

House Bill 1524

By: Representative Stephenson of the 92<sup>nd</sup>

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 the regulation of controlled substances, so as to add certain drugs to the  
3 Schedule V list of controlled substances; to provide that ephedrine, pseudoephedrine,  
4 phenylpropanolamine and related substances shall be controlled substances; to provide for  
5 related matters; to provide for an effective date and applicability; to repeal conflicting laws;  
6 and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to the  
10 regulation of controlled substances, is amended by revising paragraph (2) of Code Section  
11 16-13-29, relating to schedule V substances, as follows:

12 "(2) Ephedrine, pseudoephedrine, or phenylpropanolamine, or any drug product containing  
13 ephedrine, pseudoephedrine, or phenylpropanolamine, or any of their salts, isomers, or salts  
14 of isomers, alone or in a mixture;"

15 **SECTION 2.**

16 Said article is further amended by revising Code Section 16-13-29.2, relating to the authority  
17 for exemptions of over-the-counter Schedule V controlled substances, as follows:

18 16-13-29.2.

19 (a) The Georgia State Board of Pharmacy shall have the authority to exempt and control  
20 the sale of Schedule V controlled substances by rule which shall allow the sale of such  
21 substances without the need for issuance of a prescription from a medical practitioner and  
22 shall require such substances to be sold only in a pharmacy when such substances are sold  
23 without a prescription. Such substances shall be known as Exempt Over-the-Counter  
24 (OTC) Schedule V Controlled Substances.

25 (b) In addition to any other authority provided by law, the Georgia State Board of  
 26 Pharmacy shall be authorized to and shall require that when ephedrine, pseudoephedrine,  
 27 or phenylpropanolamine or any drug product containing ephedrine, pseudoephedrine, or  
 28 phenylpropanolamine, or any of their salts, isomers, or salts of isomers, alone or in a  
 29 mixture, is dispensed or sold as an Exempt Over-the-Counter (OTC) Schedule V  
 30 Controlled Substance, the licensed pharmacy shall report such sale to the board or its  
 31 designated agent in the manner and frequency provided in the board rules. The board or  
 32 its designated agent shall be authorized to maintain a data base of such sales. Information  
 33 from the data base shall be considered confidential, but shall be disclosed to law  
 34 enforcement agencies as provided in federal law. The board is further authorized to charge  
 35 reasonable fees to defray expenses incurred in maintaining any records or forms  
 36 necessitated by this subsection or otherwise administering any other provisions of this  
 37 subsection.

38 **SECTION 3.**

39 Said article is further amended by revising Code Section 16-13-30.3, relating to possession  
 40 of substances containing ephedrine, pseudoephedrine, and phenylpropanolamine and  
 41 restrictions on sales of products containing pseudoephedrine, as follows:

42 "16-13-30.3.

43 (a) As used in this Code section, the term:

44 (1) 'Ephedrine,' 'pseudoephedrine,' or 'phenylpropanolamine' means any drug product  
 45 containing ephedrine, pseudoephedrine, or phenylpropanolamine, or any of their salts,  
 46 isomers, or salts of isomers, alone or in a mixture.

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

52 ~~(3) 'Retail distributor' means a grocery store, general merchandise store, drugstore,~~  
 53 ~~convenience store, or other related entity, the activities of which involve the distribution~~  
 54 ~~of ephedrine, pseudoephedrine, or phenylpropanolamine products.~~

55 (b)(1) It is unlawful for any person, other than a person or entity described in paragraph  
 56 (22), (28), (29), (30), or (33), or (41) of Code Section 26-4-5 ~~or a retail distributor,~~ to  
 57 knowingly possess any product that contains ephedrine, pseudoephedrine, or  
 58 phenylpropanolamine in an amount which exceeds 300 pills, tablets, gelcaps, capsules,  
 59 or other individual units or more than 9 grams of ephedrine, pseudoephedrine, or

60 phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any  
61 of these substances, whichever is smaller.

62 (2) It shall be unlawful for any person to possess any amount of a substance set forth in  
63 this Code section with the intent to manufacture amphetamine or methamphetamine  
64 unless licensed as a manufacturer.

