

**CHAPTER 329 [OLD]  
NARCOTICS**

**REPEALED.** L 1972, c 10, §7.

**Note**

§§329-14 and 22 are renumbered §§329-39 and 44, respectively, and assigned to the new chapter 329, Uniform Controlled Substances Act. L 1972, c 10, §§7, 8.

**CHAPTER 329  
UNIFORM CONTROLLED SUBSTANCES ACT**

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## **Note**

Legislative oversight working group; improvement of the medical marijuana dispensary system (ceases to exist June 30, 2018); reports to 2017-2018 legislature. L 2016, c 230, §23.

## **Cross References**

Drug dealer liability, see chapter 663E.

Medical marijuana; economic and other data; collection, see §201-13.9.

Medical marijuana testing and research programs, see §304A-1865.

Money laundering, see chapter 708A.

## **Law Journals and Reviews**

Regression by Progression: Unleveling the Classroom Playing Field Through Cosmetic Neurology. 33 UH L. Rev. 193 (2010).

## **Case Notes**

This chapter preempted a Hawaii county ordinance that made the enforcement of marijuana laws the lowest enforcement priority in the county, because the ordinance covered the adult personal use of cannabis, which was the same subject matter that the legislature intended to govern under this chapter. 132 H. 511 (App.), 323 P.3d 155 (2014).

## **"PART I. GENERAL PROVISIONS**

**§329-1 Definitions.** As used in this chapter:

"Abuse" means the misuse of a substance or the use of a substance to an extent deemed deleterious or detrimental to the user, to others, or to society.

"Address" means, with respect to prescriptions, the physical location where an individual resides such as:

- (1) Street address, city, and state;
- (2) Tax map key number; or
- (3) The description of a physical location.

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

- (1) A practitioner (or, in the practitioner's presence or at the practitioner's direction, by a licensed or registered health care professional acting as the practitioner's authorized agent), or

(2) The patient or research subject at the direction or in the presence of the practitioner.

"Administrator" means the administrator of the narcotics enforcement division of the department of public safety.

"Advanced practice registered nurse with prescriptive authority" means a person licensed under section 457-8.6 who is registered under this chapter to administer or prescribe a controlled substance; provided that an advanced practice registered nurse with prescriptive authority shall not be authorized to request, receive, or sign for professional controlled substance samples.

"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

"Bureau" or "DEA" means the Drug Enforcement Administration, United States Department of Justice, or its successor agency.

"Central fill pharmacy" means a pharmacy located in the State that is registered pursuant to section 329-32 to prepare controlled substance orders for dispensing to the ultimate user pursuant to a valid prescription transmitted to it by a registered pharmacy.

"Central repository" means a central repository established under section 329-102.

"Controlled substance" means a drug, substance, or immediate precursor in schedules I through V of part II.

"Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer or sale from one person to another of a controlled substance or drug paraphernalia, whether or not there is an agency relationship.

"Department" means the department of public safety.

"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.

"Designated state agency" means the narcotics enforcement division, department of public safety.

"Detoxification treatment" means the dispensing, for a specific period of time, of a narcotic drug or narcotic drugs in

decreasing doses to an individual to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within a specified period of time. There are two types of detoxification treatments: short-term detoxification treatment and long-term detoxification treatment;

- (1) Short-term detoxification treatment is for a period not in excess of thirty days; and
- (2) Long-term detoxification treatment is for a period more than thirty days but not in excess of one hundred eighty days.

"Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the administering of a practitioner's controlled substances, and packaging, labeling, or compounding necessary to prepare the substance for that delivery. A controlled substance is dispensed when:

- (1) It is compounded, prepared, labeled, and packaged pursuant to the lawful order of a practitioner by a licensed pharmacist acting in the usual course of the licensed pharmacist's professional practice and who is either registered individually or employed in a registered pharmacy or by a registered institutional practitioner, for delivery to the ultimate user;
- (2) It is compounded, prepared, labeled and packaged for delivery to the ultimate user by a practitioner acting in the usual course of the practitioner's professional practice;
- (3) It is prepared, labeled, and packaged pursuant to the lawful order of a practitioner by a registered health care professional acting as an agent of the practitioner for delivery to the ultimate user by the practitioner; or
- (4) It is prepackaged by a pharmacist for use in an emergency facility for delivery to the ultimate user by a licensed or registered health care professional pursuant to the order of a physician.

"Dispenser" means a practitioner who dispenses.

"Distribute" means to deliver other than by administering or dispensing a controlled substance.

"Distributor" means a person who distributes.

"Drug" means:

- (1) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

- (2) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;
- (3) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
- (4) Substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection. It does not include devices or their components, parts, or accessories.

"Drug Enforcement Administration registration number" means the practitioner's Drug Enforcement Administration controlled substance registration number.

"Drug paraphernalia" means all equipment, products, and materials of any kind which are used, primarily intended for use, or primarily designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes but is not limited to:

- (1) Kits used, primarily intended for use, or primarily designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a prohibited controlled substance can be derived;
- (2) Kits used, primarily intended for use, or primarily designed for use in manufacturing, compounding, converting, producing, processing, or preparing prohibited controlled substances;
- (3) Isomerization devices used, primarily intended for use, or primarily designed for use in increasing the potency of any species of plant which is a prohibited controlled substance;
- (4) Testing equipment used, primarily intended for use, or primarily designed for use in identifying, or in analyzing the strength, effectiveness, or purity of prohibited controlled substances;
- (5) Scales and balances used, primarily intended for use, or primarily designed for use in weighing or measuring prohibited controlled substances;
- (6) Diluents and adulterants; such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, primarily intended for use, or primarily designed for use in cutting prohibited controlled substances;

- (7) Separation gins and sifters used, primarily intended for use, or primarily designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, prohibited marijuana;
- (8) Blenders, bowls, containers, spoons, and mixing devices used, primarily intended for use, or primarily designed for use in compounding prohibited controlled substances;
- (9) Capsules, balloons, envelopes, and other containers used, primarily intended for use, or primarily designed for use in packaging small quantities of prohibited controlled substances;
- (10) Containers and other objects used, primarily intended for use, or primarily designed for use in storing or concealing prohibited controlled substances;
- (11) Hypodermic syringes, needles, and other objects used, primarily intended for use, or primarily designed for use in parenterally injecting prohibited controlled substances into the human body;
- (12) Objects used, primarily intended for use, or primarily designed for use in ingesting, inhaling, or otherwise introducing prohibited marijuana, cocaine, hashish, hashish oil, or methamphetamine into the human body, such as:
  - (A) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - (B) Water pipes;
  - (C) Carburetion tubes and devices;
  - (D) Smoking and carburetion masks;
  - (E) Roach clips: meaning objects used to hold burning materials, such as marijuana cigarettes, that have become too small or too short to be held in the hand;
  - (F) Miniature cocaine spoons, and cocaine vials;
  - (G) Chamber pipes;
  - (H) Carburetor pipes;
  - (I) Electric pipes;
  - (J) Air-driven pipes;
  - (K) Chillums;
  - (L) Bongs; and
  - (M) Ice pipes or chillers.

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;



- (2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
- (3) The proximity of the object, in time and space, to a direct violation of this chapter;
- (4) The proximity of the object to controlled substances;
- (5) The existence of any residue of controlled substances on the object;
- (6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to a person or persons whom the owner or person in control knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
- (7) Instructions, oral or written, provided with the object concerning its use;
- (8) Descriptive materials accompanying the object which explain or depict its use;
- (9) National and local advertising concerning its use;
- (10) The manner in which the object is displayed for sale;
- (11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (12) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
- (13) The existence and scope of legitimate uses for the object in the community; and
- (14) Expert testimony concerning its use.

"Electronic prescription" means a prescription that is generated on an electronic prescription application and transmitted as an electronic data file that complies with all applicable requirements of title 21 Code of Federal Regulations part 1311 and any additional rules adopted by the department.

"Electronic prescription application" means electronic prescription software either as a stand-alone application or as a module in an electronic health record application.

"Electronic signature" means a method of signing an electronic message that identifies a particular person as the source of the message and indicates the person's approval of the information contained in the message.

"Ephedrine" includes any synthetic compound, salt, derivative, mixture, or preparation extracted from the plant (genus) Ephedra that contains the substance ephedrine.

"Exception report" means an output of data indicating schedule II controlled substances dispensation that is outside expected norms for a practitioner practicing a particular specialty or field of health care, for a dispenser doing business in a particular location, or for a patient.

"Identification number" means, with respect to a patient:

- (1) The patient's unique valid driver's license number or state identification card number, followed by the abbreviation of the state issuing the driver's license or state identification card, or the patient's military identification number;
- (2) If the patient is a foreign patient, the patient's passport number;
- (3) If the patient does not have a valid driver's license, state identification card, or military identification, the patient's social security number;
- (4) If the patient is less than eighteen years of age and has none of the identification referred to in paragraph (1), (2), or (3), the unique number on the valid driver's license, state identification card, military identification, or passport of the patient's parent or guardian; or
- (5) If the controlled substance is obtained for an animal, the unique number of the animal's owner as described in paragraph (1), (2), or (3).

"Immediate precursor" means a substance which the department of public safety has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

"Locum tenens practitioner" means a practitioner who is licensed in this State and who temporarily substitutes for another practitioner for a period not to exceed sixty days at that other practitioner's registered place of business. Locum tenens practitioners are not eligible to receive an oral code number as designated by section 328-16(k).

"Maintenance treatment" means the dispensing of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drug, for a period in excess of twenty-one days.

"Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a

controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a controlled substance:

- (1) By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice, or
- (2) By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

"Marijuana" means all parts of the plant (genus) Cannabis whether growing or not; the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

"Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
- (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (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, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

"Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 329-11, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

"Opium poppy" means the plant of the species *Papaver somniferum*, except its seeds.

"Person" means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

"Pharmacist" means a person who is licensed or holds a permit under chapter 461 to practice pharmacy, including a pharmacy intern who is under the immediate and direct supervision of a licensed pharmacist.

"Pharmacy delegate" means an individual employed by the pharmacy and selected by the pharmacist to act as that pharmacist's agent to whom the pharmacist has delegated the task of accessing electronic prescription accountability system information and for whose actions the pharmacist takes full responsibility.

"Physician assistant" means a person licensed under section 453-5.3, who is registered under this chapter to administer, prescribe, or dispense a controlled substance under the authority and supervision of a physician registered under section 329-33, but who is not authorized to request, receive, or sign for professional controlled substance samples.

"Physician-patient relationship" means the 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 shall:

- (1) Personally perform a face-to-face history and physical examination of the patient that is appropriate to the specialty training and experience of the physician or the designated member of the physician's health care team, make a diagnosis and formulate a therapeutic plan, or personally treat a specific injury or condition;
- (2) Discuss with the patient the diagnosis or treatment, including the benefits of other treatment options; and
- (3) Ensure the availability of appropriate follow-up care.

"Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

"Practitioner" means:

- (1) A physician, dentist, veterinarian, scientific investigator, or other person licensed and registered under section 329-32 to distribute, dispense, or conduct research with respect to a controlled substance in the course of professional practice or research in this State;
- (2) An advanced practice registered nurse with prescriptive authority licensed and registered under section 329-32 to prescribe and administer controlled substances in the course of professional practice in this State; and
- (3) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.

"Practitioner delegate" means an agent or employee of a practitioner (physician, dentist, veterinarian, advanced practice registered nurse with prescriptive authority, or physician assistant) to whom the practitioner has delegated the task of accessing electronic prescription accountability system information and for whose actions the practitioner takes full responsibility.

"Prescribe" means to direct, designate, or order the use of a formula for the preparation of a medicine for a disease or illness and the manner of using them.

"Prescriber" means one who is authorized to issue a prescription.

"Prescription" means an order for medication, which is dispensed to or for an ultimate user. "Prescription" shall not include an order for medication that is dispensed for immediate administration to the ultimate user, such as a chart order to dispense a drug to a bed patient for immediate administration in a hospital.

"Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

"Reverse distributor" means a registrant who is registered under section 329-32 to receive controlled substances acquired from another state certified controlled substance registrant pursuant to title 21 Code of Federal Regulations part 1317, for the purpose of:

- (1) Returning unwanted, unusable, or outdated controlled substances to the manufacturer or the manufacturer's agent; or
- (2) Where necessary, processing such substances or arranging for the processing of such substances for disposal as authorized by the administrator.

"State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

"Supervising physician" means a physician licensed to practice medicine in the State and registered under section 329-33, who supervises a physician assistant and retains full professional and legal responsibility for the performance of the supervised physician assistant and the care and treatment of the patient.

"System" means an electronic prescription accountability system as described in part VIII.

"Ultimate user" means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household. [L 1972, c 10, pt of §1; am L 1975, c 163, §7; gen ch 1985; am L 1986, c 214, §1; am L 1988, c 259, §1; am L 1989, c 293, §1; am L 1990, c 13, §1 and c 281, §§4, 10; am L 1991, c 159, §§3 to 6; am L 1996, c 268, §4; am L 1999, c 90, §1 and c 252, §1; am L 2001, c 203, §1; am L 2004, c 44, §4; am L 2006, c 69, §2; am L 2008, c 186, §2; am L 2009, c 169, §6; am L 2010, c 57, §3; am L 2013, c 20, §2; am L 2016, c 218, §1]

### **Law Journals and Reviews**

Marijuana Prohibition in Hawaii, Steven K. Christensen, 13 HBJ No. 3 Fall 1977, pg. 9.

### **Case Notes**

In prosecution under §329-43.5(b), trial court should provide jury with an instruction enumerating all fourteen factors listed in statutory definition of drug paraphernalia. 75 H. 80, 856 P.2d 1246.

No error in court failing to dismiss count against defendant for possessing "everyday household items not intended or designed for use as drug paraphernalia" as broad definition of drug paraphernalia and multiple examples of such contraband enumerated in this section weighed against defendant's contention that the ordinary nature of the containers defendant possessed did not involve the harm or evil sought to be avoided under §329-43.5 or amounted to extenuations that would not have been envisioned by the legislature. 98 H. 196, 46 P.3d 498.

" **§329-2 Hawaii advisory commission on drug abuse and controlled substances; number; appointment.** There shall be

established a state advisory commission on drug abuse and controlled substances consisting of not more than fifteen nor less than nine members appointed by the governor, as provided in section 26-34. The members shall be selected on the basis of their ability to contribute to the solution of problems arising from the abuse of controlled substances, and to the extent possible, shall represent the pharmacological, medical, community and business affairs, youth action, educational, legal defense, enforcement, and corrections segments of the community. One of the appointed members shall be a member of the state council on mental health established by section 334-10, and shall be knowledgeable about the community and the relationships between mental health, mental illness, and substance abuse. The commission shall elect a chairperson from among its members. The members shall serve without compensation, but shall be paid their necessary expenses in attending meetings of the commission. The commission shall be a part of the department of health for administrative purposes; provided that the department of health shall appoint an ex-officio non-voting representative to the commission who shall regularly attend meetings of both this commission and the state council on mental health, and make regular reports to both bodies. [L 1972, c 10, pt of §1 and am c 114, §2(4); am L 1985, c 7, §1; am L 1987, c 198, §1; am L 1993, c 210, §1]

#### **Cross References**

Needle exchange program, see chapter 325, part VII.

