

House Bill 362 (AS PASSED HOUSE AND SENATE)

By: Representatives Clark of the 101st, Cooper of the 43rd, Fleming of the 121st, Coleman of the 97th, Carter of the 175th, and others

A BILL TO BE ENTITLED
AN ACT

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

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

15 "16-13-30.3.

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

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

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

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

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

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

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

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

41 (B) Be accessible to the state, pharmacies, and law enforcement agencies, without a
 42 charge or fee, including a transaction fee; and

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

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

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

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

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

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

69 (2) No person shall ~~deliver in any single over the counter sale more than three packages~~
70 ~~of any product containing pseudoephedrine as the sole active ingredient or in combination~~
71 ~~with other active ingredients or any number of packages that contain a combined total of~~
72 ~~more than nine grams of pseudoephedrine or its base, salts, optical isomers, or salts of its~~
73 ~~optical isomers~~ distribute or purchase any nonprescription product containing more than
74 3.6 grams of ephedrine or pseudoephedrine per day in dosage form or more than 9 grams
75 of ephedrine or pseudoephedrine per 30 day period in dosage form of any product. The
76 limits set forth in this paragraph shall apply to the total amount of ephedrine or
77 pseudoephedrine contained in the product and not the overall weight of such product.

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

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

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

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

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

107 ~~(3)~~(5) It shall be unlawful for a ~~retail distributor~~ pharmacy to purchase any product
 108 containing ephedrine or pseudoephedrine from any person or entity other than a
 109 manufacturer or a wholesale distributor licensed by the State Board of Pharmacy.

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

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

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

116 ~~(5)~~(6) This subsection shall preempt all local ordinances or regulations governing the
 117 retail sale of ~~over the counter~~ products containing ephedrine or pseudoephedrine by a
 118 ~~retail business~~ except such local ordinances or regulations that existed on or before
 119 December 31, 2004. Effective January 1, 2006, this subsection shall preempt all local
 120 ordinances.

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

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

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

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

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

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

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

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

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

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

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

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

167 ~~(d)~~(e) Except as authorized by this article, it is unlawful for any person to possess, have
 168 under his or her control, manufacture, deliver, distribute, dispense, administer, purchase,
 169 sell, or possess with intent to distribute any substance product containing any amounts of
 170 ephedrine; or pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers,
 171 or salts of optical isomers which have been altered from their original condition so as to be
 172 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.