, religious or fraternal organization, corporation, civic organization,
 13 or club legitimately attempting to clean, maintain, care for, upgrade, or beautify a grave,
 14 gravesite, tomb, monument, gravestone, or other structure or thing placed or designed for
 15 a memorial of the dead to be a criminal act;

16 ~~(4)~~(5)(A) The provisions of paragraph (1) of this subsection notwithstanding, if the
 17 property which was the subject of the theft was a motor vehicle or was a motor vehicle
 18 part or component which exceeded \$100.00 in value or if the theft or unlawful activity
 19 was committed in violation of subsection (b) of Code Section 10-1-393.5 or in violation
 20 of subsection (b) of Code Section 10-1-393.6 or while engaged in telemarketing
 21 conduct in violation of Chapter 5B of Title 10, by imprisonment for not less than one
 22 nor more than ten years or, in the discretion of the trial judge, as for a misdemeanor;
 23 provided, however, that any person who is convicted of a second or subsequent offense
 24 under this paragraph shall be punished by imprisonment for not less than one year nor
 25 more than 20 years.

26 (B) Subsequent offenses committed under this paragraph, including those which may
 27 have been committed after prior felony convictions unrelated to this paragraph, shall
 28 be punished as provided in Code Section 17-10-7;

29 ~~(5)~~(6)(A) As used in this paragraph, the term:

30 (i) 'Destructive device' means a destructive device as such term is defined by Code
 31 Section 16-7-80.

32 (ii) 'Explosive' means an explosive as such term is defined by Code Section 16-7-80.

33 (iii) 'Firearm' means any rifle, shotgun, pistol, or similar device which propels a
 34 projectile or projectiles through the energy of an explosive.

35 (B) If the property which was the subject of the theft offense was a destructive device,
 36 explosive, or firearm, by imprisonment for not less than one nor more than ten years;
 37 or

1 ~~(6)~~(7) If the property which was the subject of the theft is a grave marker, monument,
 2 or memorial to one or more deceased persons who served in the military service of this
 3 state, the United States of America or any of the states thereof, or the Confederate States
 4 of America or any of the states thereof, or a monument, plaque, marker, or memorial
 5 which is dedicated to, honors, or recounts the military service of any past or present
 6 military personnel of this state, the United States of America or any of the states thereof,
 7 or the Confederate States of America or any of the states thereof, and if such grave
 8 marker, monument, memorial, plaque, or marker is privately owned or located on
 9 privately owned land, by imprisonment for not less than one nor more than three years
 10 if the value of the property which was the subject of the theft is \$300.00 or less, and by
 11 imprisonment for not less than three years and not more than five years if the value of the
 12 property which was the subject of the theft is more than \$300.00.

13 (b) Except as otherwise provided in paragraph ~~(4)~~ (5) of subsection (a) of this Code
 14 section, any person who commits the offense of theft by deception when the property
 15 which was the subject of the theft exceeded \$500.00 in value and the offense was
 16 committed against a person who is 65 years of age or older shall, upon conviction thereof,
 17 be punished by imprisonment for not less than five nor more than ten years.

18 (c) Where a violation of Code Sections 16-8-2 through 16-8-9 involves the theft of a
 19 growing or otherwise unharvested commercial agricultural product which is being grown
 20 or produced as a crop, such offense shall be punished by a fine of not less than \$500.00 and
 21 not more than the maximum fine otherwise authorized by law. This minimum fine shall not
 22 in any such case be subject to suspension, stay, or probation. This minimum fine shall not
 23 be required in any case in which a sentence of confinement is imposed and such sentence
 24 of confinement is not suspended, stayed, or probated; but this subsection shall not prohibit
 25 imposition of any otherwise authorized fine in such a case."

26 SECTION 2.

27 Said title is further amended by adding a new Code section immediately following Code
 28 Section 16-11-110, to be designated Code Section 16-11-111, to read as follows:

29 "16-11-111.

30 (a)(1) As used in this Code section, the term 'anhydrous ammonia' means any substance
 31 identified to contain the compound ammonia which is capable of being utilized in the
 32 production of methamphetamine or any other controlled substance.

