THE SENATE
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

S.B. NO. 1487 S.D. 2 H.D. 1

A BILL FOR AN ACT

RELATING TO CONTROLLED SUBSTANCES.

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

PART I

SECTION 1. Section 329-14, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Depressants. Unless specifically excepted, the schedule shall include any material, compound, mixture, or preparation which contains any quantity of the substance:

(1) Mecloqualone;

(2) Methaqualone."

SECTION 2. Section 329-16, Hawaii Revised Statutes, is amended to read as follows:

"**§329-16 Schedule II.** (a) The controlled substances listed in this section are included in schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, including the following:

(A) Raw opium;

(B) Opium extracts;

(C) Opium fluid;

(D) Powdered opium;

(E) Granulated opium;

(F) Codeine;

(G) Ethylmorphine;

(H) Etorphine hydrochloride;

(I) Hydrocodone;

(J) Hydromorphone;

(K) Metopon;

(L) Morphine;

(M) Oxycodone;

(N) Oxymorphone; and

(O) Thebaine;

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph

(1), but not including the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocanized coca leaves or extractions which do not contain cocaine or ecgonine; cocaine or any salt or isomer thereof; and

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy).

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alfentanil;

(2) Alphaprodine;

(3) Anileridine;

(4) Bezitramide;

(5) Bulk Dextropropoxyphene (nondosage form);

(6) Carfentanil;

(7) Dihydrocodeine;

(8) Diphenoxylate;

(9) Fentanyl;

(10) Isomethadone;

(11) Levo-alphacetylmethadol (LAAM);

(12) Levomethorphan;

(13) Levorphanol;

(14) Metazocine;

(15) Methadone;

(16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(17) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

(18) Pethidine (Meperidine);

(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(22) Phenazocine;

(23) Piminodine;

(24) Racemethorphan;

(25) Racemorphan;

(26) Remifentanil; and

(27) Sufentanil.

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system[~~:~~], including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital;

(4) Phencyclidine[~~;~~

~~(5) Phencyclidine immediate precursors:~~

~~(A) 1-phenycyclohexylamine;~~

~~(B) 1-piperidinocyclohexanecarbonitrile (PCC)~~]; and

[~~(6)~~] (5) Secobarbital.

(e) Stimulants. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a danger or probable danger associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers[~~.~~];

(3) Phenmetrazine and its salts; and

(4) Methylphenidate.

[~~(f) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a degree of danger or probable danger associated with a stimulant effect on the central nervous system:~~

~~(1) Phenmetrazine and its salts;~~

~~(2) Phenylacetone (P2P);~~

~~(3) Methylphenidate.~~]

(f) Immediate precursor. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(A) Phenylacetone, phenyl-2-propanone(P2P), benzyl methyl ketone, methyl benzyl ketone.

(2) Immediate precursors to phencyclidine (PCP):

(A) 1-phenylcyclohexylamine; and

(B) 1-piperidinocyclohexanecarbonitrile(PCC).

(g) Hallucinogenic substances, unless listed in another schedule, shall include, but not be limited to:

(1) Nabilone."

SECTION 3. Section 329-20, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Depressants. Any material, compound, mixture, or preparation which contains any quantity of the following substances [~~having~~], including its salts, isomers, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, that has a degree of danger or probable danger associated with a depressant effect on the central nervous system:

(1) Alprazolam;

(2) Barbital;

(3) Bromazepam;

(4) Butorphanol;

(5) Camazepam;

(6) Carisoprodol;

(7) Chloral betaine;

(8) Chloral hydrate;

(9) Chlordiazepoxide;

(10) Clobazam;

(11) Clonazepam;

(12) Clorazepate;

(13) Clotiazepam;

(14) Cloxazolam;

(15) Delorazepam;

(16) Dichloralphenazone (Midrin);

(17) Diazepam;

(18) Estazolam;

(19) Ethchlorvynol;

(20) Ethinamate;

(21) Ethyl loflazepate;

(22) Fludiazepam;

(23) Flunitrazepam;

(24) Flurazepam;

(25) Halazepam;

(26) Haloxazolam;

(27) Ketazolam;

(28) Loprazolam;

(29) Lorazepam;

(30) Lormetazepam;

(31) Mebutamate;

