

The Senate Health and Human Services Committee offered the following substitute to HB 1178:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to  
2 pharmacists and pharmacies, so as to provide for the establishment of a program through  
3 which unused prescription drugs may be distributed for use by medically indigent persons;  
4 to provide for a short title; to provide for definitions; to provide for a pilot program; to  
5 provide for the establishment of rules and regulations; to provide for timelines; to provide  
6 for limited liability; to provide for construction; to amend Article 7 of Chapter 4 of Title 49  
7 of the Official Code of Georgia Annotated, relating to medical assistance generally, so as to  
8 provide for certain coverage for pharmacy restocking fees; to provide for related matters; to  
9 repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

11 Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to pharmacists and  
12 pharmacies, is amended by adding a new Article 11 to read as follows:

"ARTICLE 11

15 26-4-190.

16 This article shall be known and may be cited as the 'Utilization of Unused Prescription  
17 Drugs Act.'

18 26-4-191.

19 As used in this article, the term:

- 20 (1) 'Controlled substance' means a drug, substance, or immediate precursor in Schedules  
21 I through V of Code Sections 16-13-25 through 16-13-29 and Schedules I through V of  
22 21 C.F.R. Part 1308.

1 (2) 'Health care facility' means an institution which is licensed as a nursing home,  
2 intermediate care home, personal care home, home health agency, or hospice pursuant  
3 to Chapter 7 of Title 31.

4 (3) 'Medically indigent person' means:

5 (A) A person who is Medicaid eligible under the laws of this state; or

6 (B) A person:

7 (i) Who is without health insurance; or

8 (ii) Who has health insurance that does not cover the injury, illness, or condition for  
9 which treatment is sought; and

10 whose family income does not exceed 200 percent of the federal poverty level as  
11 defined annually by the federal Office of Management and Budget.

12 26-4-192.

13 (a) The Georgia State Board of Pharmacy, the Department of Human Resources, and the  
14 Department of Community Health shall jointly develop and implement a state-wide  
15 program consistent with public health and safety standards through which unused  
16 prescription drugs, other than prescription drugs defined as controlled substances, may be  
17 transferred from health care facilities to pharmacies designated or approved by the  
18 Department of Human Resources for the purpose of distributing such drugs to residents of  
19 this state who are medically indigent persons.

20 (b) The Georgia State Board of Pharmacy, the Department of Human Resources, and the  
21 Department of Community Health shall be authorized to develop and implement a pilot  
22 program to determine the safest and most beneficial manner of implementing the program  
23 prior to the state-wide implementation of the program required in subsection (a) of this  
24 Code section.

25 (c) The Georgia State Board of Pharmacy, in consultation with the Department of Human  
26 Resources and the Department of Community Health, shall develop and promulgate rules  
27 and regulations to establish procedures necessary to implement the program and pilot  
28 program, if applicable, provided for in this Code section. The rules and regulations shall  
29 provide, at a minimum:

30 (1) For an inclusionary formulary for the prescription drugs to be distributed pursuant  
31 to the program;

32 (2) For the protection of the privacy of the individual for whom a prescription drug was  
33 originally prescribed;

34 (3) For the integrity and safe storage and safe transfer of the prescription drugs, which  
35 may include, but shall not be limited to, limiting the drugs made available through the  
36 program to those that were originally dispensed by unit dose or an individually sealed

1 dose and that remain in intact packaging; provided, however, that the rules and  
2 regulations shall authorize the use of any remaining prescription drugs;

3 (4) For the tracking of and accountability for the prescription drugs; and

4 (5) For other matters necessary for the implementation of the program.

5 (d) The state-wide program required by this Code section shall be implemented no later  
6 than January 1, 2007, unless a pilot program is implemented pursuant to subsection (b) of  
7 this Code section, in which case state-wide implementation shall occur no later than July  
8 1, 2008.

9 26-4-193.

10 In accordance with the rules and regulations promulgated pursuant to Code Section  
11 26-4-192, the resident of a health care facility, or the representative or guardian of a  
12 resident, may donate unused prescription drugs, other than prescription drugs defined as  
13 controlled substances, for dispensation to medically indigent persons.

14 26-4-194.

15 (a) Physicians, pharmacists, other health care professionals, and health care facilities shall  
16 not be subject to liability for transferring or receiving unused prescription drugs pursuant  
17 to this article when acting within the scope of practice of their respective licenses and in  
18 good faith compliance with the rules and regulations promulgated pursuant to Code Section  
19 26-4-192.

20 (b) Pharmacists and pharmacies shall not be subject to liability for dispensing unused  
21 prescription drugs pursuant to this article when such services are provided without  
22 reimbursement and when performed within the scope of their practice and in good faith  
23 compliance with the rules and regulations promulgated pursuant to Code Section 26-4-192.  
24 For purposes of this subsection, a restocking fee paid to a pharmacy pursuant to Code  
25 Section 49-4-152.5 shall not be considered reimbursement.

26 (c) Nothing in this Code section shall be construed as affecting, modifying, or eliminating  
27 the liability of a manufacturer of prescription drugs or its employees or agents under any  
28 legal claim, including but not limited to product liability claims. Drug manufacturers shall  
29 not be subject to liability for any acts or omissions of any physician, pharmacist, other  
30 health care professional, health care facility, or pharmacy providing services pursuant to  
31 this article. Nor shall any drug manufacturer be liable for any claim or injury caused by  
32 a transfer of unused prescription drugs pursuant to this article and arising out of the failure  
33 to transfer or communicate product or consumer information or the expiration date  
34 regarding the transferred drug.

1 26-4-195.

2 This article shall be construed in concert with Code Section 49-4-152.3."

3 **SECTION 2.**

4 Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to  
5 medical assistance generally, is amended by adding a new Code section to read as follows:

6 "49-4-152.5.

7 In the provision of medical assistance pursuant to this article, the department shall allow  
8 for the payment and coverage of appropriate restocking fees incurred by a pharmacy which  
9 receives and dispenses prescription drugs pursuant to the 'Utilization of Unused  
10 Prescription Drugs Act' in Article 11 of Chapter 4 of Title 26."

11 **SECTION 3.**

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