

House Bill 900 (COMMITTEE SUBSTITUTE)

By: Representatives Cooper of the 43rd, Weldon of the 3rd, Hawkins of the 27th, Parrish of the 158th, Harden of the 148th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia
2 Annotated, relating to electronic data base of prescription information, so as to authorize the
3 retention of data base information for two years; to provide for delegates of prescribers and
4 dispensers to access data base information under certain conditions; to revise language
5 relating to subpoenas and search warrants; to provide for accessing data base information for
6 purposes of investigation of potential abuse; to provide for the release of nonpatient specific
7 data to the agency for instructional, drug abuse prevention, and research purposes; to limit
8 liability; to provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 Part 2 of Article 2 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated,
12 relating to electronic data base of prescription information, is amended in Code Section
13 16-13-59, relating to information to include for each Schedule II, III, IV, or V controlled
14 substance prescription, by revising subsection (e) as follows:

15 "(e) The agency shall not access or allow others to access any identifying prescription
16 information from the electronic data base after ~~one year~~ two years from the date such
17 information was originally received by the agency. The agency may retain aggregated
18 prescription information for a period of ~~one year~~ two years from the date the information
19 is received but shall promulgate regulations and procedures that will ensure that any
20 identifying information the agency receives from any dispenser or reporting entity that is
21 ~~one year~~ two years old or older is deleted or destroyed on an ongoing basis in a timely and
22 secure manner."

23 style="text-align:center">**SECTION 2.**

24 Said part is further amended in Code Section 16-13-60, relating to privacy and
25 confidentiality, use of data, and security program, as follows:

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26 "16-13-60.

27 (a) Except as otherwise provided in subsections (c) and (d) of this Code section,
28 prescription information submitted pursuant to Code Section 16-13-59 shall be confidential
29 and shall not be subject to open records requirements, as contained in Article 4 of Chapter
30 18 of Title 50.

31 (b) The agency, in conjunction with the board, shall establish and maintain strict
32 procedures to ensure that the privacy and confidentiality of patients, prescribers, and
33 patient and prescriber information collected, recorded, transmitted, and maintained
34 pursuant to this part are protected. Such information shall not be disclosed to any person
35 or entity except as specifically provided in this part and only in a manner which in no way
36 conflicts with the requirements of the federal Health Insurance Portability and
37 Accountability Act (HIPAA) of 1996, P.L. 104-191. Nothing in this subsection shall be
38 construed to prohibit the agency from accessing prescription information as a part of an
39 investigation into suspected or reported abuses or regarding illegal access of the data. Such
40 information may be used in the prosecution of an offender who has illegally obtained
41 prescription information.

42 (c) The agency shall be authorized to provide requested prescription information collected
43 pursuant to this part only as follows:

44 (1) To persons authorized to prescribe or dispense controlled substances for the sole
45 purpose of providing medical or pharmaceutical care to a specific patient or to delegates
46 of such persons authorized to prescribe or dispense controlled substances in accordance
47 with the following:

48 (A) Such delegates are members of the prescriber or dispenser's staff and retrieve and
49 review information and reports strictly for purposes of determining misuse, abuse, or
50 underutilization of prescribed medication;

51 (B) Such delegates are licensed, registered, or certified by the state regulatory board
52 governing the delegating prescriber or dispenser, and the delegating prescriber or
53 dispenser shall be held responsible for the use of the information and data by their
54 delegates; and

55 (C) All information and reports retrieved and reviewed by delegates shall be
56 maintained in a secure and confidential manner in accordance with the requirements of
57 subsection (f) of this Code section;

58 (2) Upon the request of a patient, prescriber, or dispenser about whom the prescription
59 information requested concerns or upon the request on his or her behalf of his or her
60 attorney;

61 (3) To local; or state; or federal law enforcement or prosecutorial officials pursuant to
62 the issuance of a search warrant from an appropriate court or official in the county in

