

Senate Bill 116

By: Senators Mullis of the 53rd, Hamrick of the 30th, Smith of the 52nd, Thomas of the 54th, Heath of the 31st and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to
2 controlled substances, so as to limit the sale and manner of sale of products containing
3 pseudoephedrine; to provide for exceptions; to provide for mitigation of punishment under
4 certain circumstances; to provide for penalties; to restrict the sale, transfer, manufacture,
5 purchase for resale, and furnishing of certain precursor chemicals; to provide for definitions;
6 to authorize the State Board of Pharmacy to promulgate certain rules and regulations
7 regarding precursor chemicals and licenses and permits; to provide for licensing and
8 permitting of persons who sell, transfer, manufacture, purchase for resale, or otherwise
9 furnish or possess precursor chemicals; to require certain records to be maintained; to
10 provide for exceptions; to provide for certain forfeitures; to provide for penalties; to provide
11 for certain reports; to provide that it is illegal for a person to possess any substance with the
12 intent to use such substance in the manufacture of a Schedule I or Schedule II controlled
13 substance or to knowingly convey such substance to another for use in the manufacture of
14 a Schedule I or Schedule II controlled substance; to provide for certain considerations with
15 regard to determining whether such substances were possessed illegally; to provide for
16 exceptions; to provide for penalties; to reduce the quantities of methamphetamine and
17 amphetamine necessary for increased penalties for trafficking in methamphetamine and
18 amphetamine; to provide for related matters; to provide an effective date; to repeal
19 conflicting laws; and for other purposes.

20 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

21 **SECTION 1.**

22 Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to controlled
23 substances, is amended by adding a new subsection (b.1) to Code Section 16-13-30.3,
24 relating to possession of substances containing ephedrine, pseudoephedrine, and
25 phenylpropanolamine, to read as follows:

1 "(b.1)(1) On and after July 1, 2005, products whose sole active ingredient is
2 pseudoephedrine cannot be offered for retail sale by self-service, but must be stored
3 behind a counter or other barrier so that such products are not accessible by the public
4 and are only accessible by a retail store employee.

5 (2) On and after July 1, 2005, no person shall deliver in any single over the counter sale
6 more than three packages or any number of packages that contain a combined total of
7 more than nine grams of any product containing pseudoephedrine as the sole active
8 ingredient or in combination with other active ingredients.

9 (3) This subsection shall not apply to:

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

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

15 (4) This subsection shall preempt all local ordinances or regulations governing the
16 possession by individuals and sale by a retail distributor of over the counter products
17 containing pseudoephedrine.

18 (5) A retailer who is the general owner or operator of an establishment where
19 pseudoephedrine products are available for sale who violates this subsection shall not be
20 penalized pursuant to this subsection if the retailer documents that a Georgia Meth Watch
21 employee training program was conducted by or with the approval of the Georgia
22 Council on Substance Abuse.

23 (6) A person who violates paragraph (1) or (2) of this subsection shall be guilty of a
24 misdemeanor on the first offense and a misdemeanor of a high and aggravated nature on
25 a second and subsequent offense."

26 SECTION 2.

27 Said chapter is further amended by adding a new Code Section 16-13-30.4 to read as follows:

28 "16-13-30.4.

29 (a) As used in this Code section and unless otherwise specified, the term:

30 (1) 'Board' or 'Board of Pharmacy' shall mean the Georgia State Board of Pharmacy.

31 (2) 'Listed precursor chemical' means a chemical substance specifically designated as
32 such by the Georgia State Board of Pharmacy that, in addition to legitimate uses, is used
33 in the unlawful manufacture of a controlled substance or controlled substances.

34 (3) 'Person' means any individual, corporation, partnership, association, or other entity
35 which manufactures, sells, transfers, or possesses a listed precursor chemical.

1 (b) The Board of Pharmacy shall, within one year after the effective date of this Code
2 section, designate by rule listed precursor chemicals. The Board of Pharmacy may
3 subsequently by rule add chemicals as listed precursor chemicals following the criteria set
4 forth in paragraph (2) of subsection (a) of this Code section and may also by rule delete any
5 substance previously named as a listed precursor chemical. In no event shall a chemical
6 also be designated as a listed precursor chemical if it has been determined to be a
7 controlled substance pursuant to this chapter.

8 (c) If any chemical is designated or deleted as a listed precursor chemical under federal
9 law and notice thereof is given to the Board of Pharmacy, the board shall similarly list or
10 delete the substance under this Code section after the expiration of 30 days from
11 publication in the federal register of a final rule or order designating or deleting such
12 substance as a listed precursor chemical.

