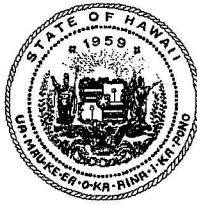


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No. _____

**TESTIMONY ON SENATE BILL 1491 SD1 HD1
RELATING TO CONTROLLED SUBSTANCES**

by
Clayton A. Frank, Director
Department of Public Safety

Committee on Judiciary
Representative Tommy Waters, Chair
Representative Blake K. Oshiro, Vice Chair

Thursday, March 13, 2008, 3:15 p.m.
State Capitol, Room 325

Representative Waters, Representative Oshiro, and Members of the Committee:

The Department of Public Safety strongly supports Senate Bill 1491 SD1 HD1, that proposes to amend Section 329-59, Hawaii Revised Statutes, to authorize the use of the Department's Controlled Substance Registration Revolving fund to offset the cost of the Narcotic Enforcement Division's (NED) forensic drug laboratory and costs associated with investigating violations relating to the Uniform Controlled Substance Act, Chapter 329, Hawaii Revised Statutes.

The controlled substance registration revolving fund consists of fees collected from the issuance of controlled substance registration certificates, regulated chemical permits and medical use of marijuana patient identification certificates. This special fund was established to offset the cost of:

- The Department's electronic prescription monitoring program.

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- The registration and control of all individuals authorized to handle controlled substances, regulated chemicals utilized to manufacture controlled substances and Hawaii's medical use of marijuana program.
- Investigative positions authorized by the legislature.

During the 2004 legislative session, NED was authorized an expenditure ceiling increase of \$100,000 for fiscal year 2004-2005 and \$30,000 for fiscal year 2006 from NED's Controlled Substance Registration Revolving Fund to offset the cost of NED's forensic drug laboratory, which analyzes the controlled substances and regulated chemicals seized by the Narcotics Enforcement Division. The fund also offsets costs associated with investigating violations relating to the registration and control of controlled substances. During the 2007 legislative session, NED was authorized an additional investigator position for its forensic drug laboratory and funding. As a house keeping measure, the Department is requesting that Section 329-59, Hawaii Revised Statutes, be amended to add NED's forensic drug laboratory and investigations of controlled substance and regulated chemical violations to the list of areas that the controlled substance registration revolving fund can be utilized.

Additionally, the Department also requests that the contents of Part II of Senate Bill 1491 SD1 HD1 be replaced with the language contained in House Bill 2776 HD1 relating to Controlled Substances, which passed out of the Health Committee on February 4, 2008. This Bill was a joint effort by the Narcotics Enforcement Division, DCCA, Board of Medical Examiners, Kaiser, Hawaii

Pharmacy association, Longs Drugs and other retailers that did not make the cross over. The new language being proposed would allow the Department to:

- (1) Use an additional method to administratively correct minor infractions committed at pharmacies or by physicians and would afford the division the ability to work with the violator and prescribe the necessary action to correct the violation as well as specify a procedure for a registrant to contest the violation;
- (2) Add a definition for "Bona fide practitioner-patient relationship" to reflect the definition adopted by the Hawaii Board of Medical Examiners;
- (3) Clarify that it is a violation of State law to pre-sign blank prescriptions to facilitate the fraudulent acquisition of controlled substances and adds a penalty for a practitioner who administers, prescribes or dispenses a controlled substance without a medical reason determined after a good faith prior examination of the patient; and
- (4) Amends Section 329-52 relating to Administrative Inspections and Warrants of controlled substance registrants.

The new language being proposed is similar to that used by State Food and Drug inspectors and would better allow the department to safeguard the public. I have attached a copy of the proposed language for your review.

In summary, the Department of Public Safety strongly supports passage of Senate Bill 1491 SD1 HD1 and request that you consider the amendments proposed by the Department. Thank you for the opportunity to testify on this matter.

A BILL FOR AN ACT

RELATING TO CONTROLLED SUBSTANCES.

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

1 PART I

2 SECTION 1. The legislature finds that the department of
3 public safety charges fees relating to the registration and
4 control of the manufacture, distribution, prescription, and
5 dispensing of controlled substances within this state. The
6 department also collects fees from manufacturers, wholesalers,
7 retailers, and other persons who sell, transfer, or otherwise
8 furnishes certain chemicals that are precursors to controlled
9 substances. Fees are also collected from patients qualified for
10 the medical use of marijuana. All of these fees are deposited
11 into the controlled substance registration revolving fund
12 established under section 329-59, Hawaii Revised Statutes.