" **[§329-3] Annual report.** The commission shall prepare and present to the governor in the month of January in each year a report respecting its actions during the preceding fiscal year, together with its recommendations respecting legislation, copies of which reports shall be furnished by the governor to the legislature. [L 1972, c 10, pt of §1]

" **§329-4 Duties of the Hawaii advisory commission on drug abuse and controlled substances.** The Hawaii advisory commission on drug abuse and controlled substances shall:

- (1) Assist the department of health in coordinating all action programs of community agencies (state, county, military, or private) specifically focused on the problem of drug abuse;
- (2) Assist the department of health in carrying out educational programs designed to prevent and deter abuse of controlled substances;

- (3) Create public awareness and understanding of the problems of drug abuse;
- (4) Sit in an advisory capacity to the governor and other state departments as may be appropriate on matters relating to the commission's work; and
- (5) Act in an advisory capacity to the director of health in substance abuse matters under chapter 321, part XVI. For the purposes of this paragraph, "substance" shall include alcohol in addition to any drug on schedules I through IV of this chapter and any substance that includes in its composition volatile organic solvents. [L 1972, c 10, pt of §1 and am c 114, §2(3); am L 1975, c 190, §3; am L 1990, c 281, §5; am L 2012, c 87, §1]

## **"PART II. STANDARDS AND SCHEDULES**

**§329-11 Authority to schedule controlled substances.** (a) Annually, upon the convening of each regular session of the state legislature, the department of public safety shall report to the legislature additions, deletions, or revisions in the schedules of substances enumerated in sections 329-14, 329-16, 329-18, 329-20, and 329-22, and any other recommendations that it deems necessary. Three months prior to the convening of each regular session, the department of public safety shall post public notice, at the state capitol and in the office of the lieutenant governor for public inspection, of the department's recommendations to the legislature concerning any additions, deletions, or revisions in these schedules; provided that the posting shall not be required if official notice has been received that the substance has been added, deleted, or rescheduled as a controlled substance under federal law. In making a determination regarding a substance, the department of public safety shall assess the degree of danger or probable danger of the substance by considering the following:

- (1) The actual or probable abuse of the substance including:
  - (A) Its history and current pattern of abuse;
  - (B) The scope, duration, and significance of abuse; and
  - (C) A judgment of the degree of actual or probable detriment that may result from the abuse of the substance;
- (2) The biomedical hazard of the substance including:
  - (A) Its pharmacology: the effects and modifiers of effects of the substance;



- (B) Its toxicology: the acute and chronic toxicity, interaction with other substances whether controlled or not, and liability to psychic or physiological dependence;
  - (C) Risk to public health and particular susceptibility of segments of the population; and
  - (D) Existence of therapeutic alternatives for substances that are or may be used for medical purposes;
- (3) A judgment of the probable physical and social impact of widespread abuse of the substance;
  - (4) Whether the substance is an immediate precursor of a substance already controlled under this part; and
  - (5) The current state of scientific knowledge regarding the substance.

(b) After considering the factors enumerated in subsection (a), the department of public safety shall make a recommendation to the legislature, specifying to what schedule the substance should be added, deleted, or rescheduled if it finds that the substance has a degree of danger or probable danger. The department of public safety may make its recommendation to the legislature prior to the submission of its annual report, in which case the department of public safety shall publish and give notice to the public of the recommendation.

(c) If the legislature designates a substance as an immediate precursor, substances that are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If a substance is added, deleted, or rescheduled as a controlled substance under federal law and notice of the designation is given to the department of public safety, the department of public safety shall recommend that a corresponding change in Hawaii law be made. The department of public safety shall similarly designate the substance as added, deleted, or rescheduled under this chapter, after the expiration of thirty days from publication in the Federal Register of a final order, and this change shall have the effect of law. If a substance is added, deleted, or rescheduled under this subsection, the control shall be temporary and, if the next regular session of the state legislature has not made the corresponding changes in this chapter, the temporary designation of the added, deleted, or rescheduled substance shall be nullified.

(e) The administrator may make an emergency scheduling by placing a substance into schedule I, II, III, IV, or V on a temporary basis, if the administrator determines the action is necessary to address or avoid a current or imminent danger to the health and safety of the public. In making the

determination of whether to emergency schedule a substance, the administrator shall assess the degree of danger or probable danger of the substance by considering the following:

- (1) The actual or possible abuse of the substance including:
  - (A) Its history and current pattern of abuse;
  - (B) The scope, duration, and significance of abuse; and
  - (C) A judgment of the degree of actual or possible detriment that may result from the abuse of the substance; and
- (2) The risk to public health.

The department shall post a public notice thirty days prior to the effective date of the emergency scheduling action, at the state capitol, in the office of the lieutenant governor, and on the department's website for public inspection. If a substance is added or rescheduled under this subsection, the control shall be temporary and, if the next regular session of the state legislature has not enacted the corresponding changes in this chapter, the temporary designation of the added or rescheduled substance shall be nullified. [L 1972, c 10, pt of §1; am L 1987, c 113, §1; am L 1990, c 281, §10; am L 1997, c 280, §1 and c 356, §6; am L 2013, c 68, §1]

" **[§329-12] Nomenclature.** The controlled substances listed or to be listed in the schedules in sections 329-14, 329-16, 329-18, 329-20, and 329-22 are included by whatever official, common, usual, chemical, or trade name designated. [L 1972, c 10, pt of §1]

" **[§329-13] Schedule I tests.** A substance shall be placed in schedule I if it has the highest degree of danger or probable danger according to the determination made pursuant to section 329-11. [L 1972, c 10, pt of §1]

" **§329-14 Schedule I.** (a) The controlled substances listed in this section are included in schedule I.

(b) Any of the following opiates, 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) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;

- (4) Alphacetylmethadol (except levo-alphacetylmethadol, levomethadyl acetate, or LAAM);
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (9) Benzethidine;
- (10) Betacetylmethadol;
- (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
- (12) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);
- (13) Betameprodine;
- (14) Betamethadol;
- (15) Betaprodine;
- (16) Clonitazene;
- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;
- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;
- (26) Ethylmethylthiambutene;
- (27) Etonitazene;
- (28) Etoxeridine;
- (29) Furethidine;
- (30) Hydroxypethidine;
- (31) Ketobemidone;
- (32) Levomoramide;
- (33) Levophenacylmorphan;
- (34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
- (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (36) Morpheridine;
- (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (38) Noracymethadol;
- (39) Norlevorphanol;
- (40) Normethadone;
- (41) Norpipanone;

- (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide;
- (43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine;
- (44) Phenadoxone;
- (45) Phenampromide;
- (46) Phenomorphan;
- (47) Phenoperidine;
- (48) Piritramide;
- (49) Proheptazine;
- (50) Properidine;
- (51) Propiram;
- (52) Racemoramide;
- (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
- (54) Tilidine;
- (55) Trimeperidine;
- (56) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers;
- (57) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers; and
- (58) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide, (acetyl fentanyl) its optical, positional, and geometric isomers, salts, and salts of isomers.

(c) Any of the following opium derivatives, 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) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine;
- (11) Heroin;
- (12) Hydromorphanol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;

- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Phoclodine; and
- (23) Thebacon.

(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) Ethylamine analog of phencyclidine (PCE);
- (30) Pyrrolidine analog of phencyclidine (PCPy, PHP);
- (31) Thiophene analog of phencyclidine (TCPy; TCP);

- (32) 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;
- (33) 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;
- (34) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts, and salts of isomers;
- (35) N-benzylpiperazine (BZP; 1-benzylpiperazine) its optical isomers, salts, and salts of isomers;
- (36) 1-(3-trifluoromethylphenyl)piperazine (TFMPP), its optical isomers, salts, and salts of isomers;
- (37) Alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers;
- (38) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;
- (39) Salvia divinorum;
- (40) Salvinorin A;
- (41) Divinorin A;
- (42) 5-Methoxy-N,N-Dimethyltryptamine (5-MeO-DIPT) (some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT);
- (43) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);
- (44) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D);
- (45) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C);
- (46) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I);
- (47) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2);
- (48) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4);
- (49) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H);
- (50) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N);
- (51) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P);
- (52) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: 25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5);
- (53) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine, its optical, positional, and

- geometric isomers, salts, and salts of isomers (Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82); and
- (54) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36).

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

- (1) Mecloqualone; or
- (2) Methaqualone.

(f) Stimulants. 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 stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (1) Aminorex;
- (2) Cathinone;
- (3) Fenethylline;
- (4) Methcathinone;
- (5) N-ethylamphetamine;
- (6) 4-methylaminorex;
- (7) N,N-dimethylamphetamine; and
- (8) Substituted cathinones, any compound, except bupropion or compounds listed under a different schedule, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:
  - (A) By substitution in the ring system to any extent with alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;
  - (B) By substitution at the 3-position with an acyclic alkyl substituent; or
  - (C) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure.

Some other trade names: Mephedrone (2-methylamino-1-p-tolylpropan-1-one), also known as 4-methylmethcathinone (4-MMC), methylephedrone or MMCA; Methylenedioxypropylamphetamine (MDPV, MDPK); methylone or 3,4-methylenedioxypropylmethcathinone; and 1-(benzo[d][1,3]dioxol-5-yl)-2-(ethylamino)propan-1-one,

monohydrochloride, also known as Ethylone, bk-MDEA hydrochloride, MDEC; 3,4-Methylenedioxy-N-ethylcathinone; bk-Methylenedioxyethylamphetamine.

(g) Any of the following cannabinoids, 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) Tetrahydrocannabinols; meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and Delta 3,4 cis or trans-tetrahydrocannabinol, and its optical isomers (since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions, are covered);
- (2) Naphthoylindoles; meaning any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;
- (3) Naphthylmethylindoles; meaning any compound containing a 1H-indol-3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;
- (4) Naphthoylpyrroles; meaning any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the



- pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent;
- (5) Naphthylmethylindenes; meaning any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent;
  - (6) Phenylacetylindoles; meaning any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent;
  - (7) Cyclohexylphenols; meaning any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with substitution at the 5-position of the phenolic ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not substituted in the cyclohexyl ring to any extent;
  - (8) Benzoylindoles; meaning any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent;
  - (9) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl) pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone (another trade name is WIN 55,212-2);
  - (10) (6a,10a)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (other trade names are: HU-210 and HU-211);
  - (11) Tetramethylcyclopropanoylindoles; meaning any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl,

- 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent;
- (12) N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: APINACA, AKB48);
  - (13) Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: PB-22; QUPIC);
  - (14) Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: 5-fluoro-PB-22; 5F-PB-22);
  - (15) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: AB-FUBINACA);
  - (16) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: ADB-PINACA);
  - (17) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: AB-CHMINACA);
  - (18) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, and geometric isomers, salts, and salts of isomers (Other names: AB-PINACA);
  - (19) [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone, and geometric isomers, salts, and salts of isomers (Other names: THJ-2201);
  - (20) Methyl (1-(4-fluorobenzyl)-1H-indazole-3-carbonyl)-L-valinate, and geometric isomers, salts, and salts of isomers (Other names: FUB-AMB);
  - (21) (S)-methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate, and geometric isomers, salts, and salts of isomers (Other names: 5-fluoro-AMB, 5-fluoro-AMP);
  - (22) N-((3s,5s,7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide, and geometric isomers, salts, and salts of isomers (Other names: AKB48 N-(5-fluoropentyl) analog, 5F-AKB48, APINACA 5-fluoropentyl analog, 5F-APINACA);

- (23) N-adamantyl-1-fluoropentylindole-3-Carboxamide, and geometric isomers, salts, and salts of isomers (Other names: STS-135, 5F-APICA; 5-fluoro-APICA);
- (24) Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate, and geometric isomers, salts, and salts of isomers (Other names: NM2201); and
- (25) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide, and geometric isomers, salts, and salts of isomers (Other names: MAB-CHMINACA and ADB-CHMINACA). [L 1972, c 10, pt of §1; am L 1974, c 217, §1; am L 1977, c 116, §1; am L 1978, c 68, §2; am L 1979, c 194, §1; am L 1980, c 140, §1 and c 232, §16; am L 1984, c 166, §1; am L 1985, c 150, §1; am L 1986, c 214, §§2, 3; am L 1988, c 59, §1; am L 1990, c 138, §3; am L 1993, c 8, §1; am L 1995, c 122, §1; am L 1997, c 356, §1; am L 1999, c 252, §2; am L 2000, c 98, §1; am L 2001, c 203, §2; am L 2003, c 151, §§1, 2; am L 2008, c 119, §3; am L 2010, c 123, §1; am L 2011, c 73, §1; am L 2012, c 29, §1; am L 2013, c 48, §1; am L 2014, c 54, §1; am L 2015, c 195, §1; am L 2016, c 218, §§2, 3]

#### Case Notes

Proscription of distribution of lysergic acid "diethylamine" under this section (1974) cannot be extended by analogy under §701-104 to distribution of lysergic acid diethylamide. 61 H. 74, 595 P.2d 288.

" **[§329-15] Schedule II tests.** A substance shall be placed in schedule II if it has a high degree of danger or probable danger according to the determination made pursuant to section 329-11. [L 1972, c 10, pt of §1]

" **§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;
  - (O) Thebaine;
  - (P) Dihydroetorphine;
  - (Q) Oripavine; and
  - (R) Tincture of opium;
- (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-alphaacetylmethadol (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;
- (27) Sufentanil; and
- (28) Tapentadol.

(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) 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;
- (4) Methylphenidate; and

- (5) Lisdexamfetamine, its salts, isomers, and salts of its isomers.
- (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); or
  - (3) Immediate precursor to Fentanyl:
    - (A) 4-anilino-N-phenethyl-4-piperidine (ANPP).
- (g) Hallucinogenic substances, unless listed in another schedule, shall include:
  - (1) Nabilone. [L 1972, c 10, pt of §1 and am c 114, §2(2); am L 1974, c 217, §2; am L 1975, c 26, §1; am L 1978, c 68, §3; am L 1979, c 194, §2; am L 1981, c 125, §§1, 2; am L 1984, c 166, §2; am L 1985, c 150, §2; am L 1987, c 203, §1; am L 1988, c 59, §2; am L 1990, c 138, §4; am L 1991, c 159, §7; am L 1995, c 122, §2; am L 1997, c 356, §2; am L 2000, c 98, §§2, 3; am L 2001, c 203, §3; am L 2002, c 165, §1; am L 2003, c 151, §3; am L 2008, c 119, §4; am L 2009, c 117, §§1, 2; am L 2010, c 123, §2; am L 2011, c 73, §2; am L 2012, c 29, §2; am L 2013, c 48, §2]

### Case Notes

Method used to prove that capsules of methaqualone hydrochloride contained methaqualone accepted as evidence. 1 H. App. 31, 613 P.2d 919.

" **[§329-17] Schedule III tests.** A substance shall be placed in schedule III if the substance has a degree of danger or probable danger less than the substances listed in schedules I and II according to the determination made pursuant to section 329-11. [L 1972, c 10, pt of §1]

" **§329-18 Schedule III.** (a) The controlled substances listed in this section are included in schedule III.

(b) Stimulants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers, whenever the existence of these salts,

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

- (1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substance listed in schedule II, and any other drug of the quantitative composition or which is the same except that it contains a lesser quantity of controlled substances;
  - (2) Benzphetamine;
  - (3) Chlorphentermine;
  - (4) Clortermine;
  - (5) Mazindol;
  - (6) Phendimetrazine.
- (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);
  - (6) Ketamine, its salts, isomers, and salts of isomers, also known as (+ or -)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone;
  - (7) Lysergic acid;
  - (8) Lysergic acid amide;
  - (9) Methyprylon;
  - (10) Sulfondiethylmethane;
  - (11) Sulfonethylmethane;
  - (12) Sulfonmethane;
  - (13) Tiletamine/Zolazepam (Telazol, 2-(ethylamino)-2-(thienyl)-cyclohexanone, flupyrazapon) or any salts thereof;
  - (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;

- (15) Perampanel [2-(2-oxo-1-phenyl-5-pyridin-2-yl-1,2-dihydropyridin-3-yl)benzotrile], including its salts, isomers, and salts of isomers; and
- (16) Alfaxalone 5[alpha]-pregnan-3[alpha]-ol-11,20-dione, including its salts, isomers, and salts of isomers.

(d) Nalorphine.

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts, or alkaloid, in limited quantities as set forth below:

- (1) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
- (2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- (3) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
- (4) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;
- (5) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts;
- (6) Not more than 50 milligrams of morphine or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and
- (7) Buprenorphine.

