ACT 252 S.B. NO. 1160

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 adding a new definition to be appropriately inserted and to read as follows:

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

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

"(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-ethylamphet-amine (DOET);] 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 hydroxybuterate (GHB);] Gamma hydroxybutyrate (GHB);
(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) Tetrahydrocannabinols;
(30) Ethylamine analog of phencyclidine (PCE);
(31) Pyrrolidine analog of phencyclidine (PCPy, PHP);
(32) Thiophene analog of phencyclidine (TPCP; TCP).''

SECTION 3. Section 329-31.5, Hawaii Revised Statutes, is amended to read as follows:

"[[]§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 [two] 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 [must] 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."

SECTION 4. Section 329-38, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a), (b), and (c) to read:

"(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:
   (A) The date of dispensing;
   (B) The name, strength, and quantity issued of the drug;
   (C) The dispensing practitioner's name and address;
   (D) The name of the patient;
   (E) The date the potency of the drug expires if that date is available from the manufacturer or principal labeler; 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 [two] five years. All schedule II prescriptions shall be written by the practitioner in duplicate. 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.

(b) The transfer of original prescription information for a controlled substance listed in schedule 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] five years from the date of last refill; and
(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 this subsection shall void the authority of the pharmacy to transfer prescriptions or receive a transferred prescription to or from another pharmacy.

(c) No controlled substance in schedule III, IV, or V may be dispensed without a written or oral prescription of a practitioner, 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 date the potency of the drug expires, if that date is available from the manufacturer or the principal labeler;
(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 [two] 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."

2. By amending subsection (e) to read:

"(e) 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 the prescriptions were issued and shall bear:
(A) The full name and address of the patient; and
(B) The name, address, telephone number, and registration number of the practitioner.

The controlled substance prescriptions shall be no larger than four and one-half inches by six and one-half inches and no smaller than four inches by five 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 is not permitted, prescriptions shall be written with ink or indelible pencil or by typewriter and shall be manually signed by 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. A corresponding liability shall rest upon a pharmacist who fills a prescription not prepared in the form prescribed by this section;

(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 handprinted on it, as well as the signature of the physician; and

(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 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."

SECTION 5. Section 329-46, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§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.

[(b)] (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."

SECTION 6. Section 329-59, Hawaii Revised Statutes, is amended to read as follows:

"[[]§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 and 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; and

(2) Funding positions authorized by the legislature by law.

(b) The fund shall consist of all moneys derived from fees collected pursuant to [section] sections 329-31 and 329-67 and legislative appropriations. All fees collected pursuant to [section] sections 329-31 and 329-67 shall be deposited in the controlled substance registration revolving fund."

SECTION 7. Part VI of chapter 329, Hawaii Revised Statutes, is amended by amending the title to read as follows:

"**PART VI. [PRECURSORS TO] REGULATED CHEMICALS FOR THE MANUFACTURE OF CONTROLLED SUBSTANCES**"

SECTION 8. Section 329-61, Hawaii Revised Statutes, is amended to read as follows:

"**§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 public safety of all those transactions:

(1) Phenyl-2-propanone;
(2) Methylamine;
(3) Phenylacetic acid;
(4) Ephedrine;
(5) Pseudoephedrine;
(6) Norpseudoephedrine;
(7) Phenylpropanolamine;
(8) Hydriodic acid;
(9) Benzyl cyanide;
(10) Benzyl chloride;
(11) N-methylformamide;
(12) N-methylephedrine;
(13) N-ethylephedrine;
(14) N-ethylpseudoephedrine;
(15) N-methylpseudoephedrine;
(16) Chloroephedrine;
(17) Chloropseudoephedrine;
(18) Ethylamine;
(19) D-lysergic acid;
(20) Ergotamine tartrate;
(21) Piperidine;
(22) N-acetylanthranilic acid;
(23) Anthranilic acid;
(24) Propionic anhydride;
(25) Isosafrole;
(26) Safrole;

(27) Piperonal;
(28) Thionychloride;
(29) Ergonovine maleate;
(30) 3,4-Methylenedioxyphenyl-2-propanone;
(31) Benzaldehyde;
(32) Nitroethane[.];
(33) Red phosphorus;
(34) Iodine crystals;
(35) Gamma butyrolactone (GBL).

(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) Benzyl chloride;
(4) Ethyl ether;
(5) Potassium permanganate;
(6) 2-Butanone (or methyl ethyl ketone or MEK);
(7) Toluene;
(8) Hydrochloric acid;
(9) Sulfuric acid;
(10) Methyl isobutyl ketone (MIBK).''

SECTION 9. Section 329-63, Hawaii Revised Statutes, is amended to read as follows:

''**[[]§329-63[]] [Report of transaction.] 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 [for use by a person in this State, not less than twenty-one days prior to delivery of the substance, shall submit a report of the transaction, which includes the identification information specified in section 329-62 to the department of public safety. However, the department of public safety may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the same substance if the department of public safety determines that either of the following exist:

(1) A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance and the recipient of the substance; or
(2) The recipient has established a record of utilization of the substance for lawful purposes.], 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 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.

[(b)] (c) The department of public safety shall provide a common reporting form for the substances in section 329-61 [which] 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."

SECTION 10. Section 329-64, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§329-64[]] Exceptions.** [This] (a) The requirements imposed by sections 329-62, 329-63, and 329-67 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 which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which 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 Sec. 301 et seq.) or regulations adopted thereunder.

(5) Any "dietary supplement" as defined by the federal Food, Drug, and Cosmetic Act (21 United States Code sec. 301) containing ephedrine

alkaloids extracted from any species of Ephedra that meets all of the following criteria:

(A) It contains, per dosage unit or serving, not more than twenty-five milligrams of ephedrine alkaloids and its labeling does not suggest or recommend a total daily intake of more than one hundred milligrams of ephedrine alkaloids;

(B) It contains no hydrochloride or sulfate salts of ephedrine alkaloids;

(C) It is packaged with a prominent label securely affixed to each package that states all of the following:

(i) The amount in milligrams of ephedrine alkaloids in a dosage unit or serving;

(ii) The amount of the dietary supplement that constitutes a dosage unit or serving; and

(iii) The maximum recommended dosage of ephedrine alkaloids for a healthy adult human is not more than one hundred milligrams in a twenty-four hour period.

(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).''

SECTION 11. Section 329-65, Hawaii Revised Statutes, is amended to read as follows:

"**§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.

(d) Any manufacturer, wholesaler, retailer, or other person who possesses any of the substances listed in section 329-61 with the intent to illegally 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."

SECTION 12. Section 329-67, Hawaii Revised Statutes, is amended by amending subsections (d), (e), and (f) to read as follows:

"(d) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department of public safety [which shall not exceed the applications processing costs.] 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 [not to exceed the application processing costs.] 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 [fined not more than $5,000, or imprisoned not more than thirty days, or both;] 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 [fined not more than $100,000, or imprisoned not more than one year, or both.] guilty of a class C felony."

SECTION 13. Section 329-101, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(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 [two] five years. Each dispenser shall keep these records available for inspection and copying by the designated state agency."

SECTION 14. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 15. Statutory material to be repealed is bracketed, except bracketed material contained within the name of a substance listed in section 329-14(d)(28), Hawaii Revised Statutes, in section 2 of this Act is not to be repealed. New statutory material is underscored.

SECTION 16. This Act shall take effect upon its approval.

(Approved July 2, 1999.)