ACT 117

S.B. NO. 967

A Bill for an Act Relating to Controlled Substances.

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

SECTION 1. Section 329-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, including the following:
   (A) Raw opium;
   (B) Opium extracts;
   (C) Opium fluid;
   (D) Powdered opium;
   (E) Granulated opium;

(F) Codeine;
(G) Ethylmorphine;
(H) Etorphine hydrochloride;
(I) Hydrocodone;
(J) Hydromorphone;
(K) Metopon;
(L) Morphine;
(M) Oxycodone;
(N) Oxymorphone; [~~and~~]
(O) Thebaine;
(P) Dihydroetorphine;
(Q) Oripavine; and
(R) Tincture of opium;

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium;
(3) Opium poppy and poppy straw;
(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocanized coca leaves or extractions which do not contain cocaine or ecgonine; cocaine or any salt or isomer thereof; and
(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy)."

SECTION 2. Section 329-16, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Stimulants. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a danger or probable danger associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
(2) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;
(3) Phenmetrazine and its salts; [~~and~~]
(4) Methylphenidate[~~.~~]; and
(5) Lisdexamfetamine, its salts, isomers, and salts of its isomers."

SECTION 3. Section 329-18, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) Any anabolic steroid. The term "anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

(1) Boldenone;
(2) Clostebol (4-Chlorotestosterone);
(3) Dehydrochlormethyltestosterone;
(4) Dihydrotestosterone (4-dihydrotestosterone);
(5) Drostanolone;
(6) Ethylestrenol;
(7) Fluoxymesterone;

(8) Formebolone (Formyldienolone);
(9) Mesterolone;
(10) Methandranone;
(11) Methandriol;
(12) Methandrostenolone (Methandienone);
(13) Methenolone;
(14) Methyltestosterone;
(15) Mibolerone;
(16) Nandrolone;
(17) Norethandrolone;
(18) Oxandrolone;
(19) Oxymesterone;
(20) Oxymetholone;
(21) Stanolone (Dihydrotestosterone);
(22) Stanozolol;
(23) Testolactone;
(24) Testosterone;
(25) Trenbolone; [~~and~~]
(26) 3[beta], 17-dihydroxy-5a-androstane;
(27) 3[alpha], 17[beta]-dihydroxy-5a-androstane;
(28) 5[alpha]-androstan-3, 17-dione;
(29) 1-androstenediol (3[beta], 17[beta]-dihydroxy-5[alpha]-androst-1-ene);
(30) 1-androstenediol (3[alpha], 17[beta]-dihydroxy-5[alpha]-androst-1-ene);
(31) 4-androstenediol (3[beta], 17[beta]-dihydroxy-androst-4-ene);
(32) 5-androstenediol (3[beta], 17[beta]-dihydroxy-androst-5-ene);
(33) 1-androstenedione ([5[alpha]]-androst-1-en-3, 17-dione);
(34) 4-androstenedione (androst-4-en-3, 17-dione);
(35) 5-androstenedione (androst-5-en-3, 17-dione);
(36) Bolasterone (7[alpha], 17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one);
(37) Calusterone (7[beta], 17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one);
(38) [Delta]1-dihydrotestosterone (a.k.a. '1-testosterone') (17[beta]-hydroxy-5[alpha]-androst-1-en-3-one);
(39) Furazabol (17[alpha]-methyl-17[beta]-hydroxyandrostano[2,3-c]-furazan);
(40) 13[beta]-ethyl-17[beta]-hydroxygon-4-en-3-one;
(41) 4-hydroxytestosterone (4,17[beta]-dihydroxy-androst-4-en-3-one);
(42) 4-hydroxy-19-nortestosterone (4,17[beta]-dihydroxy-estr-4-en-3-one);
(43) Mesterolone (1[alpha]methyl-17[beta]-hydroxy-[5[alpha]]-androstan-3-one);
(44) Methandienone (17[alpha]-methyl-17[beta]-hydroxyandrost-1,4-dien-3-one);
(45) Methandriol (17[alpha]-methyl-3[beta], 17[beta]-dihydroxyandrost-5-ene);
(46) Methenolone (1-methyl-17[beta]-hydroxy-5[alpha]-androst-1-en-3-one);
(47) 17[alpha]-methyl-3[beta], 17[beta]-dihydroxy-5a-androstane;
(48) 17[alpha]-methyl-3[alpha], 17[beta]-dihydroxy-5a-androstane;
(49) 17[alpha]-methyl-3[beta], 17[beta]-dihydroxyandrost-4-ene;
(50) 17[alpha]-methyl-4-hydroxynandrolone (17[alpha]-methyl-4-hydroxy-17[beta]-hydroxyestr-4-en-3-one);
(51) Methyldienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4, 9(10)-dien-3-one);