33 (2) A person commits the crime of unlawful possession of anhydrous ammonia if the
 34 person:

1 (A) Purchases, possesses, transfers, or distributes any amount of anhydrous ammonia
 2 knowing that the anhydrous ammonia will be used unlawfully to manufacture a
 3 controlled substance;

4 (B) Possesses, maintains, or transports any quantity of anhydrous ammonia in a
 5 container or receptacle other than a tank truck, tank trailer, rail tank car, bulk storage
 6 tank, field (nurse) tank, field applicator, or any container approved for anhydrous
 7 ammonia by the Department of Agriculture or the United States Department of
 8 Transportation; or

9 (C) Tampers with equipment manufactured to hold, apply, or transport anhydrous
 10 ammonia without the express consent of the owner of the equipment.

11 (3)(A) A person who violates subparagraph (B) of paragraph (2) of this subsection
 12 shall be subject to civil penalties in accordance with Code Section 40-16-6.

13 (B) Any person who violates this Code section shall, upon conviction thereof, be
 14 punished by imprisonment for not less than one year nor more than ten years and by a
 15 fine not to exceed \$100,000.00."

16 SECTION 3.

17 Said title is further amended by adding a new Code Section immediately following Code
 18 Section 16-13-30.2, to be designated Code Section 16-13-30.3, to read as follows:

19 "16-13-30.3.

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

21 (1) 'Ephedrine,' 'pseudoephedrine,' and 'phenylpropanolamine' mean any drug product
 22 containing ephedrine, pseudoephedrine, or phenylpropanolamine, or any of their salts,
 23 isomers, or salts of isomers, alone or in a mixture.

24 (2) 'Personal use' means the sale in a single transaction to an individual customer for a
 25 legitimate medical use of a product containing ephedrine, pseudoephedrine, or
 26 phenylpropanolamine in quantities at or below that specified in subsection (b) of this
 27 Code section, and includes the sale of those products to employers to be dispensed to
 28 employees from first-aid kits or medicine chests.

29 (3) 'Retail distributor' means a grocery store, general merchandise store, drugstore,
 30 convenience store, or other related entity, the activities of which involve the distribution
 31 of ephedrine, pseudoephedrine, or phenylpropanolamine products.

32 (b)(1) It is unlawful for any person, other than a person or entity described in paragraph
 33 (28), (29), or (33) of Code Section 26-4-5 or a retail distributor, to knowingly possess any
 34 product that contains ephedrine, pseudoephedrine, or phenylpropanolamine in an amount
 35 which exceeds 300 pills, tablets, gelcaps, capsules, or other individual units or more than

1 9 grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or
2 salts of isomers, or a combination of any of these substances, whichever is smaller.

3 (2) It shall be unlawful for any person to possess any amount of a substance set forth in
4 this Code section with the intent to manufacture amphetamine or methamphetamine.

5 (3) Any person who violates the provisions of this Code section shall be guilty of a
6 felony and, upon conviction thereof, shall be punished by imprisonment for not less than
7 one year nor more than ten years.

8 (c) This Code section shall not apply to:

9 (1) Pediatric products primarily intended for administration to children under 12 years
10 of age, according to label instructions, either:

11 (A) In solid dosage form whose recommended dosage, according to label instructions,
12 does not exceed 15 milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine
13 per individual dosage unit; or

14 (B) In liquid form whose recommended dosage, according to label instructions, does
15 not exceed 15 milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine per
16 five milliliters of liquid product;

17 (2) Pediatric liquid products primarily intended for administration to children under two
18 years of age for which the recommended dosage does not exceed two milliliters and the
19 total package content does not exceed one fluid ounce; or

20 (3) Products that the State Board of Pharmacy, upon application of a manufacturer,
21 exempts by rule from this Code section because the product has been formulated in such
22 a way as to prevent effectively the conversion of the active ingredient into
23 methamphetamine or its salts or precursors.

24 (d) Except as authorized by this article, it is unlawful for any person to possess, have under
25 his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or
26 possess with intent to distribute any substance containing any amounts of ephedrine,
27 pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of
28 optical isomers which have been altered from their original condition so as to be powdered,
29 liquefied, or crushed. This subsection shall not apply to any of the substances identified
30 within this subsection which are possessed or altered for a legitimate medical purpose.
31 Any person who violates this subsection shall be guilty of a felony and, upon conviction
32 thereof, shall be punished by imprisonment for not less than one year or more than ten
33 years."

SECTION 4.

