

House Bill 762

By: Representative Rice of the 51st

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles, so
2 as to add a new chapter to be known as the "Transportation of Hazardous Materials Act"; to
3 provide a short title; to provide definitions; to provide findings of the General Assembly; to
4 provide standards for packaging, labeling, and transportation of hazardous materials; to
5 provide for promulgation of rules and regulations; to provide for permits; to provide for
6 enforcement; to provide for fees; to specifically repeal Chapter 11 of Title 46 of the Official
7 Code of Georgia Annotated, relating to transportation of hazardous materials; to provide for
8 related matters; to provide for an effective date; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles, is amended
13 by adding a new chapter to read as follows:

14 "CHAPTER 17

15 40-17-1.

16 This chapter shall be known and may be cited as the 'Transportation of Hazardous
17 Materials Act.'

18 40-17-2.

19 As used in this chapter, the term:

20 (1) 'Anhydrous ammonia' means any substance identified to contain the compound
21 ammonia which is capable of being utilized in the production of methamphetamine or any
22 other controlled substance.

1 (2) 'Carrier' means any person engaged in the transportation on the public roads of this
2 state of goods or property in, to, or through this state, whether or not such transportation
3 is for hire. The terms 'carrier' and 'motor carrier' are synonymous.

4 (3) 'C.F.R.' means the United States Code of Federal Regulations, and as it may be
5 amended from time to time in the Federal Register.

6 (4) 'Commissioner' means the commissioner of public safety.

7 (5) 'Department' means the Department of Public Safety.

8 (6) 'Hazardous material' has the same meaning the term has under Federal Hazardous
9 Materials Law contained in Chapter 51 of Title 49 of the United States Code Annotated.

10 (7) 'Liquefied natural gas' or 'LNG' means methane or natural gas in the form of a
11 cryogenic or refrigerated liquid as identified in federal hazardous materials regulations
12 contained in Title 49 C.F.R.

13 (8) 'Out of service order' means a temporary prohibition against driving or moving a
14 motor vehicle or any cargo thereon, or operating as a carrier.

15 (9) 'Permit' means an instrument of whatever character or nature including, but not
16 limited to, electronic format issued by the department pursuant to this chapter.

17 (10) 'Person' means and includes any individual, corporation, partnership, association,
18 state, municipality, political subdivision of a state, and any agency or instrumentality of
19 the United States government or any other entity and includes any officer, agent, or
20 employee of any of the above, who offers, ships, or carries a hazardous material in the
21 furtherance of a commercial or business enterprise, whether or not such transportation is
22 for hire.

23 (11) 'Polychlorinated biphenyl' or 'PCB' has the same meaning as the material identified
24 in federal hazardous materials regulations contained in Title 49 C.F.R.

25 (12) 'Radioactive material' has the same meaning as the term used in Federal Hazardous
26 Materials Regulations contained in Title 49 C.F.R.

27 (13) 'Regulatory compliance inspection' means the examination of facilities, property,
28 buildings, vehicles, drivers, cargo, records, books, or supporting documentation kept or
29 required to be kept in the normal course of offering or transporting hazardous materials.

30 (14) 'Shipper' means any person who arranges for, provides for, solicits a carrier for,
31 consigns to a carrier for, or contracts with a carrier for shipment or transport of goods or
32 property. The terms 'shipper' and 'offeror' shall be synonymous.

33 40-17-3.

34 The General Assembly finds that the transportation of hazardous materials on the public
35 roads of this state presents a unique and potentially catastrophic hazard to the public health,
36 safety, and welfare of the people of Georgia and that the protection of the public health,

1 safety, and welfare requires control and regulation of such transportation to minimize that
2 hazard; to that end this chapter is enacted. The Department of Public Safety is designated
3 as the agency to implement this chapter.

4 40-17-4.