13 The legislature also finds that one of the criteria used by
14 the auditor in evaluating special or revolving funds is the
15 extent to which the fund reflects a clear link between the
16 benefit sought and charges made upon the users or beneficiaries

1 of the program, as opposed to serving primarily as a means to
2 provide the program or users with an automatic means of support
3 that is removed from the normal budget and appropriations
4 process. Use of the controlled substance registration revolving
5 fund to offset the cost of regulating those who make payments
6 into the fund meets the criterion used by the auditor to evaluate
7 special and revolving funds.

8 The purpose of this part is to authorize the director of
9 public safety to offset the cost of investigating violations of
10 chapter 329, Hawaii Revised Statutes, the Uniform Controlled
11 Substances Act, including funding operations of the narcotics
12 enforcement division's forensic drug laboratory facility, with
13 money appropriated from the controlled substance registration
14 revolving fund.

15 SECTION 2. Section 329-59, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) There is established within the state treasury the
18 controlled substance registration revolving fund. The fund shall
19 be expended at the discretion of the director of public safety
20 for the purpose of:

21 (1) Offsetting the cost of the electronic prescription
22 accountability system, investigation of violations, the

1 registration and control of the manufacture,
2 distribution, prescription, and dispensation of
3 controlled substances and regulated chemicals listed
4 under section 329-61, within the State and the
5 processing and issuance of a patient registry
6 identification certificate designated under part IX;
7 [and]

8 (2) Funding positions authorized by the legislature by
9 law[-]; and

10 (3) Funding the narcotics enforcement division's forensic
11 drug laboratory facility."

12 PART II

13 SECTION 3. Chapter 329, Hawaii Revised Statutes, is amended by
14 adding two new sections to part IV to be appropriately
15 designated and to read as follows:

16 "§329- Administrative penalties. (a) Any person who
17 violates this chapter or any rule adopted by the department
18 pursuant to this chapter shall be fined not more than \$10,000
19 for each separate offense. Any action taken to collect the
20 penalty provided for in this subsection shall be considered a
21 civil action and the fine shall be deposited into the state
22 general fund.

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

6 (1) The nature and history of the violation;

7 (2) Any prior violation; and

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

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

15 §329- Injunctive relief. The administrator may institute
16 a civil action in any court of competent jurisdiction for
17 injunctive relief to prevent any violation of this chapter or
18 any rule adopted to implement this chapter. The court shall
19 have powers to grant relief in accordance with the Hawaii rules
20 of civil procedure."

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1 SECTION 4. Section 329-1, Hawaii Revised Statutes, is
2 amended by adding two new definitions to be appropriately
3 inserted and to read as follows:

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

8 "Physician-patient relationship" means the collaborative
9 relationship between physicians and their patients. The health
10 and well being of patients depends upon a collaborative
11 relationship between physicians and their patients. To
12 establish this relationship, the treating physician or the
13 physician's designated member of the physician's health care
14 team, at a minimum, must:

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

- 1 (2) Discusses with the patient the diagnosis or treatment
- 2 including the benefits of other treatment options; and
- 3 (3) Ensures the availability of appropriate follow-up
- 4 care."

5 SECTION 5. Section 329-38, Hawaii Revised Statutes, is
6 amended by amending subsection (g) to read as follows:

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

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

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

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

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

4 A practitioner may sign a prescription in the same
5 manner as the practitioner would sign a check or legal
6 document (e.g., J.H. Smith or John H. Smith) and shall
7 use both words and figures (e.g., alphabetically and
8 numerically as indications of quantity, such as five
9 (5)), to indicate the amount of controlled substance
10 to be dispensed. Where an oral order is not
11 permitted, prescriptions shall be written with ink or
12 indelible pencil or typed, shall be manually signed by
13 the practitioner, and shall include the name, address,
14 telephone number, and registration number of the
15 practitioner. The prescriptions may be prepared by a
16 secretary or agent for the signature of the
17 practitioner, but the prescribing practitioner shall
18 be responsible in case the prescription does not
19 conform in all essential respects to this chapter and
20 any rules adopted pursuant to this chapter. In
21 receiving an oral prescription from a practitioner, a
22 pharmacist shall promptly reduce the oral prescription

1 to writing, which must include the following
2 information: the name, strength, and quantity of the
3 drug, in figures only, and specific directions for the
4 drug's use; the date the oral prescription was
5 received; the full name, DEA registration number, and
6 oral code number of the practitioner; and the name and
7 address of the person for whom the controlled
8 substance was prescribed or the name of the owner of
9 the animal for which the controlled substance was
10 prescribed.