13 (d) Until the Board of Pharmacy adopts a rule designating listed precursor chemicals as
14 required by subsection (b) of this Code section, the following chemicals or substances are
15 hereby deemed listed precursor chemicals:

16 (1) Ephedrine, its salts, optical isomers, and salts of optical isomers;

17 (2) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers; and

18 (3) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.

19 (e)(1) A manufacturer, wholesaler, retailer, or other person who sells, transfers,
20 manufactures, purchases for resale, or otherwise furnishes any listed precursor chemical
21 must first obtain a license annually from the Board of Pharmacy.

22 (2)(A) The procedure for obtaining a license to sell, transfer, manufacture, purchase
23 for resale, or otherwise furnish a listed precursor chemical shall be as follows:

24 (i) Submit an application to the Board of Pharmacy on forms prescribed and
25 furnished by the Board of Pharmacy; and

26 (ii) Demonstrate a legitimate reason to sell, transfer, manufacture, purchase for
27 resale, or otherwise furnish listed precursor chemicals.

28 (B) The content of the application for a license shall include, but not be limited to, the
29 following information:

30 (i) Name of business;

31 (ii) Physical address and mailing address of business;

32 (iii) Telephone number of business;

33 (iv) Names and physical home addresses of business owners;

34 (v) Location of all storage facilities used by the business for listed precursor
35 chemicals;

36 (vi) Identification of listed precursor chemicals to be sold, transferred, manufactured,
37 purchased for resale, or otherwise furnished; and

1 (vii) Criminal history of all business owners.

2 (3) A licensee shall make an accurate and legible record of any transaction of listed
3 precursor chemicals and maintain such record together with the following records for a
4 period of at least two years:

5 (A) Inventory on hand;

6 (B) Purchase receipts;

7 (C) Manufacturing records including the date and quantity of any listed precursor
8 chemicals manufactured, the quantity of listed precursor chemicals used in
9 manufacturing any other substance or product, and the inventory on hand of listed
10 precursor chemicals after the manufacturing of any other substance or product;

11 (D) Copies of the Board of Pharmacy licenses or permits; and

12 (E) Records of substance disposal.

13 (f)(1) Any person having a legitimate need for using a listed precursor chemical shall
14 apply in person to the Board of Pharmacy for a permit to possess such chemical each time
15 said chemical is obtained.

16 (2) The following must be submitted in person to the Board of Pharmacy to receive a
17 permit for possession of listed precursor chemicals:

18 (A) A driver's license number or other personal identification certificate number; date
19 of birth; residential or mailing address, other than a post office box number; and a
20 driver's license or personal identification card issued by the Department of Motor
21 Vehicle Safety which contains a photograph of the recipient;

22 (B) In the event the applicant is a corporation, the information in this paragraph shall
23 be required of the person making application for the permit. In addition, the person
24 making application for the permit on behalf of a corporation shall disclose his or her
25 relationship to the corporation;

26 (C) The make, model, model year, state where licensed, and license number of the
27 motor vehicle owned and operated by the recipient;

28 (D) The serial number of the permit issued in the name of the recipient by the Board
29 of Pharmacy pursuant to this Code section, which shall be obtained from personal
30 observation of the permit;

31 (E) A complete description of how the chemical is to be used; and

32 (F) The location where the chemical is to be stored and used.

33 (3) The permit shall consist of three parts, including:

34 (A) The original to be retained by the Board of Pharmacy;

35 (B) A copy to be retained by the manufacturer, wholesaler, retailer, or other person
36 furnishing listed precursor chemicals; and

