

House Bill 799

By: Representative Ehrhart of the 36th

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, pseudoephedrine, and
6 phenylpropanolamine; to provide for definitions; to change provisions relating to exceptions;
7 to provide for related matters; to 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,' 'pseudoephedrine,' or 'phenylpropanolamine' means any drug product
18 containing ephedrine, pseudoephedrine, or phenylpropanolamine base, or any of their
19 salts, isomers, or salts of isomers, alone or in a mixture.

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

23 (3) 'NADDI' means the National Association of Drug Diversion Investigators.

24 (4) 'Real-time electronic logging system' means an electronic system approved by the
25 Georgia Bureau of Investigation which is operated in real time and which can track
26 required information and generate a stop sale alert to notify a retail distributor that a

27 purchase of ephedrine, pseudoephedrine, or phenylpropanolamine which exceeds the
 28 quantity limits set forth in this Code section is being attempted. Such system shall:

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

33 (B) Be offered free of charge to the state, retail distributors, and law enforcement
 34 agencies; and

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

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

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

47 ~~(3)~~(6) 'Retail distributor' means a grocery store, general merchandise store, drugstore,
 48 convenience store, or other related entity, the activities of which involve the distribution
 49 of products containing ephedrine, pseudoephedrine, or phenylpropanolamine products.

50 ~~(b)(1) It is shall be unlawful for any person, other than a person or entity described in~~
 51 ~~paragraph (28), (29), or (33) of Code Section 26-4-5 or a retail distributor, to knowingly~~
 52 ~~possess any product that contains ephedrine, pseudoephedrine, or phenylpropanolamine~~
 53 ~~base in an amount which exceeds 300 pills, tablets, gelcaps, capsules, or other individual~~
 54 ~~units or more than ~~9~~ 12 grams of ephedrine, pseudoephedrine, ~~or~~ phenylpropanolamine~~
 55 ~~base, their salts, isomers, or salts of isomers, or a combination of any of these substances,~~
 56 ~~whichever is smaller.~~

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

61 (3) Any person who violates the provisions of this Code section shall be guilty of a
 62 felony and, upon conviction thereof, shall be punished by imprisonment for not less than
 63 one year nor more than ~~ten~~ 15 years.

64 ~~(b.1)(c)~~(1) Products whose sole active ingredient is pseudoephedrine may be offered for
65 retail sale only if sold in blister packaging. Such products ~~may~~ shall not be offered for
66 retail sale by self-service but shall only be offered for retail sale from behind a counter
67 or other barrier so that such products are not directly accessible by the public ~~but~~ and only
68 by ~~a retail store~~ an employee or agent of a retail distributor.

69 (2) Retail distributors shall require every retail purchaser of a product containing
70 pseudoephedrine to furnish valid government issued photographic identification of the
71 purchaser. The retail distributor shall maintain a record of required information for each
72 sale of a nonprescription product which contains ephedrine, pseudoephedrine, or
73 phenylpropanolamine base. Retail distributors shall require that every purchaser sign a
74 written or electronic log attesting to the validity of the required information.

75 (3) Retail distributors shall maintain a record of required information for a period of two
76 years from the date of each transaction. Except as authorized by paragraph (6) of this
77 subsection, the records maintained by a retail distributor pursuant to this Code section
78 shall not be disclosed. Retail distributors may destroy the required information collected
79 pursuant to this subsection after two years from the date of the transaction.

80 (4)(A) On and after January 1, 2015, retail distributors shall, before completing a sale
81 of a nonprescription product which contains ephedrine, pseudoephedrine, or
82 phenylpropanolamine base, electronically track all such sales and submit the required
83 information to a real-time electronic logging system. A retail distributor shall not
84 complete the sale of a nonprescription product which contains ephedrine,
85 pseudoephedrine, or phenylpropanolamine base if the real-time electronic logging
86 system generates a stop sale alert except as provided in subparagraph (a)(4)(A) of this
87 Code section.

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

94 (5) If a retail distributor selling a nonprescription product which contains ephedrine,
95 pseudoephedrine, or phenylpropanolamine base experiences mechanical or electronic
96 failure of the real-time electronic logging system and is unable to comply with the
97 electronic sales tracking requirement, the retail distributor shall maintain a written log or
98 an alternative electronic recording mechanism until such time as the retail distributor is
99 able to comply with the electronic sales tracking requirement.

100 (6) Provided that the Georgia Bureau of Investigation executes a memorandum of
 101 understanding with NADDI governing access to Georgia transaction records, NADDI
 102 shall forward such records to the Georgia Bureau of Investigation weekly and provide
 103 real-time access to such records through an online portal to law enforcement agencies in
 104 this state as authorized by the Georgia Bureau of Investigation.

