GOV. MSG. NO. 761

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

May 28, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on May 28, 2008, the following bill was signed into law:

SB1491 SD1 HD2 — A BILL FOR AN ACT RELATING TO CONTROLLED SUBSTANCES.
(ACT 119)

Sincerely,

LINDA LINGLE

Approved by the Governor
on MAY 28 2008

THE SENATE
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

ACT 119

S.B. NO. 1491 S.D. 1 H.D. 2

A BILL FOR AN ACT

RELATING TO CONTROLLED SUBSTANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

SECTION 1. The legislature finds that the department of public safety charges fees relating to the registration and control of the manufacture, distribution, prescription, and dispensing of controlled substances within this state. The department also collects fees from manufacturers, wholesalers, retailers, and other persons who sell, transfer, or otherwise furnish certain chemicals that are precursors to controlled substances. *Fees are also collected from patients qualified for* the medical use of marijuana. All of these fees are deposited into the controlled substance registration revolving fund established under section 329-59, Hawaii Revised Statutes.

The legislature also finds that one of the criteria used by the auditor in evaluating special or revolving funds is the extent to which the fund reflects a clear link between the benefit sought and charges made upon the users or beneficiaries of the program, as opposed to serving primarily as a means to provide the program or users with an automatic means of support

that is removed from the normal budget and appropriations process. Use of the controlled substance registration revolving fund to offset the cost of regulating those who make payments into the fund meets the criterion used by the auditor to evaluate special and revolving funds.

The purpose of this part is to authorize the director of public safety to offset the cost of investigating violations of chapter 329, Hawaii Revised Statutes, the Uniform Controlled Substances Act, including funding operations of the narcotics enforcement division's forensic drug laboratory facility, with money appropriated from the controlled substance registration revolving fund.

SECTION 2. Section 329-59, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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, investigation of violations of this chapter, 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~~] state and the processing and issuance of a patient registry identification certificate designated under part IX; [~~and~~]

(2) Funding positions authorized by the legislature by law[~~.~~]; and

(3) Funding the narcotics enforcement division's forensic drug laboratory facility."

PART II

SECTION 3. Section 329-14, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Depressants. Unless specifically excepted, the schedule shall include any material, compound, mixture, or preparation which contains any quantity of the substance:

(1) Mecloqualone; or

(2) Methaqualone."

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, 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;

(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).

(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-diphenyl 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.

(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[~~:~~], 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) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital;

(4) Phencyclidine;

[~~(5) Phencyclidine immediate precursors:~~

~~(A) 1-phenycyclohexylamine;~~

~~(B) 1-piperidinocyclohexanecarbonitrile (PCC);~~] and

[~~(6)~~] (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[~~.~~];

(3) Phenmetrazine and its salts; and

(4) Methylphenidate.

[~~(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.~~]

(f) Immediate precursor. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(A) Phenylacetone, phenyl-2-propanone(P2P), benzyl methyl ketone, methyl benzyl ketone.

or

(2) Immediate precursors to phencyclidine (PCP):

(A) 1-phenylcyclohexylamine; and

(B) 1-piperidinocyclohexanecarbonitrile(PCC).

(g) Hallucinogenic substances, unless listed in another schedule, shall include:

(1) Nabilone."

SECTION 5. 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~~], 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) 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;

(52) Zolpidem; and

(53) Zopiclone (Lunesta)."

SECTION 6. Section 329-22, Hawaii Revised Statutes, is amended to read as follows:

"**§329-22 Schedule V.** (a) The controlled substances listed in this section are included in schedule V.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or

preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Stimulants. 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 stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers[~~:~~

~~(1) Pyrovalerone~~].

(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) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid]."

SECTION 7. 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 3.6 grams per 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 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)~~] (b) The department, by rule, may exempt other products from this section, 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)~~] (c) 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."

PART III

SECTION 8. Statutory material to be repealed is bracketed and stricken, except bracketed and not stricken material contained within the name of a substance listed in section 329-22(d)(1), Hawaii Revised Statutes, in section 6 of this Act is not to be repealed.

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

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."

PART III

SECTION 8. Statutory material to be repealed is bracketed and stricken, except bracketed and not stricken material contained within the name of a substance listed in section 329-22(d)(1), Hawaii Revised Statutes, in section 6 of this Act is not to be repealed.

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

APPROVED this 28 day of MAY, 2008

GOVERNOR OF THE STATE OF HAWAII