

CHAPTER 207

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

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.2C:35-25 Sale restrictions for ephedrine products; disorderly persons offense.

1. a. Except as provided in subsection d. of this section, no person shall sell, offer for sale or purchase in any single retail transaction more than:

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

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

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

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

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

C.2C:35-26 Reporting requirement for ephedrine products.

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

C.2C:35-27 Permissive inference concerning possession of ephedrine products.

3. Proof that a person has in his possession more than 30 grams or 10 packages of any drug containing a sole active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers; or more than 30 grams or 10 packages of any combination drug containing, as one of its active ingredients, ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers or salts of optical isomers, shall give rise to a permissive inference by the trier of fact that the person acted with a purpose to create methamphetamine.

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

Consolidation of theft offenses; grading; provisions applicable to theft generally.

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

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

b. Grading of theft offenses.

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

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

(b) The property is taken by extortion;

(c) The property stolen is a controlled dangerous substance or controlled substance analog

as defined in N.J.S.2C:35-2 and the quantity is in excess of one kilogram;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C.2C:35-28 Unlawful possession of precursors; manufacturing methamphetamine; crime of second degree.

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

analogs.

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

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

- (1) carbamide (urea) and propanedioc and malonic acid or its derivatives;
- (2) ergot or an ergot derivative and diethylamine or dimethyl-formamide or diethylamide;
- (3) phenylacetone (1-phenyl-2 propanone);
- (4) pentazocine and methyliodid;
- (5) phenylacetonitrile and dichlorodiethyl methylamine or dichlorodiethyl benzylamine;
- (6) diphenylacetonitrile and dimethylaminoisopropyl chloride;
- (7) piperidine and cyclohexanone and bromobenzene and lithium or magnesium; or
- (8) 2, 5-dimethoxy benzaldehyde and nitroethane and a reducing agent.

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

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

- (a) amorphous (red) phosphorus or white phosphorus;
- (b) hydroiodic acid;
- (c) anhydrous ammonia;
- (d) sodium;or
- (e) lithium.

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

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

b. The department shall prepare a report on the recommendations to require or encourage the use of an additive to anhydrous ammonia to inhibit or prevent its use in the manufacture of methamphetamine and submit a copy of such report to the Legislature and the Governor no later than one year after the effective date of P.L.2005,c.207 (C.2C:35-25 et al.).

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

Approved August 24, 2005.