



HAWAII FOOD INDUSTRY ASSOCIATION

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February 5, 2008

To: Senate Committee on Consumer Protection & Affordable Housing
Senator Russell S. Kokubun, Chair
Senator David Y. Ige, Vice Chair

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

Re: SB 2373 RELATING TO PSEUDOEPHEDRINE SALES

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. Further, this 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.

However, 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 Russell Kokubun, Chair
Senator David Ige, Vice Chair
Committee on Commerce, Consumer Protection & Affordable Housing

State Capitol, Honolulu, Hawaii 96813

HEARING Tuesday, February 5, 2008
9:00 am
Conference Room 229

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

Chair Kokubun, Vice Chairs Ige, 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 strongly opposes SB2373, which requires retailers to maintain electronic logs of pseudoephedrine sales and maintain for two years in a searchable format.

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 both 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 such products from store shelves, these procedures in themselves serve as a deterrent to criminal activity.

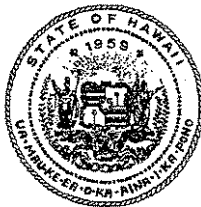
We respectfully request that you hold SB2373. Thank you for your consideration and for the opportunity to comment on this measure.

President

Carol Pregill

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Law Enforcement

No. _____

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

Senate Committee on Commerce, Consumer Protection, and Affordable Housing
Senator Russell S. Kokubun, Chair
Senator David Y. Ige, Vice Chair

Tuesday, February 5, 2008, 9:00 a.m.
State Capitol, Room 229

Senator Kokubun and Members of the Committee:

The Department of Public Safety supports the intent of Senate Bill 2373, 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 is to close the reporting loophole in Act 171 SLH 2006, which 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. It also 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, 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 when the criminals will revert back to manufacturing their own high quality

methamphetamine using pseudoephedrine obtained from retail distributors. The 2004 statistics of US businesses in Hawaii indicate 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 without the retailers being able to verify or track those individuals' previous purchases.

Senate Bill 2373 as written will not solve this problem unless it is amended to designate a centralized repository where all sales data can be reviewed and analyzed. Due to this fact the Department is recommending that Senate Bill 2373 be amended to require all retailers selling pseudoephedrine and pseudoephedrine combination products to electronically transmit the customer's identification data and sales information to the Narcotics Enforcement Division, in a format and timeframe designated by the Narcotics Enforcement Division Administrator. Section 329-75(b) should be deleted to conform with the Federal Combat Methamphetamine Epidemic Act of 2005, which 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 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 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 logbook in a format designated [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; and the amount and name of the compound, mixture, or preparation. The pharmacy or retailer shall electronically record the information obtained under this subparagraph, and shall forward the information in an electronic format designated by the administrator for posting onto an electronic purchase log established under subsection (f).

(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 shall allow state, county, and federal law enforcement agencies access to electronic purchase log data for the sole purpose of:

- (1) Identifying persons who make multiple purchases at various establishments to accumulate pseudoephedrine in quantities sufficient for possible use in manufacturing methamphetamine;
- (2) Ascertaining the location of a clandestine methamphetamine manufacturing operation; and
- (3) Use as evidence in any criminal prosecution arising from paragraphs (1) and (2).

(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.