

ACT 138

H.B. NO. 2876

A Bill for an Act Relating to Controlled Substances.

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

SECTION 1. In reviewing the report to the Legislature of recommendations regarding the addition, deletion, or revisions in the schedules of controlled substances mandated by Section 329-11, Hawaii Revised Statutes, the Legislature finds that it is necessary not only to identify and regulate controlled substances and their derivatives but to identify and regulate their precursors in order to prevent the illegitimate manufacture and distribution of controlled

substances. It is the purpose of this Act to identify and provide for the regulation of precursors to controlled substances to address this need, and to amend the existing controlled substance schedules to conform to existing federal law.

SECTION 2. Chapter 329, Hawaii Revised Statutes is amended by adding a new part to be appropriately designated and to read as follows:

**“PART
PRECURSORS TO CONTROLLED SUBSTANCES**

§329- Short title. This Act may be cited as the Regulation of Precursors to Controlled Substances Act.

§329- Substances subject to reporting. Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to any person in this State shall submit a report to the department of public safety of all of those transactions:

- (1) Ethylamine.
- (2) D-lysergic acid.
- (3) Ergotamine tartrate.
- (4) Piperidine.
- (5) N-acetylanthranilic acid.
- (6) Phenylacetic acid.
- (7) Anthranilic acid.
- (8) Propionic anhydride.
- (9) Isosafrole.
- (10) Safrole.
- (11) Piperonal.
- (12) Thionylchloride.
- (13) Ergonovine maleate.

(14) Any of the substances listed by the department of public safety in rules adopted pursuant to chapter 91.

§329- Proper identification. (a) Any manufacturer, wholesaler, retailer, or other person who receives from a source outside of the State any substance specified in section 329- prior to selling, transferring, or otherwise furnishing any substance specified in section 329- to a person in this State, shall require proper identification from the purchaser.

(b) For the purposes of this section, “proper identification” means a motor vehicle operator’s license or other official state-issued identification of the purchaser which contains a photograph of the purchaser, the residential or mailing address of the purchaser other than a post office box number or the tax map key number if no other address is available, the motor vehicle license number of any motor vehicle owned or operated by the purchaser, a letter of authorization from the business for which any substance specified in section 329- is being furnished, which includes the general excise license number and address of the business, a full description of how the substance is to be used, and the signature of the purchaser. The person selling, transferring, or otherwise furnishing any substance specified in section 329- shall affix that person’s signature as a witness to the signature and identification of the purchaser.

(c) Any manufacturer, wholesaler, retailer or other person who does not obtain the proper identification as required by this section shall be fined not more than \$5,000 or imprisoned not more than thirty days, or both.

§329- Report of transaction. (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- 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- 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;
- (2) The recipient has established a record of utilization of the substance for lawful purposes.

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

§329- Exceptions. This chapter 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.
- (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 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder.

§329- Penalty. (a) Any manufacturer, wholesaler, retailer or other person who does not submit a report as required by section 329- 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- with knowledge or the intent that the recipient will use the substance to un-

lawfully manufacture a controlled substance shall be fined not more than \$100,000 or imprisoned not more than five years, or both.

§329- Theft, loss, and discrepancy reports. (a) The theft or loss of any substance regulated pursuant to section 329- discovered by any person regulated by this chapter shall be reported to the department of public safety within three days of the receipt of actual knowledge of the discrepancy.

(b) Any report made pursuant to this section shall also include the name of the common carrier or person who transports the substance and date of shipment of the substance.

§329- Permit for conduct of business; applications; forms; fees; renewal; violations. (a) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance specified in section 329- for use by a person in this State or who receives from a source outside of the State any substance specified in section 329- shall obtain a permit for the conduct of that business from the department of public safety.

(b) Applications for permits shall be filed in writing and signed by the applicant, and shall set forth the name of the applicant, the business in which the applicant is engaged, the business address of the applicant, and a full description of any substance sold, transferred, or otherwise furnished, or received.

(c) The department of public safety may grant permits which shall be effective for not more than one year from the date of issuance. Applications and permits shall be uniform through the State, on forms prescribed by the department of public safety.

(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.

(e) A permit granted pursuant to this chapter 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.

(f) (1) Any manufacturer, wholesaler, retailer or other person who sells, transfers, or otherwise furnishes, or receives any substance specified in section 329- without a permit shall be fined not more than \$5,000 or imprisoned not more than thirty days, or both.

