

JAN 25 2006

A BILL FOR AN ACT

RELATING TO HEALTH.

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

- 1 SECTION 1. Section 329, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:
- 4 "Imitation controlled substance" means a substance that is
5 not a controlled substance, which:
- 6 (1) In the form in which it is distributed is shaped,
7 marked, or colored to lead a reasonable person to
8 believe that it is a controlled substance; or
- 9 (2) Is represented to be a controlled substance. In
10 determining whether this representation was made, the
11 court shall consider, in addition to all other
12 relevant factors:
- 13 (A) Any statement made by the defendant regarding the
14 nature of the substance, its use, or its effect;
15 and
- 16 (B) Any statement made by the defendant regarding the
17 recipient's ability to resell the substance at a



1 substantially higher price than is customary for
2 the substance.

3 "Imitation controlled substance" does not include any
4 manufacturing, distributing, or selling or possession of an
5 imitation controlled substance for use as a placebo in the
6 course of a practitioner's work."

7 SECTION 2. Section 329-41, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

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

10 (1) Who is subject to part III to distribute or dispense a
11 controlled substance in violation of section 329-38;
12 however, a licensed manufacturer or wholesaler may
13 sell or dispense a controlled substance to a master of
14 a transpacific ship or a person in charge of a
15 transpacific aircraft upon which no physician is
16 regularly employed, for the actual medical needs of
17 persons on board such ship or aircraft when not in
18 port; provided schedule I or II controlled substances
19 shall be sold to the master of such ship or person in
20 charge of such aircraft only in accordance with the
21 provisions set forth in 21 Code of Federal

- 1 Regulations, sections 1301, 1305, and 1307, adopted
2 pursuant to Title 21, United States Code, section 821;
- 3 (2) Who is a registrant to manufacture a controlled
4 substance not authorized by the registrant's
5 registration or to distribute or dispense a controlled
6 substance not authorized by the registrant's
7 registration to another registrant or another
8 authorized person;
- 9 (3) To refuse or fail to make available, keep, or furnish
10 any record, notification, order form, prescription,
11 statement, invoice, or information in patient charts
12 relating to the administration, dispensing, or
13 prescribing of controlled substances;
- 14 (4) To refuse any lawful entry into any premises for any
15 inspection authorized by this chapter;
- 16 (5) Knowingly to keep or maintain any store, shop,
17 warehouse, dwelling, building, vehicle, boat,
18 aircraft, or other structure or place for the purpose
19 of using these substances or which is used for keeping
20 or selling them in violation of this chapter or
21 chapter 712, part IV; [e]

- 1 (6) Who is a practitioner or pharmacist to dispense a
2 controlled substance to any individual not known to
3 the practitioner or pharmacist, without first
4 obtaining proper identification and documenting, by
5 signature on a log book kept by the practitioner or
6 pharmacist, the identity of the individual obtaining
7 the controlled substance. If the individual does not
8 have any form of proper identification, the pharmacist
9 shall verify the validity of the prescription and
10 identity of the patient with the prescriber, or their
11 authorized agent, before dispensing the controlled
12 substance. For the purpose of this section, "proper
13 identification" means identification containing the
14 photograph, printed name, and signature of the
15 individual obtaining the controlled substance[-];
- 16 (7) To import, transport, sell, exchange, barter, supply,
17 prescribe, dispense, give away, administer,
18 manufacture, or compound a counterfeit substance or
19 offer or attempt to do any of the acts described in
20 this paragraph; or
- 21 (8) To disseminate false advertisements for counterfeit
22 substances. False advertisements by a publisher,



1 radio broadcast licensee, or agency or medium for an
2 advertisement, not including the manufacturer,
3 wholesaler, or seller of the counterfeit substance,
4 shall not constitute a violation under this paragraph;
5 provided that the publisher, radio broadcast licensee,
6 or agency or medium for an advertisement shall furnish
7 to the department the name and post office address of
8 the entity that requested the advertisement."

