

House Bill 437

By: Representatives Neal of the 1st, Williams of the 4th, Maxwell of the 17th, and Gardner of the 57th

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 regulation of controlled substances, so as to change provisions relating to
3 possession of substances containing ephedrine, pseudoephedrine, and phenylpropanolamine
4 and restrictions on sales of products containing pseudoephedrine; to provide for real-time
5 tracking of sales of products containing ephedrine, pseudoephedrine, and
6 phenylpropanolamine; to provide for definitions; to change provisions relating to exceptions;
7 to provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to
11 regulation of controlled substances, is amended by revising Code Section 16-13-30.3,
12 relating to possession of substances containing ephedrine, pseudoephedrine, and
13 phenylpropanolamine and restrictions on sales of products containing pseudoephedrine, as
14 follows:

15 "16-13-30.3.

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

17 (1) 'Ephedrine,' 'pseudoephedrine,' or 'phenylpropanolamine' means any drug product
18 containing ephedrine, pseudoephedrine, or phenylpropanolamine base, or any of their
19 salts, isomers, or salts of isomers, alone or in a mixture.

20 (2) 'Georgia Meth Watch' means the program entitled 'Georgia Meth Watch' or similar
21 program which has been promulgated, approved, and distributed by the Georgia Council
22 on Substance Abuse.

23 (3) 'NADDI' means the National Association of Drug Diversion Investigators.

24 (4) 'NPLEx' means the National Precursor Log Exchange which is administered by
25 NADDI.

26 (5) 'NPLEx system' means an electronic system which can track required information and
 27 generate a stop sale alert to notify a retail distributor that a purchase of ephedrine,
 28 pseudoephedrine, or phenylpropanolamine which exceeds the quantity limits set forth in
 29 this Code section is being attempted. Such system shall contain an override function that
 30 will allow a retail distributor to complete a sale in violation of this Code section when the
 31 person making the sale is in reasonable fear of imminent bodily harm if he or she does
 32 not complete the sale and will track the override sales made.

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

38 (6) 'Required information' means the full name and address of the purchaser; the type of
 39 government issued photographic identification presented, including the issuer and
 40 identification number; a description of the nonprescription product purchased which
 41 contains ephedrine, pseudoephedrine, or phenylpropanolamine base, including the
 42 number of grams of pseudoephedrine in the product; and the date and time of the
 43 purchase.

44 ~~(3)(7) 'Retail distributor' means a grocery store, general merchandise store, drugstore,~~
 45 ~~convenience store, or other related entity, the activities of which involve the distribution~~
 46 ~~of products containing ephedrine, pseudoephedrine, or phenylpropanolamine products.~~

47 (b)(1) It is shall be unlawful for any person, other than a person or entity described in
 48 paragraph (28), (29), or (33) of Code Section 26-4-5 or a retail distributor, to knowingly
 49 possess any product that contains ephedrine, pseudoephedrine, or phenylpropanolamine
 50 base in an amount which exceeds 300 pills, tablets, gelcaps, capsules, or other individual
 51 units or more than 9 grams of ephedrine, pseudoephedrine, ~~or phenylpropanolamine~~ base,
 52 ~~their salts, isomers, or salts of isomers,~~ or a combination of any of these substances,
 53 whichever is smaller.

54 (2) It shall be unlawful for any person to possess any ~~amount of a substance set forth in~~
 55 ~~this Code section~~ product containing ephedrine, pseudoephedrine, or
 56 phenylpropanolamine base with the intent to manufacture amphetamine or
 57 methamphetamine.

58 (3) Any person who violates the provisions of this Code section shall be guilty of a
 59 felony and, upon conviction thereof, shall be punished by imprisonment for not less than
 60 one year nor more than ~~ten~~ 15 years.

61 ~~(b.1)(c)~~(1) Products whose sole active ingredient is pseudoephedrine may be offered for
 62 retail sale only if sold in blister packaging. Such products may not be offered for retail

63 sale by self-service but only from behind a counter or other barrier so that such products
64 are not directly accessible by the public but only by ~~a retail store~~ an employee or agent
65 of a retail distributor.

66 (2) Retail distributors shall require every retail purchaser of a product containing
67 pseudoephedrine to furnish valid government issued photographic identification of the
68 purchaser. The retail distributor shall maintain a record of required information for each
69 sale of a nonprescription product which contains ephedrine, pseudoephedrine, or
70 phenylpropanolamine base. Retail distributors shall require that every purchaser sign a
71 written or electronic log attesting to the validity of the required information.

72 (3) Retail distributors shall maintain a record of required information for a period of two
73 years from the date of each transaction. Except as authorized by paragraph (6) of this
74 subsection, the records maintained by a retail distributor pursuant to this Code section
75 shall not be disclosed. Retail distributors may destroy the required information collected
76 pursuant to this subsection after two years from the date of the transaction.

77 (4)(A) On and after January 1, 2012, retail distributors shall, before completing a sale
78 of a nonprescription product which contains ephedrine, pseudoephedrine, or
79 phenylpropanolamine base, electronically track all such sales and submit the required
80 information to NPLEEx, provided that the NPLEEx system is available to retail
81 distributors without an access charge. A retail distributor shall not complete the sale
82 of a nonprescription product which contains ephedrine, pseudoephedrine, or
83 phenylpropanolamine base if the NPLEEx system generates a stop sale alert.

84 (B) Absent negligence, wantonness, recklessness, or deliberate misconduct, any retail
85 distributor utilizing the NPLEEx system in accordance with this paragraph shall not be
86 civilly liable as a result of any act or omission in carrying out the duties required by this
87 paragraph and shall be immune from liability to any third party unless the retail
88 distributor has violated any provision of this paragraph in relation to a claim brought
89 for such violation.

