

NEIL ABERCROMBIE
GOVERNOR



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No. _____

TESTIMONY ON SENATE BILL 2361
A BILL FOR AN ACT RELATING TO PSEUDOEPHEDRINE
by

Jodie F. Maesaka-Hirata, Director
Department of Public Safety

Committee on Health
Senator Josh Green M.D., Chair
Senator Clarence K. Nishihara, Vice Chair

Monday, February 13, 2012, 1:15 PM
State Capitol, Conference Room 229

Chair Green, Vice Chair Nishihara, and Members of the Committee:

The Department of Public Safety (PSD) supports the intent of Senate Bill 2361 that proposes to make pseudoephedrine and pseudoephedrine containing products a Schedule V controlled substance.

The Legislature passed Act 184 in 2008 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 purchasing just under the 3 grams per day or a 9 gram a month limits. 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 Department would like to recommend an amendment to Senate Bill 2361 Section 1, page 1 lines 3 through 9 to read as follows:

"(c) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers[-] that contain pseudoephedrine and pseudoephedrine containing products."

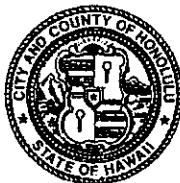
Senate Bill 2361 enacted would allow pharmacies to report all sales on Hawaii's electronic prescription monitoring program, saving on the reporting of data on two separate systems as well as allow NED the ability to track the dispensing of this controlled substance.

For these reasons the Department supports passage of Senate Bill 2361 with the proposed amendments.

Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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OUR REFERENCE JM-TA

February 13, 2012

The Honorable Josh Green, M.D., Chair
and Members
Committee on Health
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Green and Members:

SUBJECT: Senate Bill No. 2361, Relating to Pseudoephedrine

I am John McEntire, Major of the Narcotics/Vice Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports Senate Bill No. 2361, Relating to Pseudoephedrine.

Passage of this bill will classify pseudoephedrine as a Schedule V drug that may be dispensed only with a prescription. The drug pseudoephedrine can and has been used as a precursor to make the illegal drug crystal methamphetamine or "Ice."

Passage of this bill will reduce the large purchases of the drug by those who seek to abuse it in this manner. It will also reduce its sale on the black market as well. This will assist law enforcement officers to make arrests and investigate those who are selling it illegally.

The Honolulu Police Department urges you to support Senate Bill No. 2361, Relating to Pseudoephedrine.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,


LOUIS M. KEALOHA
Chief of Police


JOHN McENTIRE, Major
Narcotics/Vice Division

Serving and Protecting With Aloha

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February 14, 2012

MEMO TO: The Honorable Josh Green, M.D., Chair
Senate Committee on Health

F R O M: Elle Cochran
Council Member *Elle Cochran*

SUBJECT: TESTIMONY IN SUPPORT OF SB 2361, RELATING TO
PSEUDOEPHEDRINE

Thank you for the opportunity to testify in support of this important measure. I offer my support for this bill as an individual member of the Maui County Council. This bill classifies pseudoephedrine as a schedule V drug that may be dispensed only with a prescription.

I feel strongly that the State of Hawaii should follow the lead of other trailblazing states in their pursuit to combat the damaging effects of Meth. Most of our Hawaii families are no strangers to the strangle-hold that meth abuse can have on family members or loved ones. This legislation will show that government officials play a supporting role and are determined to heal Hawaii of this devastating disease.

The successful track records of other states that have passed parallel legislation, like Oregon and Mississippi, should aid in your confident decision to pass SB 2361 unanimously. In 2006 Oregon passed legislation requiring a prescription for drugs containing pseudoephedrine. Since that time, their state's meth lab incidents have dropped by an astounding 96% (Oregon Department of Justice's High Intensity Drug Trafficking Areas program) and their meth-related arrests have shrunk from between 28% and 32% (Oregon Criminal Justice Commission). In Mississippi the prescription-only law was passed and within the course of one year, authorities saw meth lab seizures drop by nearly 70% (*New York Times*, March 2011).

