

LINDA LINGLE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

**CLAYTON A. FRANK**  
DIRECTOR

**DAVID F. FESTERLING**  
Deputy Director  
Administration

**TOMMY JOHNSON**  
Deputy Director  
Corrections

**JAMES L. PROPOTNICK**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

TESTIMONY ON House Bill 2530  
A BILL FOR AN ACT RELATING TO  
CONTROLLED SUBSTANCES

Clayton A. Frank, Director  
Department of Public Safety

House Committee on Health  
Representative Josh Green, Chair  
Representative John Mizuno, Vice Chair

Wednesday, January 30, 2008, 8:00 a.m.  
State Capitol, Room 329

Representative Green and Members of the Committee:

The Department of Public Safety supports the intent of House Bill 2530, which would require the Department's Narcotics Enforcement Division develop and maintain an electronic purchase logbook for sales of pseudoephedrine and pseudoephedrine combination products. The intent of House Bill 2530 is to close the reporting loophole in Act 171 SLH 2006, that mandated that all retailers have customers produce proper identification and sign a log to ensure that the customer did not purchase more than 3.6 grams per day and not more than 9 grams in a 30-day period and required all retailers to maintain a logbook of all non prescription sales of pseudoephedrine containing products. Presently a person wanting to beat the system could visit multiple retail store chains and obtain 3.6 grams of pseudoephedrine per visit and the retailers would not be able to verify or track that individuals previous purchases. By requiring that all retailers selling

"An Equal Opportunity Employer/Agency"

000020

pseudoephedrine products must electronically transmit the customer's identification data to the Narcotics Enforcement Division will significantly assist the Division in deterring individuals from illegally obtaining the regulated chemical pseudoephedrine that is one of the primary chemicals necessary to manufacture methamphetamine. Since the enactment of Act 171 SLH 2006, the State has seen a dramatic drop in the number of clandestine drug labs in the State from 17 in 2005, 5 in 2006 and just 2 in 2007, however with the decrease in the quality of methamphetamine and the increase in its street price it is just a matter of time when the criminals will revert back to manufacturing their own high quality methamphetamine using pseudoephedrine obtain from retail distributors. The 2004 statistics of US businesses in Hawaii indicates that there are 1883 retail stores that are able to sell pseudoephedrine products in the State most of which are not pharmacies and unable to verify prior pseudoephedrine sales with their other retail counter parts.

The department would like to recommend that the following amendments to House Bill 2530:

On page 1, amend lines 5 through 6 to read "of products containing pseudoephedrine." Presently existing Hawaii law does not allow ephedrine and phenylpropanolamine products to be sold over the counter by retail distributors without a prescription.

On page 1 amend lines 12 through 13 to indicate that the implementation date will be December 31, 2010. This is necessary due to the fact that House Bill 2530 does not appropriate any funding or positions for the Narcotics Enforcement Division to implement this new program. The Department would have had to return to the legislature

Formatted

to make a budgetary request for additional positions and funds to implement this new program.

Rather than burdening retailers and the Narcotics Enforcement Division with substantial costs for the implementation of a real time electronic logbook, the Department is recommending that retailers report all retail pseudoephedrine transactions twice a month electronically in a similar manner to that of the Department's electronic prescription monitoring program. The Department is also recommending that House Bill 2530 be amended by adding a penalty for retailers that do not comply with the requirements of this bill. The Department is therefore recommending the following amendments to House Bill 2530:

On page 3, amend lines 3 through 17 to read as follows: “(d) The narcotics enforcement division of the department of public safety shall provide access to the electronic logbook to:

- (1) Any person authorized to prescribe or dispense products containing pseudoephedrine for the purpose of providing medical care or pharmaceutical care;
- (2) A state, county, or federal law enforcement official or a state, county, or federal prosecutor;
- (3) A state, county, or federal official who requests access for the purpose of facilitating a product recall necessary for the protection of the public health and safety;

- (4) The state board of pharmacy for the purpose of investigating a suspicious transaction; and
- (5) Any individual or agency authorized by the administrator.”

