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No. _____

TESTIMONY ON SENATE BILL 967 SD2
BILL FOR AN ACT RELATING TO
CONTROLLED SUBSTANCES
Clayton A. Frank, Director
Department of Public Safety

Committee on Public Safety
Representative Faye P. Hanohano, Chair
Representative Henry J.C. Aquino, Vice Chair

Thursday, March 19, 2009, 8:30 AM
State Capitol, Room 309

Representatives Hanohano and Members of the Committees:

The Department of Public Safety supports Senate Bill 967 SD2 that is the department's vehicle to update Hawaii's controlled substance laws to be consistent with amendments made in Federal law that is mandated by Section 329-11. The amendments being proposed by Senate Bill 967 SD2 would add new drugs to schedules II and III of Hawaii's controlled substance laws sections 329-16(b), 329-16(e) and 329-18(g) to be consistent with additions made by Federal law. The addition of these controlled substances is required by section 329-11(d) Hawaii Revised statutes which states that if a substance is added, deleted or rescheduled under federal law then the department shall recommend to the legislature that a corresponding change in Hawaii law be made.

Senate Bill 967 SD2 also proposes to amend section 329-33 and 329-34 to add language to indicate that if a registrant is required to surrender his Federal

controlled substance registration then that registrant must also surrender his State of Hawaii controlled substance registration.

Senate Bill 967 SD2 also proposes to amend section 329-38 relating to controlled substances prescriptions to allow pharmacies to transfer refills of Schedule III through V controlled substance prescriptions between islands. Senate Bill 967 SD2 also proposes to allow pharmacies that are electronically sharing a real-time, online database to transfer controlled substance prescriptions between their pharmacies up to the maximum refills permitted by law and designate procedures for these transfers.

Senate Bill 967 SD2 proposes to amend section 329-41(a) (6) that requires all distributors of controlled substances to maintain a logbook to document the signature and identification number of the customer obtaining the controlled substance prescription. The Department is proposing that the dispensing registrant also print the patients full name and list the type of identification presented in the logbook.

The department is requesting that the committee consider reinserting the language that was proposed in section 8 of Senate Bill 967 SD1 that amends section 329-52 relating to Administrative Inspections and Warrants of controlled substance registrants. This amendment is necessary to be consistent with inspection procedures utilized by the Department of Health. The new language being proposed is similar to that used by State Food and Drug inspectors and would better allow the Department to safeguard the public. The Department is

requesting to delete language in section 329-41 relating to administrative inspection warrants due to the fact that the Department utilizes search warrants for the seizure of records and property and has not utilized administrative inspection warrants for well over twenty-three years.

The amendments would be added to Senate Bill 967 SD2 as a new section 7 to read as follows:

SECTION 7. Section 329-52, Hawaii Revised Statutes, is amended to read as follows:

~~"§329-52 Administrative inspections [and warrants]. [(a) Issuance and execution of administrative inspection warrants shall be as follows:~~

- ~~(1) A judge of the circuit court, or any district judge within the judge's jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of the property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;~~
- ~~(2) A warrant shall issue only upon an affidavit of a designated officer or~~

~~employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:~~

- ~~(A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;~~
 - ~~(B) Be directed to a person authorized by section 329-51 to execute it;~~
 - ~~(C) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;~~
 - ~~(D) Identify the item or types of property to be seized, if any;~~
 - ~~(E) Direct that it be served during normal business hours and designate the judge to whom it shall be returned;~~
- ~~(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property~~

~~taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;~~

- ~~(4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the chief clerk of the judicial circuit in which the inspection was made.~~

~~(b) The department of public safety may make administrative inspections of controlled premises in accordance with the following provisions:~~

- ~~(1) For purposes of this section only, "controlled premises" means:~~
- ~~(A) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and~~
 - ~~(B) Places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.~~
- ~~(2) When authorized by an administrative inspection warrant issued pursuant~~

~~to subsection (a) an officer or employee designated by the department of public safety, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.~~

~~(3) When authorized by an administrative inspection warrant, an officer or employee designated by the department of public safety may:~~

~~(A) Inspect and copy records required by this chapter to be kept;~~

~~(B) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (b)(5), all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and~~

~~(C) Inventory any stock of any controlled substance therein and obtain samples thereof.~~

~~(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with law, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:~~

~~(A) If the owner, operator, or agent in charge of the controlled premises consents;~~

~~(B) In situations presenting imminent danger to health or safety;~~

- ~~(C) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;~~
 - ~~(D) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or~~
 - ~~(E) In all other situations in which a warrant is not constitutionally required.~~
- (5) ~~An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.]~~
- (a) The administrator or any of the administrator's agents may make administrative inspections of controlled premises upon presenting appropriate credentials to the registrant or persons subject to parts III, IV, VIII, and IX of this chapter or their agents in accordance with the following provisions:
- (1) Inspections shall be at reasonable times and within reasonable limits and in a reasonable manner of controlled premises and vehicles in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, dispense, deliver, or otherwise dispose of any controlled substance or regulated chemical designated under section 329-61 and all pertinent equipment, finished and unfinished materials, containers, and labeling

therein to determine if this chapter is being violated;

(2) The administrator or any of the administrator's agents shall have access to and may copy any and all records, books, logs, or documents pertaining to the administering, prescribing, dispensing, or sale of controlled substances or regulated chemicals designated under this chapter without a warrant; and

(3) The administrator or any of the administrator's agents may inventory any stock of any controlled substance or regulated chemical designated under section 329-61 and secure samples or specimens of any drug, device, or chemical not seized as evidence by paying or offering to pay for the sample. The administrator shall make or cause to be made examinations of samples secured under this section to determine whether or not this chapter is being violated.

(b) An inspection of records authorized by this section shall not extend to financial data, data relating to pricing of items, other than shipment and sale amounts, unless the owner, operator, or agent in charge of the controlled premises consents in writing.

(c) For purposes of this section, "controlled premises" means:

(1) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(2) Places, including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration

requirements under this chapter are permitted to hold, manufacture, compound, process, sell, dispense, deliver, or otherwise dispose of any controlled substance or regulated chemical designated under section 329-61."

SECTION 8. Statutory material to be repealed is bracketed and stricken.

New statutory material is underscored.

SECTION 9. This Act shall take effect upon signing."

In summary the Department of Public Safety strongly supports passage of Senate Bill 967 SD2 and would like to thank you for the opportunity to testify on this matter.