ACT 171

H.B. NO. 2410

A Bill for an Act Relating to Controlled Substances.

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

SECTION 1. Section 329-20, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

''(b) Depressants. Any material, compound, mixture, or preparation which contains any quantity of the following substances having 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) Halazepam;
(26) Haloxazolam;
(27) Ketazolam;
(28) Loprazolam;
(29) Lorazepam;
(30) Lormetazepam;
(31) Mebutamate;
(32) Medazepam;
(33) Meprobamate;
(34) Methohexital;
(35) Methylphenobarbital (mephorbarbital);
(36) Midazolam;
(37) Nimetazepam;
(38) Nitrazepam;
(39) Nordiazepam;
(40) Oxazepam;
(41) Oxazolam;
(42) Paraldehyde;
(43) Petrichloral;
(44) Phenobarbital;
(45) Pinazepam;
(46) Prazepam;
(47) Quazepam;
(48) Temazepam;
(49) Tetrazepam;
(50) Triazolam;
(51) Zaleplon; [~~and~~]
(52) Zolpidem[~~.~~]; and
(53) Zopiclone (Lunesta).''

SECTION 2. Section 329-64, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

''(a) The requirements imposed by sections 329-62, [~~329-63,~~] 329-63(a), 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~~] that contains [~~ephedrine,~~] pseudoephedrine[~~,~~] or norpseudoephedrine[~~, or phenylpropanolamine and which~~] 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 Sec. 301 et seq.) or regulations adopted thereunder[~~,~~] as long as it complies with the requirements of sections 329-73, 329-74, and 329-75; and

(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; and
   (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~~] twenty-four-hour period."

SECTION 3. Section 329-75, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]§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 dispense, sell, or distribute to a person without a prescription not more than [~~three packages or not more than nine~~] 3.6 grams per [~~transaction,~~] day without regard to the number of transactions, 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; provided that the pharmacy or retailer complies with the following conditions:

[~~(1) The product, mixture, or preparation shall be dispensed, sold, or distributed from an area that is in the direct line of sight of an employee at the checkout station or counter;~~

~~(2) The product, mixture, or preparation shall be dispensed, sold, or distributed from an area that is under constant video monitoring with signage placed near the drug that warns that the area is under constant video monitoring; or~~

~~(3)~~] (1) The product, mixture, or preparation shall be dispensed, 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 seller delivers the product directly into the custody of the purchaser; and

(2) Any person purchasing or otherwise acquiring any product, mixture, or preparation shall:
   (A) Produce proper identification containing the photograph, printed name, and signature of the individual obtaining the controlled substance; and
   (B) Sign a written log, receipt, or other program or mechanism approved by the administrator, showing the date of the transaction, name and address of the person, and the amount of the compound, mixture, or preparation.

No person shall purchase, receive, or otherwise acquire more than nine grams of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine

or its salts, isomers, or salts of optical isomers within a thirty-day period, except that this limit shall not apply to any quantity of such product, mixture, or preparation dispensed pursuant to a valid prescription.

(b) The sales restriction in this section, as it applies to products, mixtures, or preparations containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers, shall not apply to any products, mixtures, or preparations that are in liquid, liquid capsule, or gel capsule form if pseudoephedrine is not the only active ingredient.

(c) The department, by rule, may exempt other products from this section, [~~including extended-release pseudoephedrine combination products,~~] 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.

(d) 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.

[~~(e) For purposes of this section, "extended-release pseudoephedrine combination product" means any product containing pseudoephedrine that also contains other ingredients that protect the pseudoephedrine from immediate release and prevent the pseudoephedrine from being extracted.~~]"

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. Section 3 of this Act shall take effect on October 1, 2006. All other sections of this Act shall take effect upon its approval.

(Approved June 5, 2006.)