On page 3 lines 21 through 22 and on page 4 lines 1 through 9 should be amended to read as follows: “(f) The narcotics enforcement division of the department of public safety shall maintain the data in the electronic logbook for a period of up to three years from the date of its entry unless the electronic record is being used in an on going criminal or administrative investigation or proceeding.

(g) Intentional or knowing failure to transmit any information as required by this section shall be a misdemeanor and shall result in the immediate suspension of that retailer’s ability to sell 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 until authorized by the administrator.

- (h) A person commits an offense if the person knowingly:
  - (1) Releases or discloses to any unauthorized person any confidential information collected and maintained under this section;
  - (2) Obtains confidential information for a purpose not authorized by this section; and
  - (3) Intentional or knowingly failing to transmit any information as required by this section.

A violation of this subsection is a misdemeanor.”

The Department is also requesting that an amendment to section 329-75(a) be made to House Bill 2530 to reflect amendments made in federal law relating to products containing pseudoephedrine in liquid, liquid capsule, or gel capsule form.

"§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.~~

~~(e)~~(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."

The passage of House Bill 2530 would be an effective way to track and prevent the abuse of pseudoephedrine and pseudoephedrine containing products, which are used to illegally manufacture methamphetamine.

Thank you for the opportunity to testify on this matter.

# GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:

GARY M. SLOVIN, ESQ.  
CHRISTOPHER G. PABLO, ESQ.  
ANNE T. HORIUCHI, ESQ.  
MIHOKO E. ITO, ESQ.  
JOANNA J. H. MARKLE\*  
LISA K. KAKAZU\*\*

\* Government Relations Specialist  
\*\* Legal Assistant

ALII PLACE, SUITE 1800 • 1099 ALAKEA STREET  
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196  
HONOLULU, HAWAII 96801

TELEPHONE (808) 547-5600 • FAX (808) 547-5880  
info@goodsill.com • www.goodsill.com

INTERNET:

gslovin@goodsill.com  
cpablo@goodsill.com  
ahoriuchi@goodsill.com  
meito@goodsill.com  
jmarkle@goodsill.com  
lkakazu@goodsill.com

January 28, 2008

TO: Representative Josh Green  
Chair, Committee on Health  
Hawaii State Capitol, Room 327  
Via Email: [HLTtestimony@Capitol.hawaii.gov](mailto:HLTtestimony@Capitol.hawaii.gov)

FROM: Christopher G. Pablo, Esq.

RE: H.B. No. 2530 – Relating to Controlled Substances  
Hearing Date: Wednesday, January 30, 2008 at 8:00 a.m.

---

Dear Chair Green and Members of the Committee on Health

I am Christopher Pablo testifying on behalf of Walgreen Company (“Walgreens”), a Deerfield, Illinois based corporation operating more than 6,000 stores in 49 states and Puerto Rico.

Walgreens appreciates the committee’s concern with the growing problem of methamphetamine abuse in Hawaii. This is precisely why Walgreens has taken a proactive and voluntary approach to assist in the fight against methamphetamine abuse. Walgreens participates in voluntary education and theft deterrent programs in numerous state and local jurisdictions. It also supports youth anti-methamphetamine education efforts by groups like the Partnership For A Drug Free America.

Additionally, as you may be aware, the federal government already limits the sale of pseudoephedrine (PSE) through the Combat Methamphetamine Enforcement Act of 2005 (“CMEA”) to individual purchases of not more than 3.6 grams of pseudoephedrine per day or 9 grams in a 30 day period.

Walgreens currently complies with all federal, state and local laws regulating pseudoephedrine (“PSE”) or other methamphetamine precursors. Walgreens prides itself on its proprietary system which links all of its more than 6000 stores nationwide together to capture all PSE sales and limit individual purchases in compliance with federal, state and local laws. Its system is electronic, chain-wide and features, among other things, electronic signature capture and privacy not offered by a traditional bound logbook. Walgreens’ information can be made available to law enforcement personnel upon demand from a store, district office or corporate headquarters to assist in methamphetamine investigations.