5 (a) Notwithstanding any other provision of law to the contrary, any person transporting
6 hazardous material on the public roads of this state shall be subject to the requirements of
7 this chapter. Persons who ship, offer, transport, or store incidental to transportation of
8 hazardous materials shall be deemed to have given consent to regulatory compliance
9 inspections.

10 (b) No person, including the state or any agency thereof, shall transport hazardous material
11 in, to, or through this state on the public roads of this state, whether or not the hazardous
12 material is for delivery in this state and whether or not the transportation originated in this
13 state; nor shall any person deliver in this state any hazardous material to any person for
14 transportation; nor shall any such person accept any hazardous material for transportation
15 in this state without compliance with the following requirements: such materials shall be
16 packaged, marked, labeled, handled, loaded, unloaded, stored, detained, transported,
17 placarded, and monitored in compliance with rules and regulations promulgated by the
18 commissioner pursuant to this chapter and consistent with federal law. Compliance with
19 such rules and regulations shall be in addition to and supplemental of other regulations of
20 the United States Department of Energy, United States Department Transportation, United
21 States Nuclear Regulatory Commission, Georgia Department of Natural Resources, and
22 state fire marshal, applicable to such persons.

23 (c) The commissioner shall promulgate rules and regulations such that no person shall
24 arrange for the transportation of or cause to be transported in, to, or through this state on
25 the public roads of this state any hazardous material unless such person shall notify the
26 commissioner or his or her designee in accordance with such rules and regulations.

27 (d) Knowledge by a shipper that a carrier proposes to transport hazardous material in or
28 through this state on the public roads of this state shall be sufficient contact with this state
29 to subject such shipper to the jurisdiction of the courts of this state with respect to such
30 transport.

31 (e)(1) No transportation of hazardous material shall take place in or through this state
32 until the commissioner or his or her designee issues a permit authorizing the applicant to
33 operate or move upon the state's public roads a motor vehicle or combination of vehicles
34 which carry hazardous materials. The commissioner or his or her designee may require
35 changes in the proposed dates, times, routes, detention, holding, or storage of such
36 materials during transport as necessary to maximize protection of the public health,

1 safety, welfare, or the environment. The commissioner is authorized to promulgate
2 reasonable rules and regulations which are necessary or desirable in governing the
3 issuance of permits, provided that such rules and regulations are not in conflict with other
4 provisions of law.

5 (2) Notwithstanding any provision of law to the contrary, pursuant to uniform permitting
6 provisions of Federal Hazardous Materials Law, Section 5119 of Title 49 of the United
7 States Code Annotated, the commissioner is authorized to adopt rules and regulations to
8 bring state regulations into compliance with said federal law.

9 (f) Every such permit and all other documentation required by the commissioner shall be
10 carried in the vehicles or combination of vehicles to which it refers and shall be open to
11 inspection by any law enforcement officer, firefighter, emergency responder, or employee
12 of the department who has been given enforcement authority by the commissioner.

13 (g) For just cause, including, but not limited to, repeated and consistent past violations, the
14 commissioner may refuse to issue or may cancel, suspend, or revoke the permit of an
15 applicant or permittee.

16 (h)(1) The commissioner or the official designated by the commissioner, pursuant to this
17 Code section and the rules and regulations developed by the commissioner, may issue an
18 annual permit which shall allow vehicles transporting hazardous materials to be operated
19 on the public roads of this state for 12 months from the date the permit is issued.

20 (2) The commissioner or the official designated by the commissioner, pursuant to this
21 Code section and the rules and regulations developed by the commissioner, may issue a
22 single-trip permit to any vehicle.

23 (i)(1) The commissioner may charge a fee for the issuance of permits. Fees shall be in
24 accordance with the following schedule:

25 (A) Annual permits for materials which require inspection or escort: \$500.00, plus
26 \$100.00 for each inspection or escort;

27 (B) Annual permits for materials which do not require inspection or escort: \$250.00;

28 (C) Single-trip permits for materials which require inspection or escort: \$250.00; and

29 (D) Single-trip permits for materials which do not require inspection or escort: \$75.00.

