HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

H.B. NO. 369

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

(2) Phenylpropanolamine, 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

[~~(1)~~] (4) Pyrovalerone.

(d) The department, by rule, may exempt from schedule V any product containing any of the substances enumerated in subsection (c)(1), (2), or (3) if the administrator finds that the product is not used in the illegal manufacture of methamphetamine or other controlled dangerous substances. A manufacturer of such 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 329-64, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The requirements imposed by sections 329-62[~~,~~] and 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 that contains pseudoephedrine or norpseudoephedrine that 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 as long as it complies with the requirements of sections 329-73, 329-74, and 329-75; and~~

~~(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; and

(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.

Any dietary supplement that meets the criteria of this paragraph shall also be exempt from the requirements of section 329-67."

SECTION 3. Section 329-73, Hawaii Revised Statutes, is repealed:

~~["**§329-73 Pseudoephedrine permit.** (a) Beginning January 1, 2006, any person transporting by any means more than three packages of any product the sale of which is restricted by section 329-75 shall obtain a pseudoephedrine permit.~~

~~(b) The requirements imposed by subsection (a) shall not apply to persons registered with the department under section 329-67. A pseudoephedrine permit shall be issued by the department in a form and manner as prescribed by the department by rule. A pseudoephedrine permit shall be valid for one year and renewable annually.~~"]

SECTION 4. Section 329-74, Hawaii Revised Statutes, is repealed:

~~["**§329-74 Unlawful transport of pseudoephedrine.** (a) A person commits the offense of unlawful transport of pseudoephedrine if the person transports more than three packages of any product the sale of which is restricted by section 329-75 without a permit issued from the department.~~

~~(b) For purposes of this section, "transportation" means the transfer of a pseudoephedrine product by a person other than a wholesaler, distributor, or retailer of such product authorized to conduct business as such by the State.~~

~~(c) Unlawful transport of pseudoephedrine is a misdemeanor.~~"]

SECTION 5. 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 to a person without a prescription not more than 3.6 grams per day without regard to the number of transactions, 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 not accessible by customers or the general public, such as behind the counter or in a locked display case and where the seller delivers the product directly into the custody of the purchaser; 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 and address 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 pseudoephedrine or its salts, isomers, or salts of optical isomers within a 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.~~

~~(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, 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.~~"]

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

SECTION 7. This Act shall take effect on July 1, 2007.

INTRODUCED BY: Marilyn B. Lee

JAN 18 2007

H.B. NO. 309

Report Title:
Ephedrine; Pseudoephedrine; Phenylpropanolamine; Schedule V

Description:
Adds ephedrine, pseudoephedrine, and phenylpropanolamine to the list of Schedule V controlled substances. Repeals certain exemptions from business permits for regulated chemicals for the manufacture of controlled substances.