

ACT 214

H.B. NO. 2103-86

A Bill for an Act Relating to Controlled Substances.

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

SECTION 1. Section 329-1, Hawaii Revised Statutes, is amended by amending the definition of "Bureau" to read:

" "Bureau" or "DEA" means the [Bureau of Narcotics and Dangerous Drugs,] Drug Enforcement Administration, United States Department of Justice, or its successor agency."

SECTION 2. Section 329-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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) Acetylmethadol;
- (2) Alfentanil;
- (3) Allylprodine;
- (4) Alphacetylmethadol;
- (5) Alphameprodine;

- (6) Alphamethadol;
- (7) Alpha-Methylfentanyl;
- (8) Benzethidine;
- (9) Betacetylmethadol;
- (10) Betameprodine;
- (11) Betamethadol;
- (12) Betaprodine;
- (13) Clonitazene;
- (14) Dextromoramide;
- (15) Diampromide;
- (16) Diethylthiambutene;
- (17) Difenoxin;
- (18) Dimenoxadol;
- (19) Dimepheptanol;
- (20) Dimethylthiambutene;
- (21) Dioxaphetyl butyrate;
- (22) Dipipanone;
- (23) Ethylmethylthiambutene;
- (24) Etonitazene;
- (25) Etoxeridine;
- (26) Furethidine;
- (27) Hydroxypethidine;
- (28) Ketobemidone;
- (29) Levomoramide;
- (30) Levophenacilmorphan;
- (31) Morpheridine;
- (32) Noracymethadol;
- (33) Norlevorphanol;
- (34) Normethadone;
- (35) Norpipanone;
- (36) Parahexyl;
- (37) Phenadoxone;
- (38) Phenampromide;
- (39) Phenomorphan;
- (40) Phenoperidine;
- (41) Piritramide;
- (42) Proheptazine;
- (43) Properidine;
- (44) Propiram;
- (45) Racemoramide;
- (46) Tilidine;
- (47) Trimerperidine[.];
- (48) N-[1-(1-methyl-2-phenyl)ethyl-4-piperidyl]-N-phenylacetamide (acetyl-alpha-methylfentanyl);
- (49) N-[1-(1-methyl-2-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide (alpha-methylthiofentanyl);
- (50) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl);
- (51) N-[1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl]-N-phenylpropanamide (beta-hydroxyfentanyl);
- (52) N-[3-methyl-1-(2-hydroxy-2-phenyl)-ethyl-4-piperidyl]-N-phenylpropanamide (beta-hydroxy-3-methylfentanyl);
- (53) N-[3-methyl-1-(2-(2-thienyl) ethyl-4-piperidyl)-N-phenylpropanamide (3-methylthiofentanyl);

- (54) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenyl-fentanyl);
 (55) N-[1-(2-(2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide (thiof-entanyl)."

SECTION 3. Section 329-14, Hawaii Revised Statutes is amended by amending subsection (d) to read as follows:

"(d) Any material, compound, mixture, or preparation which 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) 2,5-dimethoxyamphetamine (2,5-DMA);
- (2) 3,4-methylenedioxy amphetamine;
- (3) 3,4-methylenedioxymethamphetamine (MDMA);
- (4) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);
- [(3)] (5) 5-methoxy-3,4-methylenedioxy-amphetamine;
- [(4)] (6) 4-bromo-2, [5 dimethoxyamphetamine] 5-dimethoxy-amphetamine (4-bromo-2, 5-DMA);
- (7) 1-(2 phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP);
- [(5)] (8) 3,4,5-trimethoxy amphetamine;
- [(6)] (9) Bufotenine;
- [(7)] (10) 4-methoxyamphetamine (PMA);
- [(8)] (11) Fenethylamine;
- [(9)] (12) Diethyltryptamine;
- [(10)] (13) Dimethyltryptamine;
- [(11)] (14) 4-methyl-2, [5-dimethoxyamphetamine;] 5-dimethoxy-amphetamine;
- [(12)] (15) Ibogaine;
- [(13)] (16) Lysergic acid diethylamide;
- [(14)] (17) Marijuana;
- [(15)] (18) Mescaline;
- [(16)] (19) Peyote;
- [(17)] (20) N-ethyl-3-piperidyl benzilate;
- [(18)] (21) N-methyl-3-piperidyl benzilate;
- [(19)] (22) Psilocybin;
- [(20)] (23) Psilocyn;
- [(21)] (24) Tetrahydrocannabinols;
- [(22)] (25) Ethylamine analog of phencyclidine (PCE);
- [(23)] (26) Pyrrolidine analog of phencyclidine [(PcPy, PHP);] (PCPy, PHP);
- [(24)] (27) Thiophene analog of phencyclidine [(TPCP).] (TPCP;TCP)."