Said title is further amended by striking Code Section 16-13-31, relating to the manufacture and trafficking of certain illegal drugs and substances, and inserting in its place a new Code Section 16-13-31, to read as follows:

"16-13-31.

(a)(1) Any person who knowingly sells, manufactures, delivers, or brings into this state or who is knowingly in possession of 28 grams or more of cocaine or of any mixture with a purity of 10 percent or more of cocaine, as described in Schedule II, in violation of this article commits the felony offense of trafficking in cocaine and, upon conviction thereof, shall be punished as follows:

(A) If the quantity of the cocaine or the mixture involved is 28 grams or more, but less than 200 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a fine of \$200,000.00;

(B) If the quantity of the cocaine or the mixture involved is 200 grams or more, but less than 400 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine of \$300,000.00; and

(C) If the quantity of the cocaine or the mixture involved is 400 grams or more, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall pay a fine of \$1 million.

(2) Any person who knowingly sells, manufactures, delivers, or brings into this state or who is knowingly in possession of any mixture with a purity of less than 10 percent of cocaine, as described in Schedule II, in violation of this article commits the felony offense of trafficking in cocaine if the total weight of the mixture multiplied by the percentage of cocaine contained in the mixture exceeds any of the quantities of cocaine specified in paragraph (1) of this subsection. Upon conviction thereof, such person shall be punished as provided in paragraph (1) of this subsection depending upon the quantity of cocaine such person is charged with knowingly selling, manufacturing, delivering, or bringing into this state or knowingly possessing.

(b) Any person who knowingly sells, manufactures, delivers, brings into this state, or has possession of ~~four~~ 4 grams or more of any morphine or opium or any salt, isomer, or salt of an isomer thereof, including heroin, as described in Schedules I and II, or ~~four~~ 4 grams or more of any mixture containing any such substance in violation of this article commits the felony offense of trafficking in illegal drugs and, upon conviction thereof, shall be punished as follows:

(1) If the quantity of such substances involved is ~~four~~ 4 grams or more, but less than 14 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of five years and shall pay a fine of \$50,000.00;

1 (2) If the quantity of such substances involved is 14 grams or more, but less than 28
2 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of
3 ten years and shall pay a fine of \$100,000.00; and

4 (3) If the quantity of such substances involved is 28 grams or more, the person shall be
5 sentenced to a mandatory minimum term of imprisonment of 25 years and shall pay a fine
6 of \$500,000.00.

7 (c) Any person who knowingly sells, manufactures, grows, delivers, brings into this state,
8 or has possession of a quantity of marijuana exceeding 50 pounds commits the offense of
9 trafficking in marijuana and, upon conviction thereof, shall be punished as follows:

10 (1) If the quantity of marijuana involved is in excess of 50 pounds, but less than 2,000
11 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of
12 five years and shall pay a fine of \$100,000.00;

13 (2) If the quantity of marijuana involved is 2,000 pounds or more, but less than 10,000
14 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of
15 seven years and shall pay a fine of \$250,000.00; and

16 (3) If the quantity of marijuana involved is 10,000 pounds or more, the person shall be
17 sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine
18 of \$1 million.

19 (d) Any person who knowingly sells, manufactures, delivers, or brings into this state 200
20 grams or more of methaqualone or of any mixture containing methaqualone, as described
21 in paragraph (6) of Code Section 16-13-25, in violation of this article commits the felony
22 offense of trafficking in methaqualone and, upon conviction thereof, shall be punished as
23 follows:

24 (1) If the quantity of the methaqualone or the mixture involved is 200 grams or more, but
25 less than 400 grams, the person shall be sentenced to a mandatory minimum term of
26 imprisonment of five years and shall pay a fine of \$50,000.00; and

27 (2) If the quantity of the methaqualone or the mixture involved is 400 grams or more, the
28 person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and
29 shall pay a fine of \$250,000.00.

