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No. _____

TESTIMONY ON HOUSE BILL 2592
BILL FOR AN ACT RELATING TO
CONTROLLED SUBSTANCES
Clayton A. Frank, Director
Department of Public Safety

Committee on Health
Representative Ryan I. Yamane, Chair
Representative Scott Y. Nishimoto, Vice Chair

Tuesday, February 9, 2010; 9:30 am
State Capitol, Room 329

Representative Yamane and Members of the Committee:

The Department of Public Safety supports House Bill 2592 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 House Bill 2592 would add new drugs to schedules I (Salvia Divinorum and/or Salvinorin A), II (Tapentadol), IV (Fospropofol) and V (Lacosamide) of Hawaii's controlled substance laws sections 329-14(d), 329-16(c), 329-20(b) and 329-22(d) to be consistent with additions made by Federal law in 2009. The addition of these controlled substances is required by section 329-11(d) and (e) Hawaii Revised statues.

Section 329-11(d) 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. In 2009 the

Federal Government scheduled the following controlled substances: Tapentadol to schedule II on 6-22-09, Fospropofol to schedule IV on 11-5-09 and Lacosamide ([(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide]) to schedule V on 6-22-09.

Section 329-11(e) states that the Administrator of the Department of Public Safety's Narcotics Enforcement Division may make an emergency scheduling by placing a substance into schedules I, II, III, IV or V on a temporary basis, if the administrator determines that such action is necessary to avoid an imminent hazard or the possibility of an imminent hazard to the health and safety of the public. On August 15, 2009, in accordance with Chapter 329-11(e) the Administrator of the Department of Public Safety's Narcotics Enforcement Division emergency scheduled Salvia divinorum or its constituent Salvinorin A as a schedule I controlled substances on a temporary basis, to avoid the possibility of an imminent hazard to the health and safety of the public.

The Drug Enforcement Administration has found a way to deal with the substance "Salvia divinorum or its constituent Salvinorin A" as a controlled substance analogue as defined in 21 USC Sec. 802 (32). The Federal Government has determined that this substance does not have an approved medical use in the United States and is presently listed as a "drug of concern" by the Federal Drug Enforcement Administration due its ability to evoke hallucinogenic effects, which in general, are similar to those of other scheduled hallucinogenic controlled substances. This definition allows the Federal

government to treat Salvia Divinorum and/or Salvinorin A as a controlled substance analogue if it is used for human consumption as a psychoactive drug. This leaves a loophole in the law for individuals selling this drug labeled as not for human consumption. As of January 2010, twelve states have enacted legislation placing regulatory controls on Salvia Divinorum and/or Salvinorin A due to its hallucinogenic properties. Delaware, Florida, Illinois, Kansas, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota and Virginia have placed Salvia Divinorum and/or Salvinorin A into schedule I. Louisiana, and Tennessee enacted other forms of legislation restricting the distribution of the plant and making human consumption of Salvia illegal. California and Maine passed legislation making it illegal to sell Salvia to minors. During last legislative session Oregon, Alaska, New Jersey, Pennsylvania, Iowa, Georgia, Texas, Massachusetts, Wisconsin, Alabama, Indiana, Maryland, Michigan, Hawaii, Kentucky, North Carolina proposed legislative bills to place regulatory controls on Salvia Divinorum and/or Salvinorin A. Salvia Divinorum and/or Salvinorin A have also been placed under regulatory controls in Australia, Belgium, Denmark, Estonia, Finland, Italy, Japan, Spain, and Sweden due to its potential for abuse.

House Bill 2592 proposes to amend section 329-35 to be consistent with federal language listed in Title 21, Chapter II, Part 1301.37 relating to the "Order to Show Cause" and to clarify the department's requirement to provide notice when revoking or suspending a registrant's controlled substance registration

certificate. House Bill 2592 proposes to amend section 329-64 relating to exemptions to the requirements of precursor chemicals by requiring all individuals and entities that conduct retail sales of pseudoephedrine obtain a precursor chemical permit. Section 329-64 is also amended to delete the exemption for the retail sales of dietary supplements that contain ephedrine due to the fact that the chemical Ephedrine was designated as a drug to be dispensed by prescription only by Act 171 in 2006.

House Bill 2592 also proposes to amend Hawaii's electronic prescription monitoring program by amending section 329-101(f) to clarify the language relating to the penalty for failure to transmit controlled substance prescription data to the Department due to non-compliance by pharmacies and physicians. House Bill 2592 amends section 329-104(e) by deleting the requirement for the designated state agency to purge the patient identification number data on all controlled substance prescriptions after three years. Maintaining these identification numbers are necessary due to administrative, civil and regulatory investigations that last longer than three years

In summary the Department of Public Safety strongly supports passage of House Bill 2592 and would like to thank you for the opportunity to testify on this matter.