

House Bill 897

By: Representatives Price of the 48<sup>th</sup>, Cooper of the 43<sup>rd</sup>, Broadrick of the 4<sup>th</sup>, Lott of the 122<sup>nd</sup>, Kaiser of the 59<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to the  
2 care and protection of indigent and elderly patients, so as to provide for the establishment and  
3 operation of a drug repository program to accept and dispense unused prescription drugs; to  
4 provide for definitions; to provide for criteria and requirements for unused prescription  
5 drugs; to provide procedures for donation and dispensing of unused prescription drugs; to  
6 provide for limited liability; to provide for rules and regulations; to amend Chapter 4 of Title  
7 26 of the Official Code of Georgia Annotated, relating to pharmacists and pharmacies, so as  
8 to repeal the "Utilization of Unused Prescription Drugs Act"; to amend Article 7 of Chapter  
9 4 of Title 49 of the Official Code of Georgia Annotated, relating to medical assistance  
10 generally, so as to revise a provision for purposes of conformity; to provide for related  
11 matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to the care and  
15 protection of indigent and elderly patients, is amended by adding a new article to read as  
16 follows:

17 style="text-align:center">"ARTICLE 10

18 31-8-300.

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.

23 (2) 'Health care facility' means a hospital, a nursing home licensed pursuant to Article  
 24 1 of Chapter 7 of this title, a hospice licensed pursuant to Article 9 of Chapter 7 of this  
 25 title, or a home health agency licensed pursuant to Article 7 of Chapter 7 of this title.

26 (3) 'Health care professional' means any of the following who provide medical, dental,  
 27 or other health related diagnosis, care, or treatment:

28 (A) Physicians licensed to practice medicine under Chapter 34 of Title 43;

29 (B) Registered nurses and licensed practical nurses licensed under Chapter 26 of Title  
 30 43;

31 (C) Physician assistants licensed under Chapter 34 of Title 43;

32 (D) Dentists and dental hygienists licensed under Chapter 11 of Title 43;

33 (E) Optometrists licensed under Chapter 30 of Title 43; and

34 (F) Pharmacists licensed under Chapter 4 of Title 26.

35 (4) 'Hospital' means a facility which has a valid permit issued pursuant to Chapter 7 of  
 36 this title.

37 (5) 'Indigent person' means any person having as a maximum allowable income level an  
 38 amount corresponding to 125 percent of the federal poverty guideline.

39 (6) 'Nonprofit clinic' means a charitable nonprofit corporation organized and operated  
 40 pursuant to Chapter 3 of Title 14 which provides health care services to indigent and  
 41 uninsured persons.

42 (7) 'Program' means the drug repository program established pursuant to Code Section  
 43 31-8-301.

44 31-8-301.

45 (a) The Board of Community Health, in consultation with the Board of Public Health, shall  
 46 establish a drug repository program to accept and dispense prescription drugs donated for  
 47 the purpose of being dispensed to individuals who are residents of this state and meet  
 48 eligibility standards established in rules and regulations adopted by the Board of  
 49 Community Health pursuant to Code Section 31-8-304.

50 (b) Prescription drugs shall only be available to be accepted and dispensed pursuant to the  
 51 program if the drugs are:

52 (1) Liquid and the vial is still sealed and properly stored;

53 (2) Individually packaged and the packaging has not been damaged; or

54 (3) In the original, unopened, sealed, and tamper-evident unit dose packaging.

55 (c) The following prescription drugs shall not be donated to the program:

56 (1) Drugs packaged in traditional brown or amber pill bottles;

57 (2) Controlled substances;

58 (3) Drugs that require refrigeration, freezing, or special storage;

59 (4) Drugs that require special registration with the manufacturer; or

60 (5) Drugs that there is reason to believe are adulterated pursuant to Code Section 26-3-7.

61 (d) Drugs donated or dispensed pursuant to the program shall bear an expiration date that  
62 is later than six months after the date the drug is donated.

63 31-8-302.

64 (a) Any person, including a drug manufacturer or health care facility, may donate  
65 prescription drugs to the program. The drugs must be donated at a pharmacy, hospital, or  
66 nonprofit clinic that elects to participate in the program and meets criteria for participation  
67 in the program established in rules and regulations adopted by the Board of Community  
68 Health pursuant to Code Section 31-8-304. Participation in the program by pharmacies,  
69 hospitals, and nonprofit clinics is voluntary. Nothing in this or any other Code section shall  
70 require a pharmacy, hospital, or nonprofit clinic to participate in the program.