30 (e) Any person who knowingly sells, ~~manufactures~~, delivers, or brings into this state or has
31 possession of 28 grams or more of methamphetamine, amphetamine, or any mixture
32 containing either methamphetamine or amphetamine, as described in Schedule II, in
33 violation of this article commits the felony offense of trafficking in methamphetamine or
34 amphetamine and, upon conviction thereof, shall be punished as follows:

35 (1) If the quantity of methamphetamine, amphetamine, or a mixture containing either
36 substance involved is 28 grams or more, but less than 200 grams, the person shall be

1 sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a
2 fine of \$200,000.00;

3 (2) If the quantity of methamphetamine, amphetamine, or a mixture containing either
4 substance involved is 200 grams or more, but less than 400 grams, the person shall be
5 sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine
6 of \$300,000.00; and

7 (3) If the quantity of methamphetamine, amphetamine, or a mixture containing either
8 substance involved is 400 grams or more, the person shall be sentenced to a mandatory
9 minimum term of imprisonment of 25 years and shall pay a fine of \$1 million.

10 (f) Any person who knowingly manufactures methamphetamine, amphetamine, or any
11 mixture containing either methamphetamine or amphetamine, as described in Schedule II,
12 in violation of this article commits the felony offense of trafficking methamphetamine or
13 amphetamine and, upon conviction thereof, shall be punished as follows:

14 (1) If the quantity of methamphetamine, amphetamine, or a mixture containing either
15 substance involved is less than 200 grams, the person shall be sentenced to a mandatory
16 minimum term of imprisonment of ten years and shall pay a fine of \$200,000.00;

17 (2) If the quantity of methamphetamine, amphetamine, or a mixture containing either
18 substance involved is 200 grams or more, but less than 400 grams, the person shall be
19 sentenced to a mandatory minimum term of imprisonment of 15 years and shall pay a fine
20 of \$300,000.00; and

21 (3) If the quantity of methamphetamine, amphetamine, or a mixture containing either
22 substance involved is 400 grams or more, the person shall be sentenced to a mandatory
23 minimum term of imprisonment of 25 years and shall pay a fine of \$1 million.

24 ~~(f)~~(g)(1) Except as provided in paragraph (2) of this subsection and notwithstanding
25 Code Section 16-13-2, with respect to any person who is found to have violated this Code
26 section, adjudication of guilt or imposition of sentence shall not be suspended, probated,
27 deferred, or withheld prior to serving the mandatory minimum term of imprisonment
28 prescribed by this Code section.

29 (2) The district attorney may move the sentencing court to impose a reduced or
30 suspended sentence upon any person who is convicted of a violation of this Code section
31 and who provides substantial assistance in the identification, arrest, or conviction of any
32 of his accomplices, accessories, conspirators, or principals. Upon good cause shown,
33 the motion may be filed and heard in camera. The judge hearing the motion may impose
34 a reduced or suspended sentence if he finds that the defendant has rendered such
35 substantial assistance.

36 ~~(g)~~(h) Any person who violates any provision of this Code section in regard to trafficking
37 in cocaine, illegal drugs, marijuana, or methamphetamine shall be punished by

1 imprisonment for not less than five years nor more than 30 years and by a fine not to
2 exceed \$1 million."

3 **SECTION 5.**

4 Code Section 40-16-6 of the Official Code of Georgia Annotated, relating to civil monetary
5 penalties, is amended by adding a new subsection at the end thereof, to be designated
6 subsection (d), to read as follows:

7 "(d)(1) As used in this subsection, the term 'anhydrous ammonia' means any substance
8 identified to contain the compound ammonia which is capable of being utilized in the
9 production of methamphetamine or any other controlled substance.

10 (2) Any person, firm, or corporation transporting methamphetamine, amphetamine, any
11 mixture containing either methamphetamine or amphetamine, anhydrous ammonia, or
12 any mixture containing anhydrous ammonia shall be subject to all rules and regulations
13 promulgated by the commissioner pursuant to Code Section 46-7-26 governing the safe
14 operation of motor vehicles and drivers and the safe transportation of hazardous
15 materials.

16 (3) Notwithstanding the provisions of subsection (a) of this Code section, the
17 commissioner may impose civil monetary penalties in an amount not to exceed
18 \$25,000.00 for each violation of any rules and regulations promulgated pursuant to Code
19 Section 46-7-26 with respect to persons transporting methamphetamine, amphetamine,
20 any mixture containing either methamphetamine or amphetamine, anhydrous ammonia,
21 or any mixture containing anhydrous ammonia."

22 **SECTION 6.**

23 This Act shall become effective upon its approval by the Governor or upon its becoming law
24 without such approval.

25 **SECTION 7.**

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