(f) The department of public safety may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration



that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(g) Any anabolic steroid. The term "anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

- (1) Boldenone;
- (2) Clostebol (4-Chlorotestosterone);
- (3) Dehydrochlormethyltestosterone;
- (4) Dihydrotestosterone (4-dihydrotestosterone);
- (5) Drostanolone;
- (6) Ethylestrenol;
- (7) Fluoxymesterone;
- (8) Formebolone (Formyldienolone);
- (9) Mesterolone;
- (10) Methandranone;
- (11) Methandriol;
- (12) Methandrostenolone (Methandienone);
- (13) Methenolone;
- (14) Methyltestosterone;
- (15) Mibolerone;
- (16) Nandrolone;
- (17) Norethandrolone;
- (18) Oxandrolone;
- (19) Oxymesterone;
- (20) Oxymetholone;
- (21) Stanolone (Dihydrotestosterone);
- (22) Stanozolol;
- (23) Testolactone;
- (24) Testosterone;
- (25) Trenbolone;
- (26) 3[beta], 17-dihydroxy-5a-androstane;
- (27) 3[alpha], 17[beta]-dihydroxy-5a-androstane;
- (28) 5[alpha]-androstane-3, 17-dione;
- (29) 1-androstenediol (3[beta], 17[beta]-dihydroxy-5[alpha]-androst-1-ene);
- (30) 1-androstenediol (3[alpha], 17[beta]-dihydroxy-5[alpha]-androst-1-ene);
- (31) 4-androstenediol (3[beta], 17[beta]-dihydroxy-androst-4-ene);
- (32) 5-androstenediol (3[beta], 17[beta]-dihydroxy-androst-5-ene);
- (33) 1-androstenedione ([5[alpha]]-androst-1-en-3, 17-dione);
- (34) 4-androstenedione (androst-4-en-3, 17-dione);

- (35) 5-androstenedione (androst-5-en-3, 17-dione);
- (36) Bolasterone (7[alpha], 17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one);
- (37) Calusterone (7[beta], 17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one);
- (38) [Delta]1-dihydrotestosterone (a.k.a. '1-testosterone') (17[beta]-hydroxy-5[alpha]-androst-1-en-3-one);
- (39) Furazabol (17[alpha]-methyl-17[beta]-hydroxyandrostano[2,3-c]-furazan);
- (40) 13[beta]-ethyl-17[beta]-hydroxygon-4-en-3-one;
- (41) 4-hydroxytestosterone (4,17[beta]-dihydroxy-androst-4-en-3-one);
- (42) 4-hydroxy-19-nortestosterone (4,17[beta]-dihydroxy-estr-4-en-3-one);
- (43) Mesterolone (1[alpha]methyl-17[beta]-hydroxy-[5[alpha]]-androstan-3-one);
- (44) Methandienone (17[alpha]-methyl-17[beta]-hydroxyandrost-1,4-dien-3-one);
- (45) Methandriol (17[alpha]-methyl-3[beta], 17[beta]-dihydroxyandrost-5-ene);
- (46) Methenolone (1-methyl-17[beta]-hydroxy-5[alpha]-androst-1-en-3-one);
- (47) 17[alpha]-methyl-3[beta], 17[beta]-dihydroxy-5a-androstane;
- (48) 17[alpha]-methyl-3[alpha], 17[beta]-dihydroxy-5a-androstane;
- (49) 17[alpha]-methyl-3[beta], 17[beta]-dihydroxyandrost-4-ene;
- (50) 17[alpha]-methyl-4-hydroxynandrolone (17[alpha]-methyl-4-hydroxy-17[beta]-hydroxyestr-4-en-3-one);
- (51) Methyldienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4, 9(10)-dien-3-one);
- (52) Methyltrienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4, 9-11-trien-3-one);
- (53) 17[alpha]-methyl-[Delta] 1-dihydrotestosterone (17[beta]-hydroxy-17[alpha]-methyl-5[alpha]-androst-1-en-3-one) (a.k.a. '17-[alpha]-methyl-1-testosterone');
- (54) 19-nor-4-androstenediol (3[beta], 17[beta]-dihydroxyestr-4-ene);
- (55) 19-nor-4-androstenediol (3[alpha], 17[beta]-dihydroxyestr-4-ene);
- (56) 19-nor-5-androstenediol (3[beta], 17[beta]-dihydroxyestr-5-ene);
- (57) 19-nor-5-androstenediol (3[alpha], 17[beta]-dihydroxyestr-5-ene);
- (58) 19-nor-4-androstenedione (estr-4-en-3, 17-dione);
- (59) 19-nor-5-androstenedione (estr-5-en-3, 17-dione);

- (60) Norbolethone (13[beta], 17[alpha]-diethyl-17[beta]-hydroxygon-4-en-3-one);
- (61) Norclostebol (4-chloro-17[beta]-hydroxyestr-4-en-3-one);
- (62) Normethandrolone (17[alpha]-methyl-17[beta]-hydroxyestr-4-en-3-one);
- (63) Stenbolone (17[beta]-hydroxy-2-methyl-[5[alpha]]-androst-1-en-3-one);
- (64) Tetrahydrogestrinone (13[beta], 17[alpha]-diethyl-17[beta]-hydroxygon-4, 9, 11-trien-3-one);
- (65) Desoxymethyltestosterone (17a-methyl-5a-androst-2-en-17-ol, madol);
- (66) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);
- (67) Boldione (Androsta-1,4-diene-3,17-dione);
- (68) Methasterone (2 alpha-17 alpha-dimethyl-5 alpha-androstan-17beta-ol-3-one);
- (69) Prostanazol (17 beta-hydroxy-5 alpha-androstano[3,2-c]pyrazole; and
- (70) Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth, except the term "anabolic steroid" does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the Secretary of Health and Human Services for nonhuman administration. If any person prescribes, dispenses, or distributes an anabolic steroid intended for administration to nonhuman species for human use, the person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this paragraph.

(h) Hallucinogenic substances, unless listed in another schedule, shall include Dronabinol (synthetic), in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product. [L 1972, c 10, pt of §1 and am c 114, §2(1); am L 1974, c 217, §3; am L 1975, c 26, §2; am L 1977, c 116, §2; am L 1978, c 68, §4; am L 1988, c 59, §3; am L 1990, c 281, §10; am L 1991, c 159, §8; am L 1992, c 151, §1; am L 1995, c 122, §3; am L 1997, c 356, §§3, 4; am L 2000, c 98, §4; am L 2001, c 203, §4; am L 2003, c 151, §4; am L 2004, c 193, §2; am L 2008, c 186, §3; am L 2009, c 117, §3; am L 2011, c 73, §3; am L 2013, c 48, §3; am L 2014, c 54, §2; am L 2015, c 195, §2]

" **[§329-19] Schedule IV tests.** A substance shall be placed in schedule IV if the substance has a degree of danger or probable danger less than the substances listed in schedule III according to the determination made pursuant to section 329-11. [L 1972, c 10, pt of §1]

" **§329-20 Schedule IV.** (a) The controlled substances listed in this section are included in schedule IV.

(b) Depressants. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, esters, ethers, 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) Fospropofol (Lusedra);
- (26) Halazepam;
- (27) Haloxazolam;
- (28) Ketazolam;
- (29) Loprazolam;
- (30) Lorazepam;
- (31) Lormetazepam;

- (32) Mebutamate;
- (33) Medazepam;
- (34) Meprobamate;
- (35) Methohexital;
- (36) Methylphenobarbital (mephobarbital);
- (37) Midazolam;
- (38) Nimetazepam;
- (39) Nitrazepam;
- (40) Nordiazepam;
- (41) Oxazepam;
- (42) Oxazolam;
- (43) Paraldehyde;
- (44) Petrichloral;
- (45) Phenobarbital;
- (46) Pinazepam;
- (47) Prazepam;
- (48) Quazepam;
- (49) Suvorexant;
- (50) Temazepam;
- (51) Tetrazepam;
- (52) Triazolam;
- (53) Zaleplon;
- (54) Zolpidem; and
- (55) Zopiclone (Lunesta).

(c) Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(d) Stimulants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Cathine ((+)-norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenproporex;
- (5) Mazindol;
- (6) Mefenorex;
- (7) Modafinil;
- (8) Phentermine;
- (9) Pemoline (including organometallic complexes and chelates thereof);
- (10) Pipradrol;

- (11) Sibutramine;
- (12) SPA (1-dimethylamino-1,2-diphenylethane, lefetamine);  
and
- (13) Lorcaserin.

(e) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its optical isomers and its salts, isomers, and salts of isomers:

- (1) Pentazocine; and
- (2) Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl)-2,6-dimethylphenyl]-1-oxopropyl]][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid.

(f) The department of public safety may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b) or any stimulant listed in subsection (d) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the degree of danger or probable danger of the substances which have a depressant or stimulant effect on the central nervous system.

(g) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

- (1) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit;
- (2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane); and
- (3) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers and salts of these isomers (including tramadol). [L 1972, c 10, pt of §1; am L 1973, c 184, §1; am L 1974, c 217, §4; am L 1977, c 116, §3; am L 1978, c 68, §5; am L 1979, c 194, §3; am L 1980, c 140, §2; am L 1985, c 150, §3; am L 1987, c 203, §2; am L 1990, c 281, §10; am L 1993, c 9, §1; am L 1995, c 122, §4; am L 2000, c 98, §5; am L 2001, c 203, §5; am L 2002, c 165, §2; am L 2003, c 151, §5; am L 2006, c 171, §1; am L 2008, c 119, §5; am L 2010,

c 123, §3; am L 2014, c 54, §3; am L 2015, c 195, §3;  
am L 2016, c 218, §4]

" **[§329-21] Schedule V tests.** A substance shall be placed in schedule V if it has a degree of danger or probable danger less than the substances listed in schedule IV according to the determination made pursuant to section 329-11. [L 1972, c 10, pt of §1]

" **§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.

(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) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxypropionamide], (Vimpat); and
- (2) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid]. [L 1972, c 10, pt of §1; am L 1978, c 68, §6;

am L 1985, c 150, §4; am L 2003, c 151, §6; am L 2008, c 119, §6; am L 2010, c 123, §4]

" **§329-23 Republishing and distribution of schedules.** (a)

The department of public safety shall make available to the public on the department's website the schedules annually or more often, as may be necessary to update the schedules.

(b) The department of public safety shall publicly announce and, in addition, shall make available to the public copies of any changes to the schedules as such changes are made. [L 1972, c 10, pt of §1; am L 1979, c 194, §4; am L 1990, c 281, §10; am L 2016, c 218, §5]

**"PART III. REGULATION OF MANUFACTURE, DISTRIBUTION, PRESCRIPTION, AND DISPENSING OF CONTROLLED SUBSTANCES**

**§329-31 Rules.** The department of public safety may adopt rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, prescribing, dispensing, or reverse distribution with controlled substances within this State. [L 1972, c 10, pt of §1; am L 1990, c 281, §10; am L 2016, c 218, §6]

" **§329-31.5 Clinics.** Registration as a clinic is required when an out-patient medical facility maintains centralized ordering, storage, and record keeping of controlled substances to be administered and/or dispensed to patients. Registration of a clinic requires that:

- (1) Each location where controlled substances are stocked be registered by name, location, and designated principal practitioner or affiliated pharmacy. The principal practitioner or affiliated pharmacy shall be responsible for the accurate maintenance of records which document all controlled substances ordered, received, administered, and dispensed within the clinic;
- (2) Controlled substances stocked at a clinic under the clinic State of Hawaii and Drug Enforcement Administration registration numbers be administered to clinic patients by licensed or registered health care professionals under the supervision of the treating practitioner;
- (3) Controlled substances stocked at a clinic under the clinic State of Hawaii and Drug Enforcement Administration registration numbers be dispensed to clinic patients only by the treating practitioner for



emergency and urgent care, when a written prescription would not be practical;

- (4) A centralized record signed and dated by the treating practitioner which indicates the patient, controlled substance, date and time of administration and/or dispensing be maintained and stored with the current controlled substance inventory, ordering, and receipt records. These records shall be maintained for five years; and
- (5) A clinic practitioner who individually maintains a personal stock of controlled substances does so under the practitioner's individual State and Drug Enforcement Administration registration number. These controlled substances shall be kept separate from clinic stock and cannot be accessed by other practitioners.

The term "affiliated pharmacy" as used in this section means a licensed pharmacy which supplies and monitors the controlled substances stocked in a registered clinic.

The term "clinic" as used in this section means an out-patient medical facility owned and operated by a legal entity that employs individual practitioners for the treatment of patients and which may or may not provide after-hours emergency or urgent care.

The term "principal physician" means the practitioner in a clinic whose signature appears on the clinic's State of Hawaii and Drug Enforcement Administration registrations, and who is responsible for the proper maintenance, storage, and record keeping of the controlled substances ordered and centrally stocked in the clinic using the clinic Drug Enforcement Administration registration number. [L 1991, c 159, §1; am L 1999, c 252, §3]

#### Case Notes

Mentioned: 732 F. Supp. 2d 1107.

- " **§329-32 Registration requirements.** (a) Every person who:
- (1) Manufactures, distributes, prescribes, dispenses, or conducts reverse distribution with any controlled substance within this State;
  - (2) Proposes to engage in the manufacture, distribution, prescription, dispensing, or reverse distribution of any controlled substance within this State; or
  - (3) Dispenses or proposes to dispense any controlled substance for use in this State by shipping, mailing,

or otherwise delivering the controlled substance from a location outside this State; shall obtain a registration issued by the department of public safety in accordance with the department's rules. A licensed or registered health care professional who acts as the authorized agent of a practitioner and who administers controlled substances at the direction of the practitioner shall not be required to obtain a registration.

(b) Persons registered by the department of public safety under this chapter to manufacture, distribute, prescribe, dispense, store, conduct research, or conduct reverse distribution with controlled substances may possess, manufacture, distribute, prescribe, dispense, store, or conduct research with those substances to the extent authorized by their registration and in conformity with this part.

(c) Except as otherwise provided by law, the following persons shall not be required to register and may lawfully possess controlled substances under this chapter:

- (1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance, if the agent or employee is acting in the usual course of the agent's or employee's business or employment;
- (2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of the person's business or employment; and
- (3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner.

(d) The department of public safety may waive the registration or filing requirement for certain manufacturers, distributors, prescribers, or dispensers by rule if:

- (1) It is consistent with the public health and safety; and
- (2) The department of public safety states the specific reasons for the waiver and the time period for which the waiver is to be valid.

(e) A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, prescribes, dispenses, or conducts reverse distribution with controlled substances, except an office used by a practitioner (who is registered at another location) where controlled substances are prescribed but neither administered nor otherwise dispensed as a regular part of the professional practice of the practitioner at such office, and where no supplies of controlled substances are maintained.

(f) The department of public safety may inspect the establishment of a registrant or applicant for registration in accordance with the department's rule.

(g) The department of public safety may require a registrant to submit documents or written statements of fact relevant to a registration that the department deems necessary to determine whether the registration should be granted or denied. The failure of the registrant to provide the documents or statements within a reasonable time after being requested to do so shall be deemed to be a waiver by the registrant of the opportunity to present the documents or statements for consideration by the department in granting or denying the registration.

(h) The failure to renew the controlled substance registration on a timely basis or to pay the applicable fees or payment with a check that is dishonored upon first deposit shall cause the registration to be automatically forfeited. [L 1972, c 10, pt of §1; gen ch 1985; am L 1990, c 281, §10; am L 1991, c 159, §9; am L 1993, c 19, §1; am L 1996, c 206, §1; am L 1997, c 280, §2; am L 2003, c 151, §7; am L 2016, c 218, §7]

#### **Cross References**

Regulation of wholesale prescription drug distributors, see §§328-111 to 123.

" **§329-33 Registration.** (a) The department of public safety shall register an applicant to manufacture, dispense, prescribe, distribute, or conduct reverse distribution with controlled substances included in sections 329-14, 329-16, 329-18, 329-20, and 329-22 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the department of public safety shall consider the following factors:

- (1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;
- (2) Compliance with applicable state and local law;
- (3) Any convictions of the applicant under any federal and state laws relating to any controlled substance;
- (4) Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;
- (5) Furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

- (6) Suspension, revocation, or surrender of the applicant's federal registration to manufacture, distribute, prescribe, or dispense controlled substances as authorized by federal law; and
- (7) Any other factor relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) does not entitle a registrant to manufacture, dispense, prescribe, and distribute controlled substances in schedule I or II other than those specified in the registration.

(c) Practitioners shall be registered to dispense or to prescribe any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or to prescribe or conduct research under the law of this State. The department of public safety need not require separate registration under this part for practitioners engaging in research with nonnarcotic controlled substances in schedules II through V where the registrant is already registered under this part in another capacity. Practitioners registered under federal law to conduct research with schedule I substances may conduct research with schedule I substances within this State upon furnishing the department of public safety evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this chapter. [L 1972, c 10, pt of §1; am L 1990, c 281, §10; am L 2009, c 117, §4; am L 2016, c 218, §8]

" **§329-34 Revocation and suspension of registration.** (a) A registration under section 329-33 to manufacture, distribute, dispense, or conduct reverse distribution with a controlled substance may be suspended or revoked by the department of public safety upon a finding that the registrant:

- (1) Has furnished false or fraudulent material information in any application filed under this chapter;
- (2) Has been convicted of a felony or has been granted a motion for the deferral of acceptance of a guilty plea or a nolo contendere plea to a felony, pursuant to chapter 853 and under any state or federal law relating to any controlled substance;
- (3) Has had the registrant's federal registration suspended or revoked to manufacture, distribute, prescribe, dispense, or conduct reverse distribution with controlled substances; or

(4) Has had the registrant's state license to practice the registrant's profession suspended or revoked by the applicable governing state board.

(b) The department of public safety may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If the department of public safety suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the State.