71 (b) A pharmacy, hospital, or nonprofit clinic eligible to participate in the program shall  
72 dispense drugs donated under this Code section to individuals who are residents of this  
73 state and meet the eligibility standards established in rules and regulations adopted by the  
74 Board of Community Health pursuant to Code Section 31-8-304 or to other government  
75 entities and nonprofit entities that shall dispense such drugs to individuals who meet the  
76 eligibility standards. A drug shall be dispensed only pursuant to a valid prescription drug  
77 order. A pharmacy, hospital, or nonprofit clinic that accepts donated drugs shall comply  
78 with all applicable federal laws and laws of this state dealing with storage and distribution  
79 of dangerous drugs and shall inspect all drugs prior to dispensing them to determine that  
80 they are not adulterated. The pharmacy, hospital, or nonprofit clinic may charge  
81 individuals receiving donated drugs a handling fee established in accordance with rules and  
82 regulations adopted by the Board of Community Health pursuant to Code Section  
83 31-8-304. Drugs donated to the program shall not be resold.

84 31-8-303.

85 (a) Any person, including a pharmacy, drug manufacturer, or health care facility, or any  
86 government entity that donates or gives drugs to the program shall not be subject to liability  
87 in tort or other civil action for injury, death, or loss to person or property.

88 (b) A pharmacy, hospital, or nonprofit clinic that accepts or dispenses drugs under the  
89 program shall not be subject to liability in tort or other civil action for injury, death, or loss  
90 to person or property, unless an action or omission of the pharmacy, hospital, or nonprofit  
91 clinic constitutes willful and wanton misconduct.

92 (c) A health care professional who accepts or dispenses drugs under the program on behalf  
93 of a pharmacy, hospital, or nonprofit clinic, and the pharmacy, hospital, or nonprofit clinic

94 employs or otherwise uses the services of such health care professional, shall not be subject  
 95 to liability in tort or other civil action for injury, death, or loss to person or property, unless  
 96 an action or omission of the health care professional, pharmacy, hospital, or nonprofit  
 97 clinic constitutes willful and wanton misconduct.

98 (d) The Board of Community Health and the Board of Public Health shall not be subject  
 99 to liability in tort or other civil action for injury, death, or loss to person or property, unless  
 100 an action or omission of either such board constitutes willful and wanton misconduct.

101 (e) In addition to the immunity granted pursuant to subsection (a) of this Code section, any  
 102 person, including a pharmacy, drug manufacturer, or health care facility, and any  
 103 government entity that donates or gives drugs to the program shall not be subject to  
 104 criminal prosecution for the donation, giving, acceptance, or dispensing of drugs under the  
 105 program, unless an action or omission of the person or government entity does not comply  
 106 with the provisions of this article or the rules and regulations adopted pursuant to this  
 107 chapter.

108 (f) In the case of a drug manufacturer, the immunities granted pursuant to subsections (a)  
 109 and (e) of this Code section shall apply with respect to any drug manufactured by the drug  
 110 manufacturer that is donated or given by any person or government entity under the  
 111 program, including but not limited to liability for failure to transfer or communicate  
 112 product or consumer information or the expiration date of the drug donated or given.

113 31-8-304.

114 The Board of Community Health, in consultation with the Board of Public Health, shall  
 115 establish rules and regulations to implement the program according to the provisions of this  
 116 article, including but not limited to eligibility criteria for pharmacies, hospitals, and  
 117 nonprofit clinics to receive and dispense donated drugs under the program; standards and  
 118 procedures for accepting, safely storing, and dispensing donated drugs; eligibility standards  
 119 based on economic need for individuals to receive drugs; handling fees that may be  
 120 charged to drug recipients to cover restocking and dispensing costs; and any other  
 121 standards and procedures the Board of Community Health considers appropriate."

122 **SECTION 2.**

123 Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to pharmacists and  
 124 pharmacies, is amended by repealing and reserving Article 11, the "Utilization of Unused  
 125 Prescription Drugs Act," in its entirety.

126 **SECTION 3.**

127 Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to  
128 medical assistance generally, is amended by revising Code Section 49-4-152.5, relating to  
129 restocking fees, as follows:

130 "49-4-152.5.

131 In the provision of medical assistance pursuant to this article, the department shall allow  
132 for the payment and coverage of appropriate restocking fees incurred by a pharmacy which  
133 receives and dispenses unused prescription drugs pursuant to ~~Article 11 of Chapter 4 of~~  
134 ~~Title 26, the 'Utilization of Unused Prescription Drugs Act.'~~ Article 10 of Chapter 8 of Title  
135 31."

136 **SECTION 4.**

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