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FOOD, DRUGS AND COSMETICS Utilization of Unused Prescription Drugs: Provide for the Establishment of a Program Through Which Unused Prescription Drugs May Be Distributed for Use by Medically Indigent Persons; Provide for a Pilot Program; Provide That a Pharmacist Who States in Writing an Objection to Any Abortion Shall Not Be Required to Fill a Prescription for a Drug If the Purpose of the Drug Is to Terminate a Pregnancy; Provide That Such Refusal Shall Not Be the Basis for Any Claim for Damages; Provide for the Duration of the Effectiveness of the Written Objection; Amend Chapter 34 of Title 31 of the

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## FOOD, DRUGS AND COSMETICS

***Utilization of Unused Prescription Drugs: Provide for the Establishment of a Program Through Which Unused Prescription Drugs May Be Distributed for Use by Medically Indigent Persons; Provide for a Pilot Program; Provide That a Pharmacist Who States in Writing an Objection to Any Abortion Shall Not Be Required to Fill a Prescription for a Drug If the Purpose of the Drug Is to Terminate a Pregnancy; Provide That Such Refusal Shall Not Be the Basis for Any Claim for Damages; Provide for the Duration of the Effectiveness of the Written Objection; Amend Chapter 34 of Title 31 of the Official Code of Georgia Annotated, Relating to Physicians for Rural Areas Assistance, so as to Revise the Purpose of the Chapter; Revise Certain Provisions Regarding Priority for Certain Specialties; Amend Chapter 7 of Title 31 of the Official Code of Georgia Annotated, Relating to Regulation of Hospitals and Related Institutions, so as to Revise a Definition; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS:	O.C.G.A. §§ 16-12-142 (amended), 26-4-190 to -195 (new), 31-7-94.1 (amended), 31-34-2 (amended), -4 (amended), 49-4-152.5 (new)
BILL NUMBER:	HB 1178
ACT NUMBER:	468
GEORGIA LAWS:	2006 Ga. Laws 152
SUMMARY:	The Act creates a program to be jointly administered by the Georgia State Board of Pharmacy, the Department of Human Resources, and the Department of Human Health. The Act mandates that this program will distribute rather than discard prescription drugs prescribed to patients in health care facilities but not used before the patient's care in the facility ends. The recipients of the unused drugs will be

uninsured or medically indigent Georgians. The Act grants pharmacists the right to refuse to fill a prescription for a drug which has the purpose of terminating a pregnancy as long as the pharmacist states in writing his or her objection to the abortion on moral or religious grounds. The Act requires that any pharmacist refusing to fill a prescription for a drug to terminate a pregnancy must make reasonable efforts to locate another pharmacist to fill such prescription or they must immediately return the prescription to the owner. The Act does not authorize a pharmacist to refuse to fill a prescription for any kind of contraceptive. The Act amends provisions which authorize loans to physicians who choose to practice in rural areas by expanding the number of physicians eligible for those loans. The act redefines "rural county" so that the population of military bases will be excluded when determining the population of the county.

EFFECTIVE DATE: July 1, 2006

### *History*

Generally, it is illegal for one patient to use another's prescription drugs, even if the same drug is lawfully prescribed to the patient by a doctor.<sup>1</sup> However, many prescriptions that are properly sealed and

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1. See Marta Hepler-Drahos, *Drug Dilemma: Options for Recycling Unused Medications Limited*, TRAVERSE CITY REC. EAGLE, Nov. 24, 2004, at 1B, available at <http://www.record-eagle.com/2004/nov/24meds1.htm>.

entirely unused go to waste each year.<sup>2</sup> This waste has been lamented by many family members who have watched thousands of dollars of medication thrown away after their loved ones either pass away or no longer need the prescribed medications.<sup>3</sup>

This concern was initially raised by a man from Ohio who lost his wife to cancer and watched, frustrated, as all of her unused and very expensive medications were thrown away.<sup>4</sup> In honor of his wife, Ohio enacted a law in 2003, which created a repository program so the state could recycle unused drugs and give them to needy patients.<sup>5</sup> Since Ohio adopted the law in 2003, eleven states have adopted similar repository programs to distribute unused medications to patients.<sup>6</sup> In addition to state programs sponsoring the recycling of unused prescription drugs, some organizations have mobilized to collect unused drugs to send to developing nations.<sup>7</sup> The issue of wasted prescription drugs was raised in the Georgia legislature during the 2006 session.<sup>8</sup>

