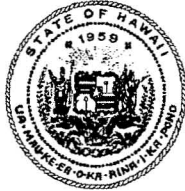


LINDA LINGLE  
GOVERNOR



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 SENATE BILL 2373 SD1  
A BILL FOR AN ACT RELATING TO  
PSEUDOEPHEDRINE SALES**

by  
Clayton A. Frank, Director  
Department of Public Safety

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

Wednesday, March 12, 2008, 10:30 a.m.  
State Capitol, Room 329

Representative Green, Representative Mizuno 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. The bill also requires 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 from 17 in 2005, to 5 in 2006, to 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

before criminals revert back to manufacturing their own high quality methamphetamine using pseudoephedrine obtain from retail distributors. The 2004 statistics of US businesses in Hawaii indicate that there are 1883 retail stores 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 including an amendment needed to make Section 329-75(b) conform with the Federal Combat Methamphetamine Epidemic Act of 2005, which did not allow for an exemption for pseudoephedrine products 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.



Representative Josh Green, M.D., Chair  
Representative John Mizuno, Vice Chair  
Committee on Health

State Capitol, Honolulu, Hawaii 96813

HEARING      Wednesday, March 12, 2008  
                  10:30 am  
                  Conference Room 39

**RE:    SB 2373, SD2, Relating to Pseudoephedrine Sales**

Chair Green, Vice Chair Mizuno, and Members of the Committee:

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 understands the intent of SB2373, SD2, which as amended requires retailers to maintain electronic logs of pseudoephedrine sales via Excel spreadsheets, and forward to the proper authorities.

However, our objection lies with the nature and quantity of personal information deemed essential. Not only is the date of the transaction, the name, address, and date of birth of the person required, but the type of identification provided, the agency issuing the identification, and any unique number associated with the identification must also be documented.

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 and §487R, HRS, Destruction of Personal Information Records, Senate Bill 2373, SD2, will needlessly expose retailers to potential liability. A merchant in possession of personal information (as defined in the above noted statutes, means "an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted: social security number; driver's license number or Hawaii ID card number") must carefully guard this information from unauthorized parties. If there is any breach of security all of the obligations that the laws impose would apply to the merchant.

We respectfully request that you hold SB2373, SD1. Thank you for your consideration and for the opportunity to comment on this measure.

President

RETAIL MERCHANTS OF HAWAII  
1240 Ala Moana Boulevard, Suite 215  
Honolulu, HI 96814  
ph: 808-592-4200 / fax: 808-592-4202

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**HAWAII FOOD INDUSTRY ASSOCIATION**

820 Milliani St., Suite 810, Honolulu, Hawaii 96813  
Phone (808) 533-1292 - Fax (808) 599-2606 - Email LISHawaii@aol.com



March 12, 2008

To: House Committee on Health  
Rep. Josh Green, M.D., Chair  
Rep. John Mizuno, Vice Chair

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

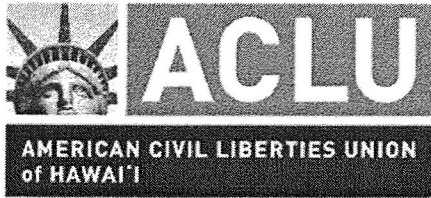
Re: **SB 2373 SD1 RELATING TO PSEUDOEPHEDRINE SALES**

Chairs & Committee Members:

We are ready to accept the requirements provided in SB 2373, SD1 that will require retailers to maintain an electronic Excel worksheet on software provided by the narcotics enforcement division. Further, we will utilize our resources to help educate retailers to offering pseudoephedrine products to consumers, along with the requirements set forth in this measure.

The measure is a reasonable compromise to allow both retailers and consumers access to nonprescription allergy and cold medicines that work, while creating a barrier to those that wish to purchase the product for illicit purposes.





**BY EMAIL:** [HLTtestimony@capitol.hawaii.gov](mailto:HLTtestimony@capitol.hawaii.gov)

Committee: Committee on Health  
Hearing Date/Time: Wednesday, March 12, 2008, 10:30 a.m.  
Place: Room 329  
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 2373, SD 1, Relating to Pseudoephedrine Sales

Dear Chair Green and Members of the Committee on Health:

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 violates the civil rights of Hawaii's 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.

Furthermore, 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 not 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  
P.O. Box 3410  
Honolulu, Hawaii 96801  
T: 808.522-5900  
F: 808.522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)

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Hon. Rep. Green, Chair, HLT Committee  
and Members Thereof

March 12, 2008

Page 2 of 2

Thank you for this opportunity to testify.

Sincerely,

Daniel M. Gluck  
Senior 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)

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SB 2373 RELATING TO PSEUDOEPHEDRINE SALES (SD1).

Requires electronic logs of pseudoephedrine sales to be made via an Excel worksheet provided by the department of public safety narcotics enforcement division and maintained for two years in a form searchable by law enforcement. (SD1)

COMMITTEE ON HEALTH

Rep. Josh Green, M.D., Chair

Rep. John Mizuno, Vice Chair

Wednesday March 12, 2008

TIME:

10:30 a.m.

PLACE:

Conference Room 329

State Capitol

415 South Beretania Street

## Hawaii Substance Abuse Coalition

GOOD MORNING CHAIR GREEN, CHAIR MIZUNO AND DISTINGUISHED COMMITTEE MEMBERS:

My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide hui of more than twenty non-profit treatment and prevention agencies.

**The Hawaii Substance Abuse Coalition supports SB 2373 and other law enforcement efforts to curb the spread of methamphetamine abuse and recommends treatment for individuals suffering from addiction.**