

House Bill 1072 (AS PASSED HOUSE AND SENATE)

By: Representatives Cooper of the 45th, Newton of the 127th, Parrish of the 158th, Jackson of the 128th, Stephens of the 164th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Titles 26, 31, and 48 of the Official Code of Georgia Annotated, relating to food,
2 drugs, and cosmetics, health, and revenue and taxation, respectively, so as to increase the
3 public's access to prescription drugs by increasing the number of pharmacy technicians
4 authorized to be supervised by a pharmacist in certain circumstances and by revising
5 provisions relative to the drug repository program; to authorize the Georgia State Board of
6 Pharmacy to increase the maximum ratio of pharmacists to pharmacy technicians in
7 closed-door pharmacies; to provide definitions; to provide for additional pharmacy
8 technicians for certain non-dispensing related duties in the drug repository program; to
9 require reverse drug distributors to make and document diligent efforts to donate drugs rather
10 than destroy them; to provide for an eligible recipient to substitute a drug under certain
11 circumstances; to provide for legislative intent regarding certain settlement funds received
12 by the state; to provide for referrals to the drug repository program; to exempt sales to or by
13 certain eligible recipients in the drug repository program; to provide for related matters; to
14 provide for legislative findings; to provide for an effective date and applicability; to repeal
15 conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I*Closed-door pharmacies***SECTION 1-1.**

20 Title 26 of the Official Code of Georgia Annotated, relating to food, drugs, and cosmetics,
21 is amended in Code Section 26-4-82, relating to duties requiring professional judgment and
22 responsibilities of a licensed pharmacist, by revising subsection (d) as follows:

23 "(d) The board of pharmacy shall promulgate rules and regulations regarding the activities
24 and utilization of pharmacy technicians in pharmacies, including the establishment of a
25 registry as required in paragraph (7) of subsection (a) of Code Section 26-4-28; provided,
26 however, that the pharmacist to pharmacy technician ratio shall not exceed one pharmacist
27 providing direct supervision of four pharmacy technicians. The board may consider and
28 approve an application to increase the ratio in a pharmacy located in a licensed hospital or
29 in a closed-door pharmacy. Such application must be made in writing and must be
30 submitted to the board by the pharmacist in charge of a specific hospital pharmacy in this
31 state or a specific closed-door pharmacy. At any time during which the pharmacist directly
32 supervises four or more pharmacy technicians, two of such technicians must be certified.
33 At any time during which the pharmacist directly supervises three pharmacy technicians,
34 one of such technicians must be certified. No certification is required for pharmacy
35 technicians in pharmacies at any time during which the pharmacist directly supervises one
36 or two pharmacy technicians. In order to be certified, pharmacy technicians must:

- 37 (1) Have successfully passed a certification program approved by the board of pharmacy;
38 (2) Have successfully passed an employer's training and assessment program which has
39 been approved by the board of pharmacy; or
40 (3) Have been certified by either the Pharmacy Technician Certification Board or any
41 other nationally recognized certifying body approved by the board of pharmacy.

42 As used in this subsection, the term 'closed-door pharmacy' means a pharmacy that
43 provides specialized services and is not open to the general public."

44 **PART II**

45 *Drug repository program*

46 **SECTION 2-1.**

47 The General Assembly finds:

48 (1) Access to affordable medications is a public health issue that disproportionately
49 impacts vulnerable patients, and a state's drug repository program can serve as a solution
50 to thousands of families for life-saving and life-preserving medications; and

51 (2) Participating recipient organizations can provide a valuable community benefit to
52 families in need by making donated medications available and will be authorized to utilize
53 additional pharmacy technicians to distribute donated medications under the drug
54 repository program.

55 **SECTION 2-2.**

56 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising
57 Code Section 31-8-300, relating to definitions relative to the drug repository program, as
58 follows:

59 "31-8-300.

60 As used in this article, the term:

61 (1) 'Controlled substance' means a drug, substance, or immediate precursor in Schedules
62 I through V of Code Sections 16-13-25 through 16-13-29 and Schedules I through V of
63 21 C.F.R. Part 1308 as of January 1, 2023.

64 (2) 'Disposition' means destroy, dispose of, return, quarantine, or otherwise prevent from
65 further distribution.

66 (3) 'Eligible drug' means an over-the-counter or prescription drug, including drugs
 67 labeled specifically for investigational use and approved by the United States Food and
 68 Drug Administration as such, which may be donated to the program pursuant to Code
 69 Section 31-8-301.

70 ~~(2)~~(4) 'Eligible patient' means an individual who is indigent, uninsured, underinsured, or
 71 enrolled in a public assistance health benefits program, in accordance with criteria
 72 established by the Department of Public Health pursuant to Code Section 31-8-304.
 73 Other individuals may be considered eligible patients if the need for donated drugs for
 74 indigent, uninsured, underinsured, and public assistance health benefits program patients
 75 is less than the supply of donated drugs.

76 ~~(3)~~(5) 'Eligible recipient' means a pharmacy, hospital, federally qualified health center,
 77 nonprofit clinic, or other entity meeting the criteria established by the Department of
 78 Public Health pursuant to Code Section 31-8-304.