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

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

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

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

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

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

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

5 (B) The official's service identification number, in
6 lieu of the registration number of the
7 practitioner required by this section. The
8 service identification number for a Public Health
9 Service employee shall be the employee's social
10 security or other government issued
11 identification number.

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

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

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

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

1 Each written controlled substance prescription issued
2 shall include the printed, stamped, typed, or hand-
3 printed name, address, and phone number of both the
4 supervising physician and physician assistant, and
5 shall be signed by the physician assistant. The
6 medical record of each written controlled substance
7 prescription issued by a physician assistant shall be
8 reviewed and initialed by the physician assistant's
9 supervising physician within seven working days."

10 SECTION 6. Section 329-38, Hawaii Revised Statutes, is
11 amended by amending subsections (j), (k), (l), and (m) to read
12 as follows:

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

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1 may be transmitted by the practitioner or the practitioner's
2 agent to a pharmacy by facsimile; provided that:

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

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

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

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

4 (5) Prescribing practitioners and pharmacists shall
5 exercise prudent and professional judgment regarding
6 the accuracy, validity, and authenticity of any
7 facsimile prescription information. The facsimile
8 shall serve as the original written prescription for
9 purposes of this section and shall be maintained in
10 accordance with section 329-36.

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

1 the original written prescription for purposes of this section
2 and it shall be maintained in accordance with section 329-36.

3 (l) A prescription prepared in accordance with subsection
4 (g) written for a schedule II substance for a patient enrolled
5 in a hospice care program certified or paid for by medicare
6 under Title XVIII or a hospice program that is licensed by the
7 State may be transmitted by the practitioner or the
8 practitioner's agent to the dispensing pharmacy by facsimile.
9 The original prescription shall be maintained by the
10 practitioner in accordance with section 329-36. The
11 practitioner or practitioner's agent shall note on the
12 prescription that the patient is a hospice patient. The
13 pharmacist shall note on the face of the facsimile prescription
14 in red ink "HOSPICE" and this facsimile shall serve as the
15 original written prescription for purposes of this section and
16 it shall be maintained in accordance with section 329-36.

17 (m) A prescription prepared in accordance with subsection
18 (g) written for a schedule II controlled substance for a
19 resident of a state-licensed long-term care facility may be
20 transmitted by the practitioner or the practitioner's agent to
21 the dispensing pharmacy by facsimile. The original prescription
22 shall be maintained by the practitioner in accordance with

1 section 329-36. The pharmacist shall note on the face of the
2 facsimile prescription in red ink "LTCF" and this facsimile
3 shall serve as the original written prescription for purposes of
4 this section and it shall be maintained in accordance with
5 section 329-36."

6 SECTION 7. Section 329-41, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§329-41 Prohibited acts B--penalties.** (a) It is
9 unlawful for any person:

10 (1) Who is subject to part III to distribute, administer,
11 prescribe, or dispense a controlled substance in
12 violation of section 329-38[+] or rules authorized
13 under section 329-31; however, a licensed manufacturer
14 or wholesaler may sell or dispense a controlled
15 substance to a master of a transpacific ship or a
16 person in charge of a transpacific aircraft upon which
17 no physician is regularly employed, for the actual
18 medical needs of persons on board such ship or
19 aircraft when not in port; provided schedule I or II
20 controlled substances shall be sold to the master of
21 such ship or person in charge of such aircraft only in
22 accordance with the provisions set forth in 21 Code of