Opponents to such legislation will site that this is an extreme and unnecessary move to eradicate or control a substance that could otherwise be managed by tracking sales or by requiring drugs containing these ingredients be confined to sales behind a counter. The fact is that Oregon and Mississippi both tried these measures and determined that there existed too many loop-holes to really have the force and effect originally intended.

An act known as "smurfing" has become the way around electronic tracking systems (currently used in states like Kentucky and Oklahoma) that would set daily and monthly limits on how

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much each customer could buy. "Smurfers" buy the drug at multiple stores and in small enough amounts to evade detection; and use fake identification when it was required.

Other opponents of prescription-only laws state that this law will create a hardship for consumers with a cold, by requiring that they visit the doctor to obtain a prescription for a decongestant; and that these measures will do nothing to stop drug traffickers from importing vast amounts of Mexican methamphetamine.

However, store shelves in states that have limited pseudoephedrine sales are now filled with substitutes made with an alternative cold remedy called phenylephrine, which drug-maker Pfizer reports, consumers appear to be equally satisfied with (i.e.: in lieu of Sudafed, consumers can now purchase Sudafed PE.) (National Public Radio, 2006); and according to Robert Bovett, District Attorney, Lincoln County, Oregon, demand for product from Mexico has dropped significantly since Mexico banned pseudoephedrine in 2009 and meth produced there is now less potent.

I whole-heartedly agree with a statement made by Oregon State Senator, Ginny Burick, that a prescription-only requirement is a small sacrifice for consumers, compared to the devastating effects of meth.

For all of the aforementioned reasons, I strongly support the intent of this bill and respectfully urge the committee to pass SB 2361.

Mahalo for the opportunity to testify.



HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)
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TO: COMMITTEE ON HEALTH

Senator Josh Green, M.D., Chair

Senator Clarence K. Nishihara, Vice Chair

DATE: Monday, February 13, 2012

TIME: 1:15 p.m.

PLACE: Conference Room 229

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

RE: SB 2361 RELATING TO PSEUDOEPHEDRINE and SB 2474 RELATING TO HEALTH

Chairs & Committee Members:

In opposition.

We estimate that upwards to 100,000 citizens and tourists in Hawaii would be required to visit a doctor if a prescription were required to purchase pseudoephedrine products. **This would exacerbate current provider shortages through resulting physician office visits.**

We estimate sales of pseudoephedrine in Hawaii to be around 250,000 packages.

Most meth is imported into the U.S. as a finished product. Approximately 20% is sourced from the U.S., with 80% from "superlabs" and less than 20% from small labs.

Electronic Tracking of PSE Sales Presents a Real Solution for Combating Meth Abuse. **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. For example, electronic tracking led to 70% of meth lab busts in key Kentucky counties, and reduced illegal sales by more than 90% in a Florida pilot. 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!

Law enforcement officials have testified before members of Congress about the effectiveness of e-logs, and communicated their concerns that a prescription-only policy would fail to limit PSE sales or enable meth lab detection.

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.**

E-tracking can also be combined with a state's meth conviction records. Oklahoma became the first state to enact a law prohibiting sales of PSE to individuals with meth convictions. State officials used their tracking system to identify individuals who had been blocked from making illegal pseudoephedrine purchases and discovered that as many as 60 percent of those being blocked had prior criminal records, many for drug charges. Now Oklahoma will deny any sales of pseudoephedrine to those individuals, even within otherwise legal quantity limits.

What is the Downside of Rx pseudophedrine?

Unfortunately, reducing or cutting off supply does not guarantee a reduction in demand or use. Mexico, for example, banned pseudoephedrine nearly three years ago. Yet the country is once again the "primary source of methamphetamine" in the U.S., according to the Justice Department's National Drug Intelligence Center's 2010 threat assessment. In fact, Oklahoma estimates that 70 percent of the meth in their state is from Mexico, in a potent, smokeable form called "ice."