(52) Methyltrienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4, 9-11-trien-3-one);
(53) 17[alpha]-methyl-[Delta] 1-dihydrotestosterone (17b [beta]-hydroxy-17[alpha]-methyl-5[alpha]-androst-1-en-3-one) (a.k.a. '17-[alpha]-methyl-1-testosterone');
(54) 19-nor-4-androstenediol (3[beta], 17[beta]-dihydroxyestr-4-ene);
(55) 19-nor-4-androstenediol (3[alpha], 17[beta]-dihydroxyestr-4-ene);
(56) 19-nor-5-androstenediol (3[beta], 17[beta]-dihydroxyestr-5-ene);
(57) 19-nor-5-androstenediol (3[alpha], 17[beta]-dihydroxyestr-5-ene);
(58) 19-nor-4-androstenedione (estr-4-en-3, 17-dione);
(59) 19-nor-5-androstenedione (estr-5-en-3, 17-dione[1];
(60) Norbolethone (13[beta], 17[alpha]-diethyl-17[beta]-hydroxygon-4-en-3-one);
(61) Norclostebol (4-chloro-17[beta]-hydroxyestr-4-en-3-one);
(62) Normethandrolone (17[alpha]-methyl-17[beta]-hydroxyestr-4-en-3-one);
(63) Stenbolone (17[beta]-hydroxy-2-methyl-[5[alpha]]-androst-1-en-3-one);
(64) Tetrahydrogestrinone (13[beta], 17[alpha]-diethyl-17[beta]-hydroxygon-4, 9, 11-trien-3-one); and
[~~(26)~~] (65) Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth, except the term "anabolic steroid" does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for nonhuman administration. If any person prescribes, dispenses, or distributes an anabolic steroid intended for administration to nonhuman species for human use, the person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this paragraph."

SECTION 4. Section 329-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department of public safety shall register an applicant to manufacture, dispense, prescribe, or distribute controlled substances included in sections 329-14, 329-16, 329-18, 329-20, and 329-22 unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the department of public safety shall consider the following factors:

(1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;
(2) Compliance with applicable state and local law;
(3) Any convictions of the applicant under any federal and state laws relating to any controlled substance;
(4) Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;
(5) Furnishing by the applicant of false or fraudulent material in any application filed under this chapter;
(6) Suspension [~~or~~], revocation, or surrender of the applicant's federal registration to manufacture, distribute, prescribe, or dispense controlled substances as authorized by federal law; and

(7) Any other factor relevant to and consistent with the public health and safety."

SECTION 5. Section 329-38, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) 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:~~] only. However, pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber's authorization. Transfers are 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[~~:~~] reduce to writing the following:
   (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;~~] dates and locations of previous refills;
      (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; and
      (vii) The pharmacy's name, address, and Drug Enforcement Administration registration number, along with the prescription number from which the prescription was originally filled;

(3) Both the original and transferred prescription shall be maintained for a period of five 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;~~] and

[~~(5)~~] (4) Any pharmacy electronically accessing a prescription record shall satisfy all information requirements of a manual mode prescription transferal.

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."

SECTION 6. Section 329-41, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It is unlawful for any person:

(1) Who is subject to part III to distribute, administer, prescribe, or dispense a controlled substance in violation of section 329-38 or rules authorized under section 329-31; 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 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 the registrant's registration or to distribute or dispense a controlled substance not authorized by the registrant's registration to another registrant or another authorized person;

(3) To refuse or fail to make available, keep, or furnish any record, notification, order form, prescription, statement, invoice, or information in patient charts relating to the administration, dispensing, or prescribing of controlled substances;

(4) To refuse any lawful entry into any premises for any inspection authorized by this chapter;

(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;