63 which the office of such law enforcement or prosecutorial officials are located pursuant
 64 to Article 2 of Chapter 5 of Title 17 or to federal law enforcement or prosecutorial
 65 officials pursuant to the issuance of a search warrant pursuant to 21 U.S.C. or a grand
 66 jury subpoena pursuant to 18 U.S.C.; and

67 (4) To the agency, or the Georgia Composite Medical Board or any other state regulatory
 68 board governing prescribers or dispensers in this state, or the Department of Community
 69 Health for purposes of the state Medicaid program upon the issuance of an administrative
 70 a subpoena issued by a Georgia state administrative law judge by such agency, board, or
 71 department pursuant to their existing subpoena power or to the federal Centers for
 72 Medicare and Medicaid Services upon the issuance of a subpoena by the federal
 73 government pursuant to its existing subpoena powers.

74 (c.1) An individual authorized to access electronic data base prescription information
 75 pursuant to this part may:

76 (1) Communicate concerns about a patient's potential misuse, abuse, or underutilization
 77 of a controlled substance with other prescribers and dispensers that are involved in the
 78 patient's health care; or

79 (2) Report potential violations of this article to the agency for review or investigation.
 80 Following such review or investigation, the agency may:

81 (A) Refer instances of a patient's possible personal misuse or abuse of controlled
 82 substances to the patient's primary prescriber to allow for potential intervention and
 83 impairment treatment;

84 (B) Refer probable violations of controlled substances being acquired for illegal
 85 distribution, and not solely for a patient's personal use, to the appropriate authorities for
 86 further investigation and potential prosecution; or

87 (C) Refer probable regulatory violations by prescribers or dispensers to the regulatory
 88 board governing such person.

89 (d) The board may provide statistical data to government entities and other entities for
 90 statistical, research, educational, or grant application purposes after removing information
 91 that could be used to identify prescribers or individual patients or persons who received
 92 prescriptions from dispensers; the board may provide nonpatient specific data to the agency
 93 for instructional, drug abuse prevention, and research purposes.

94 (e) Any person or entity who receives electronic data base prescription information or
 95 related reports relating to this part from the agency shall not provide such information or
 96 reports to any other person or entity except by order of a court of competent jurisdiction
 97 pursuant to this part.

98 (f) Any permissible user identified in this part who directly accesses electronic data base
 99 prescription information shall implement and maintain a comprehensive information

100 security program that contains administrative, technical, and physical safeguards that are
101 substantially equivalent to the security measures of the agency. The permissible user shall
102 identify reasonably foreseeable internal and external risks to the security, confidentiality,
103 and integrity of personal information that could result in the unauthorized disclosure,
104 misuse, or other compromise of the information and shall assess the sufficiency of any
105 safeguards in place to control the risks.

106 (g) No provision in this part shall be construed to modify, limit, diminish, or impliedly
107 repeal any authority existing on June 30, 2011, of a licensing or regulatory board or any
108 other entity so authorized to obtain prescription information from sources other than the
109 data base maintained pursuant to this part; provided, however, that the agency shall be
110 authorized to release information from the data base only in accordance with the provisions
111 of this part."

112 **SECTION 3.**

113 Said part is further amended in Code Section 16-13-63, relating to liability, as follows:

114 "16-13-63.

115 (a) Nothing in this part shall require a dispenser or prescriber to obtain information about
116 a patient from the program established pursuant to this part. A dispenser or prescriber shall
117 not have a duty and shall not be held civilly liable for damages to any person in any civil
118 or administrative action or criminally responsible for injury, death, or loss to person or
119 property on the basis that the dispenser or prescriber did or did not seek or obtain
120 information from the electronic data base established pursuant to Code Section 16-13-57.

121 Nothing in this part shall create a private cause of action against a prescriber or dispenser.

122 (b) A dispenser or prescriber acting in good faith shall not be held civilly liable for
123 damages to any person in any civil or administrative action or criminally responsible for
124 injury, death, or loss to person or property for receiving or using information from the
125 electronic data base established pursuant to Code Section 16-13-57."

126 **SECTION 4.**

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