(d) The department of public safety shall promptly notify the Bureau of all orders suspending or revoking registration and all forfeitures of controlled substances. [L 1972, c 10, pt of §1; am L 1980, c 147, §1; gen ch 1985; am L 1986, c 214, §4; am L 1990, c 281, §10; am L 2016, c 218, §9]

" **§329-35 Order to show cause.** (a) If, upon examination of the application for registration from any applicant and other information gathered by the department regarding the applicant, the administrator is unable to make the determinations required by the applicable provisions of sections 329-32 and 329-33 and applicable rules to register the applicant, the administrator shall serve upon the applicant an order to show cause why the registration should not be denied.

(b) If, upon information gathered by the department regarding any registrant, the administrator determines that the registration of a registrant warrants suspension or revocation pursuant to section 329-34 or applicable rules, the department shall serve upon the registrant an order to show cause why the registration should not be revoked or suspended.

(c) The order to show cause shall call upon the applicant or registrant to:

(1) Appear before the department at a time and place stated in the order, which shall not be less than thirty days after the date of receipt of the order, to admit to the allegations in the order to show cause; or

(2) Request a hearing as provided in subsection (d).

The order to show cause shall also contain a statement of the legal basis for such hearing and the reasons that support the

administrator's intent to deny the application, or the revocation or suspension of registration, and a summary of the matters of fact and law asserted.

(d) Upon receipt of an order to show cause, the applicant or registrant, if the registrant or applicant desires a hearing, shall file a request for a hearing with the department within thirty days after service of the order to show cause. Failure to request a hearing shall result in the automatic termination of the registrant's registration and in the case of a new application or renewal the unprocessed application shall be returned to the applicant.

(e) Notwithstanding subsections (a) to (d), [the] department of public safety may suspend any registration simultaneously with the institution of proceedings under section 329-34, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the department of public safety or dissolved by a court of competent jurisdiction.

(f) The department of public safety may subpoena and examine witnesses under oath upon all such charges as may be referred before it. [L 1972, c 10, pt of §1; am L 1986, c 214, §5; am L 1990, c 281, §10; am L 2010, c 123, §5]

" **§329-36 Records of registrants.** Persons registered to manufacture, distribute, prescribe, dispense, or conduct reverse distribution with controlled substances under this chapter shall keep records and maintain inventories in conformance with the recordkeeping and inventory requirements of federal law and with any additional rules the department of public safety issues. [L 1972, c 10, pt of §1; am L 1990, c 281, §10; am L 2016, c 218, §10]

" **§329-37 Filing requirements.** All persons registered to manufacture, distribute, conduct reverse distribution, or dispense controlled substances and all persons who transport, warehouse, or otherwise handle controlled substances, shall file with the department of public safety on forms and within the time and manner prescribed by the department of public safety, copies of order, receipt and distribution of schedule I and schedule II controlled substances and other controlled substances designated by the department of public safety, showing the amounts of such controlled substances ordered, received, distributed, transported, warehoused, or otherwise

handled. [L 1972, c 10, pt of §1; am L 1990, c 281, §10; am L 2016, c 218, §11]

" **§329-38 Prescriptions.** (a) No controlled substance in schedule II may be dispensed without a written prescription of a practitioner, except:

(1) In the case of an emergency situation, a pharmacist may dispense a controlled substance listed in schedule II upon receiving oral authorization from a prescribing practitioner; provided that:

- (A) The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period (dispensing beyond the emergency period shall be pursuant to a written prescription signed by the prescribing practitioner);
- (B) If the prescribing practitioner is not known to the pharmacist, the pharmacist shall make a reasonable effort to determine that the oral authorization came from a registered practitioner, which may include a callback to the prescribing practitioner using the phone number in the telephone directory or other good faith efforts to identify the prescriber; and
- (C) Within seven days after authorizing an emergency oral prescription, the prescribing practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of this subsection, the prescription shall have written on its face "Authorization for Emergency Dispensing". The written prescription may be delivered to the pharmacist in person or by mail, and if by mail, the prescription shall be postmarked within the seven-day period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription, which had earlier been reduced to writing. The pharmacist shall notify the administrator if the prescribing practitioner fails to deliver a written prescription to the pharmacy within the allotted time. Failure of the pharmacist to do so shall void the authority conferred by this paragraph to dispense without a written prescription of a prescribing individual practitioner. Any practitioner who fails to

deliver a written prescription within the seven-day period shall be in violation of section 329-41(a)(1);

- (2) No schedule II narcotic controlled substance may be prescribed or dispensed for more than a thirty-day supply, except where such substances come in a single unit dose package that exceeds the thirty-day limit or where a terminally ill patient is certified by a physician to exceed the thirty-day limit;
- (3) When dispensed directly by a practitioner, other than a pharmacist, to the ultimate user. The practitioner in dispensing a controlled substance in schedule II shall affix to the package a label showing:
  - (A) The date of dispensing;
  - (B) The name, strength, and quantity of the drug dispensed;
  - (C) The dispensing practitioner's name and address;
  - (D) The name of the patient;
  - (E) The "use by" date for the drug, which shall be:
    - (i) The expiration date on the manufacturer's or principal labeler's container; or
    - (ii) One year from the date the drug is dispensed, whichever is earlier; and
  - (F) Directions for use, and cautionary statements, if any, contained in the prescription or as required by law.

A complete and accurate record of all schedule II controlled substances ordered, administered, prescribed, and dispensed shall be maintained for five years. Prescriptions and records of dispensing shall otherwise be retained in conformance with the requirements of section 329-36. No prescription for a controlled substance in schedule II may be refilled;  
or

- (4) In the case of an electronic prescription, a pharmacist may dispense a controlled substance listed in schedule II upon receiving an electronic prescription.
  - (b) A schedule II controlled substance prescription shall:
    - (1) Be filled within seven days following the date the prescription was issued to the patient; and
    - (2) Be supplied to a patient only if the prescription has been filled and held by the pharmacy for not more than seven days.
  - (c) The transfer of original prescription information for a controlled substance listed in schedule III, IV, or V for the purpose of dispensing is permissible between pharmacies on a one



time basis only. However, pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber's authorization. Transfers are subject to the following requirements:

- (1) The transfer shall be communicated directly between two licensed pharmacists, and the transferring pharmacist shall:
  - (A) Write or otherwise place the word "VOID" on the face of the invalidated prescription;
  - (B) Record on the reverse of the invalidated prescription the name, address, and Drug Enforcement Administration registration number of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information; and
  - (C) Record the date of the transfer and the name of the pharmacist transferring the information;
- (2) The pharmacist receiving the transferred prescription information shall reduce to writing the following:
  - (A) Write or otherwise place the word "transfer" on the face of the transferred prescription;
  - (B) Record all information required to be on a prescription, including:
    - (i) The date of issuance of original prescription;
    - (ii) The original number of refills authorized on original prescription;
    - (iii) The date of original dispensing;
    - (iv) The number of valid refills remaining and dates and locations of previous refills;
    - (v) The pharmacy's name, address, Drug Enforcement Administration registration number, and original prescription number from which the prescription information was transferred;
    - (vi) The name of the transferor pharmacist; and
    - (vii) The pharmacy's name, address, and Drug Enforcement Administration registration number, along with the prescription number from which the prescription was originally filled;
- (3) Both the original and transferred prescription shall be maintained for a period of five years from the date of last refill; and
- (4) Any pharmacy electronically accessing a prescription record shall satisfy all information requirements of a manual mode prescription transferal.

Failure to comply with this subsection shall void the authority of the pharmacy to transfer prescriptions or receive a transferred prescription to or from another pharmacy.

(d) A pharmacy and an authorized central fill pharmacy may share information for initial and refill prescriptions of schedule III, IV, or V controlled substances. The following requirements shall apply:

- (1) A pharmacy may electronically transmit, including by facsimile, prescriptions for controlled substances listed in schedule III, IV, or V to a central fill pharmacy. The pharmacy transmitting the prescription information shall:
  - (A) Ensure that all information required to be on a prescription pursuant to subsection (g) is transmitted to the central fill pharmacy either on the face of the prescription or electronically; and
  - (B) Keep a record of receipt of the filled prescription, including the date of receipt, the method of delivery (private, common, or contract carrier) and the identity of the pharmacy employee accepting delivery; and
- (2) The central fill pharmacy receiving the transmitted prescription shall:
  - (A) Keep for five years a copy of a prescription received by facsimile or an electronic record of all the information transmitted by the pharmacy, including the name, address, and Drug Enforcement Administration registration number of the pharmacy transmitting the prescription;
  - (B) Keep a record of the date of receipt of the transmitted prescription, the name of the licensed pharmacists filling the prescription, and the dates the prescription was filled or is refilled; and
  - (C) Keep a record of the date the filled prescription was shipped to the pharmacy.

(e) No controlled substance in schedule III, IV, or V may be dispensed without a written, facsimile of a written, oral prescription of a practitioner, or receipt of an electronic prescription, except when a controlled substance is dispensed directly by a practitioner, other than a pharmacist, to an ultimate user. The practitioner, in dispensing a controlled substance in schedule III, IV, or V, shall affix to the package a label showing:

- (1) The date of dispensing;
- (2) The name, strength, and quantity issued of the drug;

- (3) The dispensing practitioner's name and business address;
- (4) The name of the patient;
- (5) The "use by" date for the drug, which shall be:
  - (A) The expiration date on the manufacturer's or principal labeler's container; or
  - (B) One year from the date the drug is dispensed, whichever is earlier;
- (6) Directions for use; and
- (7) Cautionary statements, if any, contained in the prescription or as required by law.

A complete and accurate record of all schedule III, IV, and V controlled substances administered, prescribed, and dispensed shall be maintained for five years. Prescriptions and records of dispensing shall be retained in conformance with the requirements of section 329-36 unless otherwise provided by law. Prescriptions may not be filled or refilled more than three months after the date of the prescription or be refilled more than two times after the date of the prescription, unless the prescription is renewed by the practitioner.

(f) The effectiveness of a prescription for the purposes of this section shall be determined as follows:

- (1) A prescription for a controlled substance shall be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of the practitioner's professional practice. The responsibility for the proper prescribing and dispensing of controlled substances shall be upon the prescribing practitioner, but a corresponding responsibility shall rest with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or for legitimate and authorized research shall not be deemed a prescription within the meaning and intent of this section, and the person who knowingly fills such a purported prescription, as well as the person who issues the prescription, shall be subject to the penalties provided for violations of this chapter;
- (2) A prescription may not be issued to allow an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients;
- (3) A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule for the purpose of "detoxification treatment" or "maintenance treatment" except as follows:

- (A) The administering or dispensing directly (but not prescribing) of narcotic drugs listed in any schedule to a narcotic drug-dependent person for "detoxification treatment" or "maintenance treatment" shall be deemed to be "in the course of a practitioner's professional practice or research" so long as the practitioner is registered separately with the department and the federal Drug Enforcement Agency as required by section 329-32(e) and complies with Title 21 Code of Federal Regulations section 823(g) and any other federal or state regulatory standards relating to treatment qualification, security, records, and unsupervised use of drugs; and
- (B) Nothing in this section shall prohibit a physician or authorized hospital staff from administering or dispensing, but not prescribing, narcotic drugs in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment of conditions other than addiction;
- (4) An individual practitioner shall not prescribe or dispense a substance included in schedule II, III, IV, or V for that individual practitioner's personal use, except in a medical emergency; and
- (5) A pharmacist shall not dispense a substance included in schedule II, III, IV, or V for the pharmacist's personal use.
- (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.

Except for electronic prescriptions, 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 or electronic prescription 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 shall include the following information: the drug name, strength, dosage form, quantity prescribed in figures only, and directions for use; the date the oral prescription was received; the full name, Drug Enforcement Administration 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 document on file. The pharmacist shall not make changes to the patient's name, the controlled substance being prescribed, the quantity of the prescription, the practitioner's Drug Enforcement Administration number, the practitioner's name, the practitioner's electronic signature, 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 Drug Enforcement Administration registration number of the supervising physician; and
  - (B) The Drug Enforcement Administration 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.

(h) A prescription for controlled substances may only be filled by a pharmacist acting in the usual course of the pharmacist's professional practice and either registered individually or employed in a registered pharmacy, central fill pharmacy, or registered institutional practitioner. A central fill pharmacy authorized to fill prescriptions on behalf of a pharmacy shall have a contractual relationship with the pharmacy that provides for this activity or shall share a common owner with the pharmacy. A central fill pharmacy shall not prepare prescriptions for any controlled substance listed in schedule II.

(i) Partial filling of controlled substance prescriptions shall be determined as follows:

- (1) The partial filling of a prescription for a controlled substance listed in schedule II is permissible if the pharmacist is unable to supply the full quantity called for in a written, electronic prescription, or emergency oral prescription and the pharmacist makes a notation of the quantity supplied on the face of the written prescription (or written record of the electronic prescription or emergency oral prescription). The remaining portion of the prescription may be filled within seventy-two hours of the first partial filling; provided that if the remaining portion is not or cannot be filled within the seventy-two-hour period, the pharmacist shall notify the prescribing individual practitioner. No further quantity shall be supplied beyond seventy-two hours without a new prescription;
- (2) The partial filling of a prescription for a controlled substance listed in schedule III, IV, or V is permissible; provided that:
  - (A) Each partial filling is recorded in the same manner as a refilling;
  - (B) The total quantity dispensed in all partial fillings does not exceed the total quantity prescribed;
  - (C) No dispensing occurs more than three months after the date on which the prescription was issued; and
  - (D) The prescription is refilled no more than two times after the initial date of the prescription, unless the prescription is renewed by the practitioner; and

(3) A prescription for a schedule II controlled substance issued for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. The pharmacist shall record on the prescription document on file whether the patient is "terminally ill" or a "long-term care facility patient". For the purposes of this section, "TI" means terminally ill and "LTCF" means long-term care facility. A prescription that is partially filled and does not contain the notation "TI" or "LTCF patient" shall be deemed to have been filled in violation of this section. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of schedule II controlled substances dispensed in all partial fillings shall not exceed the total quantity prescribed, nor shall a prescription be partially filled more than three times after the initial date of the prescription. Schedule II controlled substance prescriptions for patients in a long-term care facility or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed thirty days from the issue date unless sooner terminated by the discontinuance of medication.

(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 subsections (k), (l), 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:

- (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.

(n) An electronic prescription for a schedule II, III, IV, or V controlled substance may be electronically transmitted by the practitioner to a pharmacy; provided that:

- (1) The information shall be communicated only between the prescribing practitioner and the pharmacy of the patient's choice. The electronic 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;
- (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. Transmitted prescription information shall not be altered by any electronic 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 any applicable federal or state law; and
- (5) Prescribing practitioners and pharmacists shall exercise prudent and professional judgment regarding the accuracy, validity, and authenticity of any

electronic prescription information. [L 1972, c 10, pt of §1; am L 1973, c 206, §1; am L 1979, c 194, §5; am L 1984, c 25, §2; am L 1986, c 214, §6; am L 1988, c 59, §4; am L 1991, c 159, §§10 to 12; am L 1996, c 206, §2; am L 1997, c 280, §3; am L 1999, c 90, §2 and c 252, §4; am L 2002, c 165, §3; am L 2003, c 151, §8; am L 2006, c 69, §3; am L 2008, c 131, §3 and c 186, §4; am L 2009, c 117, §5; am L 2013, c 20, §3; am L 2016, c 218, §12]

### Cross References

Prescription requirements not applicable to medical use of marijuana, see §329-131.

" **§329-39 Labels.** (a) Whenever a producer, manufacturer, or wholesaler of controlled substances, or a pharmacy sells or dispenses any such drug to:

- (1) A producer, manufacturer, or wholesaler of controlled substances; or
- (2) A pharmacy, physician, dentist, podiatrist, veterinarian, or practitioner;

the producer, manufacturer, wholesaler, or pharmacist shall securely affix to each package in which that drug is contained: a label showing in legible English the name and address of the vendor or dispenser; and the amount, quantity, kinds, and form of controlled substances contained in each package.

(b) Whenever a pharmacist sells or dispenses any controlled substance on a prescription issued by a physician, dentist, podiatrist, or veterinarian, the pharmacist shall affix to the bottle or other container in which the drug is sold or dispensed:

- (1) The pharmacy's name and business address;
- (2) The serial number of the prescription;
- (3) The name of the patient or, if the patient is an animal, the name of the owner of the animal and the species of the animal;
- (4) The name of the physician, dentist, podiatrist, or veterinarian by whom the prescription is written; and
- (5) Such directions as may be stated on the prescription.