(2) Any manufacturer, wholesaler, retailer or other person who has previously been convicted of violating subsection 329- (a), upon a subsequent conviction thereof shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

§329- Protection of records; divulging confidential information prohibited; penalties. (a) All records and information required under this chapter shall be kept confidential, provided that disclosure of records and information to authorized state and federal agencies is permissible.

(b) The department of public safety shall adopt and enforce rules as may be necessary to prevent improper acquisition or use of confidential information.

(c) Any manufacturer, wholesaler, retailer or other person, including one who is authorized to obtain information, who, knowing the information obtained is from confidential records or files, intentionally discloses the records or information other than authorized by law, or who intentionally or knowingly aids or abets in the inspection or disclosure of such records or information by any person not authorized to inspect such records and information, shall be imprisoned not more than thirty days or fined not more than \$5,000, or both.

§329- Subpoena powers. Subject to the privileges which witnesses have in the courts of this State, the director or the director's designated subordinate is empowered pursuant to and in accordance with the rules of court to subpoena witnesses, examine them under oath and require the production of books, papers, documents or objects where the director reasonably believes the information sought is relevant or material to enforcement of this part. Books, papers, documents, or objects obtained pursuant to exercise of these powers may be retained by the director or the director's designate for a reasonable period of time for the purpose of examination, audit, copying, testing, or photographing. Upon application by the director, obedience to the subpoenas may be enforced by the circuit court in the county where the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of a circuit court.

§329- Forfeiture. Precursor chemicals that are possessed, transferred, sold or offered for sale in violation of this part shall be subject to seizure and forfeiture as provided in Chapter 712A."

SECTION 3. Section 329-14, Hawaii Revised Statutes, is amended to read as follows:

"§329-14 Schedule I. (a) The controlled substances listed in this section are included in Schedule I.

(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) Allylprodine;
- (3) Alphacetylmethadol;
- (4) Alphameprodine;
- (5) Alphamethadol;
- (6) Alpha-Methylfentanyl;
- (7) Benzethidine;
- (8) Betacetylmethadol;
- (9) Betameprodine;
- (10) Betamethadol;
- (11) Betaprodine;
- (12) Clonitazene;
- (13) Dextromoramide;
- (14) Diampromide;
- (15) Diethylthiambutene;
- (16) Difenoxin;
- (17) Dimenoxadol;
- (18) Dimepheptanol;
- (19) Dimethylthiambutene;
- (20) Dioxaphetyl butyrate;
- (21) Dipipanone;
- (22) Ethylmethylthiambutene;
- (23) Etonitazene;
- (24) Etoxidine;
- (25) Furethidine;
- (26) Hydroxypethidine;
- (27) Ketobemidone;
- (28) Levomoramide;

- (29) Levophenacetylmorphan;
- (30) Morpheridine;
- (31) Noracymethadol;
- (32) Norlevorphanol;
- (33) Normethadone;
- (34) Norpipanone;
- [35] Parahexyl;]
- (35) Para-fluorofentanyl;
- (36) Phenadoxone;
- (37) Phenampromide;
- (38) Phenomorphan;
- (39) Phenoperidine;
- (40) Piritramide;
- (41) Proheptazine;
- (42) Properidine;
- (43) Propiram;
- (44) Racemoramide;
- (45) Tilidine;
- (46) Trimerperidine;
- (47) N-[1-(1-methyl-2-phenyl)ethyl-4-piperidyl]-N-phenylacetamide (acetyl-alpha-methylfentanyl);
- (48) N-[1-(1-methyl-2-(2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide (alpha-methylthiofentanyl);
- (49) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide(benzyl-fentanyl);
- (50) N-[1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl]-N-phenylpropanamide (beta-hydroxyfentanyl);
- [51] N-[3-methyl-1-(2-hydroxy-2-phenyl)-ethyl-4-piperidyl]-N-phenylpropanamide(beta-hydroxy-3-methylfentanyl);]
- (51) N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny]-N-phenylpropanamide beta-hydroxy-3-methylfentanyl];
- (52) N-[3-methyl-1-(2-(2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide (3-methylthiofentanyl);
- (53) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide(thenylfentanyl);
- [54] N-[1-(2-(2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide(thiofentanyl).]
- (54) N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidiny]-propanamide (thiofentanyl);
- (55) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);
- (56) 1-(2-phenylethyl)-4-phenyl-4-acetoxypiperidine (PEPAP);
- (57) 3-Methylfentanyl.