(32) Medazepam;

(33) Meprobamate;

(34) Methohexital;

(35) Methylphenobarbital (mephorbarbital);

(36) Midazolam;

(37) Nimetazepam;

(38) Nitrazepam;

(39) Nordiazepam;

(40) Oxazepam;

(41) Oxazolam;

(42) Paraldehyde;

(43) Petrichloral;

(44) Phenobarbital;

(45) Pinazepam;

(46) Prazepam;

(47) Quazepam;

(48) Temazepam;

(49) Tetrazepam;

(50) Triazolam;

(51) Zaleplon;

(52) Zolpidem; and

(53) Zopiclone (Lunesta)."

SECTION 4. 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.

(d) Depressants. 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 depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Pregabalin ((S)-3-(aminomethyl)-5-methylhexanoic acid)."

SECTION 5. Section 329-75, Hawaii Revised Statutes, is amended to read as follows:

"**§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)~~] (b) 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)~~] (c) 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."

PART II

SECTION 6. Chapter 329, Hawaii Revised Statutes, is amended by adding two new sections to part IV to be appropriately designated and to read as follows:

"**§329- Administrative penalties.** (a) Any person who violates this chapter or any rule adopted by the department pursuant to this chapter shall be fined not more than $10,000 for each separate offense. Any action taken to collect the penalty provided for in this subsection shall be considered a civil action and the fine shall be deposited into the state general fund.

(b) The director may impose by order the administrative penalty specified in this section, in addition to any other administrative or judicial remedy provided by this part, or by rules adopted pursuant to this chapter. Factors to be considered in imposing the administrative penalty include:

(1) The nature and history of the violation;

(2) Any prior violation; and

(3) The opportunity, difficulty, and history of corrective action.

For any judicial proceeding to recover the administrative penalty imposed, the administrator need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and the penalty remains unpaid.

§329- Injunctive relief. The administrator may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this chapter or any rule adopted to implement this chapter. The court shall have powers to grant relief in accordance with the Hawaii rules of civil procedure."

SECTION 7. Section 329-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

""Designated member of the health care team" includes physician assistants, advanced practice registered nurses, and covering physicians who are authorized under state law to prescribe drugs.

"Physician-patient relationship" means the collaborative relationship between physicians and their patients. The health

and well-being of patients depends upon a collaborative relationship between physicians and their patients. To establish this relationship, the treating physician or the physician's designated member of the health care team, at a minimum must:

(1) Personally performs a face-to-face history and physical examination of the patient, that shall be appropriate to the specialty training, and experience of the physician or the designated member of the physician's health care team, makes a diagnosis and formulate a therapeutic plan, or personally treats a specific injury or condition;

(2) Discusses with the patient the diagnosis or treatment, including the benefits of other treatment options; and

(3) Ensures the availability of appropriate follow-up care."

SECTION 8. Section 329-14, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts,

isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alpha-ethyltryptamine (AET);

(2) 2,5-dimethoxy-4-ethylamphetamine (DOET);

(3) 2,5-dimethoxyamphetamine (2,5-DMA);

(4) 3,4-methylenedioxy amphetamine;

(5) 3,4-methylenedioxymethamphetamine (MDMA);

(6) N-hydroxy-3,4-methylenedioxyamphetamine (N-hydroxy-MDA);

(7) 3,4-methylenedioxy-N-ethylamphetamine (MDE);

(8) 5-methoxy-3,4-methylenedioxy-amphetamine;

(9) 4-bromo-2,5-dimethoxy-amphetamine(4-bromo-2,5-DMA);

(10) 4-Bromo-2,5-dimethoxyphenethylamine (Nexus);

(11) 3,4,5-trimethoxy amphetamine;

(12) Bufotenine;

(13) 4-methoxyamphetamine (PMA);

(14) Diethyltryptamine;

(15) Dimethyltryptamine;

(16) 4-methyl-2,5-dimethoxy-amphetamine;

(17) Gamma hydroxybutyrate (GHB) (some other names include gamma hydroxybutyric acid; 4-hydroxybutyrate; 4-

hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(18) Ibogaine;

(19) Lysergic acid diethylamide;

(20) Marijuana;

(21) Parahexyl;

(22) Mescaline;

(23) Peyote;