(c) No person shall alter, deface, or remove any label affixed to a package, bottle, or other container in which a drug is sold or dispensed, except for the purpose of replacing the label with the person's own lawful authorized label. [L 1931, c 152, §10; RL 1935, §1279; RL 1945, §2610; am L 1955, c 180, §1; RL 1955, §52-21; am L 1959, c 71, §3; HRS §329-14; ren L 1972, c

10, §7(1); am L 1977, c 116, §4; gen ch 1985; am L 1996, c 206, §3]

" **§329-40 Methadone treatment programs.** (a)

Notwithstanding any other provision of law to the contrary, methadone may be administered or dispensed or both as part of a state-registered and federal Substance Abuse and Mental Health Services Administration approved methadone treatment program by a practitioner who is licensed and registered under state and federal law to administer and dispense methadone for patients or by an agent of the practitioner, supervised by and under the order of the practitioner. The agent must be a pharmacist, registered nurse, or licensed practical nurse. The licensed practitioner shall be responsible for the amounts of methadone administered or dispensed in accordance with Substance Abuse and Mental Health Services Administration regulations and shall record, approve, and countersign all changes in dosage schedules.

(b) Registration of a methadone treatment program requires that:

- (1) The methadone treatment program obtain a controlled substance registration from the State of Hawaii and the Drug Enforcement Administration;
- (2) The medical director of a methadone treatment program obtain a controlled substance registration from the State of Hawaii and the Drug Enforcement Administration at the location of the program;
- (3) Admission to a methadone treatment program be limited to the narcotic-dependent persons as defined in this chapter;
- (4) Unless otherwise stated in this chapter, admission to a methadone treatment program be in accordance with Title 21 Code of Federal Regulations Part 291 and Title 42 Code of Federal Regulations Part 8;
- (5) All medical orders including initial medication orders, all subsequent medication order changes, all changes in the frequency of take-home medication, and the prescription of additional take-home medication for emergency situations be authorized by a licensed registered physician employed by the program;
- (6) Only the medical director or other designated program physician authorize a patient's admission for treatment in accordance with Title 21 Code of Federal Regulations Part 291 and Title 42 Code of Federal Regulations Part 8; and
- (7) Take-home doses of methadone be dispensed to patients in accordance with Title 21 Code of Federal

Regulations Part 291 and Title 42 Code of Federal Regulations Part 8, but shall not exceed a fourteen-day supply at any given time nor more than the maximum amount of take-homes for Levo-alphaacetylmethadol (LAAM/Orlamm) that would allow a patient to be away from the clinic for dosing for more than two weeks unless authorized by the state authority.

The term "methadone treatment program" as used in this section means an organization or a person (including a private physician) that administers or dispenses methadone to a narcotic-dependent person for maintenance or detoxification treatment and who provides the medical and rehabilitative services required by Title 21 Code of Federal Regulations Part 291 or Title 42 Code of Federal Regulations Part 8 and is approved to do so by the State and by the United States Substance Abuse and Mental Health Services Administration, and who holds a controlled substance registration as required by this chapter and the United States Drug Enforcement Administration to use methadone for the treatment of narcotic-dependent persons.

The term "narcotic-dependent person" as used in this section means an individual who physiologically needs heroin or a morphine-like drug to prevent the onset of signs of withdrawal.

The term "state authority" as used in this section means the agency within the State which exercises the responsibility for governing the treatment of narcotic-dependent persons with the narcotic drug methadone. [L 1990, c 46, §1; am L 1991, c 159, §13; am L 2002, c 165, §4]

#### **"PART IV. OFFENSES AND PENALTIES**

**§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;
- (6) Who is a practitioner or pharmacist to dispense a controlled substance to any individual not known to the practitioner or pharmacist, except under the following circumstances:
  - (A) When dispensing a controlled substance directly to an individual, the practitioner or pharmacist shall first obtain and document, in a log book or an electronic database, the full name, identification number, identification type, and signature, whether by actual signature or by electronic signature capture device, of 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; and
  - (B) For mail order prescriptions, the practitioner or pharmacist shall not be subject to subparagraph (A); provided that all other requirements of chapter 329 shall apply and that the practitioner or pharmacist, as part of the initial registration process of an individual in a mail order prescription drug plan and prior to the

controlled substance being dispensed, shall obtain all identification information, including the full name, identification number, identification type, signature, and a photocopy of a form of proper identification of the individual obtaining the controlled substance. The practitioner or pharmacist shall also comply with other requirements set forth by rule.

For the purpose of this section, "proper identification" means government-issued identification containing the photograph, printed name, identification number, and signature of the individual obtaining the controlled substance;

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

(b) It shall be 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.

(c) Any person who violates this section is guilty of a class C felony. [L 1972, c 10, pt of §1; gen ch 1985; am L 1986, c 214, §7; am L 1998, c 147, §1; am L 2006, c 69, §4; am L 2008, c 186, §5; am L 2009, c 117, §6]

" **§329-42 Prohibited acts C--penalties.** (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, 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 practitioner's oral call-in number;
  - (F) By the alteration of a prescription by the addition of future refills;
  - (G) By the unauthorized use of a practitioner's electronic prescription application; or
  - (H) By the unauthorized transmission of an electronic prescription;
- (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, electronically transmitted, or reproduced in any other manner without the authorization of the licensed practitioner.

(b) Any person who violates this section is guilty of a class C felony. [L 1972, c 10, pt of §1; am L 1991, c 159, §14; am L 1997, c 280, §4; am L 2000, c 98, §6; am L 2006, c 69, §5; am L 2008, c 186, §6; am L 2013, c 20, §4]

" **[§329-43] Penalties under other laws.** Any penalty imposed for violation of this chapter is in addition to, and not in lieu



of, any civil or administrative penalty or sanction otherwise authorized by law. [L 1972, c 10, pt of §1]

" **§329-43.5 Prohibited acts related to drug paraphernalia.**

(a) Except as provided in subsection (e), it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter. Any person who violates this section is guilty of a class C felony and upon conviction may be imprisoned pursuant to section 706-660 and, if appropriate as provided in section 706-641, fined pursuant to section 706-640.

(b) Except as provided in subsection (e), it is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter. Any person who violates this section is guilty of a class C felony and upon conviction may be imprisoned pursuant to section 706-660 and, if appropriate as provided in section 706-641, fined pursuant to section 706-640.

(c) Any person eighteen years of age or over who violates subsection (b) by delivering drug paraphernalia to a person or persons under eighteen years of age who are at least three years younger than that adult person is guilty of a class B felony and upon conviction may be imprisoned pursuant to section 706-660 and, if appropriate as provided in section 706-641, fined pursuant to section 706-640.

(d) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a class C felony and upon conviction may be imprisoned pursuant to section 706-660 and, if appropriate as provided in section 706-641, fined pursuant to section 706-640.

(e) Subsections (a) and (b) shall not apply to a person who is authorized to:

- (1) Acquire, possess, cultivate, use, distribute, or transport marijuana pursuant to the definition of "medical use" under section 329-121, while the person is facilitating the medical use of marijuana by a qualifying patient; or
- (2) Dispense, manufacture, or produce marijuana or manufactured marijuana products pursuant to and in compliance with chapter 329D, while the person is facilitating the medical use of marijuana by a qualifying patient pursuant to part IX of chapter 329. [L 1988, c 259, §2; am L 2016, c 230, §6]

### **Cross References**

Forfeitures, see §329-55.

Sale of sterile syringes for the prevention of disease, see §325-21.

### **Case Notes**

In a prosecution under subsection (b): of a merchant, jury should be instructed that it must first find that the defendant-seller delivered the object(s) in question to the buyer with the specific intent that the object(s) be used with illegal drugs; trial court should provide jury with an instruction enumerating all fourteen factors listed in the statutory definition of drug paraphernalia. 75 H. 80, 856 P.2d 1246.

Subsection (b): not void for vagueness; contains mens rea requirement of "intentionally"; mere fact that the buyer is actually an undercover police officer, which fact is unknown to the defendant, cannot render it "factually and legally" impossible that the defendant should reasonably have known that the items sold would be used with illegal drugs. 75 H. 80, 856 P.2d 1246.

No error in court failing to dismiss count against defendant for possessing "everyday household items not intended or designed for use as drug paraphernalia" as broad definition of drug paraphernalia and multiple examples of such contraband enumerated in §329-1 weighed against defendant's contention that the ordinary nature of the containers defendant possessed did not involve the harm or evil sought to be avoided under this section or amounted to extenuations that would not have been envisioned by the legislature. 98 H. 196, 46 P.3d 498.

Legislature intended to impose penal sanctions for constructive and actual possession of contraband items. 8 H. App. 610, 822 P.2d 23.

Insufficient evidence to support jury's verdict that defendant possessed scale with intent to use it for any of the purposes stated in subsection (a). 92 H. 472 (App.), 992 P.2d 741.

" **[§329-43.6] Overdose prevention; limited immunity.** (a)  
As used in this section:

"Drug or alcohol overdose" means:

- (1) A condition, including but not limited to extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death, that is the result of consumption or use of a controlled substance or alcohol or a substance with which the controlled substance or alcohol was combined; or
- (2) A condition that a layperson would reasonably believe to be a drug or alcohol overdose that requires medical assistance.

"Seeks medical assistance" or "seeking medical assistance" includes but is not limited to reporting a drug or alcohol overdose to law enforcement, the 911 system, a poison control center, or a medical provider; assisting someone so reporting; or providing care to someone who is experiencing a drug or alcohol overdose while awaiting the arrival of medical assistance.

(b) A person or persons who, in good faith, seek medical assistance for someone who is experiencing a drug or alcohol overdose and a person experiencing a drug or alcohol overdose who seeks medical assistance for the person's self or is the subject of such a good faith request shall not be arrested, charged, prosecuted, or convicted; have their property subject to civil forfeiture; or otherwise be penalized for:

- (1) Possession of a controlled substance or drug paraphernalia under this chapter or part IV of chapter 712;
- (2) Committing a prohibited act under section 281-101.5 or 712-1250.5;
- (3) Violation of a restraining order; or
- (4) Violation of probation or parole;

if the evidence for the arrest, charge, prosecution, conviction, seizure, or penalty was gained as a result of the seeking of medical assistance.

(c) The act of seeking medical assistance for someone who is experiencing a drug or alcohol overdose shall be considered by the court as a mitigating factor in any controlled substance or alcohol-related criminal prosecution for which immunity is not provided by this section. [L 2015, c 217, §2]

" **§329-44 Notice of conviction to be sent to licensing board, department of commerce and consumer affairs.** On the conviction of any physician, osteopathic physician and surgeon, dentist, podiatrist, veterinarian, practitioner, apothecary, manufacturer, wholesaler, or producer, of the wilful violation of this chapter, a copy of the sentence and of the opinion of the court or district judge, if any is filed, shall be sent by the clerk of the court, or by the judge, to the board or officer, if any, by whom the convicted defendant has been licensed to practice the convicted defendant's profession or to carry on the convicted defendant's business; and if the convicted defendant is a physician or osteopathic physician and surgeon, a copy of the sentence and of the opinion, if any, shall be sent to the department of commerce and consumer affairs. [L 1931, c 152, §16; RL 1935, §1285; RL 1945, §2616; RL 1955, §52-29; am L 1959, c 71, §3; HRS §329-22; am L 1970, c 188, §39; ren L 1972, c 10, §7(2); am L 1984, c 168, §6; am L 1985, c 197, §18; gen ch 1985]

" **§329-45 REPEALED.** L 1991, c 159, §15.

" **§329-46 Prohibited acts related to visits to more than one practitioner to obtain controlled substance prescriptions.** (a)

It is unlawful for any person knowingly or intentionally to visit more than one practitioner and withhold information regarding previous practitioner visits for the purpose of obtaining one or more controlled substance prescriptions for quantities that:

- (1) Exceed what any single practitioner would have prescribed or dispensed for the time period and legitimate medical purpose represented; and
- (2) Would constitute an offense pursuant to part IV of chapter 712.

(b) Information communicated to a physician in an effort to unlawfully procure a controlled substance, or to unlawfully procure the administration, prescribing, or dispensing of any controlled substance shall not be deemed a privileged communication.

(c) Any person who violates this section is guilty of a crime which is of the grade and class identical to that imposed under part IV of chapter 712 for the same type and equivalent quantity of controlled substance. [L 1991, c 159, §2; am L 1999, c 252, §5]

" **[§329-49] 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. [L 2008, c 186, pt of §1]

" **[§329-50] 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. [L 2008, c 186, pt of §1]

#### "PART V. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

**§329-51 Powers of enforcement personnel.** Any officer or employee of the department of public safety designated by the director of public safety may:

- (1) Carry firearms in the performance of the officer's or employee's official duties;
- (2) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this State;
- (3) Make arrests without warrant for any offense under this chapter and under part IV of chapter 712 committed in the officer's or employee's presence, or if the officer or employee has probable cause to believe that the person to be arrested has committed or is committing a violation of this chapter or part IV of chapter 712 which may constitute a felony;
- (4) Make seizures of property pursuant to this chapter; or
- (5) Perform other law enforcement duties as the director of public safety designates. [L 1972, c 10, pt of §1;

am L 1979, c 194, §6; gen ch 1985; am L 1990, c 281,  
§10]

### **Attorney General Opinions**

Narcotics enforcement division investigators may carry firearms, serve warrants, subpoenas and summons, and make arrests; qualify as law enforcement officers for purposes of excluding personal use value of state vehicle from gross income. Att. Gen. Op. 91-03.

" **§329-52 Administrative inspections.** (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 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, conduct chemical analysis, or otherwise dispose of any controlled substance or regulated chemical designated under section 329-61. [L 1972, c 10, pt of §1; gen ch 1985; am L 1990, c 281, §10; am L 2009, c 117, §7; am L 2016, c 218, §13]

" **[§329-53] Injunctions.** (a) The circuit courts of this State may exercise jurisdiction to restrain or enjoin violations of this chapter.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section. [L 1972, c 10, pt of §1]

" **§329-54 Cooperative arrangements and confidentiality.** (a) The department of public safety shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:

- (1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;
- (2) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;
- (3) Cooperate with the Bureau by establishing a centralized unit to accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the State, and make the information available for federal, state and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection (c); and

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information, and evidence received from the Bureau relating to the regulatory functions of this chapter, including results of inspections conducted by it may be relied and acted upon by the department of public safety in the exercise of its regulatory functions under this chapter.

(c) A practitioner engaged in medical research is not required or compelled to furnish the name or identity of a research subject to the department of public safety, nor may the practitioner be compelled in any state or local civil, criminal, administrative, legislative, or other proceedings to furnish the name or identity of any research subject that the practitioner is obligated to keep confidential unless the subject violates section 329-41 or 329-46 or commits an offense pursuant to part IV of chapter 712. [L 1972, c 10, pt of §1; gen ch 1985; am L 1990, c 281, §10; am L 1997, c 280, §5; am L 2016, c 218, §14]

" **§329-55 Forfeitures.** (a) The following are subject to forfeiture according to the procedures set forth in the Penal Code:

- (1) All controlled substances and anabolic steroids which have been manufactured, cultivated, grown, distributed, dispensed, or acquired in violation of this chapter;
- (2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, cultivating, growing, compounding, processing, delivering, importing, or exporting any controlled substance or anabolic steroid in violation of this chapter;
- (3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2);
- (4) All conveyances, including aircraft, vehicles, or vessels which are used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale, delivery or receipt of property described in paragraph (1) or (2), subject to the provisions of chapter 712A;
- (5) All books, records, and research products and materials, including formulas, microfilms, tapes, and data which are used, or intended for use, in violation of this chapter;
- (6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be



furnished by any person in exchange for a controlled substance or anabolic steroid in violation of this chapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter, subject to the provisions of chapter 712A;

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

(8) All drug paraphernalia as defined by section 329-1.

(b) Property subject to forfeiture under this chapter may be seized in accordance with the provisions of chapter 712A.

(c) Controlled substances listed in schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the State. Controlled substances listed in schedule I, which are seized or come into the possession of the State, the owners of which are unknown, are contraband and shall be summarily forfeited to the State.

(d) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the State.

(e) The failure, upon demand by the department of public safety, or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that the person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants. [L 1972, c 10, pt of §1; am L 1977, c 120, §1; am L 1980, c 216, §1; am L 1983, c 90, §1; am L 1985, c 150, §5; gen ch 1985; am L 1986, c 214, §8; am L 1988, c 259, §3 and c 260, §§3, 7; am L 1990, c 168, §3, c 197, §1 and c 281, §10; am L 1993, c 196, §1; am L 1996, c 104, §6]

" **§329-56 Burden of proof; liabilities.** (a) It is not necessary for the State to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, the person is presumed not to be the

holder of the registration or form. The burden of proof is upon the person to rebut the presumption.

