July 12, 2011

The Honorable Shan Tsutsui, President
  and Members of the Senate
Twenty-Sixth State Legislature
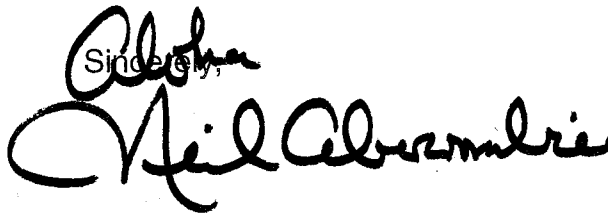State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
  and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

I am transmitting herewith SB40 SD2 HD2 CD1, without my approval, and with the statement of objections relating to the measure.

SB40 SD2 HD2 CD1   RELATING TO PSEUDOEPHEDRINE

Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 12, 2011

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 40

Honorable Members
Twenty-Sixth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 40, entitled "A Bill for an Act Relating to Pseudoephedrine."

The purpose of this bill is to establish an electronic tracking system for the sale of products containing pseudoephedrine or ephedrine base to further control access to pseudoephedrine and ephedrine.
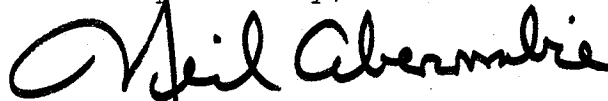
This bill is objectionable because it embraces more than one subject in violation of Section 14 of Article III of the Constitution of the State of Hawaii, which provides in part:

Each law shall embrace but one subject,
which shall be expressed in its title

The single subject expressed in the title of this bill is "pseudoephedrine" Section 1 of the bill amends section 329-75, Hawaii Revised Statutes, which regulates the sale of products containing pseudoephedrine and sets out record-keeping and reporting requirements for pseudoephedrine transaction, but this bill adds ephedrine, a different drug, to the provisions of section 329-75. This is clearly beyond the subject matter expressed in the title of the bill.

For the foregoing reasons, I am returning Senate Bill No. 40 without my approval.

Respectfully,

NEIL ABERCROMBIE
Governor of Hawaii

VETO

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

S.B. NO.   40
           S.D. 2
           H.D. 2
           C.D. 1

A BILL FOR AN ACT

RELATING TO PSEUDOEPHEDRINE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1   SECTION 1. Section 329-75, Hawaii Revised Statutes, is

2 amended to read as follows:

3   "§329-75 Sales of products, mixtures, or preparations

4 containing pseudoephedrine[+] or ephedrine; reporting

5 requirement for wholesalers. (a) Notwithstanding any other law

6 to the contrary, a pharmacy or retailer may sell or distribute

7 to a person without a prescription products containing not more

8 than 3.6 grams per day[+] or not more than nine grams per

9 thirty-day period of pseudoephedrine or ephedrine base, without

10 regard to the number of transactions[, of any product, mixture,

11 or preparation containing any detectable quantity of

12 pseudoephedrine, its salts, optical isomers, or salts of optical

13 isomers as the only active ingredient or in combination with

14 other active ingredients]; provided that the pharmacy or

15 retailer shall comply with the following conditions:

16   (1) The product, mixture, or preparation shall be sold or

17   distributed from an area not accessible by customers

18   or the general public, such as behind the counter or

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1   in a locked display case and where the seller delivers

2   the product directly into the custody of the

3   purchaser;

4   (2)   Any person purchasing or otherwise acquiring any

5   product, mixture, or preparation shall produce

6   [proper] valid, government-issued identification

7   containing the photograph, date of birth, printed

8   name, signature, and address of the individual

9   obtaining the substance;

10   (3)   The pharmacy or retailer shall [record, in an

11   electronic log on software provided by the narcotics

12   enforcement division of the department and approved by

13   the administrator.] maintain a record of required

14   information for each sale of a nonprescription product

15   containing pseudoephedrine or ephedrine including:

16   (A)   The date and time of any transaction under

17   paragraph (2);

18   (B)   The name, address, and date of birth of the

19   person;

20   (C)   The type of identification provided by the

21   individual obtaining the substance[.] and

22   identification number;

1   (D)   The agency issuing the identification used; and

2   (E)   The name of the compound, mixture, or

3   preparation, and the amount; and

4   (4)   The pharmacy or retailer shall [~

5   ~~(A)~~   ~~Record the information required under paragraph~~

6   ~~(3) on an electronic worksheet on software~~

7   ~~provided by the narcotics enforcement division of~~

8   ~~the department; and~~

9   ~~(B)~~   ~~Electronically mail the worksheet record to the~~

10   ~~narcotics enforcement division once a month.~~]

11   require every purchaser to sign a written or

12   electronic log attesting to the validity of the

13   information.

14   The information shall be retained by the pharmacy or

15   retailer for a period of two years. The electronic

16   log shall be capable of being checked for compliance

17   against all state and federal laws, including

18   interfacing with other states to ensure comprehensive

19   compliance, and shall be subject to random and

20   warrantless inspection by county or state law

21   enforcement officers.