(24) N-ethyl-3-piperidyl benzilate;

(25) N-methyl-3-piperidyl benzilate;

(26) Psilocybin;

(27) Psilocyn;

(28) 1-[1-(2-Thienyl) cyclohexyl] Pyrrolidine (TCPy);

(29) Tetrahydrocannabinols;

(30) Ethylamine analog of phencyclidine (PCE);

(31) Pyrrolidine analog of phencyclidine (PCPy, PHP);

(32) Thiophene analog of phencyclidine (TPCP; TCP);

(33) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-

hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number 96-48-0 when any such substance is intended for human ingestion;

(34) 1,4 butanediol, including butanediol; butane-1,4-diol; 1,4- butylenes glycol; butylene glycol; 1,4-dihydroxybutane; 1,4- tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4- diol with Chemical Abstract Service number 110-63-4 when any such substance is intended for human ingestion;

(35) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts, and salts of isomers;

(36) N-benzylpiperazine (BZP; 1-benzylpiperazine) its optical isomers, salts, and salts of isomers;

(37) 1-(3-trifluoromethylphenyl)piperazine (TFMPP), its optical isomers, salts, and salts of isomers;

(38) Alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers; [~~and~~]

(39) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers[~~.~~];

(40) Salvia divinorum;

(41) Salvinorin A; and

(42) Divinorin A."

SECTION 9. Section 329-18, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

(2) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(3) Any substance that contains any quantity of a derivative of barbituric acid or any salt thereof, including the substance butalbital;

(4) Chlorhexadol;

(5) Embutramide (Tributame);

[~~(5)~~] (6) Ketamine, its salts, isomers, and salts of isomers, also known as (+ or -)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;

[~~(6)~~] (7) Lysergic acid;

[~~(7)~~] (8) Lysergic acid amide;

[~~(8)~~] (9) Methyprylon;

[~~(9)~~] (10) Sulfondiethylmethane;

[~~(10)~~] (11) Sulfonethylmethane;

[~~(11)~~] (12) Sulfonmethane;

[~~(12)~~] (13) Tiletamine/Zolazepam (Telazol, 2-(ethylamino)-2-(-thienyl)-cyclohexanone, flupyrazapon) or any salts thereof; and

[(13)] (14) Gamma hydroxybutyric acid and its salts, isomers, and salts of isomers that are contained in a drug product for which an application has been approved under section 505 of the federal Food, Drug, and Cosmetic Act."

SECTION 10. Section 329-38, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (g) to read:

"(g) Prescriptions for controlled substances shall be issued only as follows:

(1) All prescriptions for controlled substances shall originate from within the State and be dated as of, and signed on, the day when the prescriptions were issued and shall contain:

(A) The first and last name and address of the patient; and

(B) The drug name, strength, dosage form, quantity prescribed, and directions for use. Where a prescription is for gamma hydroxybutyric acid, methadone, or buprenorphine, the practitioner shall record as part of the directions for use, the medical need of the patient for the prescription.

The controlled substance prescriptions shall be no larger than eight and one-half inches by eleven inches and no smaller than three inches by four inches.

A practitioner may sign a prescription in the same manner as the practitioner would sign a check or legal document (e.g., J.H. Smith or John H. Smith) and shall use both words and figures (e.g., alphabetically and numerically as indications of quantity, such as five (5)), to indicate the amount of controlled substance

to be dispensed. Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typed, shall be manually signed by the practitioner, and shall include the name, address, telephone number, and registration number of the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of the practitioner, but the prescribing practitioner shall be responsible in case the prescription does not conform in all essential respects to this chapter and any rules adopted pursuant to this chapter. In receiving an oral prescription from a practitioner, a pharmacist shall promptly reduce the oral prescription to writing, which must include the following information: the name, strength, and quantity of the drug, in figures only, and specific directions for the drug's use; the date the oral prescription was received; the full name, DEA registration number, and oral code number of the practitioner; and the name and address of the person for whom the controlled substance was prescribed or the name of the owner of

the animal for which the controlled substance was prescribed.