(c) No liability is imposed by this chapter upon any authorized state, county or municipal officer, engaged in the lawful performance of the officer's duties. [L 1972, c 10, pt of §1; gen ch 1985]

" **§329-57 Judicial review.** All final determinations, findings and conclusions of the department of public safety under this chapter are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision pursuant to chapter 91. Findings of fact by the department of public safety, if supported by substantial evidence, are conclusive. [L 1972, c 10, pt of §1; am L 1990, c 281, §10]

" **§329-58 Education and research.** (a) The department of public safety shall carry out educational programs designed to prevent and determine misuse and abuse of controlled substances. In connection with these programs it may:

- (1) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;
- (2) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;
- (3) Consult with interested groups and organizations to aid them in solving administrative and organizational problems;
- (4) Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;
- (5) Disseminate the result of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them;
- (6) Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The department of public safety may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative,

or other proceeding to identify the individuals who are subjects of research for which the authorization was obtained.

(c) The department of public safety may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization. [L 1972, c 10, pt of §1; am L 1990, c 281, §10; am L Sp 1993, c 8, §54; am L 2004, c 216, §38]

" **§329-59 Controlled substance registration revolving fund; established.** (a) There is established within the state treasury the controlled substance registration revolving fund. The fund shall be expended at the discretion of the director of public safety for the purpose of:

- (1) Offsetting the cost of the electronic prescription accountability system, investigation of violations of this chapter, the registration and control of the manufacture, distribution, prescription, and dispensation of controlled substances and regulated chemicals listed under section 329-61, within the State;
- (2) Funding positions authorized by the legislature by law; and
- (3) Funding the narcotics enforcement division's forensic drug laboratory facility.

(b) The fund shall consist of all moneys derived from fees collected pursuant to sections 329-31 and 329-67 and legislative appropriations. All fees collected pursuant to sections 329-31 and 329-67 shall be deposited in the controlled substance registration revolving fund. [L 1996, c 268, §3; am L 1999, c 252, §6; am L 2002, c 165, §5; am L 2008, c 119, §2; am L 2013, c 177, §3]

**"PART VI. REGULATED CHEMICALS FOR THE MANUFACTURE OF CONTROLLED SUBSTANCES**

**Note**

Part heading amended by L 1993, c 225, §1; L 1999, c 252, §7.

**Revision Note**

In this part, "part" substituted for "chapter".

**§329-61 Substances subject to reporting.** (a) List 1 chemicals. Any manufacturer, wholesaler, retailer, or other

person who sells, transfers, or otherwise furnishes any of the following substances to any person in this State or for use in this State shall submit a report to the department of all those transactions:

- (1) Phenyl-2-propanone;
- (2) Methylamine and its salts;
- (3) Phenylacetic acid, its esters and salts;
- (4) Ephedrine, its salts, optical isomers, and salts of optical isomers;
- (5) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers;
- (6) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
- (7) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers;
- (8) Hydriodic acid;
- (9) Benzyl cyanide;
- (10) Benzyl chloride;
- (11) N-methylformamide;
- (12) N-methylephedrine, its salts, optical isomers, and salts of optical isomers;
- (13) N-ethylephedrine;
- (14) N-ethylpseudoephedrine;
- (15) N-methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
- (16) Chloroephedrine;
- (17) Chloropseudoephedrine;
- (18) Ethylamine;
- (19) D-lysergic acid;
- (20) Ergotamine and its salts;
- (21) Piperidine and its salts;
- (22) N-acetylanthranilic acid, its esters and salts;
- (23) Anthranilic acid, its esters and salts;
- (24) Propionic anhydride;
- (25) Isosafrole;
- (26) Safrole;
- (27) Piperonal;
- (28) Thionylchloride;
- (29) Ergonovine and its salts;
- (30) 3,4-Methylenedioxyphenyl-2-propanone;
- (31) Benzaldehyde;
- (32) Nitroethane;
- (33) Red phosphorus;
- (34) Iodine crystals;
- (35) Iodine at concentrations greater than 1.5 per cent by weight in a solution or matrix above the threshold of two ounces in a single transaction;

- (36) Gamma butyrolactone (GBL) 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;
- (37) 1,4-butanediol, including butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; and tetramethylene; 1,4-diol;
- (38) Hypophosphorous acid and its salts (including ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite, and sodium hypophosphite);
- (39) White phosphorus (other names yellow phosphorus); and
- (40) Anhydrous ammonia.

(b) List 2 chemicals. Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any extraordinary quantity of any of the following chemicals, or sells, transfers, or otherwise furnishes the chemicals through the use of an uncommon method of payment or delivery or under any other circumstances that may make that person believe that the following chemicals could be used in violation of this part by any person in this State, shall report to the department all those transactions of:

- (1) Acetic anhydride;
- (2) Acetone;
- (3) Ethyl ether;
- (4) Potassium permanganate;
- (5) 2-Butanone (or methyl ethyl ketone or MEK);
- (6) Toluene;
- (7) Hydrochloric acid;
- (8) Sulfuric acid;
- (9) Methyl isobutyl ketone (MIBK);
- (10) Hydrogen chloride; and
- (11) Methyl sulfone (MSM, DMS, Dimethyl sulfone or DMSO2).

(c) Additional chemicals. If a chemical is added or deleted as a regulated list 1 or list 2 chemical under federal law and notice of the designation is given to the department, the department may recommend that a corresponding change be made to state law. The department of public safety shall designate the chemical as added or deleted under this chapter after the expiration of thirty days from publication in the Federal Register of a final order and the change shall have the effect

of law. If a chemical is added or deleted under this subsection, the control shall be temporary and, if the temporary designation of the added or deleted chemical is not permanently enacted in corresponding changes to this chapter at the next regular session of the legislature, the temporary designation shall be nullified.

(d) The department of public safety shall adopt rules pursuant to chapter 91 necessary for the purposes of this section; provided the rules adopted to add or subtract to list 1 or list 2 may be adopted without regard to chapter 91. [L 1990, c 200, pt of §1; am L 1993, c 225, §2; am L 1997, c 356, §5; am L 1999, c 252, §8; am L 2001, c 203, §6; am L 2003, c 151, §9; am L 2004, c 193, §3]

" **[§329-62] Proper identification.** (a) Any manufacturer, wholesaler, retailer, or other person who receives from a source outside of the State any substance specified in section 329-61 prior to selling, transferring, or otherwise furnishing any substance specified in section 329-61 to a person in this State, shall require proper identification from the purchaser.

(b) For the purposes of this section, "proper identification" means a motor vehicle operator's license or other official state-issued identification of the purchaser which contains a photograph of the purchaser; the residential or mailing address of the purchaser other than a post office box number, or the tax map key number if no other address is available; the motor vehicle license number of any motor vehicle owned or operated by the purchaser; a letter of authorization from the business for which any substance specified in section 329-61 is being furnished, which includes the general excise license number and address of the business; a full description of how the substance is to be used; and the signature of the purchaser. The person selling, transferring, or otherwise furnishing any substance specified in section 329-61 shall sign as a witness to the signature and identification of the purchaser.

(c) Any manufacturer, wholesaler, retailer or other person who does not obtain the proper identification as required by this section shall be fined not more than \$5,000, or imprisoned not more than thirty days, or both. [L 1990, c 200, pt of §1]

" **§329-63 Person required to keep records and file reports.** (a) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, receives, or brings in from outside the State, or otherwise furnishes a substance specified in section 329-61, or an encapsulating or tableting machine shall keep a record of each transaction for a period of two years after the date of transaction.

(b) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, receives, or brings in from outside the State, or otherwise furnishes a substance specified in section 329-61, for use by a person in this State shall report to the administrator the following:

- (1) Any regulated transaction involving:
  - (A) An above threshold quantity;
  - (B) Any suspicious or out-of-the-ordinary quantity of a chemical listed in [section] 329-61;
  - (C) An uncommon method of payment or delivery; or
  - (D) Any other circumstances that the regulated person believes may indicate that the regulated chemical will be used in violation of this part;
- (2) Any proposed regulated transaction with a person whose description or other identifying characteristics the department has previously furnished to the regulated person;
- (3) Any unusual or excessive loss or disappearance of a regulated chemical listed under section 329-61 that is under the control of the regulated person, to include exempted items. The regulated person responsible for reporting a loss in-transit is the supplier;
- (4) Any regulated transaction of a tableting machine or an encapsulating machine; and
- (5) All single entity ephedrine transactions.

(c) The department of public safety shall provide a common reporting form for the substances in section 329-61 that contains at least the following information:

- (1) Name of the substance;
- (2) Quantity of the substance sold, transferred, or furnished;
- (3) The date the substance was sold, transferred, or furnished;
- (4) The name and address of the person buying or receiving the substance; and
- (5) The name and address of the manufacturer, wholesaler, retailer, or other person selling, transferring, or furnishing such substance.

(d) Each report submitted pursuant to subsection (b) of this section, whenever possible, shall be made orally to the department at the earliest practicable opportunity after the regulated person becomes aware of the circumstances involved and as much in advance of the conclusion of the transaction as possible. A written report shall also be submitted to the department following an oral report. [L 1990, c 200, pt of §1; am L 1999, c 252, §9]

" **§329-64 Exceptions.** (a) The requirements imposed by sections 329-62 and 329-63(a) 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 section 301 et seq.) or regulations adopted thereunder as long as it complies with the requirements of sections 329-73, 329-74, and 329-75.

(b) Notwithstanding the exceptions created by subsection (a) of this section, any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise distributes in this State any list 1 or list 2 chemical, as defined in section 329-61, and who is required to register with the federal Drug Enforcement Administration as a list I chemical distributor under federal law (or who registers as a controlled substance distributor in lieu thereof), shall submit a copy of that registration application to the department of public safety. When such application is granted, the distributor shall file a copy of the federal Drug Enforcement Administration List I Chemical Registration (or Controlled Substance Registration) with the department. The distributor shall also file with the department a duplicate copy of any reports required under federal law at the same time as such reports are filed with the federal Drug Enforcement Administration for any transactions involving list I chemicals that shall be shipped into or otherwise transferred or distributed in this State.

(c) The exceptions set forth in subsection (a) of this section shall not be a defense to any offense as set forth in section 329-65(c) and (d). [L 1990, c 200, pt of §1; am L 1999, c 252, §10; am L 2006, c 171, §2; am L 2010, c 123, §6]

" **§329-65 Penalty.** (a) Any manufacturer, wholesaler, retailer, or other person who does not submit a report as required by section 329-63 or who knowingly submits a report



with false or fictitious information shall be fined not more than \$5,000, or imprisoned not more than thirty days, or both.

(b) Any manufacturer, wholesaler, retailer, or other person who has previously been convicted of violating subsection (a), upon a subsequent conviction thereof, shall be fined not more than \$100,000, or imprisoned not more than one year, or both.

(c) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the substances listed in section 329-61 with knowledge or the intent that the recipient will use the substance to unlawfully manufacture any controlled substance shall be fined not more than \$100,000, or imprisoned not more than five years, or both. For the purpose of this part, "unlawfully manufacture" means to manufacture, compound, convert, produce, derive, process, or prepare, either directly or indirectly by chemical extraction, or independently by means of chemical synthesis, any controlled substance specified in section 329-14, 329-16, 329-18, 329-20, or 329-22 without a valid state controlled substance registration as designated under section 329-33.

(d) Any manufacturer, wholesaler, retailer, or other person who possesses any of the substances listed in section 329-61 with the intent to unlawfully manufacture any controlled substance shall be fined not more than \$100,000, or imprisoned not more than ten years, or both.

(e) Any person who possesses, sells, distributes, purchases for resale, or causes to be sold, distributed, or purchased for resale any ephedrine-containing product with a label that claims or implies that consumption of the product will produce effects such as ecstasy, euphoria, increased sexual sensations, legal "highs", and other similar effects shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

(f) It is unlawful for any person to knowingly or intentionally obtain or attempt to obtain any of the substances listed in section 329-61 or procure or attempt to procure any substances listed in section 329-61:

- (1) By fraud, deceit, misrepresentation, embezzlement, or theft;
- (2) By furnishing fraudulent documentation or information or the concealment of a material fact regarding the use, location, or ultimate user of the substances listed in section 329-61; or
- (3) By the use of a false name, photo identification, general excise tax information, or the giving of a false address.

(g) Any person who violates subsection (f) shall be fined not more than \$100,000, or imprisoned not more than five years, or both. [L 1990, c 200, pt of §1; am L 1993, c 225, §3; am L 1999, c 252, §11; am L 2001, c 203, §7; am L 2003, c 151, §10]

" **[§329-66] Theft, loss, and discrepancy reports.** (a) The theft or loss of any substance regulated pursuant to section 329-61 discovered by any person regulated by this part shall be reported to the department of public safety within three days of the receipt of actual knowledge of the discrepancy.

(b) Any report made pursuant to this section shall also include the name of the common carrier or person who transports the substance and date of shipment of the substance. [L 1990, c 200, pt of §1]

" **§329-67 Permit for conduct of business; applications; forms; fees; renewal; violations.** (a) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance specified in section 329-61 for use by a person in this State or who receives from a source outside of the State any substance specified in section 329-61 shall obtain a permit for the conduct of that business from the department of public safety.

(b) Applications for permits shall be filed in writing and signed by the applicant, and shall set forth the name of the applicant, the business in which the applicant is engaged, the business address of the applicant, and a full description of any substance sold, transferred, or otherwise furnished, or received.

(c) The department of public safety may grant permits which shall be effective for not more than one year from the date of issuance. Applications and permits shall be uniform through the State, on forms prescribed by the department of public safety.

(d) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department of public safety in accordance with the department's rules.

(e) A permit granted pursuant to this part may be renewed one year from the date of issuance, and annually thereafter, upon the filing of a renewal application and the payment of a permit renewal fee in accordance with the department's rules.

- (f) (1) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes, or receives any substance specified in section 329-61 without a permit shall be guilty of a misdemeanor; and
- (2) Any manufacturer, wholesaler, retailer, or other person who has previously been convicted of violating

section 329-67(a), upon a subsequent conviction thereof shall be guilty of a class C felony. [L 1990, c 200, pt of §1; am L 1999, c 252, §12]

" **§329-68 Protection of records; divulging confidential information prohibited; penalties.** (a) All records and information required under this part shall be kept confidential; provided that disclosure of records and information to authorized state, county, and federal agencies is permissible.

(b) The department of public safety shall adopt and enforce rules as may be necessary to prevent improper acquisition or use of confidential information.

(c) Any manufacturer, wholesaler, retailer or other person, including one who is authorized to obtain information, who, knowing the information obtained is from confidential records or files, intentionally discloses the records or information other than authorized by law, or who intentionally or knowingly aids or abets in the inspection or disclosure of such records or information by any person not authorized to inspect such records and information, shall be imprisoned not more than thirty days or fined not more than \$5,000, or both. [L 1990, c 200, pt of §1; am L 1993, c 225, §4]

" **§329-69 Subpoena powers.** Subject to the privileges which witnesses have in the courts of this State, the director of public safety or the director's designated subordinate is empowered pursuant to and in accordance with the rules of court to subpoena witnesses, examine them under oath and require the production of books, papers, documents or objects where the director of public safety reasonably believes the information sought is relevant or material to enforcement of this chapter. Books, papers, documents, or objects obtained pursuant to exercise of these powers may be retained by the director of public safety or the director's designate for forty-eight hours for the purpose of examination, audit, copying, testing, or photographing. Upon application by the director of public safety, obedience to the subpoenas may be enforced by the circuit court in the county where the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of a circuit court. [L 1990, c 200, pt of §1 and am c 281, §10; am L 2000, c 98, §7]

" **§329-70 Forfeiture.** (a) Precursor chemicals that are possessed, transferred, sold, or offered for sale in violation of this part shall be subject to seizure and forfeiture as provided in chapter 712A.

(b) All conveyances, including aircraft, vehicles, or vessels that are used, or intended for use, to transport or in any manner facilitate the transportation of precursor chemicals for a purpose that would constitute a violation of section 329-65(c) or (d), shall be subject to seizure and forfeiture as provided in chapter 712A.

