

SENATE SUBSTITUTE TO HB 1178

AS PASSED SENATE

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 amend Code Section 16-12-142
 9 of the Official Code of Georgia Annotated, relating to requiring medical facilities or
 10 physicians to perform abortions and requiring others to assist, so as to provide that a
 11 pharmacist who states in writing an objection to any abortion shall not be required to fill a
 12 prescription for a drug if the purpose of the drug is to terminate a pregnancy; to provide that
 13 such refusal shall not be the basis for any claim for damages; to provide for the duration of
 14 the effectiveness of the written objection; to provide for related matters; to repeal conflicting
 15 laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"ARTICLE 11

20
 21 26-4-190.

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

1 26-4-191.

2 As used in this article, the term:

3 (1) 'Controlled substance' means a drug, substance, or immediate precursor in Schedules
4 I through V of Code Sections 16-13-25 through 16-13-29 and Schedules I through V of
5 21 C.F.R. Part 1308.

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

9 (3) 'Medically indigent person' means:

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

11 (B) A person:

12 (i) Who is without health insurance; or

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

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

17 26-4-192.

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

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

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

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

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

3 (3) For the integrity and safe storage and safe transfer of the prescription drugs, which
4 may include, but shall not be limited to, limiting the drugs made available through the
5 program to those that were originally dispensed by unit dose or an individually sealed
6 dose and that remain in intact packaging; provided, however, that the rules and
7 regulations shall authorize the use of any remaining prescription drugs;

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

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

10 (d) The state-wide program required by this Code section shall be implemented no later
11 than January 1, 2007, unless a pilot program is implemented pursuant to subsection (b) of
12 this Code section, in which case state-wide implementation shall occur no later than July
13 1, 2008.

14 26-4-193.

15 In accordance with the rules and regulations promulgated pursuant to Code Section
16 26-4-192, the resident of a health care facility, or the representative or guardian of a
17 resident, may donate unused prescription drugs, other than prescription drugs defined as
18 controlled substances, for dispensation to medically indigent persons.

19
20 26-4-194.

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

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

32 (c) Nothing in this Code section shall be construed as affecting, modifying, or eliminating
33 the liability of a manufacturer of prescription drugs or its employees or agents under any
34 legal claim, including but not limited to product liability claims. Drug manufacturers shall
35 not be subject to liability for any acts or omissions of any physician, pharmacist, other
36 health care professional, health care facility, or pharmacy providing services pursuant to

1 this article. Nor shall any drug manufacturer be liable for any claim or injury caused by
 2 a transfer of unused prescription drugs pursuant to this article and arising out of the failure
 3 to transfer or communicate product or consumer information or the expiration date
 4 regarding the transferred drug.

5 26-4-195.

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

7 SECTION 2.

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

10 "49-4-152.5.

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

15 SECTION 2A.

16 Code Section 16-12-142 of the Official Code of Georgia Annotated, relating to requiring
 17 medical facilities or physicians to perform abortions and requiring others to assist, is
 18 amended by striking such Code section and inserting in its place the following:

19 "16-12-142.

20 (a) Nothing in this article shall require a hospital or other medical facility or physician to
 21 admit any patient under the provisions of this article for the purpose of performing an
 22 abortion. In addition, any person who states in writing an objection to any abortion or all
 23 abortions on moral or religious grounds shall not be required to participate in procedures
 24 which will result in such abortion; and the refusal of the person to participate therein shall
 25 not form the basis of any claim for damages on account of such refusal or for any
 26 disciplinary or recriminatory action against the person. The written objection shall remain
 27 in effect until the person revokes it or terminates his association with the facility with
 28 which it is filed.

29 (b) Any pharmacist who states in writing an objection to any abortion or all abortions on
 30 moral or religious grounds shall not be required to fill a prescription for a drug which
 31 purpose is to terminate a pregnancy; and the refusal of the person to fill such prescription
 32 shall not form the basis of any claim for damages on account of such refusal or for any
 33 disciplinary or recriminatory action against the person; provided, however, that the

1 pharmacist shall make all reasonable efforts to locate another pharmacist who is willing to
2 fill such prescription or shall immediately return the prescription to the prescription holder.
3 The written objection shall remain in effect until the person revokes it or terminates his or
4 her association with the facility with which it is filed."

5 **SECTION 3.**

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