- 1 (C) A copy to be attached to the container of the listed precursor chemical and to be
2 kept with the chemical at all times.
- 3 (g) A license or permit, obtained pursuant to this Code section, shall be denied, suspended,
4 or revoked by the Board of Pharmacy upon finding that the licensee or permit holder has:
- 5 (1) Furnished false or fraudulent material information in any application filed under this
6 Code section;
- 7 (2) Been convicted of a crime under any state or federal law relating to any controlled
8 substance;
- 9 (3) Had his or her federal registration suspended or revoked to manufacture, distribute,
10 or dispense controlled substances;
- 11 (4) Violated the provisions of Chapter 4 of Title 26; or
- 12 (5) Failed to maintain effective controls against the diversion of listed precursor
13 chemicals to unauthorized persons or entities.
- 14 (h)(1) Any person who sells, transfers, purchases for resale, or otherwise furnishes to a
15 person in this state a listed precursor chemical shall submit a report of the transaction on
16 a form obtained from the Board of Pharmacy that includes the information required by
17 paragraph (2) of subsection (f) of this Code section.
- 18 (2) Upon the request of any manufacturer, wholesaler, retailer, or other person who sells,
19 transfers, purchases for resale, or otherwise furnishes a listed precursor chemical, the
20 Board of Pharmacy shall supply a form for the submission of:
- 21 (A) The report required by paragraph (1) of this subsection;
- 22 (B) The name and measured amount of the listed precursor chemical delivered; and
- 23 (C) Such other information as the board may require pursuant to the rules and
24 regulations of the Board of Pharmacy.
- 25 (i)(1) Any licensee or permit holder who discovers a loss or theft of or disposes of a
26 listed precursor chemical shall:
- 27 (A) Submit a report of the loss, theft, or disposal to the Board of Pharmacy no later
28 than the third business day after the date the manufacturer, wholesaler, retailer, or other
29 person furnishing listed precursor chemicals discovers the loss or theft or after the
30 actual disposal; and
- 31 (B) Include the amount of loss, theft, or disposal in the report. Any disposal of listed
32 precursor chemicals must adhere to the rules and regulations of the United States
33 Environmental Protection Administration and shall be performed at the expense of the
34 licensee or permit holder.
- 35 (2) A manufacturer, wholesaler, retailer, or other person who sells, transfers, possesses,
36 uses, or otherwise furnishes any listed precursor chemical shall:

1 (A) Maintain records as specified in paragraph (3) of subsection (e) of this Code
2 section or as prescribed by the rule of the Board of Pharmacy;

3 (B) Permit law enforcement authorities to conduct on-site audits, inspections, or
4 inventories and inspect all records made in accordance with this Code section at any
5 reasonable time; and

6 (C) Cooperate with the audit, inspection, inventory, or copying of any records.

7 (j) The Board of Pharmacy may adopt reasonable rules and regulations to effectuate the
8 provisions of this Code section. The board is further authorized to charge reasonable fees
9 to defray expenses incurred in issuing any licenses or permits, maintaining any records or
10 forms required by this Code section, and the administration of the provisions of this Code
11 section.

12 (k)(1) The provisions of this Code section shall not apply to the sale or transfer of
13 products which include a listed precursor chemical if the products may be sold lawfully
14 with a prescription or over the counter without a prescription under the federal Food,
15 Drug, and Cosmetic Act (21 U.S.C. Section 301, et seq.) or under a rule adopted pursuant
16 to that act.

17 (2) Notwithstanding any other provision of this Code section to the contrary, no person
18 shall be required to obtain a license or permit for the sale, receipt, transfer, manufacture,
19 or possession of a listed precursor chemical when:

20 (A) Such person is a duly licensed physician, dentist, veterinarian, or pharmacist when
21 the sale, receipt, transfer, manufacture, or possession of such listed precursor chemical
22 is a transaction otherwise lawfully authorized;

23 (B) Such lawful distribution takes place in the usual course of business between agents
24 or employees of a single regulated person; or

25 (C) A listed precursor chemical is delivered to or by a common or contract carrier for
26 carriage in the lawful and usual course of the business of the common or contract
27 carrier or to or by a warehouseman for storage in the lawful and usual course of the
28 business of the warehouseman.

29 (l) All listed precursor chemicals that have been or that are intended to be sold, transferred,
30 manufactured, purchased for resale, possessed or otherwise transferred in violation of a
31 provision of this Code section shall be subject to forfeiture to the state and no property
32 right shall exist in them.

33 (m)(1) Any person who manufactures, sells, transfers, receives, or possesses a listed
34 precursor chemical violates this Code section if the person:

35 (A) Knowingly fails to comply with the reporting requirements of this Code section;

36 (B) Knowingly makes a false statement in a report or record required by this Code
37 section or the rules adopted thereunder; or

1 (C) Is required by this Code section to have a listed precursor chemical license or
2 permit, is a person as defined by this Code section, and knowingly or deliberately fails
3 to obtain such a license or permit.

4 (2) It shall be illegal for a person to possess, sell, transfer, or otherwise furnish a listed
5 precursor chemical if such person possesses, sells, transfers, or furnishes the substance
6 with the knowledge or intent that the substance will be used in the unlawful manufacture
7 of a controlled substance.

8 (3) A person who violates this Code section shall be guilty of a felony and, upon
9 conviction thereof, shall be punished by imprisonment for not less than one nor more than
10 15 years or by a fine not to exceed \$100,000.00, or both."