SECTION 4. Section 329-34, Hawaii Revised Statutes, is amended to read as follows:

"§329-34 Revocation and suspension of registration. (a) A registration under section 329-33 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the department 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 his federal registration suspended or revoked to manufacture, distribute, prescribe, or dispense controlled substances; or
- (4) Has had his state license to practice his profession suspended or revoked by the applicable governing state board.

(b) The department 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 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 shall promptly notify the Bureau of all orders suspending or revoking registration and all forfeitures of controlled substances."

SECTION 5. Section 329-35, Hawaii Revised Statutes, is amended to read as follows:

"[[§329-35[]] **Order to show cause.** (a) Before denying, suspending, or revoking a registration, or refusing a renewal of registration, the department shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the department at a time and place not less than thirty days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty days before the expiration of the registration. These proceedings shall be conducted in accordance with chapter 91 without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) The department 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 or dissolved by a court of competent jurisdiction.

(c) The department of health may subpoena and examine witnesses under oath upon all such charges as may be preferred before it, and the circuit court of the circuit in which the hearing is held shall enforce by appropriate order the attendance and testimony of witnesses so subpoenaed."

SECTION 6. Section 329-38, Hawaii Revised Statutes, is amended to read:

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

- (1) In an emergency situation, those drugs may be dispensed upon oral prescription of a practitioner, provided that promptly thereafter the

prescription is reduced to writing by the practitioner and filed by the pharmacy; or

- (2) 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 the date of dispensing, the name, strength, and quantity issued of the drug, the dispensing practitioner's name and address, the name of the patient, the date the potency of the drug expires if that date is available from the manufacturer or principal labeler, directions for use, and cautionary statements, if any, contained in the prescription or as required by law. Prescriptions and records of dispensing shall be retained in conformance with the requirements of section 329-36. No prescription for a controlled substance in Schedule II may be refilled.

(b) The transfer of original prescription information for a controlled substance listed in Schedules III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one time basis 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 DEA 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:
 - (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 date of last refill;
 - (v) The pharmacy's name, address, DEA registration number, and original prescription number from which the prescription information was transferred; and
 - (vi) The name of transferor pharmacist;
 - (3) Both the original and transferred prescription must be maintained for a period of two years from the date of last refill;
 - (4) The procedure allowing the transfer of prescription information for refill purposes is permissible only between pharmacies located on the same island in this State.

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

[(b)] (c) No controlled substance in Schedule III or IV may be dispensed without a written or oral prescription of a practitioner, except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user. The practitioner in dispensing a controlled substance in Schedule III and IV shall affix to the package a label showing the date of dispensing, the name, strength, and quantity issued of the drug, the dispensing practitioner's name and address, the name of the patient, the date the potency of the drug expires if that date is available from the manufacturer or the principal labeler, directions for use, and cautionary statements, if any, contained in the prescription or as required by law. Prescriptions and records of dispensing shall be retained in conformance with the requirements of section 329-36. Those prescriptions may not be filled or refilled more than three months after the date thereof or be refilled more than two times after the date of the prescription unless renewed by the practitioner.

[(c)] (d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

[(d)] (e) The effectiveness of a prescription for the purposes of this section shall be determined as follows:

- (1) A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of this section, and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of the law relating to controlled substances.
- (2) A prescription may not be issued in order for 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 "detoxification treatment" or "maintenance treatment".

[(e)] (f) Prescriptions for controlled substances shall be issued only as follows:

- (1) All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, and the name, address, and registration number of the practitioner. A practitioner may sign a prescription in the same manner as he would sign a check or legal document (e.g., J.H. Smith or John H. Smith). Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by this section.

