

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
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STATE OF NEW JERSEY
211th LEGISLATURE

ADOPTED JUNE 9, 2005

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SYNOPSIS

Restricts sales of ephedrine and pseudoephedrine and criminalizes possession of anhydrous ammonia under certain circumstances.

CURRENT VERSION OF TEXT

As amended by the Senate on June 20, 2005.

(Sponsorship Updated As Of: 7/1/2005)

1 AN ACT concerning certain substances, amending N.J.S.2C:20-2
2 and supplementing Title 2C of the New Jersey Statutes and
3 Titles 45 and 51 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the
6 State of New Jersey:

7
8 1. (New section) a. Except as provided in subsection d. of this
9 section, no person shall sell, offer for sale or purchase in any single
10 ¹retail¹ transaction more than:

11 (1) three packages, or any number of packages that contain a
12 total of nine grams, of any drug containing a sole active ingredient
13 of ephedrine, pseudoephedrine, phenylpropanolamine, or any of
14 their salts, optical isomers or salts of optical isomers, or

15 (2) three packages of any combination drug containing, as
16 one of its active ingredients, ephedrine, pseudoephedrine,
17 phenylpropanolamine, or any of their salts, optical isomers or salts
18 of optical isomers, or any number of packages of such combination
19 drug that contain a total of nine grams of ephedrine,
20 pseudoephedrine, phenylpropanolamine, or any of their salts,
21 optical isomers or salts of optical isomers.

22 b. As used in this section, "drug" has the meaning as defined
23 in R.S.24:1-1.

24 c. A violation of this section is a disorderly persons offense.

25 d. This act shall not apply to a drug lawfully prescribed or
26 administered by a licensed physician, veterinarian or dentist.

27
28 2. (New section) Every pharmacy, store and other retail
29 mercantile establishment shall promptly communicate to local law
30 enforcement authorities the confirmed report of, or actual
31 knowledge of, a loss of 30 or more grams of any drug containing
32 a sole active ingredient of ephedrine, pseudoephedrine,
33 phenylpropanolamine, or any of their salts, optical isomers or salts
34 of optical isomers. As used in this section, "store or other retail
35 mercantile establishment" means a place where merchandise is
36 displayed, held, stored or sold or offered to the public for sale.

37
38 3. (New section) Proof that a person has in his possession
39 more than 30 grams or 10 packages of any drug containing a sole
40 active ingredient of ephedrine, pseudoephedrine,
41 phenylpropanolamine, or any of their salts, optical isomers or salts
42 of optical isomers; or more than 30 grams or 10 packages of any

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted June 20, 2005.

1 combination drug containing, as one of its active ingredients,
2 ephedrine, pseudoephedrine, phenylpropanolamine, or any of their
3 salts, optical isomers or salts of optical isomers, shall give rise to
4 a permissive inference by the trier of fact that the person acted
5 with a purpose to create methamphetamine.

6
7 4. N.J.S. 2C:20-2 is amended to read as follows:

8 2C:20-2. Consolidation of Theft Offenses; Grading; Provisions
9 Applicable to Theft Generally.

10 a. Consolidation of Theft and Computer Criminal Activity
11 Offenses. Conduct denominated theft or computer criminal activity
12 in this chapter constitutes a single offense, but each episode or
13 transaction may be the subject of a separate prosecution and
14 conviction. A charge of theft or computer criminal activity may be
15 supported by evidence that it was committed in any manner that
16 would be theft or computer criminal activity under this chapter,
17 notwithstanding the specification of a different manner in the
18 indictment or accusation, subject only to the power of the court to
19 ensure fair trial by granting a bill of particulars, discovery, a
20 continuance, or other appropriate relief where the conduct of the
21 defense would be prejudiced by lack of fair notice or by surprise.

22 b. Grading of theft offenses.