11 SECTION 3.

12 Said chapter is further amended by adding a new Code Section 16-13-30.6 to read as follows:

13 "16-13-30.6.

14 (a) It shall be illegal for a person to possess, whether acquired through theft or other
15 means, any substance with the intent to:

16 (1) Use such substance in the manufacture of a Schedule I or Schedule II controlled
17 substance; or

18 (2) To knowingly convey such substance to another for use in the manufacture of a
19 Schedule I or Schedule II controlled substance.

20 (b) In determining whether a particular substance is possessed with the intent required to
21 violate subsection (a) of this Code section, the court or other authority making such a
22 determination shall, in addition to all other logically relevant factors, consider the
23 following:

24 (1) Statements by the owner or anyone in control of the substances concerning its use;

25 (2) Prior convictions, if any, of the owner or of anyone in control of the substances for
26 violation of any state or federal law relating to the sale or manufacture of controlled
27 substances;

28 (3) Instructions or descriptive materials of any kind accompanying the substance or
29 found in the owner's or controlling person's possession concerning, explaining, or
30 depicting its use;

31 (4) The manner in which the substance is displayed or offered for sale;

32 (5) The quantity and location of the substance considered in relation to the existence and
33 scope of legitimate uses for the substance in the community; and

34 (6) Expert testimony concerning the substance's use.

35 (c) This Code section shall not apply where possession was by a person authorized by law
36 to dispense, prescribe, manufacture, or possess the substance in question.

1 (d) A person who violates this Code section shall be guilty of a felony and, upon
 2 conviction thereof, shall be punished by imprisonment for not less than one nor more than
 3 fifteen years or by a fine not to exceed \$100,000.00, or both."

4 SECTION 4.

5 Said chapter is further amended by striking subsections (e) and (f) of Code Section 16-13-31,
 6 relating to trafficking in methamphetamine and amphetamine, and inserting in lieu thereof
 7 new subsections (e) and (f) to read as follows:

8 "(e) Any person who knowingly sells, delivers, or brings into this state or has possession
 9 of 28 grams or more of methamphetamine, amphetamine, or any mixture containing either
 10 methamphetamine or amphetamine, as described in Schedule II, in violation of this article
 11 commits the felony offense of trafficking in methamphetamine or amphetamine and, upon
 12 conviction thereof, shall be punished as follows:

13 (1) If the quantity of methamphetamine, amphetamine, or a mixture containing either
 14 substance involved is 28 grams or more, but less than ~~200~~ 100 grams, the person shall be
 15 sentenced to a mandatory minimum term of imprisonment of ten years and shall pay a
 16 fine of \$200,000.00;

17 (2) If the quantity of methamphetamine, amphetamine, or a mixture containing either
 18 substance involved is ~~200~~ 100 grams or more, but less than ~~400~~ 300 grams, the person
 19 shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall
 20 pay a fine of \$300,000.00; and

21 (3) If the quantity of methamphetamine, amphetamine, or a mixture containing either
 22 substance involved is ~~400~~ 300 grams or more, the person shall be sentenced to a
 23 mandatory minimum term of imprisonment of 25 years and shall pay a fine of \$1 million.

24 (f) Any person who knowingly manufactures methamphetamine, amphetamine, or any
 25 mixture containing either methamphetamine or amphetamine, as described in Schedule II,
 26 in violation of this article commits the felony offense of trafficking methamphetamine or
 27 amphetamine and, upon conviction thereof, shall be punished as follows:

28 (1) If the quantity of methamphetamine, amphetamine, or a mixture containing either
 29 substance involved is less than ~~200~~ 28 grams, the person shall be sentenced to a
 30 mandatory minimum term of imprisonment of ten years and shall pay a fine of
 31 \$200,000.00;

32 (2) If the quantity of methamphetamine, amphetamine, or a mixture containing either
 33 substance involved is ~~200~~ 28 grams or more, but less than ~~400~~ 300 grams, the person
 34 shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall
 35 pay a fine of \$300,000.00; and

1 (3) If the quantity of methamphetamine, amphetamine, or a mixture containing either
2 substance involved is ~~400~~ 300 grams or more, the person shall be sentenced to a
3 mandatory minimum term of imprisonment of 25 years and shall pay a fine of \$1
4 million."

5 **SECTION 5.**

6 This Act shall become effective upon its approval by the Governor or upon its becoming law
7 without such approval.

8 **SECTION 6.**

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