

The House Committee on Health and Human Services offers the following substitute to HB 588:

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to regulation of controlled substances, so as to change provisions relating to possession of substances containing ephedrine, pseudoephedrine, and phenylpropanolamine and restrictions on sales of products containing pseudoephedrine; to provide for real-time tracking of sales of products containing ephedrine or pseudoephedrine; to provide for definitions; to revise provisions relating to exceptions; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to regulation of controlled substances, is amended by revising Code Section 16-13-30.3, relating to possession of substances containing ephedrine, pseudoephedrine, and phenylpropanolamine and restrictions on sales of products containing pseudoephedrine, as follows:

"16-13-30.3.

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

(1) 'Ephedrine;' or 'pseudoephedrine;' ~~or 'phenylpropanolamine'~~ means any drug product containing ephedrine; or pseudoephedrine; ~~or phenylpropanolamine;~~ or any of their salts, isomers, or salts of isomers, alone or in a mixture.

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

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

(2) 'Georgia Meth Watch' means the program entitled Georgia Meth Watch or a similar program which has been promulgated, approved, and distributed by the Georgia Council on Substance Abuse.

(3) 'Pharmacy' has the same meaning as in Code Section 26-4-5.

(4) 'Real-time electronic logging system' means an electronic system approved by the Georgia Bureau of Investigation which is operated in real time and which can track required information and generate a stop sale alert to notify a pharmacy that a purchase of ephedrine or pseudoephedrine which exceeds the quantity limits set forth in this Code section is being attempted. Such system shall:

(A) Contain an override function that will not only allow a pharmacy to complete a sale in violation of this Code section when the person making the sale is in reasonable fear of imminent bodily harm if he or she does not complete the sale but also will track any override sales made;

(B) Be offered free of charge to the state, pharmacies, and law enforcement agencies; and

(C) Have real-time interstate communicability with similar systems in other states.

(5) 'Required information' means the full name and address of the purchaser; the type of government issued photographic identification presented, including the issuer and identification number; a description of the nonprescription product purchased which contains ephedrine or pseudoephedrine, including the number of grams of pseudoephedrine in the product; and the date and time of the purchase.

(b)(1) ~~It is shall be unlawful for any person, other than a person or entity described in paragraph (22), (28), (29), (30), or (33), or (41) of Code Section 26-4-5 or a retail distributor, to knowingly possess any product that contains ephedrine; or pseudoephedrine; or phenylpropanolamine in an amount which exceeds 300 pills, tablets, gelcaps, capsules, or other individual units or more than 9 grams of ephedrine; or pseudoephedrine; or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances, whichever is smaller.~~

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

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

~~(b.1)(c)~~(1) Products whose sole active ingredient is pseudoephedrine may be offered for retail sale only if sold in blister packaging. ~~Such products may not be offered for retail sale by self-service but only from behind a counter or other barrier so that such products are not directly accessible by the public but only by a retail store employee or agent.~~ Nonprescription products whose sole active ingredient is ephedrine or pseudoephedrine shall only be sold in a pharmacy in a manner which complies with State Board of Pharmacy rules established pursuant to Code Section 16-13-29.2.

(2) No person shall ~~deliver in any single over the counter sale more than three packages of any product containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients or any number of packages that contain a combined total of more than nine grams of pseudoephedrine or its base, salts, optical isomers, or salts of its optical isomers~~ distribute or purchase any nonprescription product containing more than 3.6 grams of ephedrine or pseudoephedrine per day in dosage form or more than 9 grams of ephedrine or pseudoephedrine per 30 day period in dosage form of any product. The limits set forth in this paragraph shall apply to the total amount of ephedrine or pseudoephedrine contained in the product and not the overall weight of such product.

(3) The pharmacy shall maintain a record of required information for each sale of a nonprescription product which contains ephedrine or pseudoephedrine for a period of two years from the date of each transaction. Except as to law enforcement agencies in this state which shall be provided immediate access by a pharmacy to all written and electronic logs or records upon request, the records maintained by a pharmacy pursuant to this Code section shall not be disclosed. Pharmacies may destroy the required information collected pursuant to this subsection after two years from the date of the transaction.

(4)(A) On and after January 1, 2017, pharmacies shall, before completing a sale of a nonprescription product which contains ephedrine or pseudoephedrine, electronically track all such sales and submit the required information to a real-time electronic logging system. A pharmacy shall not complete the sale of a nonprescription product which contains ephedrine or pseudoephedrine if the real-time electronic logging system generates a stop sale alert except as provided in subparagraph (a)(4)(A) of this Code section.