Like Ohio and the other states that have addressed the problem of wasted medications, thousands of dollars worth of unused prescription medications are thrown away in Georgia when other patients could safely use them.<sup>9</sup> When a patient passes away or leaves a nursing home, hospice, or other health-care facility in Georgia, their prescription drugs have, up until now, been flushed down the toilet.<sup>10</sup>

Representative Mickey Channell of the 116th district first brought the bill to Georgia.<sup>11</sup> Representative Channell gave the bill to Representative Cecily Hill of the 180th district, whose husband is a

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2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. Telephone Interview with Rep. Cecily Hill, House District No. 180 (May 16, 2006) [hereinafter Hill Interview].

7. Hepler-Drahos, *supra* note 1. "One such organization is Aid for AIDS, A [sic] New York-based non-profit group committed to improving the quality of life of people with HIV/AIDS in Latin America, the Caribbean, and Africa." *Id.*

8. See HB 1178, 2006 Ga. Gen. Assem.

9. Andy Miller, *Legislature 2006: Deceased's Drugs May Be Recycled, Bill Would Give Access to Unused Medication*, ATLANTA J.-CONST., Mar. 23, 2006, at D1, available at [http://www.ajc.com/search/content/auto/epaper/editions/thursday/metro\\_4422e3d69270802600a4.html](http://www.ajc.com/search/content/auto/epaper/editions/thursday/metro_4422e3d69270802600a4.html).

10. *Id.*

11. Hill Interview, *supra* note 6.

pharmacist.<sup>12</sup> Representative Hill became the first-signing sponsor and advocate of the law in Georgia.<sup>13</sup> The Utilization of Unused Prescription Drugs Act, HB 1178, aims to end the practice of throwing away medications to reduce waste and increase the availability of prescription medications in Georgia.<sup>14</sup>

In addition to the thousands of dollars wasted by throwing away unused drugs, Georgia spends a billion dollars a year on pharmaceuticals given to individuals covered by Medicaid.<sup>15</sup> By creating a program to give unused medications to uninsured Georgians, HB 1178 attempts to alleviate some of the high costs to the state of providing prescription drugs.<sup>16</sup> With the rising cost of prescription drugs, supporters felt the bill timely and necessary to help ensure the availability of prescription drugs to uninsured Georgians.<sup>17</sup>

In addition to creating a state program to distribute unused drugs to uninsured Georgians, HB 1178 also provides immunity from employment repercussions and tort liability for pharmacists who refuse to fill a prescription which will be used to terminate a pregnancy.<sup>18</sup> Though this language is not present in other states' laws on drug recycling, this section was added to protect pharmacists who feel morally or religiously obligated to refuse to assist in an abortion.<sup>19</sup> Though some people feel that it is not appropriate for pharmacists to question a customer or to decide for themselves whether or not to fill a prescription, the section was added to give pharmacists the same protection already given to doctors and hospitals and to allow the pharmacists the moral latitude to make

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12. *Id.*

13. *Id.*

14. *See* HB 1178, 2006 Ga. Gen. Assem.

15. *See* Audio Recording of Senate Proceedings, Mar. 27, 2006 [hereinafter Senate Audio] (remarks by Sen. Greg Goggans), [http://www.georgia.gov/00/channel\\_modifieddate/0,2096,4802\\_6107103,00.html](http://www.georgia.gov/00/channel_modifieddate/0,2096,4802_6107103,00.html).

16. *See id.*; Miller, *supra* note 9.

17. *See* Miller, *supra* note 9.

18. *See* HB 1178 (SCSFA), 2006 Ga. Gen. Assem.