(c) Any of the following opium derivatives, 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) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyrenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine;

- (11) Heroin;
- (12) Hydromorphenol;
- (13) Methylidesorphine;
- (14) Methyl dihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Phoclodine;
- (23) Thebacon.

(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);]
- (4) N-hydroxy-3,4-methylenedioxyamphetamine (N-hydroxy-MDA);
- (5) 3,4-methylenedioxy-N-ethylamphetamine (MDE);
- [5] (6) 5-methoxy-3,4-methylenedioxy-amphetamine;
- [6] (7) 4-bromo-2,5-dimethoxy-amphetamine(4-bromo-2,5-DMA)
- [7] 1-(2 phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP);]
- (8) 3,4,5-trimethoxy amphetamine;
- (9) Bufotenine;
- (10) 4-methoxyamphetamine (PMA);
- [11] Fenethyliline;
- [12] (11) Diethyltryptamine;
- [13] (12) Dimethyltryptamine;
- [14] (13) 4-methyl-2,5-dimethoxy-amphetamine;
- [15] (14) Ibogaine;
- [16] (15) Lysergic acid diethylamide;
- [17] (16) Marijuana;
- (17) Parahexyl;
- (18) Mescaline;
- (19) Peyote;
- (20) N-ethyl-3-piperidyl benzilate;
- (21) N-methyl-3-piperidyl benzilate;
- (22) Psilocybin;
- (23) Psilocyn;
- (24) 1-[1-(2-Thienyl)cyclohexyl]Pyrrolidine (TCPy);
- [24] (25) Tetrahydrocannabinols;
- [25] (26) Ethylamine analog of phencyclidine (PCE);
- [26] (27) Pyrrolidine analog of phencyclidine (PCPy, PHP);
- [27] (28) Thiophene analog of phencyclidine (TPCP;TCP).

(e) Unless specifically excepted, the schedule shall include any material, compound, mixture, or preparation which contains any quantity¹ of the substance methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any

quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (1) Fenethylamine;
- (2) N-ethylamphetamine;
- (3) 4-methylaminorex;
- (4) N,N-dimethylamphetamine.”

SECTION 4. Section 329-16, Hawaii Revised Statutes, is amended to read as follows:

“§329-16 Schedule II. (a) The controlled substances listed in this section are included in Schedule II.

(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.
- (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 decocainized coca leaves or extractions which do not contain cocaine or ecgonine; cocaine or any salt of¹ isomer thereof.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk Dextropropoxyphene (nondosage form);
- (6) Carfentanil;
- [(6)] (7) Dihydrocodeine;
- [(7)] (8) Diphenoxylate;
- [(8)] (9) Fentanyl;
- [(9)] (10) Isomethadone;
- [(10)] (11) Levomethorphan;
- [(11)] (12) Levorphanol;
- [(12)] (13) Metazocine;
- [(13)] (14) Methadone;
- [(14)] (15) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- [(15)] (16) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- [(16)] (17) Pethidine;
- [(17)] (18) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

- [(18)] (19) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- [(19)] (20) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- [(20)] (21) Phenazocine;
- [(21)] (22) Piminodine;
- [(22)] (23) Racemethorphan;
- [(23)] (24) Racemorphan;
- [(24)] (25) Sufentanil.

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

- (1) Amobarbital;
- (2) Pentobarbital;
- (3) Phencyclidine;
- (4) Phencyclidine immediate precursors:
 - (A) 1-phenylcyclohexylamine;
 - (B) 1-piperidinocyclohexanecarbonitrile (PCC);
- (5) Secobarbital.

(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.

(f) 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 stimulant effect on the central nervous system:

- (1) Phenmetrazine and its salts;
- (2) Phenylacetone (P2P);
- (3) Methylphenidate.

(g) Hallucinogenic substances, including but not limited to:¹

- (1) Dronabinol (synthetic), in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product[.]; and
- (2) Nabilone."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, or proceedings that commenced prior to its effective date.

SECTION 6. Statutory material to be repealed is bracketed, except bracketed material contained within the name of a substance listed in section 3 of this Act. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval; provided that Section 2 shall take effect on January 1, 1991.

(Approved June 15, 1990.)

Note

1. So in original.