NEIL ABERCROMBIE
GOVERNOR

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No. _____

TESTIMONY ON HOUSE BILL 1962
A BILL FOR AN ACT RELATING TO PSEUDOEPHEDRINE
by
Jodie F. Maesaka-Hirata, Director
Department of Public Safety

House Committee on Health
Representative Ryan I. Yamane, Chair
Representative Dee Morikawa, Vice Chair

Friday, February 3, 2012, 9:00 AM
State Capitol, Room 329

Chair Yamane, Vice Chair Morikawa, and Members of the Committee:

The Department of Public Safety (PSD) supports the intent of House Bill 1962 that proposes to establish a tracking system for the sale of products containing pseudoephedrine as a base.

The Legislature passed Act 184 in 2008 that mandated that all retail distributors selling products, mixtures, or preparations containing pseudoephedrine must electronically report all retail sales data to the Narcotics Enforcement Division (NED) on a monthly basis. Pseudoephedrine control and tracking has been very successful in Hawaii in reducing the amount of clandestine laboratories manufacturing methamphetamine, commonly referred to as "ICE." NED formed a partnership with the Western States Information Network (WSIN/RISS) whose mission is to support law enforcement efforts

nationwide to combat illegal drug trafficking, identity theft, human trafficking, violent crime, terrorist activity, and to promote officer safety in Alaska, California, Hawaii, Oregon, Washington, as well as Canada and Guam to host the pseudoephedrine tracking database.

The electronic tracking log is an impressive first step for the State to attempt to track retail pseudoephedrine sales and decrease the production of methamphetamine (ICE). This tracking system has a few shortcomings, unlike Hawaii's electronic prescription monitoring program a system that reports all controlled substance prescription data monthly, the pseudoephedrine tracking program does not report information relating to persons, who purchase just under the 3 grams per day or a 9 gram per month limit. Presently, most of the sales of pseudoephedrine containing products are sold at pharmacies and that many of the non-pharmacy retail distributors, no longer carry pseudoephedrine containing products and are now selling over the counter "pseudoephedrine PE" products that cannot be utilized to manufacture methamphetamine.

The system being proposed by House Bill 1962 will greatly improve a retailer's ability to safely sell pseudoephedrine containing products to its customers by having the ability to check a computerized database prior to making the sale. PSD would like to recommend an amendment to House Bill 1962, Section 5 page, lines 7 through 8, replace "board of pharmacy" with "administrator" to read as follows:

> ...<u>in writing to the administrator stating the reasons therefore. The administrator may grant an exemption for</u> ...

Chapter 329-1 defines "administrator" as the Narcotics Enforcement Division Administrator in PSD, who has the responsibility for tracking all controlled substances and regulated chemicals utilized to manufacture controlled substances.

The Department would like to point out that the success of the program proposed in House Bill 1962 will rest primarily on a third party entity, the National Association of Drug Diversion Investigators (NADDI), who will provide transaction reports and allow access to the National Precursor Log Exchange to NED and retailers. If NADDI does not allow access or chooses not to allow the State to participate, then House Bill 1962 will not succeed.

Thank you for the opportunity to testify on this matter.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012

ON THE FOLLOWING MEASURE:
H.B. NO. 1962, RELATING TO PSEUDOEPHEDRINE.

BEFORE THE:
HOUSE COMMITTEE ON HEALTH

DATE: Friday, February 3, 2012 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Yamane and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but submits its comments and legal concerns.

The purpose of this bill is to establish a tracking system for the sale of products containing pseudoephedrine. The Department's first concern is that the bill contains some ambiguous and inconsistent wording with respect to the requirements to maintain records of pseudoephedrine transactions. The second concern relates to the bill's provisions that require pseudoephedrine transaction information to be submitted to the National Precursor Log Exchange administered by the National Association of Drug Diversion Investigators.

1. Electronic or Written Logs:

The bill as drafted is somewhat inconsistent with respect to requirements upon pharmacies and retailers to maintain written or electronic logs of transactions involving pseudoephedrine.

For example, on page 2 of the bill, starting at line 10, the requirement that a pharmacy or retailer maintain an electronic log of pseudoephedrine transactions has been repealed. Instead, the bill only requires that a "record" of specified information be maintained.

