



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2228, S.D. 2, RELATING TO PSEUDOEPHEDRINE.

**L A T E**

**BEFORE THE:**

HOUSE COMMITTEE ON HEALTH

**DATE:** Tuesday, March 13, 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

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Chair Yamane and Members of the Committee:

The Department of the Attorney General (the "Department") appreciates the intent of this bill, but recommends changes to address certain technical issues and legal concerns.

The purpose of this bill is to establish a tracking system for the sale of products containing pseudoephedrine.

On page 3, at lines 14-21, the bill sets out the existing statutory wording that requires an electronic log of information kept by a pharmacy or retailer to be available for inspection by law enforcement officers. This requirement only applies to electronic logs of information. The Department notes, however, that on page 2 of the bill, at lines 10-15, the requirement that the pharmacy or retailer maintain an electronic log of information is being repealed. The pharmacy or retailer is being given the option of maintaining either an electronic or written log of information. The concern is that the requirement to keep electronic logs available for inspection by law enforcement is not being extended to written logs.

On page 4, at lines 9-17, the bill provides, "Except in the case of **absent** negligence, wantonness, recklessness, or deliberate misconduct, any retailer using the electronic sales tracking system in accordance with this subsection shall not be civilly liable as a result of any act or omission in carrying out the duties required by this subsection and shall be immune from liability to any third party, unless the retailer has violated this subsection, in relation to a claim brought for such violation." It appears that the word "absent" should be deleted from that sentence.

Starting on page 6, at lines 19-21, the bill provides that no person shall knowingly purchase, receive, or otherwise acquire products containing 3.6 grams or more per day or nine or more grams per thirty-day period of pseudoephedrine base. This is not consistent with the wording used on page 1, at lines 6-9, which provides that a pharmacy or retailer may sell or distribute to a person without a prescription products containing not more than 3.6 grams per day or not more than nine grams per thirty-day period of pseudoephedrine base. In other words, a pharmacy could legally provide a person with products containing 3.6 grams per day or nine grams per thirty-day period of pseudoephedrine base, but the person receiving the specific quantity would be in violation of law. The wording on page 6, at lines 19-21, should be revised to state "more than" the specified amounts—"products containing more than 3.6 grams per day or more than nine grams...per thirty-day period...."

We appreciate the intent of the bill, and respectfully suggest that the foregoing concerns be addressed to cure potential legal issues with it.