(c) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for any of the substances listed in section 329-61 that facilitate any violation of section 329-65(c) or (d), and all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of section 329-65(c) or (d), shall be subject to seizure and forfeiture as provided in chapter 712A. [L 1990, c 200, pt of §1; am L 2008, c 185, §1]

" **[§329-71] Requirements when selling specific chemicals.**

(a) Any manufacturer, wholesaler, retailer, or other person in this State who sells to any person in this State or any other state any quantity of sodium cyanide, potassium cyanide, cyclohexanone, bromobenzene, magnesium turnings, mercuric chloride, sodium metal, lead acetate, paladium black, red phosphorus, white phosphorus (other names yellow phosphorus), iodine, hydrogen chloride gas, trichlorofluoromethane (fluorotrichloromethane), dichlorodifluoromethane, 1,1,2-trichloro-1,2,2-trifluoroethane (trichlorotrifluoroethane), sodium acetate, or acetic anhydride, notwithstanding any other provision of law, shall do the following:

- (1) Require proper purchaser identification for in-state sales that shall include a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser that contains a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number, the motor vehicle license number of the motor vehicle used by the purchaser at the time of purchase, a description of how the substance is to be used, the Environmental Protection Agency certification number or general excise tax license number assigned to the individual or business entity for which the individual is purchasing any chlorofluorocarbon product, and the signature of the purchaser. Proper purchaser identification for out-of-state sales shall include all of the above information, except the motor vehicle

license number and the signature of the purchaser. The out-of-state sale information shall also include the means by which the purchase was delivered or provided to the purchaser and the delivery address, if different from the identification address provided by the purchaser;

- (2) Prepare a bill of sale that both describes with particularity the specific items and quantities sold and sets forth the proper purchaser identification information and affix to the bill of sale the preparer's signature as witness to the sale and identification of the purchaser;
- (3) Retain the original bill of sale containing the purchaser identification information for at least three years in a readily producible manner, and produce the bill of sale containing the sale information and purchaser identification information upon demand by any law enforcement officer or authorized representative of the department; and
- (4) Submit a report to the department of public safety of all sales covered by this section.

(b) Any manufacturer, wholesaler, retailer, or other person in this State who purchases any item listed in subsection (a) shall do the following:

- (1) Prepare a record of the purchase including information identifying the source of the items purchased, the date of purchase, the specific items purchased, the quantities of each item purchased, and the cost of the items purchased; and
- (2) Retain the record of purchase for at least three years in a readily producible manner and produce the record of purchase upon demand to any law enforcement officer or authorized representative of the department.

(c) Additional requirements for manufacturers, wholesalers, retailers, or other persons who sell iodine or red or white phosphorous are as follows:

- (1) Except as provided in subsection (d), no manufacturer, wholesaler, retailer, or other person shall sell to any individual, and no individual shall buy, more than four ounces of iodine in any thirty-day period; and
- (2) Except as provided in subsection (d), no manufacturer, wholesaler, retailer, or other person shall sell to any individual, and no individual shall buy, more than two ounces of red or white phosphorous in any thirty day period. This paragraph shall not apply to any sale of red phosphorous made to a person or business that is licensed or regulated by state or federal law

with respect to the purchase or use of red or white phosphorous.

(d) The requirements of this section do not apply to either of the following:

- (1) Any sale of iodine at concentrations less than 1.5 per cent by weight in a solution or matrix under the threshold of two ounces in a single transaction; or
- (2) Any sale of iodine made to a licensed health care facility, any manufacturer licensed by the department of health, or wholesaler licensed by the Hawaii state board of pharmacy who sells, transfers, or otherwise furnishes the iodine to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian.

(e) A person violating this section shall be guilty of a misdemeanor and fined not more than \$100,000. [L 2004, c 193, pt of §1]

" **[§329-72] Rules.** The department of public safety may adopt rules and assess reasonable fees relating to the registration and control of the sale, distribution, or possession of regulated chemicals under part VI of chapter 329. [L 2004, c 193, pt of §1]

" **§329-73 REPEALED.** L 2016, c 218, §18.

" **§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.

(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. [L 2005, c 193, pt of §1; am L 2016, c 218, §15]

" **§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 sell or distribute to a person without a prescription products containing not more than 3.6 grams per day or not more than nine grams per thirty-day period of pseudoephedrine, without regard to the number of transactions; provided that the pharmacy or retailer shall comply with the following conditions:

- (1) The product, mixture, or preparation shall be 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 pharmacy or retailer delivers the product directly into the custody of the person purchasing or obtaining the substances;
- (2) Any person purchasing or otherwise obtaining any product, mixture, or preparation shall produce valid, government-issued identification containing the photograph, date of birth, printed name, signature, and address of the person purchasing or obtaining the substance;
- (3) The pharmacy or retailer shall maintain a written or electronic log of required information for each sale of a nonprescription product containing pseudoephedrine, including:
  - (A) The date and time of any transaction under paragraph (2);
  - (B) The name, address, and date of birth of the person purchasing or obtaining the substance;
  - (C) The type of identification provided by the person purchasing or obtaining the substance and identification number;
  - (D) The agency issuing the identification used; and
  - (E) The name of the compound, mixture, or preparation, and the amount; and
- (4) The pharmacy or retailer shall require every person purchasing or obtaining the substance to sign a written or electronic log attesting to the validity of the information. The information shall be retained by the pharmacy or retailer for a period of two years. The written or electronic log shall be capable of being checked for compliance against all state and federal laws, including interfacing with other states to ensure comprehensive compliance, and shall be subject to random and warrantless inspection by county or state law enforcement officers.

(b) Beginning January 1, 2013, before completing a sale of an over-the-counter product containing pseudoephedrine, a pharmacy or retailer shall electronically submit the information required pursuant to subsection (a) to the National Precursor Log Exchange administered by the National Association of Drug Diversion Investigators; provided that the National Precursor Log Exchange is available to pharmacies or retailers in the State without a charge for accessing the system. The pharmacy or retailer shall not complete the sale if the system generates

a stop sale alert. Except in the case of negligence, wantonness, recklessness, or deliberate misconduct, any pharmacy or retailer using the electronic sales tracking system in accordance with this subsection shall not be civilly liable as a result of any act or omission in carrying out the duties required by this subsection and shall be immune from liability to any third party, unless the pharmacy or retailer has violated this subsection, in relation to a claim brought for such violation.

(c) If a pharmacy or retailer selling an over-the-counter product containing pseudoephedrine experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement under this section, the pharmacy or retailer shall maintain a written log or an alternative electronic recordkeeping mechanism until such time as the pharmacy or retailer is able to comply with the electronic sales tracking requirement.

(d) A pharmacy or retailer selling an over-the-counter product containing pseudoephedrine may seek an exemption from submitting transactions to the electronic sales tracking system in writing to the administrator stating the reasons therefore. The administrator may grant an exemption for good cause shown, but in no event shall the exemption exceed one hundred eighty days. Any pharmacy or retailer that receives an exemption shall maintain a hard copy log and shall require the person purchasing or obtaining the substance to provide the information required under this section before completion of any sale. The log shall be maintained as a record of each sale for inspection by any law enforcement officer or inspector of the board of pharmacy during normal business hours.

(e) The National Association of Drug Diversion Investigators shall forward Hawaii transaction records in the National Precursor Log Exchange to the narcotics enforcement division of the department of public safety weekly and provide real-time access to National Precursor Log Exchange information through the National Precursor Log Exchange online portal to law enforcement in the State as authorized by the narcotics enforcement division; provided that the narcotics enforcement division executes a memorandum of understanding with the National Association of Drug Diversion Investigators governing access to the information; provided further that the department of public safety narcotics enforcement division shall establish the electronic tracking system in conjunction with the State's existing narcotics tracking system beginning no later than January 1, 2015.



(f) This system shall be capable of generating a stop sale alert, which shall be a notification that completion of the sale would result in the pharmacy or retailer, or person purchasing or obtaining the substance, violating the quantity limits set forth in this section. The system shall contain an override function that may be used by a pharmacy or retailer selling pseudoephedrine who has a reasonable fear that imminent bodily harm will result if the sale is not completed. Each instance where the override function is used shall be logged by the system.

(g) No person shall knowingly purchase, receive, or otherwise acquire products containing more than 3.6 grams per day or more than nine grams per thirty-day period of pseudoephedrine, except that this limit shall not apply to any quantity of such product, mixture, or preparation dispensed pursuant to a valid prescription.

(h) Any person who violates subsection (g) is guilty of a class C felony.

(i) 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.

(j) 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.

(k) Intentional or knowing failure of a retailer or pharmacy to transmit any information as required by this section shall be a misdemeanor and shall result in the immediate suspension of that retailer's ability to sell 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 until authorized by the administrator.  
[L 2005, c 193, pt of §1; am L 2006, c 171, §3; am L 2008, c 119, §7 and c 184, §1; am L 2012, c 119, §1; am L 2013, c 48, §4]

**"PART VII. PRECURSORS TO CONTROLLED SUBSTANCES--REPEALED**

**§§329-81 to 91 REPEALED.** L 1993, c 225, §5.

**"[PART VIII.] ELECTRONIC PRESCRIPTION ACCOUNTABILITY SYSTEM**

**§329-101 Reporting of dispensation of controlled substances; electronic prescription accountability system; requirements; penalty.** (a) A controlled substance electronic prescription accountability system shall be established within six months of June 18, 1996.

(b) The designated state agency shall determine those schedules of controlled substances, classes of controlled substances, and specific controlled substances that are purportedly being misused and abused in the State. As part of the controlled substance registration process, all practitioners, except veterinarians, and pharmacies shall be registered with the department to utilize the electronic prescription accountability system. No identified controlled substances may be dispensed unless information relevant to the dispensation of the substance is reported electronically or by means indicated by the designated state agency to the central repository established under section 329-102, in accordance with rules adopted by the department.

(c) The information required by this section shall be transmitted: on an electronic device that is compatible with the receiving device of the central repository; or by computer diskette, magnetic tape, or pharmacy universal claim form that meets the specifications provided in the rules of the designated state agency. The information to be transmitted under subsection (b) shall include at least the following for each dispensation:

- (1) The patient's name;
- (2) The patient's identification number;
- (3) The patient's date of birth;
- (4) The patient's address;
- (5) The eight-digit national drug code number of the substance dispensed;
- (6) The date the prescription was issued;
- (7) The date of dispensation;
- (8) The quantity and number of refills authorized;

- (9) The practitioner's Drug Enforcement Administration registration number;
  - (10) The pharmacy's National Association of Boards of Pharmacy number and location; and
  - (11) The practitioner's practice specialty and subspecialties, as determined by the applicable licensure boards.
- (d) Under the system:
    - (1) Information shall be reported in numerical format, not less than once every seven days, on the filling of prescriptions for designated controlled substances and the dispensing of drug samples by a licensed practitioner; and
    - (2) Each dispenser shall maintain a record of such filled prescriptions, including all information described in subsection (c), for a period of five years. Each dispenser shall keep these records available for inspection and copying by the designated state agency.
  - (e) The system shall provide for the use of a central repository in accordance with section 329-102. The operation of the system shall be overseen by the designated state agency. The system shall include provisions to protect the confidentiality of information in the system, in accordance with section 329-104.
  - (f) Intentional or knowing failure to transmit any information as required by this section, including a request by the designated state agency for data corrections, shall be a misdemeanor, may incur administrative fines, and shall result in the immediate suspension of that pharmacy or practitioner's ability to dispense controlled substances in the State until authorized by the administrator. [L 1996, c 268, pt of §2; am L 1997, c 280, §6; am L 1999, c 252, §13; am L 2001, c 203, §8; am L 2008, c 186, §7; am L 2010, c 123, §7; am L 2011, c 73, §4; am L 2016, c 55, §3 and c 218, §16]

#### **Revision Note**

"June 18, 1996" substituted for "the effective date of this part".

" **§329-102 Central repository.** (a) Except as provided in subsection (b), the transmittal of information under this section shall be made: through an electronic transmitting device that is compatible with the receiving device of the central repository; or by computer diskette, magnetic tape, or other appropriate electronic means that meets the specifications provided by rules of the designated state agency.

(b) The administrator may exempt individual dispensing entities from the electronic information reporting requirements of subsection (a) if:

- (1) The imposition of the requirement would result in financial hardship for a particular pharmacy; and
- (2) The pharmacy agrees to provide the information to the designated state agency through use of a pharmacy universal claim form.

(c) The administrator, in consultation with the state pharmacist membership organizations and applicable licensure boards, shall develop policies that account for the transmission of data fields in section 329-101 that include unintentional data errors. Data errors collected by the designated state agency shall be presumed to be accidental in nature, unless a pattern of transmission errors occurs as determined by the agency.

(d) The system shall provide for the maintenance of information collected in a central repository that meets the following requirements:

- (1) The central repository shall be a data processing system maintained by, or under contract with, the designated state agency. The system shall be capable of aggregating and displaying the collected information in formats required by the designated state agency, including reports showing controlled substances by the:
  - (A) Practitioner's name, practice specialty and subspecialties, and identifying number or numbers as specified by the designated state agency, including the practitioner's Drug Enforcement Administration registration number;
  - (B) Pharmacy's name, National Association of Boards of Pharmacy number, and registration number;
  - (C) Patient's name, identification number, and date of birth; and
  - (D) Eight-digit national drug code number, frequency of use, quantity, number of refills, and whether new or refill prescription;
- (2) The central repository shall provide the designated state agency with continual, twenty-four hour per day, on-line access to information;
- (3) The central repository shall secure the information against access by unauthorized persons and shall be subject to review and oversight by the administrator or the administrator's designee, to ensure the security of the information and the system;

- (4) If the central repository is not operated by the designated state agency, the vendor-repository:
  - (A) Shall provide information in response to the designated state agency's inquiries within twenty-four hours and shall provide routine reports on a regular schedule to be specified by the designated state agency; and
  - (B) Shall not withhold access to the collected information for any reason other than failure of the designated state agency to pay agreed fees and charges for the use of the central repository; and
- (5) If the relationship between the designated state agency and the vendor-repository is terminated, the vendor-repository shall provide to the designated state agency within thirty days all collected information, the database maintained by the vendor-repository, and such software as is needed to access the information and the database.

(e) The administrator shall select the most overall cost-effective and efficient computerization system, and automatic data processing services and equipment, to ensure the successful implementation of the system. The administrator may enter into a contract with a vendor to implement the central repository. The repository may include an existing system, such as the State's medicaid management information system, or other existing computerization systems and automated data processing services available to the designated state agency.

(f) All prescriptions for controlled substances in schedules II through V and other substances of concern 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. [L 1996, c 268, pt of §2; am L 2008, c 186, §8; am L 2011, c 73, §5]

" **[§329-103] Designated state agency.** The designated state agency shall:

- (1) Oversee and administer the collection of information under the system;
- (2) Control access to the information in the system; and
- (3) Produce exception reports as defined in section 329-1. [L 1996, c 268, pt of §2]

" **§329-104 Confidentiality of information; disclosure of information.** (a) The information collected under this part shall not be available to the public or used for any commercial

purpose. Ownership of all data collected shall reside with the State.

(b) Responsibility for limiting access to information in the system is vested in the administrator. Access to the information collected at the central repository pursuant to this part shall be confidential, and access to the information shall be limited to personnel of the designated state agency.

(c) This section shall not prevent the disclosure, at the discretion of the administrator, of investigative information to:

- (1) Law enforcement officers, investigative agents of federal, state, or county law enforcement or regulatory agencies, United States attorneys, county prosecuting attorneys, or the attorney general; provided that the administrator has reasonable grounds to believe that the disclosure of any information collected under this part is in furtherance of an ongoing criminal or regulatory investigation or prosecution;
- (2) Registrants authorized under chapters 448, 453, and 463E who are registered to administer, prescribe, or dispense controlled substances and their practitioner delegate; provided that the information disclosed relates only to the registrant's own patient;
- (3) Pharmacists or pharmacist delegates, employed by a pharmacy registered under section 329-32, who request prescription information about a customer relating to a violation or possible violation of this chapter;
- (4) Other state-authorized governmental prescription-monitoring programs;
- (5) The chief medical examiner or licensed physician designee who requests information and certifies the request is for the purpose of investigating the death of an individual;
- (6) Qualified personnel for the purpose of bona fide research or education; provided that data elements that would reasonably identify a specific recipient, prescriber, or dispenser shall be deleted or redacted from the information prior to disclosure; provided further that release of the information may be made only pursuant to a written agreement between qualified personnel and the administrator in order to ensure compliance with this subsection; and
- (7) Other entities or individuals authorized by the administrator to assist the program with projects that enhance the electronic prescription accountability system.

Information disclosed to a registrant, pharmacist, or authorized government agency under this section shall be transmitted by a secure means determined by the designated agency.

(d) No person shall knowingly disclose or attempt to disclose, or use or attempt to use, information in the system in violation of this section. Any person who violates this section is guilty of a class C felony.

(e) The designated state agency shall purge or cause to be purged from the central repository system, no later than five years after the date a patient's prescription data are made available to the designated state agency, the identification number of the patient, unless the information is part of an active investigation. [L 1996, c 268, pt of §2; am L 1999, c 145, §1; am L 2001, c 162, §1; am L 2006, c 69, §6; am L 2009, c 11, §42; am L 2010, c 123, §8; am L 2016, c 218, §17]

## "[PART IX.] MEDICAL USE OF MARIJUANA

### Note

Legislative oversight working group; improvement of the medical marijuana dispensary system (ceases to exist June 30, 2018); reports to 2017-2018 legislature. L 2016, c 230, §23.