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

68 (b.1)(1) Products whose sole active ingredient is pseudoephedrine may be offered for  
69 retail sale only if sold in blister packaging. Such products may not be offered for retail  
70 sale by self-service but only from behind a counter or other barrier so that such products  
71 are not directly accessible by the public but only by ~~a retail store~~ an employee or agent  
72 of a licensed pharmacy.

73 (2) No person shall deliver in any single over the counter sale more than three packages  
74 of any product containing pseudoephedrine as the sole active ingredient or in combination  
75 with other active ingredients or any number of packages that contain a combined total of  
76 more than nine grams of pseudoephedrine or its base, salts, optical isomers, or salts of its  
77 optical isomers.

78 (3) It shall be unlawful ~~for a retail distributor~~ to purchase any product containing  
79 pseudoephedrine from any person or entity other than a manufacturer or a wholesale  
80 distributor licensed by the Georgia State Board of Pharmacy.

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

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

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

88 ~~(5)~~ This subsection shall preempt all local ordinances or regulations governing the retail  
89 sale of over the counter products containing pseudoephedrine by a retail business except  
90 such local ordinances or regulations that existed on or before December 31, 2004.  
91 Effective January 1, 2006, this subsection shall preempt all local ordinances.

92 ~~(6)(A)~~ (5)(A) Except as otherwise provided herein, it shall be unlawful for any person  
93 knowingly to violate any prohibition contained in paragraph (1), (2), or (3) of this  
94 subsection.

95 (B) Any person convicted of a violation of paragraph (1) or (2) of this subsection shall  
96 be guilty of a misdemeanor which, upon the first conviction, shall be punished by a fine

97 of not more than \$500.00 and, upon the second or subsequent conviction, shall be  
 98 punished by not more than six months' imprisonment or a fine of not more than  
 99 \$1,000.00, or both.

100 (C) Any person convicted of a violation of paragraph (3) of this subsection shall, upon  
 101 the first conviction, be guilty of a misdemeanor and, upon the second or subsequent  
 102 conviction, be guilty of a misdemeanor of a high and aggravated nature.

103 ~~(D) It shall be a defense to a prosecution of a retail business or owner or operator~~  
 104 ~~thereof for violation of paragraph (1) or (2) of this subsection that, at the time of the~~  
 105 ~~alleged violation, all of the employees of the retail business had completed training~~  
 106 ~~under Georgia Meth Watch, the retail business was in compliance with Georgia Meth~~  
 107 ~~Watch, and the defendant did not knowingly, willfully, or intentionally violate~~  
 108 ~~paragraph (1) or (2) of this subsection. For purposes of this subsection only, the term~~  
 109 ~~'Georgia Meth Watch' shall mean that program entitled 'Georgia Meth Watch' or similar~~  
 110 ~~program which has been promulgated, approved, and distributed by the Georgia~~  
 111 ~~Council on Substance Abuse.~~

112 ~~(7)~~ (6) Except as otherwise provided in this subsection, the Georgia State Board of  
 113 Pharmacy may adopt reasonable rules and regulations to effectuate the provisions of this  
 114 subsection. The board is further authorized to charge reasonable fees to defray expenses  
 115 incurred in maintaining any records or forms necessitated by this subsection or otherwise  
 116 administering any other provisions of this subsection.

117 (c) ~~This Code section shall not apply to:~~

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

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

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

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

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

133 (d) Except as authorized by this article, it is unlawful for any person to possess, have under  
134 his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or  
135 possess with intent to distribute any substance containing any amounts of ephedrine,  
136 pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of  
137 optical isomers which have been altered from their original condition so as to be powdered,  
138 liquefied, or crushed. This subsection shall not apply to any of the substances identified  
139 within this subsection which are possessed or altered for a legitimate medical purpose.  
140 Any person who violates this subsection shall be guilty of a felony and, upon conviction  
141 thereof, shall be punished by imprisonment for not less than one year nor more than ten  
142 years."

143 **SECTION 4.**

144 This Act shall become effective July 1, 2010, and shall apply to offenses committed on or  
145 after such date.

146 **SECTION 5.**

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