19. *See* Audio Recording of Senate Proceedings, Mar. 2, 2006 (remarks by Sen. Jim Whitehead), [hereinafter Mar. 2 Senate Audio] [http://www.georgia.gov/00/channel\\_modifieddate/0,2096,4802\\_6107103,00.html](http://www.georgia.gov/00/channel_modifieddate/0,2096,4802_6107103,00.html).

those decisions without the possibility of losing their jobs or being sued for damages.<sup>20</sup>

### *Bill Tracking of HB 1178*

#### *Consideration and Passage by the House*

HB 1178 was sponsored by Representatives Cecily Hill, Mickey Channell, Sharon Cooper, Jeff Brown, and Charles Jenkins of the 180th, 116th, 41st, 69th, and 8th districts, respectively.<sup>21</sup> On January 31, 2006, the House first read HB 1178, and it was assigned to the House Committee on Health and Human Services.<sup>22</sup> On February 28, 2006, the committee reported HB 1178 favorably with only a few minor changes.<sup>23</sup> The House Committee expanded the definition of “medically indigent person” as defined in the bill and clarified that doctors, pharmacists or other health care professionals would not be subject to liability for receiving, transferring, or dispensing unused drugs under the Act, while drug manufacturers could still be subject to potential product liability claims.<sup>24</sup> The Committee substitute also allowed a pharmacy to collect restocking fees associated with receiving and dispensing unused prescription drugs.<sup>25</sup> The House unanimously passed HB 1178 on March 9, 2006 and sent the bill to the Senate.<sup>26</sup>

#### *Consideration and Passage by the Senate*

The Senate read the bill for the first time on March 13, 2006, and it was referred to the Senate Committee on Health and Human

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20. See Hill Interview, *supra* note 6.

21. See HB 1178, as introduced, 2006 Ga. Gen. Assem.

22. See State of Georgia Final Composite Status Sheet, HB 1178, Jan. 31, 2006 (Mar. 30, 2006); HB 1178 (HCS), 2006 Ga. Gen. Assem.

23. See State of Georgia Final Composite Status Sheet, HB 1178, Feb. 28, 2006 (Mar. 30, 2006).

24. See HB 1178 (HCS), 2006 Ga. Gen. Assem.

25. *Id.*

26. Georgia House of Representatives Voting Record, HB 1178 (Mar. 9, 2006); State of Georgia Final Composite Status Sheet, HB 1178, Mar. 9, 2006 (Mar. 30, 2006).

Services.<sup>27</sup> With only minor changes, the Committee favorably reported the bill back to the Senate on March 23, 2006.<sup>28</sup>

On March 27, 2006, Senator Greg Goggans of the 7th district introduced the bill on the Senate floor.<sup>29</sup> Senator Goggans opened by stating that “Georgia Medicaid spends 1 billion dollars each year on pharmac[euticals],” and this could be remedied by utilizing some of the countless unused medications that are thrown away each year after someone passes or leaves a nursing home or other facility.<sup>30</sup> Senator Ed Harbison of the 15th district asked why controlled substances would not be included under the new drug recycling program.<sup>31</sup> Senator Goggans explained that controlled substances may include narcotics, implying that there may be some logistical difficulties related to their distribution.<sup>32</sup> Senator Seth Harp of the 29th district finished introducing the bill by stating that it is an “absolute tragedy” that so many unused prescriptions are thrown away when they could be used for a needy person after a patient passes away.<sup>33</sup>

Senator Jim Whitehead from the 24th district introduced an amendment to incorporate a provision in the Act to allow pharmacists to refuse to fill prescriptions for any drug which is prescribed to terminate a pregnancy.<sup>34</sup> Senator Whitehead noted that the language was exactly the same as SB 123 which the Senate had previously passed.<sup>35</sup> The amendment provides that a pharmacist who states their objection to abortion on moral or religious grounds is not required to

27. See State of Georgia Final Composite Status Sheet, HB 1178, Mar. 13, 2006 (Mar. 30, 2006).

28. See State of Georgia Final Composite Status Sheet, HB 1178, Mar. 23, 2006 (Mar. 30, 2006); HB 1178 (SCS), 2006 Ga. Gen. Assem. The Senate Committee clarified that drug manufacturers could not be liable for any injury caused by transferred drugs that arose from failure to communicate product information or the expiration date of the transferred drug. See HB 1178 (SCS), 2006 Ga. Gen. Assem.