105 ~~(2)(7) No person shall deliver in any single over the counter sale more than three~~
 106 ~~packages of any product containing pseudoephedrine as the sole active ingredient or in~~
 107 ~~combination with other active ingredients or any number of packages that contain a~~
 108 ~~combined total of more than nine grams of pseudoephedrine or its base, salts, optical~~
 109 ~~isomers, or salts of its optical isomers~~ distribute or purchase any nonprescription product
 110 containing more than 3.6 grams of ephedrine, pseudoephedrine, or phenylpropanolamine
 111 base per day in dosage form or more than 12 grams of ephedrine, pseudoephedrine, or
 112 phenylpropanolamine base per 30 day period in dosage form of any product. The limits
 113 set forth in this paragraph shall apply to the total amount of ephedrine, pseudoephedrine,
 114 or phenylpropanolamine base contained in the product and not the overall weight of such
 115 product.

116 ~~(3)(8) It shall be unlawful for a retail distributor to purchase any product containing~~
 117 ~~whose sole active ingredient is pseudoephedrine from any person or entity other than a~~
 118 ~~manufacturer or a wholesale distributor licensed by the State Board of Pharmacy.~~

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

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

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

125 ~~(5)(9) This subsection shall preempt and supersede all local ordinances or regulations~~
 126 ~~governing the retail sale of over the counter products containing whose sole active~~
 127 ~~ingredient is pseudoephedrine by a retail business distributor except such local ordinances~~
 128 ~~or regulations that existed on or before December 31, 2004. Effective January 1, 2006,~~
 129 ~~this subsection shall preempt and supersede all local ordinances.~~

130 ~~(6)(10)(A) Except as otherwise provided herein in subsections (b) and (e) of this Code~~
 131 ~~section, it shall be unlawful for any person knowingly to violate any prohibition~~
 132 ~~contained in paragraph (1), (2), or (3), (4), (7), or (8) of this subsection.~~

133 ~~(B) Any person convicted of a violation of paragraph (1), or (2), (4), or (7) of this~~
 134 ~~subsection shall be guilty of a misdemeanor which, upon the first conviction, shall be~~
 135 ~~punished by a fine of not more than \$500.00 and, upon the second or subsequent~~

136 conviction, shall be punished by not more than six months' imprisonment or a fine of
 137 not more than \$1,000.00, or both.

138 (C) Any person convicted of a violation of paragraph ~~(3)~~ (8) of this subsection shall,
 139 upon the first conviction, be guilty of a misdemeanor and, upon the second or
 140 subsequent conviction, be guilty of a misdemeanor of a high and aggravated nature.

141 (D) It shall be a defense to a prosecution of a retail ~~business or owner or operator~~
 142 ~~thereof~~ distributor for violation of paragraph ~~(1), or (2), (4), (7), or (8)~~ of this subsection
 143 that, at the time of the alleged violation, all of the employees of the retail ~~business~~
 144 distributor had completed training complying with standards established under Georgia
 145 Meth Watch; as such standards existed on February 1, 2014, and the retail ~~business~~
 146 distributor was in compliance with procedures established by Georgia Meth Watch, and
 147 ~~the defendant did not knowingly, willfully, or intentionally violate paragraph (1) or (2)~~
 148 ~~of this subsection. For purposes of this subsection only, the term 'Georgia Meth Watch'~~
 149 ~~shall mean that program entitled 'Georgia Meth Watch' or similar program which has~~
 150 ~~been promulgated, approved, and distributed by the Georgia Council on Substance~~
 151 ~~Abuse as such standards existed on February 1, 2014.~~

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

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

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

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

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

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

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

173 ~~(d)~~(e) Except as authorized by this article, it is unlawful for any person to possess, have
174 under his or her control, manufacture, deliver, distribute, dispense, administer, purchase,
175 sell, or possess with intent to distribute any ~~substance~~ product containing any amounts of
176 ephedrine, pseudoephedrine, or phenylpropanolamine base, ~~or any of their salts, optical~~
177 ~~isomers, or salts of optical isomers~~ which have been altered from their original condition
178 so as to be powdered, liquefied, or crushed. This subsection shall not apply to any of the
179 substances identified within this subsection which are possessed or altered for a legitimate
180 medical purpose. Any person who violates this subsection shall be guilty of a felony and,
181 upon conviction thereof, shall be punished by imprisonment for not less than one year nor
182 more than ~~ten~~ 15 years."

183

SECTION 2.

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