Later, however, on page 3, at lines 4-13, the pharmacy or retailer is required to have every purchaser sign a written **or** electronic log attesting to the validity of the information. Then at lines 15-21, the law provides that the electronic log shall be capable of being checked for compliance against all state and federal laws, including interfacing with other states to ensure

comprehensive compliance, and shall be subject to random and warrantless inspection by law enforcement. There is no reference to, or requirements placed upon, the alternative written log.

We respectfully recommend that these inconsistencies be cured.

2. Provisions that Require Pharmacies and Retailers to Submit Information to the National Precursor Log Exchange:

Starting at the top of page 4, the bill requires pharmacies and retailers to electronically submit pseudoephedrine transaction information to the National Precursor Log Exchange (NPLE) administered by the National Association of Drug Diversion Investigators (NADDI). This is a conditional requirement that is effective only if the NPLE is available to retailers without charge. Therefore, if NADDI decides to charge for NPLE access, then pharmacies and retailers would not be required to submit any information. The challenge is that this bill is attempting to establish a tracking system by requiring the use of a specific system that is controlled by a completely independent entity. Hawaii has no control over NADDI, nor any formalized relationship with this independent entity.

On page 5, starting at line 17, the bill requires NADDI to forward Hawaii transaction records in the NPLE to the State Narcotics Enforcement Division and provide real-time access to NPLE information to law enforcement agencies in Hawaii. These requirements on NADDI are also conditional. The Narcotics Enforcement Division must first execute a memorandum of understanding with NADDI that governs access to the information.
There currently is no memorandum of understanding. The bill appears to be attempting to make future terms of a memorandum of understanding statutorily mandated upon an independent entity.

On page 6, at lines 6-14, the bill requires that the NPLE system provide several specific functions for Hawaii.

On page 7, at lines 3-4, the bill provides that any person who violates subsections (b) through (g) is guilty of a class C felony. Subsection (e) requires NADDI to forward Hawaii transaction records in NPLE to the Narcotics Enforcement Division and provide real-time access to the NPLE information to law enforcement. It is currently unclear, if NADDI decides not to forward records or provide real-time access, whether it will be committing a class C felony. Subsection (f) requires the NPLE system to provide several specific functions for Hawaii. It is

likewise unclear, if NADDI does not provide one of those specified functions, whether it will be committing a class C felony.

As we noted at the start of our testimony, we appreciate the intent of the bill, and suggest that the foregoing recommendations can help cure potential legal issues with it.

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February 3, 2012

House Committee on Health
Rep. Ryan I. Yamane, Chair
Rep. Dee Morikawa, Vice Chair

By: Richard C. Botti
On Behalf of LISH, and the Consumer Healthcare Products Association

Re: HB 1962 RELATING TO PSEUDOEPHEDRINE

Chairs & Committee Members:

This measure is a means of addressing the crystal meth issue, while not punishing the tens of thousands of consumers having cold, flu, and or allergy issues.

Every year at this time, many of us experience an epidemic of URI (Upper Respiratory Infection) where antibiotics are next to useless. Shaking the URI can take well over a month, and can reoccur as soon as the weather get damp and cold again. We have learned to think in advance and make sure we have an adequate supply of pseudoephedrine products on hand, as they are the only products that help control the symptoms. It is a family illness, not just a one person issue. This measure will avoid requiring each of us to go to the doctor, doubling, tripling, or quadrupling the cost and inconvenience, when self diagnosis is a no brainer.

The attached chart best explains what Electronic Tracking will do.

We propose the Legislature address the concerns of meth labs with electronic Tracking.

We do not believe anyone that is so possessed to try crystal meth should be placed ahead of honest law abiding citizens by creating major inconvenience, unnecessary cost, and unnecessary suffering. We should not put the criminal element against the needs of the majority.

Electronic-tracking (E-tracking) is the best solution to reducing the production of methamphetamine.

