JAN 25 2006 SB. NO. 2372

A BILL FOR AN ACT

RELATING TO CONTROLLED SUBSTANCES.

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

SECTION 1. Section 329-22, Hawaii Revised Statutes, is amended to read as follows:

"**§329-22 Schedule V.** (a) The controlled substances listed in this section are included in schedule V.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Pyrovalerone [~~.~~] ;

(2) Ephedrine, its salts, optical isomers, and salts of optical isomers as the only active ingredient, or in combination with other active ingredients;

(3) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers as the only active ingredient, or in combination with other active ingredients; and

(4) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers as the only active ingredient, or in combination with other active ingredients.

(d) Notwithstanding any other law, a pharmacy may dispense, sell, or distribute without a prescription not more than three packages or not more than nine grams of any product, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of optical isomers, provided that:

(1) It is dispensed, sold, or distributed only by, or under the supervision of, a licensed pharmacist or a registered pharmacy technician; and

(2) Any person purchasing or otherwise acquiring any product, mixture, or preparation shall:

(A) Produce proper identification containing the photograph, printed name, and signature of the individual obtaining the controlled substance; and

(B) Sign a written log, receipt, or other program or mechanism approved by the administrator, showing the date of the transaction, name of the person,

and the amount of the compound, mixture, or preparation.

No person shall purchase, receive, or otherwise acquire more than nine grams of any product, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of optical isomers within any thirty-day period, except that this limit shall not apply to any quantity of such product, mixture, or preparation dispensed pursuant to a valid prescription.

(e) Schedule V designation, as it applies to compounds, mixtures, or preparations containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers, shall not apply to any compounds, mixtures, or preparations that are in liquid, liquid capsule, or gel capsule form if pseudoephedrine is not the only active ingredient.

(f) The department, by rule, may exempt other products from schedule V if the administrator finds that the products are not used in the illegal manufacture of methamphetamine or other controlled dangerous substances. A manufacturer of a drug

product may apply for removal of the product from the schedule if the product is determined by the administrator to have been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine."

SECTION 2. Section 329-75, Hawaii Revised Statutes, is repealed.

["~~[§329-75] Sales of products, mixtures, or preparations containing pseudoephedrine; reporting requirement for wholesalers.~~ ~~(a) Notwithstanding any other law to the contrary, a pharmacy or retailer may dispense, sell, or distribute without a prescription not more than three packages or not more than nine grams per transaction, of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers, as the only active ingredient or in combination with other active ingredients; provided that the pharmacy or retailer complies with the following conditions:~~

~~(1) The product, mixture, or preparation shall be dispensed, sold, or distributed from an area that is in the direct line of sight of an employee at the check-out station or counter;~~

~~(2) The product, mixture, or preparation shall be dispensed, sold, or distributed from an area that is under constant video monitoring with signage placed near the drug that warns that the area is under constant video monitoring; or~~

~~(3) The product, mixture, or preparation shall be dispensed, sold, or distributed from an area not accessible by customers or the general public, such as behind the counter or in a locked display case.~~

~~(b) The sales restriction in this section, as it applies to products, mixtures, or preparations containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers, shall not apply to any products, mixtures, or preparations that are in liquid, liquid capsule, or gel capsule form if pseudoephedrine is not the only active ingredient.~~

~~(c) The department, by rule, may exempt other products from this section, including extended-release pseudoephedrine combination products, if the administrator finds that the products are not used in the illegal manufacture of methamphetamine or other controlled substances. A manufacturer of a drug product may apply for removal of the product from this~~

~~section if the product is determined by the administrator to have been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.~~

~~(d) Notwithstanding any other provision of this chapter to the contrary, every wholesaler shall report to the administrator all sales made to any retailer, of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers, as the only active ingredient or in combination with other active ingredients. The department shall provide a common reporting form that contains at least the following information about the product, mixture, or preparation:~~

~~(1) Generic or other name;~~

~~(2) Quantity sold;~~

~~(3) Date of sale;~~

~~(4) Name and address of the wholesaler; and~~

~~(5) Name and address of the retailer.~~

~~(e) For purposes of this section, "extended-release pseudoephedrine combination product" means any product containing pseudoephedrine that also contains other ingredients that protect the pseudoephedrine from immediate release and prevent the pseudoephedrine from being extracted.~~"]

SECTION 3. Section 329-64, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The requirements imposed by sections 329-62, [~~329-63,~~] 329-63(a), and 329-67 of this part shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian;

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to patients;

(3) Any manufacturer or wholesaler licensed by the State who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian; and

[~~(4) Any sale, transfer, furnishing, or receipt of any drug which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 United States Code Sec. 301 et seq.) or regulations adopted thereunder.~~

~~(5)~~] (4) Any "dietary supplement" as defined by the federal Food, Drug, and Cosmetic Act (21 United States Code Sec. 301) containing ephedrine alkaloids extracted from any species of Ephedra that meets all of the following criteria:

(A) It contains, per dosage unit or serving, not more than twenty-five milligrams of ephedrine alkaloids and its labeling does not suggest or recommend a total daily intake of more than one hundred milligrams of ephedrine alkaloids;

(B) It contains no hydrochloride or sulfate salts of ephedrine alkaloids;

(C) It is packaged with a prominent label securely affixed to each package that states all of the following:

(i) The amount in milligrams of ephedrine alkaloids in a dosage unit or serving;

(ii) The amount of the dietary supplement that constitutes a dosage unit or serving; and

(iii) The maximum recommended dosage of ephedrine alkaloids for a healthy adult human is not

more than one hundred milligrams in a twenty-four hour period."

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

SECTION 5. This Act shall take effect on July 1, 2006.

INTRODUCED BY: _____

BY REQUEST

JUSTIFICATION SHEET

SB. NO. 2372

DEPARTMENT: Public Safety

TITLE: A BILL FOR AN ACT RELATING TO CONTROLLED SUBSTANCES.

PURPOSE: The purposes of this bill is to add the chemicals ephedrine, pseudoephedrine, and phenylpropanolamine to schedule V, as these substances are immediate precursors of amphetamine, a schedule II controlled substances; and to limit the exemption on single transaction retail sale of over-the-counter drug products containing ephedrine, pseudopseudoephedrine, or an ephedrine combination product to deter their use in clandestine laboratories to unlawfully manufacture methamphetamine.

This bill will also repeal section 329-75, Hawaii Revised Statutes, because it contradicts the more stingent conditions of the proposed amendments.

MEANS: Amend sections 329-22 and 329-64(a) and repeal section 329-75, Hawaii Revised Statutes.

JUSTIFICATION: To restrict the sales of cold medicines that can be used to manufacture the illegal and highly addictive drug methamphetamine by deleting the exemption on over the counter retail sales of pseudoephedrine and ephedrine combination products from section 329-64, Hawaii Revised Statutes; and to add chemicals used in that manufacturing process to Schedule V of the Controlled Substances Act.

Section 329-75, Hawaii Revised Statutes, will be repealed as it provides for less stringent conditions in the control of pseudoephedrine and ephedrine combination products. The proposed amendments to section 329-22, Hawaii Revised Statutes, will substantially limit the opportunity to steal these products from shelves of pharmacies and retail stores.

Impact on the public: Protection of the

public from individuals who clandestinely manufacture illegal controlled substances.

Impact on the department and other agencies: Assist the Narcotics Enforcement Division in clarifying regulations of the Uniform Controlled Substances Act.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: PSD 502.

OTHER AFFECTED AGENCIES: Department of Health and other law enforcement agencies.

EFFECTIVE DATE: July 1, 2006.