A corresponding liability shall rest upon a pharmacist who fills a prescription not prepared in the form prescribed by this section. A pharmacist may add a patient's missing address or change a patient's address on all controlled substance prescriptions after verifying the patient's identification and noting the identification number on the back of the prescription. The pharmacist shall not make changes to the patient's name, the controlled substance being prescribed, the quantity of the prescription, the practitioner's DEA number, or the practitioner's signature;

(2) An intern, resident, or foreign-trained physician, or a physician on the staff of a Department of Veterans Affairs facility or other facility serving veterans, exempted from registration under this chapter, shall include on all prescriptions issued by the physician:

(A) The registration number of the hospital or other institution; and

(B) The special internal code number assigned to the physician by the hospital or other institution in lieu of the registration number of the practitioner required by this section.

The hospital or other institution shall forward a copy of this special internal code number list to the department as often as necessary to update the department with any additions or deletions. Failure to comply with this paragraph shall result in the suspension of that facility's privilege to fill controlled substance prescriptions at pharmacies outside of the hospital or other institution. Each written prescription shall have the name of the physician stamped, typed, or hand-printed on it, as well as the signature of the physician;

(3) An official exempted from registration shall include on all prescriptions issued by the official:

(A) The official's branch of service or agency (e.g., "U.S. Army" or "Public Health Service"); and

(B) The official's service identification number, in lieu of the registration number of the practitioner required by this section. The

service identification number for a Public Health Service employee shall be the employee's social security or other government issued identification number.

Each prescription shall have the name of the officer stamped, typed, or handprinted on it, as well as the signature of the officer; and

(4) A physician assistant registered to prescribe controlled substances under the authorization of a supervising physician shall include on all controlled substance prescriptions issued:

(A) The DEA registration number of the supervising physician; and

(B) The DEA registration number of the physician assistant.

Each written controlled substance prescription issued shall include the printed, stamped, typed, or hand-printed name, address, and phone number of both the supervising physician and physician assistant, and shall be signed by the physician assistant. The medical record of each written controlled substance prescription issued by a physician assistant shall be

reviewed and initialed by the physician assistant's supervising physician within seven working days."

2. By amending subections (j), (k), (l), and (m) to read as follows:

"(j) A prescription for a schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy by facsimile equipment; provided that the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted in [~~subsection~~] subsections (k), (l), [~~or~~] and (m). The original prescription shall be maintained in accordance with section 329-36. A prescription for a schedule III, IV, or V controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy by facsimile; provided [~~that~~] further:

(1) The information shall be communicated only between the prescribing practitioner or the prescriber's authorized agent and the pharmacy of the patient's choice[~~,~~]. The original prescription shall be maintained by the practitioner in accordance with section 329-36;

(2) The information shall be communicated in a retrievable, recognizable format acceptable to the intended recipient and shall include the physician's oral code designation and the name of the recipient pharmacy;

(3) No electronic system, software, or other intervening mechanism or party shall alter the practitioner's prescription, order entry, selection, or intended selection without the practitioner's approval on a per prescription per order basis. Facsimile prescription information shall not be altered by any system, software, or other intervening mechanism or party prior to receipt by the intended pharmacy;

(4) The prescription information processing system shall provide for confidentiality safeguards required by federal or state law; and

(5) Prescribing practitioners and pharmacists shall exercise prudent and professional judgment regarding the accuracy, validity, and authenticity of any facsimile prescription information. The facsimile shall serve as the original written prescription for

purposes of this section and shall be maintained in accordance with section 329-36.

(k) A prescription prepared in accordance with subsection (g) written for a narcotic listed in schedule II to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion, but does not extend to the dispensing of oral dosage units of controlled substances, may be transmitted by the practitioner or the practitioner's agent to the pharmacy by facsimile. The original prescription shall be maintained by the practitioner in accordance with section 329-36. The pharmacist shall note on the face of the facsimile prescription in red ink "Home Infusion/IV" and this facsimile shall serve as the original written prescription for purposes of this section and it shall be maintained in accordance with section 329-36.

(l) A prescription prepared in accordance with subsection (g) written for a schedule II substance for a patient enrolled in a hospice care program certified or paid for by medicare under Title XVIII or a hospice program that is licensed by the State may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The original prescription shall be maintained by the

practitioner in accordance with section 329-36. The practitioner or practitioner's agent shall note on the prescription that the patient is a hospice patient. The pharmacist shall note on the face of the facsimile prescription in red ink "HOSPICE" and this facsimile shall serve as the original written prescription for purposes of this section and it shall be maintained in accordance with section 329-36.