(6) Who is a practitioner or pharmacist to dispense a controlled substance to any individual not known to the practitioner or pharmacist, [~~without first obtaining proper identification and documenting, by signature on a log book kept by the practitioner or pharmacist, the identity of and the type of identification presented by~~] except under the following circumstances:

(A) When dispensing a controlled substance directly to an individual, the practitioner or pharmacist shall first obtain and document, in a log book or an electronic database, the full name, identification number, identification type, and signature, whether by actual signature or by electronic signature capture device, of the individual obtaining the controlled substance. If the individual does not have any form of proper identification, the pharmacist shall verify the validity of the prescription and identity of the patient with the prescriber, or their authorized agent, before dispensing the controlled substance[~~.~~]; and

(B) For mail order prescriptions, the practitioner or pharmacist shall not be subject to subparagraph (A); provided that all other requirements of chapter 329 shall apply and that the practitioner or pharmacist, as part of the initial registration process of an individual in a mail order prescription drug plan and prior to the controlled substance being dispensed, shall obtain all identification information, including the full name, identification number, identification type, signature, and a photocopy of a form of proper identification of the individual obtaining

the controlled substance. The practitioner or pharmacist shall also comply with other requirements set forth by rule.

For the purpose of this section, "proper identification" means government-issued identification containing the photograph, printed name, identification number, and signature of the individual obtaining the controlled substance;

(7) Who is a practitioner to predate or pre-sign prescriptions to facilitate the obtaining or attempted obtaining of controlled substances; or

(8) Who is a practitioner to facilitate the issuance or distribution of a written prescription or to issue an oral prescription for a controlled substance when not physically in the State."

SECTION 7. Section 329-52, Hawaii Revised Statutes, is amended to read as follows:

"**§329-52 Administrative inspections ~~[and warrants]~~.** ~~[(a) Issuance and execution of administrative inspection warrants shall be as follows:~~

~~(1) A judge of the circuit court, or any district judge within the judge's jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of the property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;~~

~~(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:~~

~~(A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;~~

~~(B) Be directed to a person authorized by section 329-51 to execute it;~~

~~(C) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;~~

~~(D) Identify the item or types of property to be seized, if any;~~

~~(E) Direct that it be served during normal business hours and designate the judge to whom it shall be returned;~~

~~(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be~~

made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the chief clerk of the judicial circuit in which the inspection was made.

(b) The department of public safety may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(A) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(B) Places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to subsection (a) an officer or employee designated by the department of public safety, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the department of public safety may:

(A) Inspect and copy records required by this chapter to be kept;

(B) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (b)(5), all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(C) Inventory any stock of any controlled substance therein and obtain samples thereof.

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with law, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(A) If the owner, operator, or agent in charge of the controlled premises consents;

(B) In situations presenting imminent danger to health or safety;

(C) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(D) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(E) In all other situations in which a warrant is not constitutionally required.

~~(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.~~]

(a) The administrator or any of the administrator's agents may make administrative inspections of controlled premises upon presenting appropriate credentials to the registrant or persons subject to parts III, IV, VIII, and IX of this chapter or their agents in accordance with the following provisions:

(1) Inspections shall be at reasonable times and within reasonable limits and in a reasonable manner of controlled premises and vehicles in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, dispense, deliver, or otherwise dispose of any controlled substance or regulated chemical designated under section 329-61 and all pertinent equipment, finished and unfinished materials, containers, and labeling therein to determine if this chapter is being violated;

(2) The administrator or any of the administrator's agents shall have access to and may copy any and all records, books, logs, or documents pertaining to the administering, prescribing, dispensing, or sale of controlled substances or regulated chemicals designated under this chapter without a warrant; and

(3) The administrator or any of the administrator's agents may inventory any stock of any controlled substance or regulated chemical designated under section 329-61 and secure samples or specimens of any drug, device, or chemical not seized as evidence by paying or offering to pay for the sample. The administrator shall make or cause to be made examinations of samples secured under this section to determine whether or not this chapter is being violated.

(b) An inspection of records authorized by this section shall not extend to financial data relating to pricing of items other than shipment and sale amounts, unless the owner, operator, or agent in charge of the controlled premises consents in writing.

(c) For purposes of this section, "controlled premises" means:

(1) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(2) Places, including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, dispense, deliver, or otherwise dispose of any controlled substance or regulated chemical designated under section 329-61."

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 12, 2009.)

Note

1. Missing end parenthesis.