
A BILL FOR AN ACT

RELATING TO CONTROLLED SUBSTANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 329, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§329-A Administrative penalty; enforcement. (a) Any
5 person who violates this chapter or any rule adopted pursuant to
6 this chapter shall be subject to a penalty of not more than
7 \$10,000 for each separate offense. All penalties imposed under
8 this section shall be in addition to any other administrative or
9 judicial remedy provided by this chapter or by rules adopted
10 under this chapter, and shall be deposited into the controlled
11 substance registration revolving fund established under section
12 329-59.

13 (b) In enforcing this section, if the administrator
14 determines that any person has violated this chapter or any rule
15 adopted pursuant to this chapter, the administrator:



- 1 (1) Shall cause written notice to be served upon the
2 alleged violator. The notice shall specify the
3 alleged violation;
- 4 (2) Shall issue to the alleged violator or violators a
5 cease and desist order against the activities that
6 violate this chapter or any rule adopted pursuant to
7 this chapter;
- 8 (3) Shall impose penalties as provided in subsection (a)
9 by sending a notice in writing, either by certified
10 mail or by personal service, to the alleged violator
11 describing the violation; and
- 12 (4) May require that the alleged violator or violators
13 appear before the administrator for a hearing at a
14 time and place specified in the notice and answer the
15 charges complained of.
- 16 (c) Any order issued under this section shall become final
17 twenty days after service unless within the twenty days any
18 person named therein requests in writing a hearing before the
19 administrator. Any penalty imposed under this section shall
20 become due and payable twenty days after the notice of penalty
21 is served; provided that whenever a hearing is requested on any
22 penalty imposed under this section, the penalty shall become due



1 and payable only upon completion of all review proceedings and
2 the issuance of a final order confirming the penalty in whole or
3 in part. Upon request for a hearing, the administrator shall
4 require that the alleged violator or violators appear before the
5 administrator for a hearing at a time and place specified in the
6 notice and answer the charges complained of.

7 (d) Any hearing under this section shall be conducted as a
8 contested case under chapter 91. If after a hearing held
9 pursuant to this section, the administrator finds that any
10 violation has occurred, the administrator shall affirm or modify
11 any penalty imposed or shall affirm or modify the order
12 previously issued or issue an appropriate order or orders for
13 the prevention, abatement, or control of the violation, or for
14 the taking of such other corrective action as may be
15 appropriate. If after a hearing on an order or penalty
16 contained in a notice, the administrator finds that no violation
17 has occurred, the administrator shall rescind the order or
18 penalty. Any order issued after hearing may prescribe the date
19 or dates by which the violation or violations shall cease and
20 may prescribe timetables for necessary action in preventing,
21 abating, or controlling the violation.



1 (e) If the amount of any penalty is not paid to the
2 department within thirty days after it becomes due and payable,
3 the administrator may institute a civil action in the name of
4 the State to collect the penalty, which shall be a government
5 realization.

6 In any judicial proceeding to recover the penalty imposed,
7 the administrator need only show that:

- 8 (1) Notice was given;
- 9 (2) A hearing was held or the time granted for requesting
10 a hearing has expired without such a request;
- 11 (3) The penalty was imposed; and
- 12 (4) The penalty remains unpaid.

13 (f) In connection with any hearing held pursuant to this
14 section, the administrator shall have the power to subpoena the
15 attendance of witnesses and the production of evidence on behalf
16 of all parties.

17 **§329-B Injunctive relief.** The administrator may maintain
18 an action in any court of competent jurisdiction for injunctive
19 relief to prevent any violation of this chapter or any rule
20 adopted thereunder."



1 SECTION 2. Section 329-1, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Bona fide practitioner-patient relationship" means a
5 relationship between a practitioner and a patient that includes
6 all four of the following elements:

- 7 (1) The patient has a medical complaint;
- 8 (2) A medical history of the patient has been taken;
- 9 (3) The practitioner has performed a physician examination
10 or, in the case of a psychiatrist, a psychological
11 examination prior to administering, prescribing, or
12 dispensing a controlled substance; and
- 13 (4) Some logical connection exists between the patient's
14 medical complaint, medical history, and physical or
15 psychological examination, and the controlled
16 substance administered, prescribed, or dispensed."