1 Federal Regulations, Sections 1301, 1305, and 1307,
2 adopted pursuant to Title 21, United States Code,
3 Section 821;

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

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

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

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

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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 and the type of
7 identification presented by the individual obtaining
8 the controlled substance. If the individual does not
9 have any form of proper identification, the pharmacist
10 shall verify the validity of the prescription and
11 identity of the patient with the prescriber, or their
12 authorized agent, before dispensing the controlled
13 substance. For the purpose of this section, "proper
14 identification" means government-issued identification
15 containing the photograph, printed name, and signature
16 of the individual obtaining the controlled
17 substance[-];

18 (7) Who is a practitioner to predate or pre-sign
19 prescriptions to facilitate the obtaining or attempted
20 obtaining of controlled substances; or

21 (8) Who is a practitioner to facilitate the issuance or
22 distribution of a written prescription or to issue an

1 oral prescription for a controlled substance when not
2 physically in the State.

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

7 ~~(b)~~ (c) Any person who violates this section is guilty of
8 a class C felony."

9 SECTION 8. 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, administration, or prescribing of a
18 controlled substance a registration number that is
19 fictitious, revoked, suspended, expired, or issued to
20 another person;

- 1 (3) To obtain or attempt to obtain any controlled
2 substance or procure or attempt to procure the
3 administration of any controlled substance:
4 (A) By fraud, deceit, misrepresentation,
5 embezzlement, theft;
6 (B) By the forgery or alteration of a prescription or
7 of any written order;
8 (C) By furnishing fraudulent medical information or
9 the concealment of a material fact;
10 (D) By the use of a false name, patient
11 identification number, or the giving of false
12 address;
13 (E) By the unauthorized use of a physician's oral
14 call-in number; or
15 (F) By the alteration of a prescription by the
16 addition of future refills;
17 (4) To furnish false or fraudulent material information
18 in, or omit any material information from, any
19 application, report, or other document required to be
20 kept or filed under this chapter, or any record
21 required to be kept by this chapter;

- 1 (5) To make, distribute, or possess any punch, die, plate,
2 stone, or other thing designed to print, imprint, or
3 reproduce the trademark, trade name, or other
4 identifying mark, imprint, or device of another or any
5 likeness of any of the foregoing upon any drug or
6 container or labeling thereof so as to render the drug
7 a counterfeit substance;
- 8 (6) To misapply or divert to the person's own use or other
9 unauthorized or illegal use or to take, make away
10 with, or secrete, with intent to misapply or divert to
11 the person's own use or other unauthorized or illegal
12 use, any controlled substance that shall have come
13 into the person's possession or under the person's
14 care as a registrant or as an employee of a registrant
15 who is authorized to possess controlled substances or
16 has access to controlled substances by virtue of the
17 person's employment; or
- 18 (7) To make, distribute, possess, or sell any prescription
19 form, whether blank, faxed, computer generated,
20 photocopied, or reproduced in any other manner without
21 the authorization of the licensed practitioner."

1 SECTION 9. Section 329-52, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§329-52 Administrative inspections** [~~and warrants~~]. [~~(a)~~

4 ~~Issuance and execution of administrative inspection warrants~~
5 ~~shall be as follows:~~

6 ~~(1) A judge of the circuit court, or any district judge~~
7 ~~within the judge's jurisdiction, and upon proper oath~~
8 ~~or affirmation showing probable cause, may issue~~
9 ~~warrants for the purpose of conducting administrative~~
10 ~~inspections authorized by this chapter or rules~~
11 ~~hereunder, and seizures of the property appropriate to~~
12 ~~the inspections. For purposes of the issuance of~~
13 ~~administrative inspection warrants, probable cause~~
14 ~~exists upon showing a valid public interest in the~~
15 ~~effective enforcement of this chapter or rules~~
16 ~~hereunder, sufficient to justify administrative~~
17 ~~inspection of the area, premises, building or~~
18 ~~conveyance in the circumstances specified in the~~
19 ~~application for the warrant;~~

20 ~~(2) A warrant shall issue only upon an affidavit of a~~
21 ~~designated officer or employee having knowledge of the~~
22 ~~facts alleged, sworn to before the judge and~~

1 ~~establishing the grounds for issuing the warrant. If~~
2 ~~the judge is satisfied that grounds for the~~
3 ~~application exist or that there is probable cause to~~
4 ~~believe they exist, the judge shall issue a warrant~~
5 ~~identifying the area, premises, building, or~~
6 ~~conveyance to be inspected, the purpose of the~~
7 ~~inspection, and, if appropriate, the type of property~~
8 ~~to be inspected, if any. The warrant shall:~~