90 (5) If a retail distributor selling a nonprescription product which contains ephedrine,
91 pseudoephedrine, or phenylpropanolamine base experiences mechanical or electronic
92 failure of the NPLEEx system and is unable to comply with the electronic sales tracking
93 requirement, the retail distributor shall maintain a written log or an alternative electronic
94 recording mechanism until such time as the retail distributor is able to comply with the
95 electronic sales tracking requirement.

96 (6) NADDI shall forward Georgia transaction records in NPLEEx to the Georgia Bureau
97 of Investigation weekly and provide real-time access to NPLEEx information through the
98 NPLEEx online portal to law enforcement agencies in this state as authorized by the
99 Georgia Bureau of Investigation, provided that the Georgia Bureau of Investigation

100 executes a memorandum of understanding with NADDI governing access to such
 101 information.

102 ~~(2)(7)~~ No person shall deliver in any single over the counter sale more than three
 103 packages of any product containing pseudoephedrine as the sole active ingredient or in
 104 combination with other active ingredients or any number of packages that contain a
 105 combined total of more than nine grams of pseudoephedrine or its base, salts, optical
 106 isomers, or salts of its optical isomers distribute or purchase any nonprescription product
 107 containing more than 3.6 grams of ephedrine, pseudoephedrine, or phenylpropanolamine
 108 base per day in dosage form or more than 9 grams of ephedrine, pseudoephedrine, or
 109 phenylpropanolamine base per 30 day period in dosage form of any product. The limits
 110 set forth in this paragraph shall apply to the total amount of ephedrine, pseudoephedrine,
 111 or phenylpropanolamine base contained in the product and not the overall weight of such
 112 product.

113 ~~(3)(8)~~ It shall be unlawful for a retail distributor to purchase any product ~~containing~~
 114 whose sole active ingredient is pseudoephedrine from any person or entity other than a
 115 manufacturer or a wholesale distributor licensed by the Georgia State Board of Pharmacy.

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

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

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

123 ~~(5)(9)~~ This subsection shall preempt all local ordinances or regulations governing the
 124 retail sale of ~~over the counter~~ products containing whose sole active ingredient is
 125 pseudoephedrine by a retail ~~business~~ distributor except such local ordinances or
 126 regulations that existed on or before December 31, 2004. Effective January 1, 2006, this
 127 subsection shall preempt all local ordinances.

128 ~~(6)(10)(A)~~ Except as otherwise provided ~~herein~~ in subsections (b) and (e) of this Code
 129 section, it shall be unlawful for any person knowingly to violate any prohibition
 130 contained in paragraph (1), (2), ~~or (3), (4), (7), or (8)~~ of this subsection.

131 (B) Any person convicted of a violation of paragraph (1), ~~or (2), (4), or (7)~~ of this
 132 subsection shall be guilty of a misdemeanor which, upon the first conviction, shall be
 133 punished by a fine of not more than \$500.00 and, upon the second or subsequent
 134 conviction, shall be punished by not more than six months' imprisonment or a fine of
 135 not more than \$1,000.00, or both.

136 (C) Any person convicted of a violation of paragraph ~~(3)~~ (8) of this subsection shall,
 137 upon the first conviction, be guilty of a misdemeanor and, upon the second or
 138 subsequent conviction, be guilty of a misdemeanor of a high and aggravated nature.

139 (D) It shall be a defense to a prosecution of a retail ~~business or owner or operator~~
 140 ~~thereof~~ distributor for violation of paragraph (1), ~~or (2), (4), (7), or (8)~~ of this subsection
 141 that, at the time of the alleged violation, all of the employees of the retail ~~business~~
 142 distributor had completed training under Georgia Meth Watch, the retail ~~business~~
 143 distributor was in compliance with Georgia Meth Watch, and the defendant did not
 144 knowingly, willfully, or intentionally violate paragraph (1), ~~or (2), (4), (7), or (8)~~ of this
 145 subsection. ~~For purposes of this subsection only, the term 'Georgia Meth Watch' shall~~
 146 ~~mean that program entitled 'Georgia Meth Watch' or similar program which has been~~
 147 ~~promulgated, approved, and distributed by the Georgia Council on Substance Abuse.~~
 148 ~~(7) Except as otherwise provided in this subsection, the Georgia State Board of~~
 149 ~~Pharmacy may adopt reasonable rules and regulations to effectuate the provisions of this~~
 150 ~~subsection. The board is further authorized to charge reasonable fees to defray expenses~~
 151 ~~incurred in maintaining any records or forms necessitated by this subsection or otherwise~~
 152 ~~administering any other provisions of this subsection.~~

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

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

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

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

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

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

169 ~~(d)~~(e) Except as authorized by this article, it is unlawful for any person to possess, have
 170 under his or her control, manufacture, deliver, distribute, dispense, administer, purchase,
 171 sell, or possess with intent to distribute any ~~substance~~ product containing any amounts of
 172 ephedrine, pseudoephedrine, or phenylpropanolamine base, ~~or any of their salts, optical~~

173 ~~isomers, or salts of optical isomers~~ which have been altered from their original condition
174 so as to be powdered, liquefied, or crushed. This subsection shall not apply to any of the
175 substances identified within this subsection which are possessed or altered for a legitimate
176 medical purpose. Any person who violates this subsection shall be guilty of a felony and,
177 upon conviction thereof, shall be punished by imprisonment for not less than one year nor
178 more than ~~ten~~ 15 years."

179 **SECTION 2.**

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