ACT 123

S.B. NO. 2745

A Bill for an Act Relating to Controlled Substances.

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

SECTION 1. 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-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 hydroxybutyrate (GHB) (some other names include gamma hydroxybutyric acid; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);
(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);
(33) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number 96-48-0 when any such substance is intended for human ingestion;
(34) 1,4 butanediol, including butanediol; butane-1,4-diol; 1,4- butylenes glycol; butylene glycol; 1,4-dihydroxybutane; 1,4- tetramethylene

glycol; tetramethylene glycol; tetramethylene 1,4- diol with Chemical Abstract Service number 110-63-4 when any such substance is intended for human ingestion;

(35) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts, and salts of isomers;

(36) N-benzylpiperazine (BZP; 1-benzylpiperazine) its optical isomers, salts, and salts of isomers;

(37) 1-(3-trifluoromethylphenyl)piperazine (TFMPP), its optical isomers, salts, and salts of isomers;

(38) Alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers; [~~and~~]

(39) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers[~~.~~];

(40) Salvia divinorum;

(41) Salvinorin A; and

(42) Divinorin A."

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

"(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;
(7) Dihydrocodeine;
(8) Diphenoxylate;
(9) Fentanyl;
(10) Isomethadone;
(11) Levo-alphacetylmethadol (LAAM);
(12) Levomethorphan;
(13) Levorphanol;
(14) Metazocine;
(15) Methadone;
(16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-dphenyl butane;
(17) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
(18) Pethidine (Meperidine);
(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(22) Phenazocine;
(23) Piminodine;
(24) Racemethorphan;
(25) Racemorphan;
(26) Remifentanil; [~~and~~]
(27) Sufentanil[~~.~~]; and
(28) Tapentadol."

SECTION 3. 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, including its salts, isomers, esters, ethers, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, that has 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) Fospropofol (Lusedra);
[~~(25)~~] (26) Halazepam;
[~~(26)~~] (27) Haloxazolam;
[~~(27)~~] (28) Ketazolam;
[~~(28)~~] (29) Loprazolam;
[~~(29)~~] (30) Lorazepam;
[~~(30)~~] (31) Lormetazepam;
[~~(31)~~] (32) Mebutamate;
[~~(32)~~] (33) Medazepam;
[~~(33)~~] (34) Meprobamate;
[~~(34)~~] (35) Methohexital;
[~~(35)~~] (36) Methylphenobarbital (mephorbarbital);
[~~(36)~~] (37) Midazolam;
[~~(37)~~] (38) Nimetazepam;
[~~(38)~~] (39) Nitrazepam;
[~~(39)~~] (40) Nordiazepam;
[~~(40)~~] (41) Oxazepam;
[~~(41)~~] (42) Oxazolam;
[~~(42)~~] (43) Paraldehyde;
[~~(43)~~] (44) Petrichloral;
[~~(44)~~] (45) Phenobarbital;
[~~(45)~~] (46) Pinazepam;

[~~(46)~~] (47) Prazepam;
[~~(47)~~] (48) Quazepam;
[~~(48)~~] (49) Temazepam;
[~~(49)~~] (50) Tetrazepam;
[~~(50)~~] (51) Triazolam;
[~~(51)~~] (52) Zaleplon;
[~~(52)~~] (53) Zolpidem; and
[~~(53)~~] (54) Zopiclone (Lunesta)."

SECTION 4. Section 329-22, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide], (Vimpat); and
[~~(1)~~] (2) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid]."

SECTION 5. Section 329-35, Hawaii Revised Statutes, is amended to read as follows:

"**§329-35 Order to show cause.** (a) [~~Before denying, suspending, or revoking a registration, or refusing a renewal of registration, the department of public safety shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the department of public safety at a time and place not less than thirty days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty days before the expiration of the registration. These proceedings shall be conducted in accordance with chapter 91 without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.~~] If, upon examination of the application for registration from any applicant and other information gathered by the department regarding the applicant, the administrator is unable to make the determinations required by the applicable provisions of sections 329-32 and 329-33 and applicable rules to register the applicant, the administrator shall serve upon the applicant an order to show cause why the registration should not be denied.