### Cross References

Medical marijuana; economic and other data; collection, see §201-13.9.

Medical marijuana; tenant use; eviction, see §521-39.

Medical marijuana testing and research programs, see §304A-1865.

### Law Journals and Reviews

Gonzales v. Raich: How the Medical Marijuana Debate Invoked Commerce Clause Confusion. 28 UH L. Rev. 261.

### Case Notes

District court erred in re-determining the fact of medical use in contrast to the parties' stipulation that petitioner possessed and transported medical marijuana under a valid Medical Marijuana Registry Patient Identification Certificate, thus preempting consideration of petitioner's affirmative defense; given that the State presented no evidence showing that the marijuana was for any other use other than a medical use, petitioner proved that petitioner was authorized to possess

marijuana for medical purposes pursuant to this part for purposes of an affirmative defense under §712-1240.1(2). 129 H. 397, 301 P.3d 607 (2013).

**§329-121 Definitions.** As used in this part:

"Adequate supply" means an amount of marijuana jointly possessed between the qualifying patient and the primary caregiver that is not more than is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition; provided that an "adequate supply" shall not exceed: seven marijuana plants, whether immature or mature, and four ounces of usable marijuana at any given time. The four ounces of usable marijuana shall include any combination of usable marijuana and manufactured marijuana products, as provided in chapter 329D, with the marijuana in the manufactured marijuana products being calculated using information provided pursuant to section 329D-9(c).

"Advanced practice registered nurse" means an advanced practice registered nurse with prescriptive authority as described in section 457-8.6 and registered under section 329-32.

"Debilitating medical condition" means:

- (1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;
- (2) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:
  - (A) Cachexia or wasting syndrome;
  - (B) Severe pain;
  - (C) Severe nausea;
  - (D) Seizures, including those characteristic of epilepsy;
  - (E) Severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease; or
  - (F) Post-traumatic stress disorder; or
- (3) Any other medical condition approved by the department of health pursuant to administrative rules in response to a request from a physician or advanced practice registered nurse or potentially qualifying patient.

"Marijuana" shall have the same meaning as "marijuana" and "marijuana concentrate" as provided in sections 329-1 and 712-1240.



"Medical use" means the acquisition, possession, cultivation, use, distribution, or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition. For the purposes of "medical use", the term distribution is limited to the transfer of marijuana and paraphernalia.

"Physician" means a person who is licensed to practice under chapter 453 and is licensed with authority to prescribe drugs and is registered under section 329-32. "Physician" does not include a physician assistant as described in section 453-5.3.

"Primary caregiver" means a person eighteen years of age or older, other than the qualifying patient and the qualifying patient's physician or advanced practice registered nurse, who has agreed to undertake responsibility for managing the well-being of the qualifying patient with respect to the medical use of marijuana. In the case of a minor or an adult lacking legal capacity, the primary caregiver shall be a parent, guardian, or person having legal custody.

"Qualifying patient" means a person who has been diagnosed by a physician or advanced practice registered nurse as having a debilitating medical condition.

"Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for the medical use of marijuana. "Usable marijuana" does not include the seeds, stalks, and roots of the plant.

"Written certification" means the qualifying patient's medical records or a statement signed by a qualifying patient's physician or advanced practice registered nurse, stating that in the physician's or advanced practice registered nurse's professional opinion, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient. The department of health may require, through its rulemaking authority, that all written certifications comply with a designated form. "Written certifications" are valid for only one year from the time of signing. [L 2000, c 228, pt of §2; am L 2009, c 11, §43 and c 169, §7; am L 2010, c 57, §4; am L 2013, c 178, §2; am L 2015, c 241, §6; am L 2016, c 230, §7]

### **Case Notes**

Rule of lenity required the construction, under the specific facts of the case, of §§329-122 and 329-125 and this section

against the government, as there was an irreconcilable inconsistency between the authorized transportation of medical marijuana under this section, and the prohibition on transport of medical marijuana through "any ... place open to the public" under [§329-122(c)(2)(E)]; thus, under §701-115(2)(b), petitioner was entitled to an acquittal because petitioner's evidence, when considered in light of any contrary prosecution evidence proved by a preponderance of the evidence the specified fact or facts with negated penal liability. 129 H. 397, 301 P.3d 607 (2013).

" **§329-122 Medical use of marijuana; conditions of use.** (a) Notwithstanding any law to the contrary, the medical use of marijuana by a qualifying patient shall be permitted only if:

- (1) The qualifying patient has been diagnosed by a physician or advanced practice registered nurse as having a debilitating medical condition;
- (2) The qualifying patient's physician or advanced practice registered nurse has certified in writing that, in the physician's or advanced practice registered nurse's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient; and
- (3) The amount of marijuana possessed by the qualifying patient does not exceed an adequate supply.

(b) Subsection (a) shall not apply to a qualifying patient under the age of eighteen years, unless:

- (1) The qualifying patient's physician or advanced practice registered nurse has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient; and
- (2) A parent, guardian, or person having legal custody consents in writing to:
  - (A) Allow the qualifying patient's medical use of marijuana;
  - (B) Serve as the qualifying patient's primary caregiver; and
  - (C) Control the acquisition of the marijuana, the dosage, and the frequency of the medical use of marijuana by the qualifying patient.

(c) The authorization for the medical use of marijuana in this section shall not apply to:

- (1) The medical use of marijuana that endangers the health or well-being of another person;

- (2) The medical use of marijuana:
  - (A) In a school bus, public bus, or any moving vehicle;
  - (B) In the workplace of one's employment;
  - (C) On any school grounds;
  - (D) At any public park, public beach, public recreation center, recreation or youth center; or
  - (E) At any other place open to the public; provided that a qualifying patient, primary caregiver, or an owner or employee of a medical marijuana dispensary licensed under chapter 329D shall not be prohibited from transporting marijuana or any manufactured marijuana product, as that term is defined in section 329D-1, in any public place; provided further that the marijuana or manufactured marijuana product shall be transported in a sealed container, not be visible to the public, and shall not be removed from its sealed container or consumed or used in any way while it is in the public place; and
- (3) The use of marijuana by a qualifying patient, parent, or primary caregiver for purposes other than medical use permitted by this part.
  - (d) For the purposes of this section, "transport" means the transportation of marijuana, usable marijuana, or any manufactured marijuana product between:
    - (1) A qualifying patient and the qualifying patient's primary caregiver;
    - (2) The production centers and the retail dispensing locations under a dispensary licensee's license; or
    - (3) A production center or retail dispensing location and a certified laboratory for the purpose of laboratory testing;

provided that "transport" does not include the interisland transportation of marijuana, usable marijuana, or any manufactured marijuana product, except when the transportation is performed for the sole purpose of laboratory testing pursuant to section 329D-8, as permitted under section 329D-6(m) and subject to section 329D-6(j), and with the understanding that state law and its protections do not apply outside of the jurisdictional limits of the State. [L 2000, c 228, pt of §2; am L 2001, c 55, §15; am L 2013, c 178, §3; am L 2015, c 241, §7; am L 2016, c 230, §8]

Gonzales v. Raich: How the Medical Marijuana Debate Invoked Commerce Clause Confusion. 28 UH L. Rev. 261.

### Case Notes

Rule of lenity required the construction, under the specific facts of the case, of §§329-121 and 329-125 and this section against the government, as there was an irreconcilable inconsistency between the authorized transportation of medical marijuana under §329-121, and the prohibition on transport of medical marijuana through "any ... place open to the public" under subsection [(c)(2)(E)]; thus, under §701-115(2)(b), petitioner was entitled to an acquittal because petitioner's evidence, when considered in light of any contrary prosecution evidence proved by a preponderance of the evidence the specified fact or facts with negated penal liability. 129 H. 397, 301 P.3d 607 (2013).

" **§329-123 Registration requirements.** (a) Physicians or advanced practice registered nurses who issue written certifications shall provide, in each written certification, the name, address, patient identification number, and other identifying information of the qualifying patient. The department of health shall require, in rules adopted pursuant to chapter 91, that all written certifications comply with a designated form completed by or on behalf of a qualifying patient. The form shall require information from the applicant, primary caregiver, and physician or advanced practice registered nurse as specifically required or permitted by this chapter. The form shall require the address of the location where the marijuana is grown and shall appear on the registry card issued by the department of health. The certifying physician or advanced practice registered nurse shall be required to have a bona fide physician-patient relationship or bona fide advanced practice registered nurse-patient relationship, as applicable, with the qualifying patient. All current active medical marijuana permits shall be honored through their expiration date.

(b) Qualifying patients shall register with the department of health. The registration shall be effective until the expiration of the certificate issued by the department of health and signed by the physician or advanced practice registered nurse. Every qualifying patient shall provide sufficient identifying information to establish the personal identities of the qualifying patient and the primary caregiver. Qualifying patients shall report changes in information within ten working days. Every qualifying patient shall have only one primary

caregiver at any given time. The department of health shall issue to the qualifying patient a registration certificate, and shall charge \$35 per year.

(c) Primary caregivers shall register with the department of health. Every primary caregiver shall be responsible for the care of only one qualifying patient at any given time.

(d) Upon inquiry by a law enforcement agency, which inquiry may be made twenty-four hours a day, seven days a week, the department of health shall immediately verify whether the subject of the inquiry has registered with the department of health and may provide reasonable access to the registry information for official law enforcement purposes. [L 2000, c 228, pt of §2; am L 2011, c 73, §6; am L 2013, c 178, §4; am L 2015, c 241, §8; am L 2016, c 230, §9]

" **[§329-124] Insurance not applicable.** This part shall not be construed to require insurance coverage for the medical use of marijuana. [L 2000, c 228, pt of §2]

" **§329-125 Protections afforded to a qualifying patient or primary caregiver.** (a) A qualifying patient or the primary caregiver may assert the medical use of marijuana authorized under this part as an affirmative defense to any prosecution involving marijuana under this part or part IV; or part IV of chapter 712; provided that the qualifying patient or the primary caregiver strictly complied with the requirements of this part.

(b) Any qualifying patient or primary caregiver not complying with the permitted scope of the medical use of marijuana shall not be afforded the protections against searches and seizures pertaining to the misapplication of the medical use of marijuana.

(c) No person shall be subject to arrest or prosecution for simply being in the presence or vicinity of the medical use of marijuana as permitted under this part. [L 2000, c 228, pt of §2; am L 2016, c 230, §10]

### Case Notes

Rule of lenity required the construction, under the specific facts of the case, of §§329-121 and 329-122 and this section against the government, as there was an irreconcilable inconsistency between the authorized transportation of medical marijuana under §329-121, and the prohibition on transport of medical marijuana through "any ... place open to the public" under [§329-122(c)(2)(E)]; thus, under §701-115(2)(b), petitioner was entitled to an acquittal because petitioner's evidence, when considered in light of any contrary prosecution

evidence proved by a preponderance of the evidence the specified fact or facts with negatived penal liability. 129 H. 397, 301 P.3d 607 (2013).

" **[§329-125.5] Medical marijuana patient and caregiver protections.** (a) No school shall refuse to enroll or otherwise penalize, and no landlord shall refuse to lease property to or otherwise penalize, a person solely for the person's status as a qualifying patient or primary caregiver in the medical marijuana program under this part, unless failing to do so would cause the school or landlord to lose a monetary or licensing-related benefit under federal law or regulation; provided that the qualifying patient or primary caregiver strictly complied with the requirements of this part; provided further that the qualifying patient or primary caregiver shall present a medical marijuana registry card or certificate and photo identification, to ensure that the qualifying patient or primary caregiver is validly registered with the department of health pursuant to section 329-123.

(b) For the purposes of medical care, including organ transplants, a registered qualifying patient's use of marijuana in compliance with this part shall be considered the equivalent of the use of any other medication under the direction of a physician and shall not constitute the use of an illicit substance or otherwise disqualify a registered qualifying patient from medical care.

(c) No qualifying patient or primary caregiver under this part shall be denied custody of, visitation with, or parenting time with a minor, and there shall be no presumption of neglect or child endangerment, for conduct allowed under this part; provided that this subsection shall not apply if the qualifying patient's or primary caregiver's conduct created a danger to the safety of the minor, as established by a preponderance of the evidence. [L 2015, c 242, §2]

" **§329-125.6 Protections afforded to an owner or qualified employee of a licensed medical marijuana dispensary.** (a) An owner or employee of a medical marijuana dispensary that is licensed under chapter 329D may assert the production or distribution of medical marijuana as an affirmative defense to any prosecution involving marijuana under this part or part IV; chapter 329D; or part IV of chapter 712; provided that the owner or employee strictly complied with the requirements of chapter 329D and any administrative rules adopted thereunder.

(b) An owner or employee of a licensed medical marijuana dispensary not strictly complying with the requirements of chapter 329D, and any administrative rules adopted thereunder,

shall not be afforded the protections provided by subsection (a). [L 2015, c 241, pt of §5; am L 2016, c 230, §11]

" **§329-126 Protections afforded to a treating physician or advanced practice registered nurse.** No physician or advanced practice registered nurse shall be subject to arrest or prosecution, penalized in any manner, or denied any right or privilege for providing written certification for the medical use of marijuana for a qualifying patient; provided that:

- (1) The physician or advanced practice registered nurse has diagnosed the patient as having a debilitating medical condition, as defined in section 329-121;
- (2) The physician or advanced practice registered nurse has explained the potential risks and benefits of the medical use of marijuana, as required under section 329-122;
- (3) The written certification is based upon the physician's or advanced practice registered nurse's professional opinion after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship or bona fide advanced practice registered nurse-patient relationship, as applicable; and
- (4) The physician or advanced practice registered nurse has complied with the registration requirements of section 329-123. [L 2000, c 228, pt of §2; am L 2016, c 230, §12]

" **[§329-127] Protection of marijuana and other seized property.** Marijuana, paraphernalia, or other property seized from a qualifying patient or primary caregiver in connection with a claimed medical use of marijuana under this part shall be returned immediately upon the determination by a court that the qualifying patient or primary caregiver is entitled to the protections of this part, as evidenced by a decision not to prosecute, dismissal of charges, or an acquittal; provided that law enforcement agencies seizing live plants as evidence shall not be responsible for the care and maintenance of such plants. [L 2000, c 228, pt of §2]

" **§329-128 Fraudulent misrepresentation; penalty.** (a) Notwithstanding any law to the contrary, fraudulent misrepresentation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution under this part or chapter 712 shall be a petty misdemeanor and subject to a fine of \$500.

(b) Notwithstanding any law to the contrary, fraudulent misrepresentation to a law enforcement official of any fact or circumstance relating to the issuance of a written certificate by a physician or advanced practice registered nurse not covered under section 329-126 for the medical use of marijuana shall be a misdemeanor. This penalty shall be in addition to any other penalties that may apply for the non-medical use of marijuana. Nothing in this section is intended to preclude the conviction of any person under section 710-1060 or for any other offense under part V of chapter 710. [L 2000, c 228, pt of §2; am L 2016, c 230, §13]

" **[\$329-129] Prohibited acts; flammable solvents.** (a) No qualifying patient or primary caregiver shall use butane to extract tetrahydrocannabinol from marijuana plants.

(b) Any person who violates this section shall be guilty of a class C felony. [L 2015, c 241, pt of §5]

" **[\$329-130] Authorized sources of medical marijuana.** (a) After December 31, 2018, a qualifying patient shall obtain medical marijuana or manufactured marijuana products only:

- (1) From a dispensary licensed pursuant to chapter 329D; provided that the marijuana shall be purchased and paid for at the time of purchase; or
- (2) By cultivating marijuana in an amount that does not exceed an adequate supply for the qualifying patient, pursuant to section 329-122.

After December 31, 2018, no primary caregiver shall be authorized to cultivate marijuana for any qualifying patient.

(b) This section shall not apply to:

- (1) A qualifying patient who is a minor or an adult lacking legal capacity and the primary caregiver is the parent, guardian, or person having legal custody of a qualifying patient described in this paragraph; or
- (2) A qualifying patient on any island on which there is no medical marijuana dispensary licensed pursuant to chapter 329D. [L 2015, c 241, pt of §5]

" **[\$329-131] Prescription and pharmacy requirements not applicable.** Notwithstanding any other law to the contrary, the prescription requirements of section 329-38 and the board of pharmacy licensure or regulatory requirements under chapter 461 shall not apply to the medical use of marijuana under this part. [L 2015, c 241, pt of §5]