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

12 ~~(B) Be directed to a person authorized by section~~
13 ~~329-51 to execute it;~~

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

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

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

4 ~~(3) A warrant issued pursuant to this section must be~~
5 ~~executed and returned within ten days of its date~~
6 ~~unless, upon a showing of a need for additional time,~~
7 ~~the court orders otherwise. If property is seized~~
8 ~~pursuant to a warrant, a copy shall be given to the~~
9 ~~person from whom or from whose premises the property~~
10 ~~is taken, together with a receipt for the property~~
11 ~~taken. The return of the warrant shall be made~~
12 ~~promptly, accompanied by a written inventory of any~~
13 ~~property taken. The inventory shall be made in the~~
14 ~~presence of the person executing the warrant and of~~
15 ~~the person from whose possession or premises the~~
16 ~~property was taken, if present, or in the presence of~~
17 ~~at least one credible person other than the person~~
18 ~~executing the warrant. A copy of the inventory shall~~
19 ~~be delivered to the person from whom or from whose~~
20 ~~premises the property was taken and to the applicant~~
21 ~~for the warrant;~~

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

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

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

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

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

21 ~~(2) When authorized by an administrative inspection~~
22 ~~warrant issued pursuant to subsection (a) an officer~~

1 ~~or employee designated by the department of public~~
2 ~~safety, upon presenting the warrant and appropriate~~
3 ~~credentials to the owner, operator, or agent in~~
4 ~~charge, may enter controlled premises for the purpose~~
5 ~~of conducting an administrative inspection.~~

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

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

11 ~~(B) Inspect, within reasonable limits and in a~~
12 ~~reasonable manner, controlled premises and all~~
13 ~~pertinent equipment, finished and unfinished~~
14 ~~material, containers and labeling found therein,~~
15 ~~and, except as provided in subsection (b) (5), all~~
16 ~~other things therein, including records, files,~~
17 ~~papers, processes, controls, and facilities~~
18 ~~bearing on violation of this chapter; and~~

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

21 ~~(4) This section does not prevent the inspection without a~~
22 ~~warrant of books and records pursuant to an~~

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1 ~~administrative subpoena issued in accordance with law,~~
2 ~~nor does it prevent entries and administrative~~
3 ~~inspections, including seizures of property, without a~~
4 ~~warrant:~~

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

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

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

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

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

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

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

6 (1) Inspections shall be at reasonable times and within
7 reasonable limits and in a reasonable manner of
8 controlled premises and vehicles in which persons
9 registered or exempted from registration requirements
10 under this chapter are permitted to hold, manufacture,
11 compound, process, sell, dispense, deliver, or
12 otherwise dispose of any controlled substance or
13 regulated chemical designated under section 329-61 and
14 all pertinent equipment, finished and unfinished
15 materials, containers, and labeling therein to
16 determine if this chapter is being violated;

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

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

10 (b) An inspection of records authorized by this section
11 shall not extend to financial data, data relating to pricing of
12 items, other than shipment and sale amounts, unless the owner,
13 operator, or agent in charge of the controlled premises consents
14 in writing.

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

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

20 (B) Places, including factories, warehouses,
21 establishments, and conveyances in which persons
22 registered or exempted from registration

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1 requirements under this chapter are permitted to
2 hold, manufacture, compound, process, sell,
3 dispense, deliver, or otherwise dispose of any
4 controlled substance or regulated chemical
5 designated under section 329-61."

6 SECTION 10. Section 329-101, Hawaii Revised Statutes, is
7 amended by amending subsection (f) to read as follows:

8 "(f) Intentional or knowing failure to transmit any
9 information as required by this section shall be a misdemeanor
10 and shall result in the immediate suspension of that pharmacies
11 ability to dispense controlled substances in the State until
12 authorized by the Administrator.

13 SECTION 11. Section 329-102, Hawaii Revised Statutes, is
14 amended by amending subsection (f) to read as follows:

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

20 SECTION 12. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22 SECTION 13. This Act shall take effect on July 1, 2008.

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S.B. NO.

1491
S.D. 1
H.D. 1
Proposed

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