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DEPARTMENT OF PUBLIC SAFETY

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No. _____

TESTIMONY ON SENATE BILL 2373 SD1
A BILL FOR AN ACT RELATING TO
PSEUDOEPHEDRINE SALES
Clayton A. Frank, Director
Department of Public Safety

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

Monday, February 25, 2008, 10:00 a.m.
State Capitol, Room 016

Senator Taniguchi and Members of the Committee:

The Department of Public Safety supports Senate Bill 2373 SD1, which would require retailers and pharmacies to maintain an electronic purchase logbook for sales of pseudoephedrine and pseudoephedrine combination products. The intent of Senate Bill 2373 SD1 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. 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. 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 those individuals' previous purchases.

Senate Bill 2373 SD1 will require that all retailers transmit the data of the identity and quantity of all pseudoephedrine and pseudoephedrine combination products to the Department's Narcotics Enforcement Division to be reviewed and analyzed.

The Department would like to request Senate Bill 2373 SD1 be amended by include an amendment needed to make Section 329-75(b) conform with the Federal Combat Methamphetamine Epidemic Act of 2005. This act did not allow for an exemption for pseudoephedrine products that were in liquid, liquid capsule or gel capsule form from the reporting and record keeping requirement.

The Department recommends that section 329-75 be amended starting on page 1 line 3 to page 3 line 15 to read as follows:

"§329-75 Sales of products, mixtures, or preparations containing pseudoephedrine; reporting requirement for wholesalers[-]; electronic log; penalties. (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]~~ shall comply 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]~~ produce proper identification containing the photograph, printed name, date of birth, ~~[and]~~ signature and address of the individual obtaining the ~~[controlled]~~ substance; ~~[and~~
 - (B) ~~Sign a written log, receipt, or other program or mechanism]~~
- (3) The pharmacy or retailer shall record, in an electronic log on software provided by the narcotics enforcement division of the department and approved by the administrator~~[; showing];~~ the date of the transaction~~[;];~~ the name ~~[and];~~ address, and date of birth of the person [,] ; the type of identification provided by the person; the agency issuing the identification number used; any unique identification number associated with the identification and the amount and name of the compound, mixture, or preparation~~[;]~~

(4) The pharmacy or retailer shall electronically record the information obtained under paragraph (3) on software provided by the narcotics enforcement division and shall forward the information in an electronic format designated by the administrator once a month for posting onto an electronic purchase log. The information shall be retained for a period of two years and shall be subject to random and warrantless inspection by the narcotics enforcement division. The electronic log maintained by the narcotics enforcement division shall be capable of checking compliance of state and federal laws relating to the over-the counter sale of pseudoephedrine and pseudoephedrine containing products.

(b) No person shall purchase, possess, 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) Any person who violates subsection (b) is guilty of a class C felony.

~~[(e)]~~(d) 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)]~~(e) 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.

(f) The department shall establish and maintain an electronic purchase log of the information forwarded to the administrator pursuant to subsection (a). The administrator may allow state, county, and federal law enforcement and regulatory agencies access to electronic purchase log data for the purpose of:

- (1) Identifying persons who make multiple purchases at various establishments to accumulate pseudoephedrine in quantities above the authorized threshold designated under this section;
- (2) Identifying pharmacies and retailers violating the provisions of this section;
- (3) Ascertaining the location of a clandestine methamphetamine manufacturing operation; and
- (4) Use as evidence in any criminal prosecution arising from paragraphs (1), (2) and (3).
 - (e) 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."

Thank you for the opportunity to testify on this matter.



BY EMAIL: testimony@capitol.hawaii.gov

Committee: Committee on Judiciary and Labor
 Hearing Date/Time: Monday, February 25, 2008, 10:00 a.m.
 Place: Room 016
 Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 2373, Relating to Pseudoephedrine Sales

Dear Chair Taniguchi and Members of the Committee on Judiciary and Labor:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes in opposition to S.B. 2373.

S.B. 2373'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 turns a fundamental government principle on its head by establishing that all Hawaii's residents are guilty until proven innocent.

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-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.

American Civil Liberties Union of Hawaii
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Hon. Senator Taniguchi, Chair, JDL Committee
and Members Thereof
February 25, 2008
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Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
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GORDON, THOMAS HONEYWELL
GOVERNMENTAL AFFAIRS

LATE

February 24, 2008

TO: Senator Brian Taniguchi
Chair, Senate Judiciary & Labor Committee
Hawaii State Capitol, Room 219
Via Email: sentaniguchi@Capitol.hawaii.gov

FROM: Noah Reandea

RE: S.B. 2373 – Relating to Pseudoephedrine Sales

Dear Chair Taniguchi and members of the Judiciary & Labor Committee

I am sure you are aware of the problems that illegal methamphetamines are causing in our local communities. Virtually no state is immune to the ill effects of meth. In reaction to this national crisis, more than 40 states have passed laws that restrict the sale of over the counter drugs containing pseudoephedrine. In fact, Hawaii has already taken this first step and established a written log that retailers are required to fill out when someone purchases pseudoephedrine. These logs have proven somewhat effective. However, they do not allow law enforcement to identify criminals who move from store to store purchasing pseudoephedrine to stay “below the radar screen.” This is unfortunately becoming a common practice to obtain the necessary amounts of pseudoephedrine that are needed to make meth.