(m) A prescription prepared in accordance with subsection (g) written for a schedule II controlled substance for a resident of a state-licensed long-term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The original prescription shall be maintained by the practitioner in accordance with section 329-36. The pharmacist shall note on the face of the facsimile prescription in red ink "LTCF" and this facsimile shall serve as the original written prescription for purposes of this section and it shall be maintained in accordance with section 329-36."

SECTION 11. Section 329-41, Hawaii Revised Statutes, is amended to read as follows:

"**§329-41 Prohibited acts B--penalties.** (a) It is unlawful for any person:

(1) Who is subject to part III to distribute, administer, prescribe, or dispense a controlled substance in violation of section 329-38[~~,~~] or rules authorized under section 329-31; however, a licensed manufacturer or wholesaler may sell or dispense a controlled substance to a master of a transpacific ship or a person in charge of a transpacific aircraft upon which no physician is regularly employed, for the actual medical needs of persons on board such ship or aircraft when not in port; provided schedule I or II controlled substances shall be sold to the master of such ship or person in charge of such aircraft only in accordance with the provisions set forth in 21 Code of Federal Regulations, Sections 1301, 1305, and 1307, adopted pursuant to Title 21, United States Code, Section 821;

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

(3) To refuse or fail to make available, keep, or furnish any record, notification, order form, prescription, statement, invoice, or information in patient charts relating to the administration, dispensing, or prescribing of controlled substances;

(4) To refuse any lawful entry into any premises for any inspection authorized by this chapter;

(5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place for the purpose of using these substances or which is used for keeping or selling them in violation of this chapter or chapter 712, part IV; [~~or~~]

(6) Who is a practitioner or pharmacist to dispense a controlled substance to any individual not known to the practitioner or pharmacist, without first obtaining proper identification and documenting, by signature on a log book kept by the practitioner or pharmacist, the identity of and the type of identification presented by the individual obtaining the controlled substance. If the individual does not have any form of proper identification, the pharmacist

shall verify the validity of the prescription and identity of the patient with the prescriber, or their authorized agent, before dispensing the controlled substance. For the purpose of this section, "proper identification" means government-issued identification containing the photograph, printed name, and signature of the individual obtaining the controlled substance[~~.~~]; <u></u>

<u>(7) Who is a practitioner to predate or pre-sign prescriptions to facilitate the obtaining or attempted obtaining of controlled substances; or</u>

<u>(8) Who is a practitioner to facilitate the issuance or distribution of a written prescription or to issue an oral prescription for a controlled substance when not physically in the state.</u>

<u>(b) It is unlawful for any person subject to part III of this chapter except a pharmacist, to administer, prescribe, or dispense any controlled substance without a bona fide physician-patient relationship.</u>

[~~(b)~~] <u>(c)</u> Any person who violates this section is guilty of a class C felony."

SECTION 12. Section 329-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

(1) To distribute as a registrant a controlled substance classified in schedule I or II, except pursuant to an order form as required by section 329-37;

(2) To use in the course of the manufacture [~~or~~], distribution, administration, or prescribing of a controlled substance a registration number that is fictitious, revoked, suspended, expired, or issued to another person;

(3) To obtain or attempt to obtain any controlled substance or procure or attempt to procure the administration of any controlled substance:

(A) By fraud, deceit, misrepresentation, embezzlement, theft;

(B) By the forgery or alteration of a prescription or of any written order;

(C) By furnishing fraudulent medical information or the concealment of a material fact;

(D) By the use of a false name, patient identification number, or the giving of false address;

(E) By the unauthorized use of a physician's oral call-in number; or

(F) By the alteration of a prescription by the addition of future refills;

(4) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter;

(5) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance;

(6) To misapply or divert to the person's own use or other unauthorized or illegal use or to take, make away with, or secrete, with intent to misapply or divert to

the person's own use or other unauthorized or illegal use, any controlled substance that shall have come into the person's possession or under the person's care as a registrant or as an employee of a registrant who is authorized to possess controlled substances or has access to controlled substances by virtue of the person's employment; or

(7) To make, distribute, possess, or sell any prescription form, whether blank, faxed, computer generated, photocopied, or reproduced in any other manner without the authorization of the licensed practitioner."