23 (1) Theft constitutes a crime of the second degree if:

24 (a) The amount involved is \$75,000.00 or more;

25 (b) The property is taken by extortion;

26 (c) The property stolen is a controlled dangerous substance or
27 controlled substance analog as defined in N.J.S.2C:35-2 and the
28 quantity is in excess of one kilogram;

29 (d) The property stolen is a person's benefits under federal or
30 State law, or from any other source, which the Department of
31 Human Services or an agency acting on its behalf has budgeted for
32 the person's health care and the amount involved is \$75,000 or
33 more; or

34 (e) The property stolen is human remains or any part thereof.

35 (2) Theft constitutes a crime of the third degree if:

36 (a) The amount involved exceeds \$500.00 but is less than
37 \$75,000.00;

38 (b) The property stolen is a firearm, motor vehicle, vessel,
39 boat, horse, domestic companion animal or airplane;

40 (c) The property stolen is a controlled dangerous substance or
41 controlled substance analog as defined in N.J.S.2C:35-2 and the
42 amount involved is less than \$75,000.00 or is undetermined and
43 the quantity is one kilogram or less;

44 (d) It is from the person of the victim;

45 (e) It is in breach of an obligation by a person in his capacity as
46 a fiduciary;

1 (f) It is by threat not amounting to extortion;

2 (g) It is of a public record, writing or instrument kept, filed or
3 deposited according to law with or in the keeping of any public
4 office or public servant;

5 (h) The property stolen is a person's benefits under federal or
6 State law, or from any other source, which the Department of
7 Human Services or an agency acting on its behalf has budgeted for
8 the person's health care and the amount involved is less than
9 \$75,000;

10 (i) The property stolen is any real or personal property related
11 to, necessary for, or derived from research, regardless of value,
12 including, but not limited to, any sample, specimens and
13 components thereof, research subject, including any warm-blooded
14 or cold-blooded animals being used for research or intended for
15 use in research, supplies, records, data or test results, prototypes
16 or equipment, as well as any proprietary information or other type
17 of information related to research;

18 (j) The property stolen is a New Jersey Prescription Blank as
19 referred to in R.S.45:14-14; [or]

20 (k) The property stolen consists of an access device or a
21 defaced access device ; or

22 (l) The property stolen consists of anhydrous ammonia and the
23 actor intends it to be used to manufacture methamphetamine.

24 (3) Theft constitutes a crime of the fourth degree if the amount
25 involved is at least \$200.00 but does not exceed \$500.00. If the
26 amount involved was less than \$200.00 the offense constitutes a
27 disorderly persons offense.

28 (4) The amount involved in a theft or computer criminal
29 activity shall be determined by the trier of fact. The amount shall
30 include, but shall not be limited to, the amount of any State tax
31 avoided, evaded or otherwise unpaid, improperly retained or
32 disposed of. Amounts involved in thefts or computer criminal
33 activities committed pursuant to one scheme or course of conduct,
34 whether from the same person or several persons, may be
35 aggregated in determining the grade of the offense.

36 c. Claim of right. It is an affirmative defense to prosecution
37 for theft that the actor:

38 (1) Was unaware that the property or service was that of
39 another;

40 (2) Acted under an honest claim of right to the property or
41 service involved or that he had a right to acquire or dispose of it
42 as he did; or

43 (3) Took property exposed for sale, intending to purchase and
44 pay for it promptly, or reasonably believing that the owner, if
45 present, would have consented.

1 d. Theft from spouse. It is no defense that theft or computer
2 criminal activity was from or committed against the actor's spouse,
3 except that misappropriation of household and personal effects, or
4 other property normally accessible to both spouses, is theft or
5 computer criminal activity only if it occurs after the parties have
6 ceased living together.

7 (cf: P.L.2003, c.39, s.7)

8

9 5. (New section) a. Except as authorized by P.L.1970, c. 226
10 (C.24:21-1 et seq.), a person is guilty of the crime of unlawful
11 possession of a precursor if the person knowingly or purposely
12 possesses anhydrous ammonia with intent to unlawfully
13 manufacture methamphetamine or any of its analogs.