29. See Senate Audio, *supra* note 15 (remarks by Sen. Greg Goggans).

30. See *id.*

31. See *id.*

32. See *id.*

33. See *id.* (remarks by Sen. Seth Harp).

34. See *id.* (remarks by Sen. Jim Whitehead); see also HB 1178 (SCSFA), 2006 Ga. Gen. Assem.

35. See Senate Audio, *supra* note 15 (remarks by Sen. Jim Whitehead). In introducing SB 123 for floor debate on March 2, 2006, Senator Jim Whitehead of the 24th district stated: “I come before you today to present SB 123. This bill is very simple and only does one thing. That is to extend protection to a pharmacist if and when they choose to refuse to fill a drug to terminate a pregnancy. The pharmacists must have a written statement of objection to any and all abortions. They must make an effort to find another pharmacy or pharmacist to fill the prescription or immediately return the prescription to its owner.” See Mar. 2 Senate Audio, *supra* note 19.

fill a prescription for a drug that will terminate a pregnancy.<sup>36</sup> Furthermore, a pharmacist must make a reasonable effort to find another pharmacy or pharmacist to fill the prescription or immediately return the prescription to its owner.<sup>37</sup> Senator Gloria Butler of the 55th district asked Senator Whitehead to clarify who would receive pharmacists' written objections to filling these prescriptions.<sup>38</sup> Senator Whitehead clarified that a pharmacist would be required to provide a written objection to their employer.<sup>39</sup> The amendment passed the Senate by a vote 34 to 16 and became part of HB 1178.<sup>40</sup> Senator Preston Smith of the 52nd district introduced a second amendment for a grammatical and rephrasing correction, and it passed unanimously.<sup>41</sup>

Before the final vote on the amended bill in the Senate, Senator Butler of the 55th district questioned whether the amendment was germane to the bill.<sup>42</sup> She felt the provision granting pharmacists immunity for refusing to fill a prescription was not germane to the part of the bill that discussed recycling of unused prescriptions from nursing homes.<sup>43</sup> Senator Butler said that no one in a "nursing home would have to use any pills like this."<sup>44</sup> The President of the Senate, Eric Johnson, deliberated but decided the amendment was germane because it would be added to the same Code section as the drug recycling program.<sup>45</sup> HB 1178, as amended, passed the Senate by a vote of 32 to 15.<sup>46</sup>

### *Consideration by the Conference Committee*

The House sent the Senate's version of HB 1178 to Conference Committee on March 28, 2006.<sup>47</sup> While nothing was taken out of the

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36. See HB 1178 (SCSFA), 2006 Ga. Gen. Assem.

37. *See id.*

38. *See Senate Audio, supra* note 15 (remarks by Sen. Gloria Butler).

39. *See id.* (remarks by Sen. Jim Whitehead).

40. Georgia Senate Voting Record, HB 1178 (Mar. 27, 2006).

41. *See Senate Audio, supra* note 15 (remarks by Sen. Preston Smith).

42. *See id.* (remarks by Sen. Gloria Butler).

43. *See id.*

44. *See id.*

45. *See id.* (remarks by President of the Senate, Eric Johnson).

46. Georgia Senate Voting Record, HB 1178 (Mar. 27, 2006).

47. *See State of Georgia Final Composite Status Sheet, HB 1178, Mar. 28, 2006 (Mar. 30, 2006).*

version which passed in the Senate on March 27, 2006, a number of provisions were added.<sup>48</sup> The conference committee added a provision to broaden the availability of loans to physicians who move into rural areas.<sup>49</sup> It also redefined “rural.”<sup>50</sup> Populations on military bases are not included when determining the population to define whether a county is rural or not.<sup>51</sup>

HB 1178 was sent to the Governor on April 5, 2006 and was signed into law on April 18, 2006.<sup>52</sup>

### *The Act*

The Act amends Chapter 4 of Title 26 of the Code to add a new Article 11,<sup>53</sup> which includes the following: (1) mandates a state-wide program through which unused prescriptions, other than controlled substances, may be transferred to medically indigent Georgians and authorizes a pilot program to determine the best way to implement the Act,<sup>54</sup> (2) defines Georgians who can receive the drugs as those who are Medicaid eligible under the laws of Georgia, those without health insurance, or those whose income does not exceed 200% of the federal poverty level and who have health insurance that does not cover the cost of treatment,<sup>55</sup> and (3) states that pharmacists, other health care professionals, and drug manufacturers acting pursuant to the Act and within the scope of their practices will not be subject to liability for acting pursuant to the Act.<sup>56</sup>

The Act amends Article 7 of Chapter 4 of Title 49 to add a new Code section which allows for the payment of appropriate restocking fees that a pharmacy incurs by acting pursuant to this Act.<sup>57</sup>

The Act amends Code section 16-12-142 to allow pharmacists to refuse to fill prescriptions which will terminate a pregnancy.<sup>58</sup>

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48. See HB 1178 (CCS), 2006 Ga. Gen. Assem.