9 SECTION 3. Section 329-42, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) It is unlawful for any person knowingly or
12 intentionally:

- 13 (1) To distribute as a registrant a controlled substance
14 classified in schedule I or II, except pursuant to an
15 order form as required by section 329-37;
- 16 (2) To use in the course of the manufacture or
17 distribution of a controlled substance a registration
18 number that is fictitious, revoked, suspended, or
19 issued to another person;
- 20 (3) To obtain or attempt to obtain any controlled
21 substance or procure or attempt to procure the
22 administration of any controlled substance:



- 1 (A) By fraud, deceit, misrepresentation,
2 embezzlement, theft;
- 3 (B) By the forgery or alteration of a prescription or
4 of any written order;
- 5 (C) By furnishing fraudulent medical information or
6 the concealment of a material fact; or
- 7 (D) By the use of a false name, patient
8 identification number, or the giving of false
9 address;
- 10 (4) To furnish false or fraudulent material information
11 in, or omit any material information from, any
12 application, report, or other document required to be
13 kept or filed under this chapter, or any record
14 required to be kept by this chapter;
- 15 (5) To make, distribute, or possess any punch, die, plate,
16 stone, or other thing designed to print, imprint, or
17 reproduce the trademark, trade name, or other
18 identifying mark, imprint, or device of another or any
19 likeness of any of the foregoing upon any drug or
20 container or labeling thereof so as to render the drug
21 a counterfeit substance;

- 1 (6) To misapply or divert to the person's own use or other
2 unauthorized or illegal use or to take, make away
3 with, or secrete, with intent to misapply or divert to
4 the person's own use or other unauthorized or illegal
5 use, any controlled substance that shall have come
6 into the person's possession or under the person's
7 care as a registrant or as an employee of a registrant
8 who is authorized to possess controlled substances or
9 has access to controlled substances by virtue of the
10 person's employment; [e]
- 11 (7) To make, distribute, possess, or sell any prescription
12 form, whether blank, faxed, computer generated,
13 photocopied, or reproduced in any other manner without
14 the authorization of the licensed practitioner[-];
- 15 (8) To import, transport, sell, exchange, barter, supply,
16 prescribe, dispense, give away, administer,
17 manufacture, or compound a counterfeit substance or
18 offer or attempt to do any such act described in this
19 paragraph;
- 20 (9) To disseminate false advertisements for counterfeit
21 substances; or

1 (10) To manufacture, distribute, sell, possess with the
2 intent to distribute, or sell an imitation controlled
3 substance."

4 SECTION 4. Section 329-55, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) The following are subject to forfeiture according to
7 the procedures set forth in the Penal Code:

8 (1) All controlled substances and anabolic steroids which
9 have been manufactured, cultivated, grown,
10 distributed, dispensed, or acquired in violation of
11 this chapter;

12 (2) All raw materials, products, and equipment of any kind
13 which are used, or intended for use, in manufacturing,
14 cultivating, growing, compounding, processing,
15 delivering, importing, or exporting any controlled
16 substance or anabolic steroid in violation of this
17 chapter;

18 (3) All property which is used, or intended for use, as a
19 container for property described in paragraph (1) or
20 (2);

21 (4) All conveyances, including aircraft, vehicles, or
22 vessels which are used or intended for use, to

1 transport, or in any manner to facilitate the
2 transportation, for the purpose of sale, delivery or
3 receipt of property described in paragraph (1) or (2),
4 subject to the provisions of chapter 712A;

5 (5) All books, records, and research products and
6 materials, including formulas, microfilms, tapes, and
7 data which are used, or intended for use, in violation
8 of this chapter;

9 (6) All moneys, negotiable instruments, securities, or
10 other things of value furnished or intended to be
11 furnished by any person in exchange for a controlled
12 substance or anabolic steroid in violation of this
13 chapter, all proceeds traceable to such an exchange,
14 and all moneys, negotiable instruments, and securities
15 used or intended to be used to facilitate any
16 violation of this chapter, subject to the provisions
17 of chapter 712A;

18 (7) All firearms which are visible, carried during, or
19 used in furtherance of a violation of this chapter or
20 chapter 712, part IV; [~~and~~]

21 (8) All drug paraphernalia as defined by section 329-1[-];i

1 (9) All imitation controlled substances that were
2 manufactured, distributed, or dispensed in violation
3 of this chapter; and

4 (10) All counterfeit controlled substances that were
5 manufactured, distributed, or dispensed in violation
6 of this chapter."

7 SECTION 5. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun, before its effective date.

10 SECTION 6. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 7. This Act shall take effect upon its approval.

13

INTRODUCED BY: 

Report Title:

Controlled Substances; Counterfeit and Imitation

Description:

Amends the controlled substances provisions to include provisions for counterfeit substances and imitation controlled substances.