14 b. Except as authorized by P.L.1970, c. 226 (C.24:21-1 et
15 seq.), a person is guilty of the crime of unlawful possession of a
16 precursor if the person knowingly or purposely possesses
17 phenylalanine with intent to unlawfully manufacture
18 methamphetamine or amphetamine or any of their analogs.

19 c. Except as authorized by P.L.1970, c. 226 (C. 24:21-1 et
20 seq.), a person is guilty of the crime of unlawful possession of a
21 precursor if the person knowingly or purposely possesses, with
22 intent to manufacture a controlled dangerous substance or
23 controlled substance analog, any of the following:

24 (1) carbamide (urea) and propanediol and malonic acid or its
25 derivatives;

26 (2) ergot or an ergot derivative and diethylamine or dimethyl-
27 formamide or diethylamide;

28 (3) phenylacetone (1-phenyl-2 propanone);

29 (4) pentazocine and methyliodid;

30 (5) phenylacetonitrile and dichlorodiethyl methylamine or
31 dichlorodiethyl benzylamine;

32 (6) diethylacetonitrile and dimethylaminoisopropyl chloride;

33 (7) piperidine and cyclohexanone and bromobenzene and
34 lithium or magnesium; or

35 (8) 2, 5-dimethoxy benzaldehyde and nitroethane and a
36 reducing agent.

37 d. (1) Except as authorized by P.L.1970, c. 226 (C.24:21-1 et
38 seq.), a person is guilty of the crime of unlawful possession of a
39 precursor if the person, with intent to unlawfully manufacture
40 methamphetamine, knowingly or purposely possesses ephedrine
41 (including its salts, isomers or salts of isomers),
42 norpseudoephedrine (including its salts, isomers or salts of
43 isomers), n-methylephedrine (including its salts, isomers or salts of
44 isomers), n-methylpseudoephedrine (including its salts, isomers or
45 salts of isomers), or pseudoephedrine (including its salts, isomers

1 or salts of isomers).

2 (2) Proof that a person in possession of any of the substances
3 enumerated in paragraph (1) of this subsection at the same time
4 also possesses any of the following substances shall give rise to a
5 permissive inference by the trier of fact that the person acted with
6 intent to unlawfully manufacture methamphetamine:

7 (a) amorphous (red) phosphorus or white phosphorus;

8 (b) hydroiodic acid;

9 (c) anhydrous ammonia;

10 (d) sodium; or

11 (e) lithium.

12 Unlawful possession of a precursor in violation of this section
13 is a crime of the second degree.

14

15 6. (New section) a. The New Jersey Department of
16 Agriculture, which includes the Secretary of Agriculture, the State
17 Board of Agriculture and the State Chemist, shall conduct a study
18 on the feasibility of using an additive to anhydrous ammonia sold
19 as agricultural fertilizer to inhibit or prevent its illicit use in the
20 manufacturing of the drug methamphetamine. The study shall
21 consider: the effectiveness of potential additives in inhibiting or
22 preventing the use of anhydrous ammonia to manufacture the drug
23 methamphetamine; expected final cost of any potential additives;
24 the human health hazards, hazards to fish, shellfish and wildlife,
25 and environmental hazards of any potential additives as compared
26 to the same hazards posed by anhydrous ammonia; and the extent
27 which the additives would be expected to reduce the effectiveness
28 or usefulness of anhydrous ammonia as an agricultural fertilizer.

29 b. The department shall prepare a report on the
30 recommendations to require or encourage the use of an additive to
31 anhydrous ammonia to inhibit or prevent its use in the manufacture
32 of methamphetamine and submit a copy of such report to the
33 Legislature and the Governor no later than one year after the
34 effective date of P.L. ,c. (C.) (pending before the Legislature
35 as this bill).

36

37 7. This act shall take effect on the 90th day following
38 enactment.