49. *Id.*

50. *Id.*

51. *Id.*

52. See State of Georgia Final Composite Status Sheet, HB 1178, Mar. 28, 2006 (Mar. 30, 2006).

53. See O.C.G.A. §§ 26-4-190 to -195 (Supp. 2006).

54. See O.C.G.A. § 26-4-192 (Supp. 2006).

55. See O.C.G.A. § 26-4-191(3) (Supp. 2006).

56. See O.C.G.A. § 26-4-194 (Supp. 2006).

57. See O.C.G.A. § 49-4-152.5 (Supp. 2006).

58. See O.C.G.A. § 16-12-142(b) (Supp. 2006).

Code section 31-34-2 is amended to broaden loan eligibility for physicians who agree to serve rural communities.<sup>59</sup> Physicians seeking a loan are no longer required to be “young” or to have “recently” completed their medical education.<sup>60</sup> This provision now applies to any physician agreeing to practice in a rural area.<sup>61</sup> Code section 31-34-4 is amended to give priority in granting a loan to any physician actively practicing or beginning to practice any specialty experiencing a shortage or distribution problem in rural areas as determined by the State Medical Education Board.<sup>62</sup> Previously, priority had been limited to physicians practicing obstetrics.<sup>63</sup> Code section 31-4-94.1 is amended to redefine “rural county.”<sup>64</sup> Military personnel will no longer be included for purposes of calculating the population of such counties.<sup>65</sup>

### *Analysis*

#### *Drug Redistribution Program*

The most important purpose of the Act is to recycle unused prescription drugs for needy Georgians through the drug redistribution program.<sup>66</sup> The House gave unanimous approval to this program based on the belief that anything that can be done to reduce the burden on the State’s Medicaid program is a good thing.<sup>67</sup> However, the true reduction in costs is uncertain because creating the pilot program, the redistribution program, and reimbursing pharmacies for restocking costs will impose added costs.<sup>68</sup>

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59. See O.C.G.A. § 31-34-2 (Supp. 2006).

60. *Id.*

61. *Id.*

62. See O.C.G.A. § 31-34-4 (Supp. 2006).

63. See O.C.G.A. § 31-34-4 (2005). Although priority was given to obstetrics and gynecology, the board was authorized to consider other practices in granting loans, to include in order of priority, family practice, general practice, general internal medicine, general pediatrics, general surgery, psychiatry, or other approved specialties. See *id.*

64. See O.C.G.A. § 31-7-94.1 (Supp. 2006).

65. *Id.*

66. See Senate Audio, *supra* note 15 (remarks by Sen. Greg Goggans).

67. See Georgia House Voting Record, HB 1178 (Mar. 9, 2006); see also Hill Interview, *supra* note 6.

68. See O.C.G.A. §§ 26-4-192, 49-4-152.5 (Supp. 2006).

Safety concerns might also arise in dispensing the drugs.<sup>69</sup> The Georgia Pharmacy Association believes that tampering or storage problems may create potential dangers for patients receiving prescriptions under the program.<sup>70</sup> The Pharmacy Research and Manufacturers of America, a drug industry organization, also said that the program may leave some patients vulnerable to unsafe drugs.<sup>71</sup>

These problems have already surfaced when redistributing drugs internationally.<sup>72</sup> According to the World Health Organization, “an estimated 17,000 metric tons of inappropriate donations were received with an estimated disposal cost of [34 million dollars]” between 1992 and 1996 in Bosnia and Herzegovina.<sup>73</sup> Problems with these inappropriately redistributed drugs included improper storage, improper labeling, drugs past their expiration date, and inaccurate doses or quantities.<sup>74</sup> A structured oversight program in Georgia’s law on unused prescriptions may help to avoid many of the problems experienced overseas, but many critics still cite some of these as safety concerns.<sup>75</sup>

### *Immunity for Pharmacists*

The amendment allowing pharmacists to refuse to fill prescriptions that may induce an abortion created more controversy than the unanimously passed drug redistribution program.<sup>76</sup> Even Representative Hill, the first sponsor of the Act, was opposed to adding this provision.<sup>77</sup> Opponents expressed concerns that the abortion provision would limit access to abortion-inducing drugs, that there could be inconsistent application of laws allowing pharmacists

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69. Miller, *supra* note 9.