Arkansas, Kentucky, Oklahoma and West Virginia have already taken the next legislative step in addressing meth by passing legislation to require that pseudoephedrine logs be kept in an electronic format. These electronic logs can be shared with law enforcement to eliminate the ability for criminals to purchase more than the legal limit of pseudoephedrine. With access to electronic logs, law enforcement officers are able to save time and money in identifying and busting meth labs. In addition, many of the pharmacies that have implemented electronic logs in these states are finding them to be far quicker, simpler, and more accurate than the manual logs they were previously maintaining.

S.B. 2373 is a very short bill and simply enhances Hawaii’s current state law by requiring pseudoephedrine logs to be kept in an electronic format. While this change is small, it will make a significant difference in the ability for law enforcement to crack down on meth production. In fact, in addition to Hawaii, 9 other states have already introduced legislation this year to require electronic logs. As witnessed by the unanimous passage of Arkansas S.B. 296 last year (attached), this legislation should not be controversial.

Therefore, I hope that you will seize this opportunity to assist in eliminating the growing meth epidemic and hear and pass S.B. 2373 as soon as possible.

Thank you for your time and consideration. Should you have any questions, please do not hesitate to contact me.



HAWAII FOOD INDUSTRY ASSOCIATION

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February 25, 2008

To: 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 2373 SD2 RELATING TO PSEUDOEPHEDRINE SALES

Chairs & Committee Members:

While we opposed SB2373, we feel comfortable with the amendments reflected in SB2373, SD1, and look forward to working with the Department of Public Safety in requiring retailers of pseudoephedrine over the counter cold and allergy products to file sales reports using Excel spreadsheets provided by the Narcotics Enforcement Division and emailing the reports monthly. We feel that this will not exclude the many smaller retailers, rural retailers, and especially convenience stores, sundries stores, and hotel gift shops, from providing a limited number of the items needed by consumers when a drug store is not available, open, or convenient.

LATE**testimony**

From: Shannon Wood [swood@hoku.com]
Sent: Sunday, February 24, 2008 11:26 AM
To: testimony
Subject: SB2373 SD1 - RELATING TO PSEUDOEPHEDRINE SALES

COMMITTEE ON JUDICIARY & LABOR

Sen. Brian Taniguchi, Chair
Sen. Clayton Hee, Vice Chair

DECISION-MAKING HEARING**10 am****Monday, February 25, 2008****Conference Room 016**

SB2373 SD1 - RELATING TO PSEUDOEPHEDRINE SALES
STRONGLY OPPOSE

TO THE COMMITTEE ON JUDICIARY AND LABOR:

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 continue to oppose SB2373 SD1 - RELATING TO PSEUDOEPHEDRINE SALES 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.

No proof has been submitted by any law enforcement agency that the current laws requiring the product to be sold behind-the-counter do not work. In fact, the number of "ice labs" using these drug store products here in Hawai'i has decreased by almost 90% in just a little over two years.

Instead, mainland ice labs are bringing in their raw materials from China, Thailand, Mexico, and other countries proving that we do indeed live in a global economy.

Furthermore, there is no hard unbiased data to support this statement as filed in the *Standing Committee Report 2373*:

"Your Committee finds that with the decrease in the quality of methamphetamine and the increase in its street price, it is inevitable that criminals will revert back to manufacturing their own high quality methamphetamine using pseudoephedrine products obtained from retail distributors."

NOTE: In fact, crystal methamphetamine 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? If this *Legislature* feels

strongly enough to even give serious consideration to a law like this, then you should be hammering on the doors of *Congress* to get them to ban the products outright.

Furthermore, it is a **HUGE** invasion of privacy for any government agency to have this information as to who buys cold and allergy medications. How will this information be used? I regularly buy these products at Long's - can I expect midnight raids or being hauled into court to justify my spending \$5 a month on these **behind-the-counter medications**? All I can think of is that the purpose of this bill is to harass retailers into discontinuing carrying these products which means that those of us with allergies will either be forced to use ineffective medications, pay more for them because they now require a prescription, or explore the dark recesses of the drug underworld in order to breathe normally.

Finally, there are the costs to implement this legislation on the retailer as well as the *Department of Public Safety*. On average, it takes approximately 10 minutes for a clerk to process a **behind-the-counter** transaction today. With this proposed legislation, you'll increase the time required by at least a couple of minutes.

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 such as the *Legislative Auditor* that there is a need for this bill because earlier legislation is **NOT** working, I urge that you hold **SB2373 SD1 - RELATING TO PSEUDOEPHEDRINE SALES** and spend our taxpayer dollars on real solutions such as treatment and education 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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