79 (6) 'Expiration date' means the original expiration date provided by the manufacturer or
 80 repackager or the expiration date provided on the medication's packaging or prescription
 81 drug label.

82 ~~(4)~~(7) 'Health care facility' means a:

- 83 (A) Nursing home licensed pursuant to Article 1 of Chapter 7 of this title;
- 84 (B) Personal care home licensed pursuant to Code Section 31-7-12;
- 85 (C) Assisted living community licensed pursuant to Code Section 31-7-12.2;
- 86 (D) Hospice licensed pursuant to Article 9 of Chapter 7 of this title; and
- 87 (E) Home health agency licensed pursuant to Article 7 of Chapter 7 of this title.

88 ~~(5)~~(8) 'Health care professional' means any of the following who provide medical, dental,
 89 or other health related ~~diagnosis~~ diagnoses, care, or treatment:

- 90 (A) Physicians licensed to practice medicine under Chapter 34 of Title 43;
- 91 (B) Registered nurses and licensed practical nurses licensed under Chapter 26 of
 92 Title 43;

93 (C) Physician assistants licensed under Chapter 34 of Title 43;

94 (D) Dentists and dental hygienists licensed under Chapter 11 of Title 43;

95 (E) Optometrists licensed under Chapter 30 of Title 43; and

96 (F) Pharmacists licensed under Chapter 4 of Title 26.

97 ~~(6)~~(9) 'Hospital' means a facility licensed pursuant to Chapter 7 of this title.

98 ~~(7)~~(10) 'Program' means the drug repository program established pursuant to Code
99 Section 31-8-301.

100 (11) 'Short-dated' means within five months of a drug's expiration date."

101 **SECTION 2-3.**

102 Said title is further amended by revising Code Section 31-8-301, relating to the establishment
103 of a drug repository program and criteria and requirements for unused over-the-counter and
104 prescription drugs, as follows:

105 "31-8-301.

106 (a) The Department of Public Health shall establish a drug repository program to accept
107 and dispense over-the-counter and prescription drugs donated for the purpose of being
108 dispensed to eligible patients.

109 (b) Drugs shall only be dispensed pursuant to the program if:

110 (1) For prescription drugs, ~~they do~~ with an expiration date that does not expire before the
111 completion of the medication by the eligible patient based on the prescribing health care
112 professional's directions for use and, for over-the-counter drugs, they do with an
113 expiration date that does not expire before use by the eligible patient based on the
114 directions for use on the manufacturer's label; and

115 (2) The drugs were donated in unopened tamper-evident packaging as defined by United
116 States Pharmacopeia General Chapter 659, Packaging and Storage Requirements,
117 including but not limited to unopened unit-dose and multiple-dose packaging.

118 (c) The following drugs shall not be donated to the program:

- 119 (1) Controlled substances;
- 120 (2) Drugs subject to a federal Food and Drug Administration managed risk evaluation
121 and mitigation strategy pursuant to Section 355-1 of Title 21 of the United States Code
122 if inventory transfer is prohibited by such strategy; or
- 123 (3) Drugs that there is reason to believe are adulterated pursuant to Code Section 26-3-7."

124 **SECTION 2-4.**

125 Said title is further amended in Code Section 31-8-302, relating to procedures for donation
126 and dispensing of unused over-the-counter and prescription drugs, by adding new subsections
127 to read as follows:

128 "(f) In addition to the maximum number of pharmacy technicians that are authorized to be
129 under the direct supervision of a pharmacist pursuant to subsection (d) of Code
130 Section 26-4-82, a participating pharmacy may utilize up to two additional pharmacy
131 technicians under the direct supervision of such pharmacist for duties related to the
132 program; provided, however, that the two such additional pharmacy technicians shall not
133 be authorized to assist the supervising pharmacist in connection with any activities related
134 to completing a prescription drug order or preparation of a prescription drug for a patient,
135 but shall only be authorized to perform non-dispensing related duties, such as, but not
136 limited to, receiving and stocking inventory.

137 (g) A reverse drug distributor permitted or licensed by the State Board of Pharmacy shall:

138 (1) Make and document diligent efforts to donate eligible drugs within 30 days of taking
139 possession to the program in accordance with Code Section 31-8-301 rather than destroy
140 such drugs;

141 (2) Not directly or indirectly by transferring to another entity or by other means, cause
142 eligible drugs to be dispositioned, become short-dated, expire, or otherwise become
143 ineligible for donation; and

144 (3) Make and document diligent efforts to ensure that any policy, contract, or other
145 business arrangement between the reverse drug distributor and its clients or other parties
146 does not prohibit the donation of eligible drugs received from any such client or other
147 party to the program in accordance with Code Section 31-8-301; provides for the same
148 rate of compensation for the client or other party for donation of eligible drugs and other
149 disposition of such drugs; and does not require an eligible drug to be dispositioned,
150 become short-dated, expire, or otherwise become ineligible for donation.

