

A Bill for an Act Relating to Imitation Controlled Substances.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read:

**“CHAPTER  
IMITATION CONTROLLED SUBSTANCES ACT**

§ -1 **Definitions.** Whenever used in this chapter, unless the context otherwise requires:

“Controlled substance” means a substance as defined in section 329-1.

“Distribute” means the actual, constructive, or attempted transfer, delivery, or dispensing to another of an imitation controlled substance.

“Imitation controlled substance” means a substance that is not a controlled substance, which by dosage unit, appearance (including color, shape, size, and markings), or by representations made, would lead a reasonable person to believe that the substance is a controlled substance. In any case when the appearance of the dosage unit is not reasonably sufficient to establish that the substance is an “imitation controlled substance” (for example in the case of powder or liquid), the court or authority concerned shall consider, in addition to all other logically relevant factors, the following factors as related to representations made in determining whether the substance is an imitation controlled substance:

- (1) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;
- (2) Statements made to the recipient that the substances may be resold for inordinate profit;
- (3) Whether the substance is packaged in a manner normally used for illicit controlled substances;
- (4) Evasive tactics or actions utilized by the owner or person in control of the substance to avoid detection by law enforcement authorities;
- (5) Prior convictions, if any, of an owner, or anyone in control of the object, under state or federal law related to controlled substances or fraud; and
- (6) The proximity of the substances to controlled substances.

“Manufacture” means the production, preparation, or repackaging, labeling, or relabeling, of an imitation controlled substance.

**§ -2 Offenses.** (a) No person shall manufacture, distribute, or possess with intent to distribute, an imitation controlled substance. Any person who violates this subsection shall be guilty of a misdemeanor.

(b) No person eighteen years of age or over shall violate section -2(a) by distributing an imitation controlled substance to a person under eighteen years of age. Any person who violates this subsection shall be guilty of a class (C) felony.

(c) No person shall use, or possess with intent to use, an imitation controlled substance. Any person who violates this subsection shall be guilty of a petty misdemeanor, except that possession of a substance imitating a controlled substance which is subject to section 712-1249 shall constitute a violation.

(d) No person shall place in any newspaper, magazine, handbill, or other publication, or post or distribute in any public place, any advertisement or solicitation with reasonable knowledge that the purpose of the advertisement or solicitation is to promote the distribution of imitation controlled substances. Any person who violates this subsection shall be guilty of a misdemeanor.

(e) No civil or criminal liability shall be imposed by virtue of this chapter on any person registered under chapter 329 who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo by a registered practitioner in the course of professional practice or research.

**§ -3 Forfeiture.** All imitation controlled substances are subject to forfeiture according to the procedures set forth in section 701-119.”

**SECTION 2.** If any provision of this Act or the application of the Act to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application and to this end the provisions of this Act are severable.

**SECTION 3.** This Act shall take effect upon its approval.

(Approved May 31, 1984.)