

ACT 113

S.B. NO. 1733

A Bill for an Act Relating to Controlled Substances.

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

SECTION 1. Section 329-11, Hawaii Revised Statutes, is amended to read as follows:

“[[§329-11]] Authority to schedule controlled substances. (a) Annual-ly, upon the convening of each annual session of the state legislature, the

department shall report to the legislature [the effects of the implementation of this chapter in relation to the problems of drug abuse in Hawaii and shall recommend to the legislature any] 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 which it deems necessary. The department shall not recommend [any] additions, deletions, or revisions in such schedules until after notice and an opportunity for a hearing is afforded all interested parties, except such hearing 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 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)] (A) Its history and current pattern of abuse;
 - [(b)] (B) The scope, duration, and significance of abuse; and
 - [(c)] (C) A judgment of the degree of actual or probable detriment which may result from the abuse of the substance[.];
- (2) The biomedical hazard of the substance including:
 - [(a)] (A) Its pharmacology: the effects and modifiers of effects of the substance;
 - [(b)] (B) Its toxicology: the acute and chronic toxicity, interaction with other substances whether controlled or not, and liability to psychic or physiological dependence;
 - [(c)] (C) Risk to public health and particular susceptibility of segments of the population; and
 - [(d)] (D) Existence of therapeutic alternatives for substances which 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 above, the department 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 may make such recommendation to the legislature prior to the submission of its annual report in which case the department shall publish and give notice to the public of such recommendation.

[(c)] (c) The state legislature has the sole authority to add, delete, or reschedule all substances enumerated in the schedules in sections 329-14, 329-16, 329-18, 329-20, and 329-22.

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

[(e)] (e) 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, the department shall recommend that a corresponding change in Hawaii law be made [by the state legislature, unless the department objects to the change. In that case, the department shall publish the reasons for objection and afford all interested parties an opportunity to be heard. Following the hearing, the department shall announce its decision and shall

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notify the legislature in writing of the change in federal law or regulations and of the department's recommendation]. The department 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 such 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."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved May 31, 1987.)