151 (h) Any person or entity eligible to donate drugs under the program shall be allowed to
152 donate eligible drugs in the same manner, at the same rate of compensation, and paid for
153 by the same parties as applies to the disposition of drugs regardless of any policy, contract,
154 or other business arrangement that would have otherwise directly or indirectly by
155 transferring to another entity or by other means required an eligible drug to be
156 dispositioned, become short-dated, expire, or otherwise become ineligible for donation.

157 (i) The donation, brokering, or other facilitation of a donation of a drug pursuant to this
158 program shall not be considered wholesale distribution as defined in Code Section
159 26-4-201 and shall not be subject to or require licensure as a wholesale distributor pursuant
160 to Chapter 4 of Title 26.

161 (j) Eligible recipients that provide pharmacy related services only for the purpose of
162 dispensing donated or purchased drugs pursuant to the program shall not be subject to
163 comprehensive formulary or minimum supply of drugs requirements contained in
164 Chapter 4 of Title 26."

165 **SECTION 2-5.**

166 Said article is further amended by adding new Code sections to read as follows:

167 "31-8-305.

168 (a) Notwithstanding Article 5 of Chapter 4 of Title 26, an eligible recipient may substitute:

169 (1) A prescribed drug with a therapeutically equivalent drug; or

- 170 (2) A biological product with an interchangeable biological product.
171 (b) Substitutions made pursuant to subsection (a) of this Code section may include, but are
172 not limited to:
173 (1) Splitting a combination drug into two or more drugs;
174 (2) Combining two or more drugs into a combination drug; and
175 (3) Substituting a different form of a prescribed drug, including, but not limited to, an
176 oral tablet or capsule.
177 (c) If an eligible recipient dispenses or administers a substitute drug pursuant to this Code
178 section, such substitution shall be communicated to the patient and the prescribing health
179 care professional, unless the program's substitution policy is readily available on the
180 eligible recipient's website.
181 (d) Whenever a substitution is made, the eligible recipient shall record on the original
182 prescription or the patient's prescription drug label that there has been a substitution and
183 the identity of the dispensed drug product or interchangeable biological product.

184 31-8-306.

- 185 (a) It is the intent of the General Assembly that a portion of the proceeds of settlements
186 received by the state relating to prescription drugs that are not controlled substances be
187 appropriated for purposes of the program and distributed to eligible recipients in proportion
188 to each such recipient's participation rate in the program.
189 (b) It is further the intent of the General Assembly that if funds are appropriated for
190 purposes of this article, the department shall be required to distribute such appropriations
191 to eligible recipients in proportion to each such recipient's level of participation in the
192 program.

193 31-8-307.

194 (a) Hospitals and pharmacies licensed in this state and state programs that provide health
195 care coverage or health care services to patients, recipients, or other individuals in this
196 state, including, but not limited to, Medicaid, PeachCare for Kids Program, alcohol and
197 drug awareness programs, and the Department of Corrections shall provide such patients,
198 recipients, or other individuals with referral information to the program for eligible drugs
199 available through the program for:

200 (1) Drugs not currently covered under a state program;

201 (2) Patients who do not meet the eligibility coverage for a state program or become
202 unenrolled or leave a state program;

203 (3) Drugs that are covered under a state program but are otherwise inaccessible to a
204 patient due to, but not limited to a gap in coverage or out-of-pocket costs that are too high
205 for a specific patient, recipient, or other individual; a prior authorization requirement; step
206 therapy requirements; or high co-payments; or

207 (4) A patient, recipient, or other individual for a drug that is covered under a state
208 program but that the claim for coverage is denied with respect to the specific patient,
209 recipient, or other individual.

210 (b) Recipients of the federal Title X Family Planning Program shall make and document
211 diligent efforts to subcontract with interested eligible recipients participating in the
212 program to offer family planning services to rural and low-income populations.

213 (c) If an eligible recipient offers value-added services and referrals, in addition to just
214 providing medicine, such eligible recipient may also be eligible for discounted medication
215 pricing to help widen such eligible recipient's formularies of medication and increase
216 financial sustainability of its participation in the program."

217 **SECTION 2-6.**

218 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
219 amended in Code Section 48-8-3, relating to exemptions from sales and use taxes, by
220 deleting "or" at the end of paragraph (103), by replacing the period with "; or" at the end of
221 paragraph (104), and by adding a new paragraph to read as follows:

222 "(105) Sales to or by an eligible recipient, as defined in Code Section 31-8-300, which
223 provides pharmacy related services only for the purpose of dispensing donated or
224 purchased drugs pursuant to the drug repository program established under Article 10 of
225 Chapter 8 of Title 31, if such organization qualifies as a tax-exempt organization under
226 Section 501(c)(3) of the Internal Revenue Code or is an organization that is treated for
227 federal income tax purposes as a disregarded entity of a tax-exempt organization under
228 Section 501(c)(3) of the Internal Revenue Code."

229 **PART III**

230 *Effective date and repealer*

231 **SECTION 3-1.**

232 This Act shall become effective upon its approval by the Governor or upon its becoming law
233 without such approval; provided, however, that Section 2-6 of this Act shall be applicable
234 to taxable years beginning on or after January 1, 2025.

235 **SECTION 3-2.**

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