January 28, 2008  
Page 2

**Based upon Walgreens' experience, before a state implements an electronic logbook, standards must be in place that are intended to protect the privacy of the patient, and enhance public safety.**

With regard to this data collection, we have specific comments on these elements in HB 2530:

- 1. Type of identification required.** On page 2, line 20, it states: "the issuing state or agency". Walgreens would recommend that the language which refers to identification be made more general. To illustrate this point, if a patient presents a driver's license from another jurisdiction, it may be difficult for an employee to readily determine the issuing agency. Because this information is not always listed on state or federally issued IDs, the issuing agency may be the secretary of state, the department of motor vehicles or another issuing agency. Therefore, we would ask that this bill be amended to require collection of the document type, jurisdiction and number as the identifying features. This will allow residents and vacationers to use a state ID, driver's license or passport for PSE purchases.
- 2. Lack of national program and national standards integrating a multi-state program.** On page 2, lines 1-2, it states: "...including interfacing with other states to ensure comprehensive compliance..." Our impression is that the sponsors are essentially advocating for a federal program and integrated multi-state program, which, in Walgreens' experience, cannot be reasonably achieved without national standards implemented at the federal level. We understand the sponsor's intent, as it parallels Walgreens' PSE program. However, unless there is a national platform with uniform specified standards, such a requirement would create tremendous technical challenges to the retail pharmacy community in attempting to interface with numerous different state or local PSE logbook systems.
- 3. Potential retailer liability in failing to protect patient confidential information.** On page 2, line 14, it states: "... purchase information shall be submitted in real time." Third-party real-time electronic logbooks present a burden and a potential liability for the retailer. This is due to the fact that the logbook must collect the information and interface with an outside vendor's software, potentially via an unsecured internet connection, subjecting the purchaser's personal information to hacking or misuse. Therefore, Walgreens would recommend compiling and sending our PSE sales data via secure file transfer protocol directly to the law enforcement agencies enforcing pseudoephedrine compliance. We would recommend sending this information on a regular basis (e.g., weekly. This would allow the law enforcement agencies to monitor sales of pseudoephedrine products and conduct investigations as necessary while

January 28, 2008  
Page 3

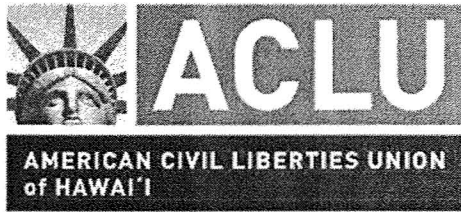
protecting individual privacy. Walgreens strongly opposes asking its pharmacy personnel to send personal

Walgreens strongly opposes asking our pharmacy personnel to send personal information about our patients to private third-party contractors via less secure platforms such as the internet.

Thank you for holding this hearing. Please know that we share your concerns on this serious matter. We will be happy to assist with additional information you may need and Walgreens pledges to be a leader in the fight against pseudoephedrine misuse.

Again, I would like to thank the committee for allowing me to address you today on behalf of Walgreens.

000029



VIA EMAIL: [HLTtestimony@Capitol.hawaii.gov](mailto:HLTtestimony@Capitol.hawaii.gov)

Committee: Committee on Health  
Hearing Date/Time: Wednesday, January 30, 2008, 8:00 a.m.  
Place: Room 329  
Re: Testimony of the ACLU of Hawaii in Opposition to HB 2530, Relating to Controlled Substances

Dear Chair Green and Members of the Committee on Health:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to H.B. 2530, which seeks to require the narcotics enforcement division of the department of public safety to maintain an electronic purchase logbook for sales of pseudoephedrine and related substances.

H.B. 2530’s implementation of a government tracking device for pseudoephedrine purchasers tramples on the civil rights of Hawaii citizens. Simply put, individuals do not lose their rights to privacy, due process, or Fourth Amendment protections simply because they purchase over-the-counter and prescription cold and allergy medications that contain pseudoephedrine (Nyquil, Contact, Sudafed, Allerest, Tavist-D, Dimetapp, Theraflu, Tylenol Cold & Flu, Aleve Cold & Sinus, Claritin D and Robitussin, to name a few).