30 (2) In addition, the commissioner may arrange for escort or inspections where the
31 arrangement complies with Code Section 35-2-56 or 35-2-101.

32 (j) For purposes of this chapter, the commissioner is expressly authorized to contract with
33 any other state or local agency or department to perform any activities necessary to
34 implement this chapter. Enforcement of this chapter and any rules, regulations, or orders
35 promulgated or adopted hereunder shall be the sole province of the department and those
36 entities the commissioner authorizes in writing.

1 (k) Notwithstanding any other provisions of this chapter, the commissioner is authorized
2 to establish such exceptions or exemptions from the requirements of this chapter, or any
3 provision hereof, for such kinds, quantities, types, or shipments of hazardous materials as
4 it shall deem appropriate, consistent with the protection of the public health, safety, and
5 welfare.

6 (l) This chapter shall not apply to the transportation, delivery, or acceptance for delivery
7 of radioactive materials inside the confines of the authorized location of use of any person
8 authorized to use, possess, transport, deliver, or store radioactive materials by the
9 Department of Natural Resources pursuant to Chapter 13 of Title 31 or by the United States
10 Nuclear Regulatory Commission; nor shall this chapter apply to the transportation,
11 delivery, or acceptance for transportation of radioactive materials under the direction or
12 supervision of the United States Nuclear Regulatory Commission, United States
13 Department of Energy, United States Department of Defense, or other federal agency
14 authorized to possess or transport such material where such transportation, delivery, or
15 acceptance for transportation is escorted by personnel designated by or under the authority
16 of those agencies.

17 (m) This chapter shall not apply to interstate pipeline facilities which are subject to the
18 jurisdiction of the United States Department of Transportation under the Natural Gas
19 Pipeline Safety Act of 1968.

20 (n)(1) In the event of any damage to state property or any discharge of hazardous
21 materials from the authorized shipping package or container or any threat of such
22 discharge which results from the transportation, storage, holding, detention, delivery for
23 transportation, or acceptance for transportation of hazardous materials in this state, the
24 state may recover from any shipper, carrier, bailor, bailee, or any other person responsible
25 for such storage, transportation, holding, detention, delivery, or acceptance all costs
26 incurred by the state in the reparation of the damage and all costs incurred in the
27 prevention, abatement, or removal of any such discharge or threatened discharge,
28 including reasonable attorney's fees incurred with respect to recovery.

29 (2) The commissioner is expressly authorized to charge reasonable fees for time,
30 equipment, materials, and supplies used or incurred by the department in the
31 implementation of this chapter.

32 (3) The commissioner may issue civil penalties to shippers and carriers found in
33 violation of this chapter or any regulations promulgated or adopted for the safe
34 transportation of hazardous materials. Such penalties shall not exceed the limits
35 established by Chapter 51 of Title 49 of the United States Code Annotated.

36 (A) Any person, firm, or corporation transporting methamphetamine, amphetamine,
37 any mixture containing either methamphetamine or amphetamine, anhydrous ammonia,

1 or any mixture containing anhydrous ammonia shall be subject to all rules and
2 regulations promulgated by the commissioner pursuant to this title and Title 46
3 governing the safe operation of motor vehicles and drivers and the safe transportation
4 of hazardous materials.

5 (B) Notwithstanding the provisions of this Code section, the commissioner may impose
6 civil monetary penalties in an amount not to exceed \$32,500.00 for each violation of
7 any rules and regulations promulgated pursuant to this title or Title 46 with respect to
8 persons transporting methamphetamine, amphetamine, any mixture containing either
9 methamphetamine or amphetamine, anhydrous ammonia, or any mixture containing
10 anhydrous ammonia.

