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No. _____

TESTIMONY ON SENATE BILL 2130
A BILL FOR AN ACT RELATING TO
CONTROLLED SUBSTANCES

Clayton A. Frank, Director
Department of Public Safety

Senate Public Safety Committee
Senator Will Espero, Chair
Senator Clarence K. Nishihara, Vice Chair

Tuesday, February 5, 2008, 2:45 p.m.
State Capitol, Room 225

LATE TESTIMONY

Senator Espero and Members of the Committee:

The Department of Public Safety supports the intent of Senate Bill 2130, 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 Senate Bill 2130 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 pseudoephedrine products must electronically transmit the customer's identification data to the Narcotics Enforcement Division will significantly assist the Division in

detering 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 Senate Bill 2130:

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 Senate Bill 2130 does not appropriate any funding or positions for the Department to implement this new program. The Department will have to have time to return to the legislature to make a budgetary request for additional positions and funds to implement this new program.

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 amended to Senate Bill 2130 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 Senate Bill 2130 would be the most efficient and cost 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.



HAWAII FOOD INDUSTRY ASSOCIATION

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February 5, 2008

To: Senate Committee on Public Safety
Senator Will Espero, Chair
Senator Clarence K. Nishihara, Vice Chair

Senate Committee on Judiciary
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

By: Richard C. Botti, President
Lauren Zirbel, Government Affairs

Re: SB 2130 RELATING TO CONTROLLED SUBSTANCES

Chairs & Committee Members:

We oppose this measure because it will require many retailers now providing cold and allergy medicines behind the counter to stop selling completely because of the cost that would be involved in the purchasing of the electronic equipment that would be necessary to comply with the measure. This however would cause the most harm to tourists in hotels and consumers in rural areas where a pharmacy is not convenient, and not open in the evenings, weekends, and holidays.

We have discussed another method that NEA (Narcotic Enforcement Agency) suggested that would basically eliminate the need for special electronic equipment. This would allow retailers to provide the information via an Excel worksheet on software provided by NEA. We would have no objection to such a method of allowing the transfer of information via email at little cost once or twice a month.

We must maintain a balance between the needs of consumers with colds and allergies who are doing their best to take care of their health, while doing what we can to stifle those that do not care about their health to such an extent that they will use crystal meth.

Senator Will Espero, Chair
Senator Clarence Nishihara, Vice Chair
Committee on Public Safety

Senator Brian Taniguchi, Chair
Senator Clayton Hee, Vice Chair
Committee on Judiciary & Labor

State Capitol, Honolulu, Hawaii 96813



HEARING Tuesday, February 5, 2008
2:45 pm
Conference Room 225

RE: SB 2130, Relating to the Controlled Substances

Chairs Espero and Taniguchi, Vice Chairs Nishihara and Hee, and Members of the Committees:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing about 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii.

RMH strongly opposes SB2130, which requires retailers to maintain electronic log books for sales of pseudoephedrine and related substances.

In a national environment where businesses are encouraged by financial institutions and mandated by government entities to reduce collecting and storing customers' personal identification information, this measure runs at counter purposes to these security directives. Given statutes already in place: §487N, HRS, Security Breach of Personal Information; §487R, HRS, Destruction of Personal Information Records, and the soon to be effective §487J, HRS, Social Security Number Protection, SB2373 is needlessly exposing retailers to potential liability.

Retailers have complied with federal and state regulations requiring the maintaining logbooks of sales of controlled substances, and this information is readily available for law enforcement personnel to review. Coupled with the limits on amounts purchased and the removal of these products from store shelves, these procedures in themselves serve as a deterrent to any criminal activity

Retailers should not be forced to purchase the required costly technology. In Hawaii, our high cost of doing business, including employment, property and transportation costs, makes expensive investments in such technology prohibitive. The reality is that, ultimately, these costs will be passed on to the consumer.

We respectfully request that you hold SB2130. Thank you for your consideration and for the opportunity to comment on this measure.

A handwritten signature in cursive script, appearing to read 'Carol Dreijer', is written in black ink.

President

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COMMITTEE ON PUBLIC SAFETY

Sen. Will Espero, Chair

Sen. Clarence Nishihara, Vice Chair

COMMITTEE ON JUDICIARY & LABOR

Sen. Brian Taniguchi, Chair

Sen. Clayton Hee, Vice Chair

PUBLIC HEARING

2:45 pm

Tuesday, February 5, 2008

Conference Room 225

**SB2130 - RELATING TO CONTROLLED SUBSTANCES
STRONGLY OPPOSE**

Good afternoon, *Chairs* Espero & Taniguchi & *Members* of the **Public Safety and Judiciary & Labor Committees**. 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 SB2130 - 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* decongestant products over the past several years have worked in that the number of local meth labs arrests have decreased significantly. Ice use is, in fact, down significantly & 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. If you feel that there are causing serious legal problems, then why not get these products banned from being produced & marketed nationally or internationally?

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*.

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. Public policymakers should be investing in treatment and education rather than expensive & ineffective recording systems.

Unless the law enforcement community can demonstrate to an independent third party that there is a need for this bill because earlier legislation is **NOT** working, I urge that you hold **SB2130 - 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
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Handwritten notes and scribbles on the left margin, including the number '2' and some illegible characters.