Electronic Tracking is the Right Solution	Rx is Too Costly and More Effective Alternatives Exist	PSE is Important
HEADLINE: •1 E-tracking is the best solution to reducing meth labs. It is the only solution that will block illegal sales in real time and prevent meth cooks from buying illegal amounts of PSE.	**HEADLINE:** •2 A prescription mandate would be very expensive for the healthcare system and would not effectively solve the problem.	**HEADLINE:** •3 Pseudoephedrine is a unique and important decongestant relied on by over 16 million cold, allergy, and sinus sufferers.
KEY FACTS: •4 E-tracking is a "real-time" system that allows the retailer to refuse an illegal sale, based on purchases made anywhere in the state. E-tracking is the only system that can provide real-time stop-sale across multiple states. •5 Twelve of the 14 states that have taken action to fight illegal PSE sales have rejected prescription mandates and chosen a better solution—electronic stop sale e tracking. •6 E-tracking has a proven track record and blocks thousands of attempted purchases. o1 In the four states that have fully implementing this system, e-tracking technology blocks nearly 40,000 grams of illegal pseudoephedrine sales per month. o2 E-tracking in a Florida pilot project reduced illegal sales by over 90%.	**KEY FACTS:** •7 If PSE is made Rx, o3 Illegal sales would not be blocked; o4 Current sales limits would not apply; and o5 Lose ability to track illegal purchases across state lines. •8 Making PSE Rx only will: o6 burden millions of consumers with significantly higher costs to get needed medication, o7 force consumers to go to the expense and inconvenience of unnecessary doctor visits, o8 prevent consumers from quickly treating a common cold or chronic allergies with their preferred medicine, and o9 trigger Medicaid coverage, driving up state-budget costs. •9 Supply does not impact demand. Mexico banned PSE nearly three years ago but the country is once again the primary source of methamphetamine in the US, according to the Justice Department's national Drug intelligence Center's 2010 threat assessment.	**KEY FACTS:** •1 16 million American consumers take pseudoephedrine each year. •2 PSE is pharmacologically different than other decongestants and for some people, is the only oral decongestant that works for them •3 PSE is the only decongestant available for 12 hour and 24 hour relief •4 In a recent nationwide survey, a majority of consumers: o1 oppose an Rx mandate (63%) and o2 think e-tracking was a better solution than an Rx program.

HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)
1050 Bishop St. Box 235
Honolulu, HI 96813
Fax : 808-791-0702
Telephone : 808-533-1292

DATE: Friday, February 03, 2012

TIME: 9:00 a.m.

PLACE: Conference Room 329

TO: Rep. Ryan I. Yamane, Chair; Rep. Dee Morikawa, Vice Chair

FROM: Hawaii Food Industry Association - Lauren Zirbel, Executive Director

RE: HB 1962 RELATING TO PSEUDOEPHEDRINE

Chairs & Committee Members:

HFIA supports this measure because it provides an up to date, real – time tracking system that will help ensure that pseudoephedrine products are not illegally sold.

E-logs provide real-time approval or denial of PSE purchases at the point-of-sale, creating no access barriers for the 18 million American households that purchase non-prescription cold and allergy medicines to treat their symptoms.

E-logs enable law enforcement to track real-time activity and search histories, thus identifying "smurfing" operations and labs that might otherwise go undetected. 19 states have enacted laws that require electronic tracking of PSE sales: Kentucky, Illinois, Louisiana, Iowa, Missouri, Florida, Alabama, S. Carolina, Kansas, Washington, N. Dakota, Nebraska, Indiana, Tennessee, N. Carolina, Michigan, Texas, Oklahoma, and Arkansas. Nationwide, the NPLEx system blocked over 850,000 boxes, accounting for over 2 million grams of pseudoephedrine in 2011 alone.

a prescription-only policy would fail to limit PSE sales, curb meth use, or enable meth lab detection. In fact, Oregon (a prescription only state) had more meth related deaths in 2010 than they did prior to their Rx law passage. And Mississippi, another Rx state, ranked 10th in the country in meth labs just last year – more than Texas, Florida, New York, and California!

Federal law currently limits all PSE-containing OTCs to behind the counter, with sales per customer of no more than 3.6 grams per day and 9 grams per 30 days, and requires purchasers to show ID and sign a logbook.

Electronic tracking allows retailers to block illegal sales and enhances law enforcement's suppression and investigative efforts. **Establishing a multistate electronic tracking system for medicines that contain PSE will prevent smurfing across different retailers, even across state lines, and provide a highly efficient law enforcement tool. At the same time, it will create no new barriers for the millions of cold and allergy sufferers looking for relief.**

Thank you for the opportunity to provide this testimony.