This bill violates purchasers’ rights to privacy and due process because it forces purchasers to give out their private information and place themselves on a list of criminal suspects in order to purchase these legal medications. Doctor-patient privacy rights of individuals with prescriptions are also violated when law enforcement agencies are provided with access to their records.

Finally, this bill presents grave Fourth Amendment violations when it gives law enforcement agencies access to these purchasers’ records without a warrant or subpoena. The legislature should be loathe to implement a system that takes Hawaii one step closer to a surveillance society and should be extremely wary of becoming the “big brother” that tracks Hawaii citizens’ every move.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-

American Civil Liberties Union of Hawai'i  
P.O. Box 3410  
Honolulu, Hawai'i 96801  
T: 808.522-5900  
F: 808.522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)

000030

Hon. Rep. Green, Chair, Health Committee  
and Members Thereof  
January 30, 2008  
Page 2 of 2

profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple  
Staff Attorney  
ACLU of Hawaii

American Civil Liberties Union of Hawai'i  
P.O. Box 3410  
Honolulu, Hawai'i 96801  
T: 808.522-5900  
F: 808.522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)

000031

mizuno1-Edgar

---

**From:** Shannon Wood [swood@hoku.com]  
**Sent:** Tuesday, January 29, 2008 4:23 PM  
**To:** HLTtestimony  
**Subject:** HB2530 - RELATING TO CONTROLLED SUBSTANCES

**COMMITTEE ON HEALTH**  
**Rep. Josh Green, MD, Chair**  
**Rep. John Mizuno, Vice Chair**

**PUBLIC HEARING**  
**8 am**  
**Wednesday, January 30, 2008**  
**Conference Room 329**

**HB2530 - RELATING TO CONTROLLED SUBSTANCES**  
**STRONGLY OPPOSE**

Good morning, *Mr. Chair & Members* of the **Health Committee**. My name is Shannon Wood, a Kailua, O'ahu resident, speaking only as an individual on my own behalf and not representing any group or organization.

**I strongly oppose HB2530 - RELATING TO CONTROLLED SUBSTANCES for the following reasons.**

Probably the most important is that there is no indication that such a law is needed. The restrictions placed on behind-the-counter purchases of *pseudoephedrine* in decongestant products over the past several years have worked in that the number of local meth labs arrests have decreased significantly. Ice use is down & arrests are up because the it is far more hazardous to bring in either the raw materials from other countries or the finished product itself. than for small-time dealers to set up small-time labs.

. **NOTE:** Ice use is way down due in part to current laws and to increased educational efforts about its impacts. Unfortunately, drug use in general is not because addicts are switching over to cocaine or heroin. This bill will doing nothing to address this fact.

Almost as important is the fact that **these are legal behind-the-counter non-prescription products**. Why not get these products banned from being produced & marketed?

Furthermore, it is a **HUGE** invasion of privacy for any government agency to have this information as to who buys cold and allergy medications.

Finally, there are the costs to implement this legislation on the retailer as well as the **Department of Public Safety**.

1/29/2008

000032

Although there is no doubt that crystal methamphetamine has caused great suffering for some 10,000 users and their families & friends here in Hawai'i, this bill would do absolutely nothing to help them out. All it will do is make it look as if quote **The Government** unquote is doing something about drugs.

Unless the law enforcement community can demonstrate that there is a need for this bill because earlier legislation is **NOT** working, I urge that you hold **HB2530 - RELATING TO CONTROLLED SUBSTANCES** and spend our taxpayer dollars on real solutions rather than passing a law which will have no impact on addressing community concerns about drug addiction.

*Mahalo* for the opportunity to present this testimony.

Shannon Wood  
P.O. Box 1013  
Kailua, HI 96734  
Cell Phone: 224-4496