

The Senate Health and Human Services Committee offers the following substitute to SB 116:

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:

SECTION 1.

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

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, its base, optical isomers, and salts of optical isomers;

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

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

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

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

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

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

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

31 (i) Name of business;

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

33 (iii) Telephone number of business;

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

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

- 1 (vi) Identification of listed precursor chemicals to be sold, transferred, manufactured,
2 purchased for resale, or otherwise furnished; and
3 (vii) Criminal history of all business owners.
- 4 (3) A licensee shall make an accurate and legible record of any transaction of listed
5 precursor chemicals and maintain such record together with the following records for a
6 period of at least two years:
- 7 (A) Inventory on hand;
 - 8 (B) Purchase receipts;
 - 9 (C) Manufacturing records including the date and quantity of any listed precursor
10 chemicals manufactured, the quantity of listed precursor chemicals used in
11 manufacturing any other substance or product, and the inventory on hand of listed
12 precursor chemicals after the manufacturing of any other substance or product;
 - 13 (D) Copies of the Board of Pharmacy licenses or permits; and
 - 14 (E) Records of substance disposal.
- 15 (f)(1) Any person having a legitimate need for using a listed precursor chemical shall
16 apply in person to the Board of Pharmacy for a permit to possess such chemical each time
17 said chemical is obtained.
- 18 (2) The following must be submitted in person to the Board of Pharmacy to receive a
19 permit for possession of listed precursor chemicals:
- 20 (A) A driver's license number or other personal identification certificate number; date
21 of birth; residential or mailing address, other than a post office box number; and a
22 driver's license or personal identification card issued by the Department of Motor
23 Vehicle Safety which contains a photograph of the recipient;
 - 24 (B) In the event the applicant is a corporation, the information in this paragraph shall
25 be required of the person making application for the permit. In addition, the person
26 making application for the permit on behalf of a corporation shall disclose his or her
27 relationship to the corporation;
 - 28 (C) The make, model, model year, state where licensed, and license number of the
29 motor vehicle owned and operated by the recipient;
 - 30 (D) The serial number of the permit issued in the name of the recipient by the Board
31 of Pharmacy pursuant to this Code section, which shall be obtained from personal
32 observation of the permit;
 - 33 (E) A complete description of how the chemical is to be used; and
 - 34 (F) The location where the chemical is to be stored and used.
- 35 (3) The permit shall consist of three parts, including:
- 36 (A) The original to be retained by the Board of Pharmacy;

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

3 (C) A copy to be attached to the container of the listed precursor chemical and to be
4 kept with the chemical at all times.

5 (g) A license or permit, obtained pursuant to this Code section, shall be denied, suspended,
6 or revoked by the Board of Pharmacy upon finding that the licensee or permit holder has:

7 (1) Furnished false or fraudulent material information in any application filed under this
8 Code section;

9 (2) Been convicted of a crime under any state or federal law relating to any controlled
10 substance;

11 (3) Had his or her federal registration suspended or revoked to manufacture, distribute,
12 or dispense controlled substances;

13 (4) Violated the provisions of Chapter 4 of Title 26; or

14 (5) Failed to maintain effective controls against the diversion of listed precursor
15 chemicals to unauthorized persons or entities.

16 (h)(1) Any person who sells, transfers, purchases for resale, or otherwise furnishes to a
17 person in this state a listed precursor chemical shall submit a report of the transaction on
18 a form obtained from the Board of Pharmacy that includes the information required by
19 paragraph (2) of subsection (f) of this Code section.

20 (2) Upon the request of any manufacturer, wholesaler, retailer, or other person who sells,
21 transfers, purchases for resale, or otherwise furnishes a listed precursor chemical, the
22 Board of Pharmacy shall supply a form for the submission of:

23 (A) The report required by paragraph (1) of this subsection;

24 (B) The name and measured amount of the listed precursor chemical delivered; and

25 (C) Such other information as the board may require pursuant to the rules and
26 regulations of the Board of Pharmacy.

27 (i)(1) Any licensee or permit holder who discovers a loss or theft of or disposes of a
28 listed precursor chemical shall:

29 (A) Submit a report of the loss, theft, or disposal to the Board of Pharmacy no later
30 than the third business day after the date the manufacturer, wholesaler, retailer, or other
31 person furnishing listed precursor chemicals discovers the loss or theft or after the
32 actual disposal; and

33 (B) Include the amount of loss, theft, or disposal in the report. Any disposal of listed
34 precursor chemicals must adhere to the rules and regulations of the United States
35 Environmental Protection Administration and shall be performed at the expense of the
36 licensee or permit holder.

1 (2) A manufacturer, wholesaler, retailer, or other person who sells, transfers, possesses,
2 uses, or otherwise furnishes any listed precursor chemical shall:

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

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

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

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

14 (k)(1) Notwithstanding any other provision of this Code section to the contrary, the
15 provisions of this Code section shall not apply in any manner whatsoever to the sale or
16 transfer of products or medications which include a listed precursor chemical if such
17 products or medications may be sold lawfully with a prescription or over the counter
18 without a prescription.

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

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

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

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

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

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

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

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

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

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

10 (3) A person who violates this Code section shall be guilty of a felony and, upon
11 conviction thereof, shall be punished by imprisonment for not less than one nor more than
12 15 years or by a fine not to exceed \$100,000.00, or both."

13 SECTION 3.

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

15 "16-13-30.6.

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

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

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

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

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

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

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

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

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

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

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

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

6 SECTION 4.

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

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

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

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

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

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

30 (1) If the quantity of methamphetamine, amphetamine, or a mixture containing either
31 substance involved is less than ~~200~~ 28 grams, the person shall be sentenced to a
32 mandatory minimum term of imprisonment of ten years and shall pay a fine of
33 \$200,000.00;

34 (2) If the quantity of methamphetamine, amphetamine, or a mixture containing either
35 substance involved is ~~200~~ 28 grams or more, but less than ~~400~~ 300 grams, the person

1 shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall
2 pay a fine of \$300,000.00; and

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

7 **SECTION 5.**

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

10 **SECTION 6.**

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