70. *Id.*

71. *Id.*

72. See Hepler-Drahos, *supra* note 1.

73. *See id.*

74. *See id.*

75. *See* Miller, *supra* note 9.

76. Georgia Senate Voting Record, HB 1178 (Mar. 27, 2006) (showing that 16 Senators voted against including the abortion amendment).

77. Hill Interview, *supra* note 6.

to refuse to fill certain prescriptions, and that it was not germane to the Utilization of Unused Prescription Drugs Act.<sup>78</sup>

The abortion provision may effectively limit the availability of pills used to terminate pregnancies.<sup>79</sup> Abortion rights groups argue that widespread access to these medications should be maintained.<sup>80</sup> “We can’t allow rogue pharmacists to leave women in a lurch (some [pharmacists] not only refuse to fill prescriptions, they sometimes destroy them).”<sup>81</sup> Although the Act provides that the pharmacist refusing to fill the prescription must make a reasonable effort to find another pharmacist willing to fill the prescription or, alternatively, immediately return the prescription to the customer, it does not require that any pharmacist fill the prescription.<sup>82</sup> Hypothetically, there could be areas in Georgia where there are no pharmacists nearby that are willing to fill the prescriptions, and patients may have to travel long distances in order to obtain the prescriptions.<sup>83</sup> Supporters of this section of the Act argue that pharmacists should not be required to dispense these types of prescriptions that are morally repugnant to them.<sup>84</sup>

Secondly, opponents of the abortion provision in the Act argue that laws such as these are inconsistently and hypocritically applied.<sup>85</sup> For example, pharmacists must still distribute allegedly harmful and morally objectionable drugs like Viagra, but according to the Act, they are no longer required to distribute pills to terminate a pregnancy.<sup>86</sup> This example highlights the over- and under-inclusiveness of the abortion provision of the Act—pharmacists may refuse to fill all prescriptions that may terminate a pregnancy, even if the use of that prescription is not morally objectionable, and pharmacists may not refuse to fill other morally objectionable prescriptions such as Viagra.<sup>87</sup>

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78. See discussion *infra* Analysis: Immunity for Pharmacists and text accompanying notes 73-86.

79. See Radley Balko, *Pharmacists Shouldn't Be Forced to Dispense Abortion Pill*, FOXNEWS.COM, Mar. 5, 2006, <http://www.foxnews.com/story/0,2933,186875,00.html>.

80. *Id.*

81. *Id.*

82. O.C.G.A. 16-12-142(b) (Supp. 2006).

83. See Balko, *supra* note 79.

84. See *id.*

85. See Mar. 2 Senate Audio, *supra* note 19 (remarks by Sen. Steen Miles).

86. See *id.*

87. See *id.*

Finally, opponents of the abortion provision contend that it is not germane to the Act.<sup>88</sup> Article III, section V, paragraph 3 of the Georgia Constitution reads “[n]o bill shall pass which refers to more than one subject matter or contains matter different from what is expressed in the title thereof.”<sup>89</sup> Representative Hill, the Act’s sponsor, felt that including the provision would violate this constitutional mandate by adding a different subject matter to the Utilization of Prescription Drugs Act.<sup>90</sup> Though the objection to the germaneness of the provision was overruled, the claimed lack of germaneness opens the Act to constitutional challenge in the courts.<sup>91</sup> A claimant must suffer an injury to challenge the constitutionality of a statute, which will limit the pool of citizens with standing to challenge the law.<sup>92</sup> Even so, if a patient is not able to obtain drugs prescribed to terminate a pregnancy, this injury may sufficiently create a basis for challenging the law.<sup>93</sup>

*Elizabeth A. Bulat*

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88. See Senate Audio, *supra* note 15 (remarks by Sen. Gloria Butler).

89. GA. CONST. art. III, § 5, para. 3.

90. Hill Interview, *supra* note 6.

91. See GA. CONST. art. III, § 5, para. 3.

92. See *Lord v. State*, 219 S.E.2d 425 (Ga. 1975).

93. See *id.*