(b) If, upon information gathered by the department regarding any registrant, the administrator determines that the registration of a registrant warrants suspension or revocation pursuant to section 329-34 or applicable rules, the department shall serve upon the registrant an order to show cause why the registration should not be revoked or suspended.

(c) The order to show cause shall call upon the applicant or registrant to:

(1) Appear before the department at a time and place stated in the order, which shall not be less than thirty days after the date of receipt of the order, to admit to the allegations in the order to show cause; or
(2) Request a hearing as provided in subsection (d).

The order to show cause shall also contain a statement of the legal basis for such hearing and the reasons that support the administrator's intent to deny the application, or the revocation or suspension of registration, and a summary of the matters of fact and law asserted.

(d) Upon receipt of an order to show cause, the applicant or registrant, if the registrant or applicant desires a hearing, shall file a request for a hearing with the department within thirty days after service of the order to show cause. Failure to request a hearing shall result in the automatic termination of the registrant's registration and in the case of a new application or renewal the unprocessed application shall be returned to the applicant.

[~~(b) The~~] (e) Notwithstanding subsections (a) to (d), department of public safety may suspend any registration simultaneously with the institution of proceedings under section 329-34, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the department of public safety or dissolved by a court of competent jurisdiction.

[~~(c)~~] (f) The department of public safety may subpoena and examine witnesses under oath upon all such charges as may be [~~preferred~~] referred before it[~~, and the circuit court of the circuit in which the hearing is held shall enforce by appropriate order the attendance and testimony of witnesses so subpoenaed~~]."

SECTION 6. Section 329-64, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The requirements imposed by sections 329-62[~~,~~] and 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 that contains pseudoephedrine or norpseudoephedrine 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 period~~]."

SECTION 7. Section 329-101, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Intentional or knowing failure to transmit any information as required by this section, including a request by the designated state agency for data corrections, shall be a misdemeanor, may incur administrative fines, and shall result in the immediate suspension of that pharmacy or practitioner's ability to dispense controlled [~~[~~]substances[~~]~~] in the [~~State~~] state until authorized by the administrator."

SECTION 8. Section 329-104, Hawaii Revised Statutes, is amended as follows:

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

"(b) Responsibility for limiting access to information in the system is vested in the administrator. Access to the information collected at the central repository pursuant to this part shall be confidential, and access to the information shall be limited to[~~:~~

~~(1) Personnel~~] personnel of the designated state agency[~~; and~~

~~(2) The Drug Enforcement Administration diversion group supervisor~~].

(c) This section shall not prevent the disclosure, at the discretion of the administrator, of investigative information to:

(1) Law enforcement officers, investigative agents of federal, state, or county law enforcement agencies, United States attorneys, county prosecuting attorneys, or the attorney general; provided that the administrator has reasonable grounds to believe that the disclosure of any information collected under this part is in furtherance of an ongoing criminal or regulatory investigation or prosecution;

(2) Registrants authorized under chapters 448, 453, and 463E who are registered to administer, prescribe, or dispense controlled substances; provided that the information disclosed relates only to the registrant's own patient;

(3) Pharmacists, employed by a pharmacy registered under section 329-32, who request prescription information about a customer relating to a violation or possible violation of this chapter; or

(4) Other state-authorized governmental prescription-monitoring programs.

Information disclosed to a registrant, pharmacist, or authorized government agency under this section shall be transmitted by a secure means determined by the designated agency."

2. By amending subsection (e) to read:

"(e) The designated state agency shall purge or cause to be purged from the central repository system, no later than [~~three~~] five years after the date a patient's prescription data are made available to the designated state agency, the identification number of the patient, unless the information is part of an active investigation."

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 19, 2010.)