SECTION 13. Section 329-52, Hawaii Revised Statutes, is amended to read as follows:

"**§329-52 Administrative inspections** [~~**and warrants**~~]. [~~(a) Issuance and execution of administrative inspection warrants shall be as follows:~~

~~(1) A judge of the circuit court, or any district judge within the judge's jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of the property appropriate to~~

~~the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;~~

~~(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:~~

~~(A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;~~

~~(B) Be directed to a person authorized by section 329-51 to execute it;~~

~~(C) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;~~

~~(D) Identify the item or types of property to be seized, if any;~~

~~(E) Direct that it be served during normal business hours and designate the judge to whom it shall be returned;~~

~~(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the~~

~~presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;~~

~~(4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the chief clerk of the judicial circuit in which the inspection was made.~~

~~(b) The department of public safety may make administrative inspections of controlled premises in accordance with the following provisions:~~

~~(1) For purposes of this section only, "controlled premises" means:~~

~~(A) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and~~

~~(B) Places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.~~

~~(2) When authorized by an administrative inspection warrant issued pursuant to subsection (a) an officer or employee designated by the department of public safety, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.~~

~~(3) When authorized by an administrative inspection warrant, an officer or employee designated by the department of public safety may:~~

~~(A) Inspect and copy records required by this chapter to be kept;~~

~~(B) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished~~

~~material, containers and labeling found therein, and, except as provided in subsection (b)(5), all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and~~

~~(C) Inventory any stock of any controlled substance therein~~ and obtain samples thereof.

~~(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with law, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:~~

~~(A) If the owner, operator, or agent in charge of the controlled premises consents;~~

~~(B) In situations presenting imminent danger to health or safety;~~

~~(C) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;~~

~~(D) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or~~

~~(E) In all other situations in which a warrant is not constitutionally~~ required.

~~(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.~~]

(a) The administrator or any of the administrator's agents may make administrative inspections of controlled premises upon presenting appropriate credentials to the registrant or persons subject to parts III, IV, VIII, and IX of this chapter or their agents in accordance with the following provisions:

(1) Inspections shall be at reasonable times and within reasonable limits and in a reasonable manner of controlled premises and vehicles in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, dispense, deliver, or otherwise dispose of any controlled substance or

regulated chemical designated under section 329-61 and all pertinent equipment, finished and unfinished materials, containers, and labeling therein to determine if this chapter is being violated;

(2) The administrator or any of the administrator's agents shall have access to and may copy any and all records, books, logs, or documents pertaining to the administering, prescribing, dispensing, or sale of controlled substances or regulated chemicals designated under this chapter without a warrant; and

(3) The administrator or any of the administrator's agents may inventory any stock of any controlled substance or regulated chemical designated under section 329-61 and secure samples or specimens of any drug, device, or chemical not seized as evidence by paying or offering to pay for the sample. The administrator shall make or cause to be made examinations of samples secured under this section to determine whether or not this chapter is being violated.

(b) An inspection of records authorized by this section shall not extend to financial data, data relating to pricing of items, other than shipment and sale amounts, unless the owner,

operator, or agent in charge of the controlled premises consents in writing.

(c) For purposes of this section, "controlled premises" means:

(1) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(2) Places, including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, dispense, deliver, or otherwise dispose of any controlled substance or regulated chemical designated under section 329-61."

SECTION 14. Section 329-101, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f)) Intentional or knowing failure to transmit any information as required by this section shall be a misdemeanor and shall result in the immediate suspension of that pharmacy's ability to dispense controlled substance in the state until authorized by the administrator."

SECTION 15. Section 329-102, Hawaii Revised Statues, is amended by amending subsection (f) to read as follows:

"(f) All prescriptions for schedule II through V and other controlled substances designated by the designated state agency that are processed by an out-of-state pharmacy shall conform to reporting and registration requirements adopted by the State, and to any additional rules the department adopts."

PART III

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 17. This Act shall take effect on July 1, 2008.

S.B. NO. 1487
S.D. 2
H.D. 1

Report Title:
Controlled Substances

Description:
Makes Hawaii's controlled substance laws consistent with that of federal law. (SB1487 HD1)