Despite extreme actions taken by the Mexican government, drug traffickers and meth cooks have simply found alternative ingredients to use, such as phenylacetic acid, or they illegally smuggle pseudoephedrine to keep meth production viable and profitable.

What is the cost to consumers and taxpayers?

- If only half of the estimated 16 million Americans who use pseudoephedrine each year went to a doctor once a year to obtain a prescription for pseudoephedrine, this would **add three quarters of a billion dollars in healthcare costs** for office visits alone.
- Restricting access to pseudoephedrine products would also decrease sales tax revenues in many states, as over-the-counter medications are subject to sales tax while prescription medications are not.
- Medicaid programs and state employee health and retiree insurance plans would likely face an average of \$11.5 million in added costs for increased provider visits and provision of prescription pseudoephedrine.

The Good News:

The OTC industry offering to pay for this system! The Consumer Healthcare Products Association (CHPA)—the trade association representing U.S. manufacturers of nonprescription medicines—supports a multistate electronic tracking system in retail outlets that will monitor all over-the-counter (OTC) PSE purchases in real-time to prevent criminals from exceeding legal limits. Providing an enforcement mechanism for the purchase limits is the best way to curb the diversion of PSE for meth production. States have been passing laws requiring such systems, but in some cases, the laws do not take effect unless funding for them is provided. States began asking for industry support, and industry agreed to help.

Thank you for the opportunity to provide this testimony.



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February 13, 2012

To: Senate Committee on Health
Senator Josh Green, M.D., Chair
Senator Clarence K. Nishihara, Vice Chair

By: Richard C. Botti
On Behalf of LISH

Re: SB 2361 Relating to Pseudoephedrine
SB 2474 Placing Pseudoephedrine as a schedule V drug.
SB 2228 Establishing a tracking system for Pseudoephedrine products.

Chairs & Committee Members:

SB 2361 and SB 2474 proposed addressing the crystal meth issue by punishing tens of thousands of law abiding consumers having cold, flu, and or allergy issues by requiring them to make a Dr. appointment, pay a co-pay fee, and then pay a Rx co-fee.

While it may make sense to those closely related to the meth problem, it doesn't make sense to those that are law abiding citizens that have an immediate problem with their cold, flu, and/or allergy, and know what the solution is to their problem.

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 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.

A former President of your Senate once said to me: "Dick, there are always choices!". This has become a common quote in our household. The vast majority of your constituents make good choices. Those that make poor choices generally are not your constituents, and don't care much about anything in the community. So, why punish us?

We support SB 2228, because it makes sense to go after the problem, not the symptom. The attached chart explains Electronic Tracking, and it won't cost the State.

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

| <u>Electronic Tracking is the Right Solution</u> | <u>Rx is Too Costly and More Effective Alternatives Exist</u> | <u>PSE is Important</u> |
|---|--|--|
| <p><u>HEADLINE:</u></p> <ul style="list-style-type: none"> •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. | <p><u>HEADLINE:</u></p> <ul style="list-style-type: none"> •2 A prescription mandate would be very expensive for the healthcare system and would not effectively solve the problem. | <p><u>HEADLINE:</u></p> <ul style="list-style-type: none"> •3 Pseudoephedrine is a unique and important decongestant relied on by over 16 million cold, allergy, and sinus sufferers. |
| <p><u>KEY FACTS:</u></p> <ul style="list-style-type: none"> •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. <ul style="list-style-type: none"> 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%. | <p><u>KEY FACTS:</u></p> <ul style="list-style-type: none"> •7 If PSE is made Rx, <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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. | <p><u>KEY FACTS:</u></p> <ul style="list-style-type: none"> •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: <ul style="list-style-type: none"> o1 oppose an Rx mandate (63%) and o2 think e-tracking was a better solution than an Rx program. |