1   (b) Beginning January 1, 2012, before completing a sale of

2 an over-the-counter product containing pseudoephedrine or

3 ephedrine, a pharmacy or retailer shall electronically submit

4 the information required pursuant to subsection (a) to the

5 National Precursor Log Exchange administered by the National

6 Association of Drug Diversion Investigators; provided that the

7 National Precursor Log Exchange is available to retailers in the

8 State without a charge for accessing the system. The seller

9 shall not complete the sale if the system generates a stop sale

10 alert. Absent negligence, wantonness, recklessness, or

11 deliberate misconduct, any retailer utilizing the electronic

12 sales tracking system in accordance with this subsection shall

13 not be civilly liable as a result of any act or omission in

14 carrying out the duties required by this subsection and shall be

15 immune from liability to any third party, unless the retailer

16 has violated this subsection, in relation to a claim brought for

17 such violation.

18   (c) If a pharmacy or retailer selling an over-the-counter

19 product containing pseudoephedrine or ephedrine experiences

20 mechanical or electronic failure of the electronic sales

21 tracking system and is unable to comply with the electronic

22 sales tracking requirement under this section, the pharmacy or

1 retail establishment shall maintain a written log or an

2 alternative electronic recordkeeping mechanism until such time

3 as the pharmacy or retail establishment is able to comply with

4 the electronic sales tracking requirement;

5   (d) A pharmacy or retailer selling an over-the-counter

6 product containing pseudoephedrine or ephedrine may seek an

7 exemption from submitting transactions to the electronic sales

8 tracking system in writing to the board of pharmacy stating the

9 reasons therefore. The board of pharmacy may grant an exemption

10 for good cause shown, but in no event shall the exemption exceed

11 one hundred eighty days. Any pharmacy or retailer that receives

12 an exemption shall maintain a hard copy log and shall require

13 the purchaser to provide the information required under this

14 section before completion of any sale. The log shall be

15 maintained as a record of each sale for inspection by any law

16 enforcement officer or inspector of the board of pharmacy during

17 normal business hours.

18   (e) The National Association of Drug Diversion

19 Investigators shall forward Hawaii transaction records in

20 National Precursor Log Exchange to the narcotics enforcement

21 division of the department of public safety weekly and provide

22 real-time access to National Precursor Log Exchange information

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1   through the National Precursor Log Exchange online portal to law

2   enforcement in the State as authorized by the narcotics

3   enforcement division; provided that the narcotics enforcement

4   division executes a memorandum of understanding with National

5   Association of Drug Diversion Investigators governing access to

6   the information;

7   (f) This system shall be capable of generating a stop sale

8   alert, which shall be a notification that completion of the sale

9   would result in the seller or purchaser violating the quantity

10   limits set forth in this section. The system shall contain an

11   override function that may be used by a seller of

12   pseudoephedrine or ephedrine who has a reasonable fear that

13   imminent bodily harm will result if they do not complete the

14   sale. Each instance where the override function is utilized

15   shall be logged by the system.

16   [(b)] (g) No person shall knowingly purchase, [possess,]

17   receive, or otherwise acquire products containing 3.6 grams or

18   more [than] per day or nine or more grams [of any product,

19   mixture, or preparation containing any detectable quantity of

20   pseudoephedrine or its salts, isomers, or salts of optical

21   isomers within a thirty-day period,] per thirty-day period of

22   pseudoephedrine or ephedrine base, except that this limit shall

1   not apply to any quantity of such product, mixture, or

2   preparation dispensed pursuant to a valid prescription.

3   [(e)] (h) Any person who violates [subsection] subsections

4   (b) through (f) is guilty of a class C felony.

5   [(d)] (i) The department, by rule, may exempt other

6   products from this section, if the administrator finds that the

7   products are not used in the illegal manufacture of

8   methamphetamine or other controlled substances. A manufacturer

9   of a drug product may apply for removal of the product from this

10   section if the product is determined by the administrator to

11   have been formulated in such a way as to effectively prevent the

12   conversion of the active ingredient into methamphetamine.

13   [(e)] (j) Notwithstanding any other provision of this

14   chapter to the contrary, every wholesaler shall report to the

15   administrator all sales made to any retailer, of any product,

16   mixture, or preparation containing any detectable quantity of

17   pseudoephedrine[,] or ephedrine, its salts, optical isomers, or

18   salts of optical isomers, as the only active ingredient or in

19   combination with other active ingredients. The department shall

20   provide a common reporting form that contains at least the

21   following information about the product, mixture, or

22   preparation:

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1   (1)   Generic or other name;

2   (2)   Quantity sold;

3   (3)   Date of sale;

4   (4)   Name and address of the wholesaler; and

5   (5)   Name and address of the retailer.

6   [(f)] (k)   Intentional or knowing failure of a retailer or

7 pharmacy to transmit any information as required by this section

8 shall be a misdemeanor and shall result in the immediate

9 suspension of that retailer's ability to sell any product,

10 mixture, or preparation containing any detectable quantity of

11 pseudoephedrine[.] or ephedrine, its salts, optical isomers, or

12 salts of optical isomers as the only active ingredient or in

13 combination with other active ingredients until authorized by

14 the administrator."

15   SECTION 2.   This Act does not affect rights and duties that

16 matured, penalties that were incurred, and proceedings that were

17 begun before its effective date.

18   SECTION 3.   Statutory material to be repealed is bracketed

19 and stricken.   New statutory material is underscored.

20   SECTION 4.   This Act shall take effect upon approval.

APPROVED this   day of   , 2011