11 (o) Routing determinations for hazardous materials shall be made in accordance with the
12 provisions of Federal Hazardous Materials Law, Section 5119 of Title 49 of the United
13 States Code Annotated. Routing information may be supplied to the Georgia Department
14 of Transportation, Georgia Department of Natural Resources, Georgia Emergency
15 Management Agency, and Georgia Department of Homeland Security.

16 (p) Drivers who transport hazardous materials shall be trained at least to the minimum
17 standards required by federal law. Upon request by the commissioner, proof of such
18 federally required driver training shall be made available to the commissioner or his or her
19 staff.

20 (q) Prior to the transport of spent nuclear fuel or high-level radioactive waste, the shipper
21 shall make notification to the commissioner or his or her designee in the manner required
22 by Title 10 C.F.R. Part 73.

23 (r) For the transportation of spent nuclear fuel, high-level radioactive waste, and other
24 hazardous materials, the commissioner may take action to ensure that motor vehicles used
25 in such transportation have been inspected to show compliance with the federal motor
26 carrier safety regulations and federal hazardous materials regulations.

27 (s) Notwithstanding any other provisions of law, a bond or indemnity insurance required
28 of carriers shall be established by rules and regulations of the commissioner and shall for
29 all persons subject to this chapter, whether intrastate or interstate carriers, be at least in the
30 maximum amount or amounts authorized or required by federal law or regulations.

31 (t) In addition to any other liability imposed by law, any person who violates any provision
32 of this chapter shall be guilty of a misdemeanor.

33 (u) The rulemaking authority granted to the commissioner pursuant to this chapter shall
34 be exercised at all times in conformity with Chapter 13 of Title 50, the 'Georgia
35 Administrative Procedure Act'; provided, however, that regulations governing hazardous
36 materials may be adopted by administrative order referencing compatible federal
37 regulations or standards without compliance with the procedural requirements of Chapter

1 13 of Title 50; provided, further, that such compatible federal regulations or standards shall
2 be maintained on file by the department and made available for inspection and copying by
3 the public, by means including, but not limited to, posting on the department's Internet
4 website.

5 40-17-5.

6 (a) The commissioner is authorized to employ such persons as may be necessary, in the
7 discretion of the commissioner, for the proper enforcement of this chapter, as provided for
8 in this chapter and Chapter 2 of Title 35. Funds derived under this chapter shall be used to
9 further the Department of Motor Vehicle Safety's hazardous materials transportation safety
10 programs, provided, however, the department shall retain those funds derived specifically
11 for inspection or escort.

12 (b) The commissioner is vested with police powers and authority to designate, deputize,
13 and delegate to employees of the commissioner the necessary authority to enforce this
14 chapter, including the power to stop and inspect all motor vehicles using the public
15 highways and to enter upon and inspect shipper and carrier facilities for purposes of
16 determining whether such vehicles and facilities have complied with and are complying
17 with the provisions of this chapter and all other laws regulating the use of the public
18 highways by motor vehicles, and to arrest all persons found in violation thereof, and to
19 issue out-of-service orders to carriers, vehicles and drivers in accordance with criteria
20 which shall be established by the commissioner.

21 (c) The commissioner shall promulgate such rules, regulations, policies, or written
22 procedures as necessary to establish the scope and purpose of regulatory compliance
23 inspections and to define the discretion of persons performing such inspections.

24 40-17-6.

25 In the event that any section, paragraph, or other part of this chapter, or any requirement
26 thereunder, or any rule, regulation, or order of the commissioner promulgated hereunder,
27 is found to be preempted by federal law, or otherwise found to be improper, null or
28 otherwise void, all other requirements not so preempted or otherwise so found shall remain
29 in full force and effect."

30

SECTION 2.

31 Title 46 of the Official Code of Georgia Annotated, relating to public utilities, is amended
32 by repealing Chapter 11, relating to transportation of hazardous materials, and designating
33 said chapter as reserved.

1 **SECTION 3.**

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

4 **SECTION 4.**

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