- (2) An intern, resident, or foreign-trained physician, or physician on the staff of a Veterans Administration facility, exempted from registration under this chapter, shall include on all prescriptions issued by him the registration number of the hospital or other institution and the special internal code number assigned to him by the hospital or other institution in lieu of the registration number of the practitioner required by this section. Each written prescription shall have the name of the physician stamped, typed, or handprinted on it, as well as the signature of the physician.
- (3) An official exempted from registration shall include on all prescriptions issued by him his branch of service or agency (e.g., "U.S. Army" or "Public Health Service") and his 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 is his Social Security 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.

[(f)] (g) A prescription for controlled substances may only be filled by a pharmacist acting in the usual course of his professional practice and either registered individually or employed in a registered pharmacy or registered institutional practitioner."

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

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

- (1) Who is subject to part III to distribute or dispense a controlled substance in violation of section 329-38; 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 [pursuance of a special official written order approved by a commissioned medical officer or acting assistant surgeon of the United States public health service;] 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 his registration or to distribute or dispense a controlled substance not authorized by his registration to another registrant or another authorized person;
- (3) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this chapter;
- (4) To refuse any lawful entry into any premises for any inspection authorized by this chapter; or
- (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.

(b) Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than \$5,000, or both."

SECTION 8. Section 329-55, Hawaii Revised Statutes, is amended to read as follows:

"§329-55 Forfeitures. (a) The following are subject to forfeiture:

- (1) All controlled substances 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 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 or receipt of property described in paragraph (1) or (2), but:
 - (A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;
 - (B) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent; and
 - (C) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.
- (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 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, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.
- (7) All firearms which are visible, carried during, or used in furtherance of a violation of this chapter or chapter 712, part IV.

(b) Property subject to forfeiture under this chapter may be seized by the department upon process issued by any circuit court having jurisdiction over the

property; provided that any county may, in addition to the department, seize motor vehicles under subsection (a)(4). Seizure without process may be made if:

- (1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;
- (2) The property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding based upon this chapter;
- (3) The department or a county has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- (4) The department or a county has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of the seizure of property described in subsection (a)(1) to [(6),] (7), pursuant to subsection (b), proceedings under subsection (d) shall be instituted promptly. When property is seized under this chapter, the department shall report the fact of the seizure within ten days thereof to the prosecuting attorney of the county where the seizure was made. Within thirty days of the notification of the seizure, the prosecuting attorney shall cause to be filed in the circuit court in the county in which the property was seized, an action in rem, petitioning the court for forfeiture of the property. Upon the filing of the action, the court shall order the department to hold the property for further order of the court, and shall order that the owner of the seized property be served with notice of action. Notice of such action shall be made promptly in person, by registered mail, or by publication in accordance with section 634-23. At the expiration of twenty days after such notice, if no claimant has appeared, the court shall order the property forfeited to the State, to be disposed of by the department in a manner consistent with subsection (e).

If a claim is made in response to the petition for forfeiture within the twenty-day period, the court shall schedule a hearing, at which time the State shall prove by preponderance of evidence that the property was used, intended to be used, furnished, or acquired in violation of this chapter. At the conclusion of such hearing, the court shall order the property forfeited to the State; provided that if any claimant proves the claimant's right to an exception under subsection (a)(4)(A), (B), or (C) the court shall order the return of the property or such portion of the property that is proved to be encumbered, to the bona fide owner, lienholder, or mortgagee.

(d) Property, as described in subsection (a)(1) to [(6),] (7), taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the seizing authority subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When such property is seized under this chapter, the seizing authority may:

- (1) Place such property under seal;
- (2) Remove such property to a place designated by it; or
- (3) Require the sheriff to take custody of such property and remove it to an appropriate location for disposition in accordance with law.

If a county seizes property under subsection (a)(4) it shall immediately notify the department of the seizure, and shall relinquish the seized property to the department upon its request therefor. In the event the property is forfeited and the department does not request the property seized by the county, the property shall be disposed of by the county in a manner consistent with subsection (e).

(e) When property is forfeited under this chapter the department may:

- (1) Retain [it for official use;] the property or transfer it to the county and authorize its use in the enforcement of this chapter;
 - (2) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs;
 - (3) Require the sheriff to take custody of the property and remove it for disposition in accordance with law; or
 - (4) Forward it to the bureau for disposition.
- (f) 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.
- (g) 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.
- (h) The failure, upon demand by the department, 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 he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 27, 1986.)