

House Bill 749 (AS PASSED HOUSE AND SENATE)

By: Representatives Duncan of the 26th, Tanner of the 9th, Martin of the 49th, Golick of the 40th, Pak of the 108th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated,
2 relating to theft, so as to provide for the crime of cargo theft; to provide for definitions; to
3 provide for penalties; to provide for the crime of unlawful possession or use of a fifth wheel;
4 to provide for related matters; to provide an effective date and for applicability; to repeal
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 SECTION 1.

8 Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to theft,
9 is amended by adding new Code sections to read as follows:

10 "16-8-22.

11 (a) For purposes of this Code section, the term 'vehicle' includes, without limitation, any
12 railcar.

13 (b) Notwithstanding any provision of this article to the contrary, a person commits the
14 offense of cargo theft when he or she unlawfully takes or, being in lawful possession
15 thereof, unlawfully appropriates:

16 (1) Any vehicle engaged in commercial transportation of cargo or any appurtenance
17 thereto, including, without limitation, any trailer, semitrailer, container, or other
18 associated equipment, or the cargo being transported therein or thereon, which is the
19 property of another with the intention of depriving such other person of the property,
20 regardless of the manner in which the property is taken or appropriated; or

21 (2) Any trailer, semitrailer, container, or other associated equipment, or the cargo being
22 transported therein or thereon, which is deployed by or used by a law enforcement
23 agency, which is the property of another with the intention of depriving such other person
24 of the property, regardless of the manner in which the property is taken or appropriated.

25 (c) The value of a vehicle engaged in commercial transportation of cargo and any
26 appurtenance thereto and the cargo being transported which is taken or unlawfully

27 appropriated shall be based on the fair market value of such vehicle, appurtenances, and
28 cargo taken or unlawfully appropriated.

29 (d)(1) If the property taken is one or more controlled substances as defined in Code
30 Section 16-13-21 with a collective value of less than \$10,000.00, a person convicted of
31 a violation of this Code section shall be punished by imprisonment for not less than one
32 nor more than ten years, a fine of not less than \$10,000.00 nor more than \$100,000.00,
33 or both.

34 (2) If the property taken is one or more controlled substances as defined in Code
35 Section 16-13-21 with a collective value of at least \$10,000.00 but less than \$1 million,
36 a person convicted of a violation of this Code section shall be punished by imprisonment
37 for not less than five nor more than 25 years, a fine of not less than \$50,000.00 nor more
38 than \$1 million, or both.

39 (3) If the property taken is one or more controlled substances as defined in Code
40 Section 16-13-21 with a collective value of \$1 million or more, a person convicted of a
41 violation of this Code section shall be punished by imprisonment for not less than ten nor
42 more than 30 years, a fine of not less than \$100,000.00 nor more than \$1 million, or both.

43 (e)(1) Except as otherwise provided in subsection (d) of this Code section, if the property
44 taken has a collective value of \$1,500.00 or less, a person convicted of a violation of this
45 Code section shall be punished as for a misdemeanor.

46 (2) Except as otherwise provided in subsection (d) of this Code section, if the property
47 taken has a collective value of more than \$1,500.00 but less than \$10,000.00, a person
48 convicted of a violation of this Code section shall be punished by imprisonment for not
49 less than one nor more than ten years, a fine of not less than \$10,000.00 nor more than
50 \$100,000.00, or both.

51 (3) Except as otherwise provided in subsection (d) of this Code section, if the property
52 taken has a collective value of at least \$10,000.00 but less than \$1 million, a person
53 convicted of a violation of this Code section shall be punished by imprisonment for not
54 less than five nor more than 20 years, a fine of not less than \$50,000.00 nor more than
55 \$1 million, or both.

56 (4) Except as otherwise provided in subsection (d) of this Code section, if the property
57 taken has a collective value of \$1 million or more, a person convicted of a violation of
58 this Code section shall be punished by imprisonment for not less than ten nor more than
59 20 years, a fine of not less than \$100,000.00 nor more than \$1 million, or both.

60 (f) Notwithstanding subsections (d) and (e) of this Code section, if the property taken is
61 a trailer, semitrailer, container, or other associated equipment, or the cargo being
62 transported therein or thereon, which is deployed by or used by a law enforcement agency,
63 regardless of its value, a person convicted of a violation of this Code section shall be

64 punished by imprisonment for not less than one nor more than ten years, a fine of not less
 65 than \$10,000.00 nor more than \$100,000.00, or both.

66 (e) A person convicted of a violation of this Code section may also be punished by, if
 67 applicable, the revocation of the defendant's commercial driver's license in accordance with
 68 Code Section 40-5-151.

69 16-8-23.

70 (a) For the purposes of this Code section, the term 'fifth wheel' means a device mounted
 71 on a truck tractor or similar towing vehicle, including, but not limited to, a converter dolly,
 72 which interfaces with and couples to the upper coupler assembly of a semitrailer.

73 (b) It shall be unlawful for any person to modify, alter, attempt to alter, and, if altered, sell,
 74 possess, offer for sale, move, or cause to be moved on the highways of this state a device
 75 known as a fifth wheel or the antitheft locking device attached to the fifth wheel with the
 76 intent to use the fifth wheel to commit or attempt to commit cargo theft as defined in Code
 77 Section 16-8-22.

78 (c) A person convicted of a violation of this Code section shall be punished by
 79 imprisonment for not less than one nor more than ten years, a fine of not less than
 80 \$10,000.00 nor more than \$100,000.00, or both."

81 **SECTION 2.**

82 Said article is further amended by revising paragraph (8) of subsection (a) of Code
 83 Section 16-8-12, relating to penalties for theft in violation of Code Sections 16-8-2 through
 84 16-8-9, as follows:

85 ~~"(8) If the property that was the subject of the theft was a vehicle engaged in commercial~~
 86 ~~transportation of cargo or any appurtenance thereto, including, without limitation, any~~
 87 ~~such trailer, semitrailer, container, or other associated equipment, or the cargo being~~
 88 ~~transported therein or thereon, by imprisonment for not less than three years nor more~~
 89 ~~than ten years, a fine not less than \$5,000.00 nor more than \$50,000.00, and, if~~
 90 ~~applicable, the revocation of the defendant's commercial driver's license in accordance~~
 91 ~~with Code Section 40-5-151, or any combination of such penalties. For purposes of this~~
 92 ~~paragraph, the term 'vehicle' includes, without limitation, any railcar Reserved; or".~~

93

SECTION 3.

94 This Act shall become effective on July 1, 2014, and shall apply to all offenses committed
95 on or after such date. The enactment of Code Sections 16-8-22 and 16-8-23 shall not affect
96 any prosecutions for acts occurring before the effective date of Code Sections 16-8-22 and
97 16-8-23 and shall not act as an abatement of any such prosecutions.

98

SECTION 4.

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