

JAN 25 2006

SB. NO. 2372

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# A BILL FOR AN ACT

RELATING TO CONTROLLED SUBSTANCES.

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

1 SECTION 1. Section 329-22, Hawaii Revised Statutes, is

2 amended to read as follows:

3 "§329-22 Schedule V. (a) The controlled substances

4 listed in this section are included in schedule V.

5 (b) Narcotic drugs containing nonnarcotic active medicinal

6 ingredients. Any compound, mixture, or preparation containing

7 limited quantities of any of the following narcotic drugs, which

8 also contains one or more nonnarcotic active medicinal

9 ingredients in sufficient proportion to confer upon the

10 compound, mixture, or preparation, valuable medicinal qualities

11 other than those possessed by the narcotic drug alone:

12 (1) Not more than 200 milligrams of codeine, or any of its

13 salts, per 100 milliliters or per 100 grams;

14 (2) Not more than 100 milligrams of dihydrocodeine, or any

15 of its salts, per 100 milliliters or per 100 grams;

16 (3) Not more than 100 milligrams of ethylmorphine, or any

17 of its salts, per 100 milliliters or per 100 grams;

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

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

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

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

15 (1) Pyrovalerone [-] ;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 ~~["§329-75] Sales of products, mixtures, or preparations~~  
8 ~~containing pseudoephedrine, reporting requirement for~~  
9 ~~wholesalers. (a) Notwithstanding any other law to the~~  
10 ~~contrary, a pharmacy or retailer may dispense, sell, or~~  
11 ~~distribute without a prescription not more than three packages~~  
12 ~~or not more than nine grams per transaction, of any product,~~  
13 ~~mixture, or preparation containing any detectable quantity of~~  
14 ~~pseudoephedrine, its salts, optical isomers, or salts of optical~~  
15 ~~isomers, as the only active ingredient or in combination with~~  
16 ~~other active ingredients, provided that the pharmacy or retailer~~  
17 ~~complies with the following conditions:~~

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

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

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

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

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

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

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

- 13 ~~(1) Generic or other name;~~  
14 ~~(2) Quantity sold;~~  
15 ~~(3) Date of sale;~~  
16 ~~(4) Name and address of the wholesaler; and~~  
17 ~~(5) Name and address of the retailer.~~

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

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

3 "(a) The requirements imposed by sections 329-62, [~~329-~~  
4 ~~63~~] 329-63(a), and 329-67 of this part shall not apply to any  
5 of the following:

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

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

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

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

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1       ~~(5)]~~ (4) Any "dietary supplement" as defined by the  
2               federal Food, Drug, and Cosmetic Act (21 United States  
3               Code Sec. 301) containing ephedrine alkaloids  
4               extracted from any species of Ephedra that meets all  
5               of the following criteria:

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

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

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

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

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

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



JUSTIFICATION SHEET

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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 stringent 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

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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.