17 SECTION 3. Section 329-34, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) A registration under section 329-33 to manufacture,
20 distribute, or dispense a controlled substance may be suspended
21 or revoked by the department of public safety upon a finding
22 that the registrant:



- 1 (1) Has furnished false or fraudulent material information
2 in any application filed under this chapter;
- 3 (2) Has been convicted of a felony or has been granted a
4 motion for the deferral of acceptance of a guilty plea
5 or a nolo contendere plea to a felony, pursuant to
6 chapter 853 and under any state or federal law
7 relating to any controlled substance;
- 8 (3) Has been convicted within the last five years of a
9 misdemeanor under any state or federal law relating to
10 any controlled substance or regulated chemical
11 violation, or has been granted a motion for the
12 deferral of acceptance of a guilty plea, conditional
13 discharge, or a nolo contendere plea for a misdemeanor
14 under any state or federal law relating to any
15 controlled substance or regulated chemical violation;
- 16 [~~3~~] (4) Has had the registrant's federal registration
17 suspended or revoked to manufacture, distribute,
18 prescribe, or dispense controlled substances; or
- 19 [~~4~~] (5) Has had the registrant's state license to practice
20 the registrant's profession suspended or revoked by
21 the applicable governing state board."



1 SECTION 4. Section 329-38, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

3 "(d) The effectiveness of a prescription for the purposes
4 of this section shall be determined as follows:

5 (1) A prescription for a controlled substance shall be
6 issued for a legitimate medical purpose by an
7 individual practitioner acting in the usual course of
8 the practitioner's professional practice[-] where a
9 bona fide practitioner-patient relationship exists.

10 The responsibility for the proper prescribing and
11 dispensing of controlled substances shall be upon the
12 prescribing practitioner, but a corresponding
13 responsibility shall rest with the pharmacist who
14 fills the prescription. An order purporting to be a
15 prescription issued not in the usual course of
16 professional treatment or for legitimate and
17 authorized research shall not be deemed a prescription
18 within the meaning and intent of this section, and the
19 person who knowingly fills such a purported
20 prescription, as well as the person who issues the
21 prescription, shall be subject to the penalties
22 provided for violations of this chapter;



- 1 (2) A prescription may not be issued to allow an
2 individual practitioner to obtain controlled
3 substances for supplying the individual practitioner
4 for the purpose of general dispensing to patients;
- 5 (3) A prescription may not be issued for the dispensing of
6 narcotic drugs listed in any schedule for the purpose
7 of "detoxification treatment" or "maintenance
8 treatment". Nothing in this section shall prohibit a
9 physician or authorized hospital staff from
10 administering or dispensing narcotic drugs in a
11 hospital to maintain or detoxify a person as an
12 incidental adjunct to medical or surgical treatment of
13 conditions other than addiction; and
- 14 (4) An individual practitioner may not prescribe or
15 dispense a substance included in schedule II, III, IV,
16 or V for that individual practitioner's personal use,
17 except in a medical emergency."

18 SECTION 5. Section 329-41, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) It is unlawful for any person:

- 21 (1) Who is subject to part III to distribute, administer,
22 prescribe, or dispense a controlled substance in



1 violation of section 329-38; however, a licensed
2 manufacturer or wholesaler may sell or dispense a
3 controlled substance to a master of a transpacific
4 ship or a person in charge of a transpacific aircraft
5 upon which no physician is regularly employed, for the
6 actual medical needs of persons on board such ship or
7 aircraft when not in port; provided schedule I or II
8 controlled substances shall be sold to the master of
9 such ship or person in charge of such aircraft only in
10 accordance with the provisions set forth in 21 Code of
11 Federal Regulations, sections 1301, 1305, and 1307,
12 adopted pursuant to Title 21, United States Code,
13 section 821;

14 (2) Who is a registrant to manufacture a controlled
15 substance not authorized by the registrant's
16 registration or to distribute or dispense a controlled
17 substance not authorized by the registrant's
18 registration to another registrant or another
19 authorized person;

20 (3) To refuse or fail to make available, keep, or furnish
21 any record, notification, order form, prescription,
22 statement, invoice, or information in patient charts