(B) If a pharmacy selling a nonprescription product which contains ephedrine or pseudoephedrine experiences mechanical or electronic failure of the real-time electronic logging system and is unable to comply with the requirements of this paragraph, the pharmacy shall maintain a written log or an alternative electronic recording mechanism until such time as the pharmacy is able to comply with the electronic logging requirement.

(C) Absent negligence, wantonness, recklessness, or deliberate misconduct, any pharmacy utilizing the real-time electronic logging system in accordance with this paragraph shall not be civilly liable as a result of any act or omission in carrying out the duties required by this paragraph and shall be immune from liability to any third party unless the pharmacy has violated any provision of this paragraph in relation to a claim brought for such violation.

(D) The Georgia Bureau of Investigation shall provide real-time access to records on such logging system through an online portal to law enforcement agencies in this state.

~~(3)(5)~~ It shall be unlawful for a ~~retail distributor~~ pharmacy to purchase any product containing ephedrine or pseudoephedrine from any person or entity other than a manufacturer or a wholesale distributor licensed by the State Board of Pharmacy.

~~(4) This subsection shall not apply to:~~

~~(A) Pediatric products labeled pursuant to federal regulation as primarily intended for administration to children under 12 years of age according to label instructions; and~~

~~(B) Products that the State Board of Pharmacy, upon application of a manufacturer, exempts because the product is formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine or its salts or precursors.~~

~~(5)(6)~~ This subsection shall preempt all local ordinances or regulations governing the retail sale of ~~over the counter~~ products containing ephedrine or pseudoephedrine by a ~~retail business~~ except such local ordinances or regulations that existed on or before December 31, 2004. Effective January 1, 2006, this subsection shall preempt all local ordinances.

~~(6)(A) Except as otherwise provided herein, it shall be unlawful for any person knowingly to violate any prohibition contained in paragraph (1), (2), or (3) of this subsection.~~

~~(B)(7)(A)~~ Any person convicted of a violation of paragraph (1), ~~or (2), (3), or (4)~~ of this subsection shall be guilty of a misdemeanor which, upon the first conviction, shall be punished by a fine of not more than \$500.00 and, upon the second or subsequent conviction, shall be punished by not more than six months' imprisonment or a fine of not more than \$1,000.00, or both.

~~(C)(B)~~ Any person convicted of a violation of paragraph ~~(3)~~ (5) of this subsection shall, upon the first conviction, be guilty of a misdemeanor and, upon the second or subsequent conviction, be guilty of a misdemeanor of a high and aggravated nature.

~~(D)(C)~~ It shall be a defense to a prosecution pursuant to this paragraph by law enforcement of a ~~retail business or owner or operator thereof~~ pharmacy for violation of paragraph (1), ~~or (2), (3), (4), or (5)~~ of this subsection that, at the time of the alleged violation, all of the employees of the ~~retail business~~ pharmacy had completed training

complying with standards established under Georgia Meth Watch; as such standards existed on June 30, 2016, and the retail business pharmacy was in compliance with procedures established by Georgia Meth Watch, and the defendant did not knowingly, willfully, or intentionally violate paragraph (1) or (2) of this subsection. For purposes of this subsection only, the term 'Georgia Meth Watch' shall mean that program entitled 'Georgia Meth Watch' or similar program which has been promulgated, approved, and distributed by the Georgia Council on Substance Abuse as such standards existed on June 30, 2016; provided, however, that this subparagraph shall not apply to the State Board of Pharmacy or prevent it from taking disciplinary action for a violation of this subsection.

~~(7) Except as otherwise provided in this subsection, the State Board of Pharmacy may adopt reasonable rules and regulations to effectuate the provisions of this subsection. The board is further authorized to charge reasonable fees to defray expenses incurred in maintaining any records or forms necessitated by this subsection or otherwise administering any other provisions of this subsection.~~

~~(c)~~(d) This Code section shall not apply to:

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

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

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

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

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

~~(d)~~(e) Except as authorized by this article, it is unlawful for any person to possess, have under his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute any substance product containing any amounts of ephedrine; or pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers which have been altered from their original condition so as to be powdered, liquefied, or crushed. This subsection shall not apply to any of the substances

173 identified within this subsection which are possessed or altered for a legitimate medical
174 purpose. Any person who violates this subsection shall be guilty of a felony and, upon
175 conviction thereof, shall be punished by imprisonment for not less than one year nor more
176 than ten years."

177 **SECTION 2.**

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