- 1 relating to the administration, dispensing, or
2 prescribing of controlled substances;
- 3 (4) To refuse any lawful entry into any premises for any
4 inspection authorized by this chapter;
- 5 (5) Knowingly to keep or maintain any store, shop,
6 warehouse, dwelling, building, vehicle, boat,
7 aircraft, or other structure or place for the purpose
8 of using these substances or which is used for keeping
9 or selling them in violation of this chapter or
10 chapter 712, part IV; [~~or~~]
- 11 (6) Who is a practitioner or pharmacist to dispense a
12 controlled substance to any individual not known to
13 the practitioner or pharmacist, without first
14 obtaining proper identification and documenting, by
15 signature on a log book kept by the practitioner or
16 pharmacist, the identity of the individual obtaining
17 the controlled substance[~~-~~] and the type of
18 identification presented. If the individual does not
19 have any form of proper identification, the pharmacist
20 shall verify the validity of the prescription and
21 identity of the patient with the prescriber, or their
22 authorized agent, before dispensing the controlled



1 substance. For the purpose of this section, "proper
2 identification" means government-issued identification
3 containing the photograph, printed name, and signature
4 of the individual obtaining the controlled
5 substance[-]; or

6 (7) Who is a practitioner subject to part III to
7 administer, prescribe, or dispense a controlled
8 substance without a medical reason determined after a
9 good faith prior examination of the patient."

10 SECTION 6. Section 329-59, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§329-59 Controlled substance registration revolving fund;**
13 **established.** (a) There is established within the state
14 treasury the controlled substance registration revolving fund.
15 The fund shall be expended at the discretion of the director of
16 public safety for the purpose of:

17 (1) Offsetting the cost of the electronic prescription
18 accountability system, the registration and control of
19 the manufacture, distribution, prescription, and
20 dispensation of controlled substances and regulated
21 chemicals listed under section 329-61[-] within the
22 [~~State~~] state and investigations of violations



1 thereof, and the processing and issuance of a patient
2 registry identification certificate designated under
3 part IX; and

4 (2) Funding positions authorized by the legislature by
5 law.

6 (b) The fund shall consist of all moneys derived from fees
7 and fines collected pursuant to sections 329-31, 329-67, [~~and~~]
8 329-72, 329-123(b), and 329-A, and legislative appropriations.
9 All fees collected pursuant to sections 329-31, 329-67, [~~and~~]
10 329-72, 329-123(b), and 329-A shall be deposited in the
11 controlled substance registration revolving fund."

12 SECTION 7. There is appropriated out of the controlled
13 substance registration revolving fund established under section
14 329-59 the sum of \$266,201 or so much thereof as may be
15 necessary for fiscal year 2006-2007 for two permanent
16 investigators and their necessary investigative equipment for
17 the narcotics enforcement division of the department of public
18 safety.

19 The sum appropriated shall be expended by the department of
20 public safety for the purposes of this Act.

21 SECTION 8. In codifying the new sections added by section
22 1 of this Act, the revisor of statutes shall substitute



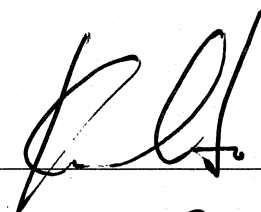


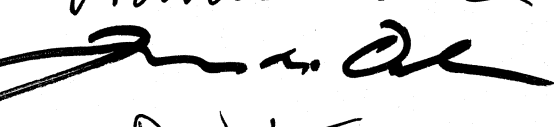
1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 9. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 10. This Act shall take effect upon its approval;
6 provided that section 7 of this Act shall take effect on July 1,
7 2006.

8

INTRODUCED BY:



 Mayor B. De

 Cindy Evans
 Al G. ...
 Matt ...
 Dennis ...

 PW



Report Title:

Controlled Substances

Description:

Establishes an administrative fine for violations of the Uniform Controlled Substances Act and allows the Narcotics Enforcement Division of the Department of Public Safety to bring actions to prevent these violations. Allows the Department of Public Safety to suspend or revoke a registration to manufacture, distribute, or dispense a controlled substance if the registrant within the last five years has been found guilty of a misdemeanor relating to any controlled substance. Requires a bona fide practitioner-patient relationship for a practitioner to prescribe a controlled substance. Prohibits the dispensing of a controlled substance to an individual unless the individual presents government-issued identification and the practitioner or pharmacist logs the type of identification presented. Prohibits a practitioner from administering, prescribing, or dispensing a controlled substance without a medical reason determined after prior examination of the patient. Authorizes the use of the controlled substance registration revolving fund to offset the cost of investigating violations relating to the registration and control of controlled substances. Appropriates funds for investigators and related equipment for the Narcotics Enforcement Division of the Department of Public Safety.

