



**GOV. MSG. NO. 1221**

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

June 15, 2012

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:

This is to inform you that on June 15, 2012, the following bill was signed into law:

SB2228 SD2 HD2

RELATING TO PSEUDOEPHEDRINE.  
**Act 119 (12)**

*Sincerely,*  


NEIL ABERCROMBIE  
Governor, State of Hawaii

Approved by the Governor

JUN 15 2012

on

THE SENATE  
TWENTY-SIXTH LEGISLATURE, 2012  
STATE OF HAWAII

ACT 113

S.B. NO. 2228  
S.D. 2  
H.D. 2

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# 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; reporting requirement for**  
5 **wholesalers.** (a) Notwithstanding any other law to the  
6 contrary, a pharmacy or retailer may sell or distribute to a  
7 person without a prescription products containing not more than  
8 3.6 grams per day[7] or not more than nine grams per thirty-day  
9 period of pseudoephedrine, without regard to the number of  
10 transactions [7, of any product, mixture, or preparation  
11 containing any detectable quantity of pseudoephedrine, its  
12 salts, optical isomers, or salts of optical isomers as the only  
13 active ingredient or in combination with other active  
14 ingredients]; provided that the pharmacy or retailer shall  
15 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

SB2228 HD2 HMS 2012-3403



1 in a locked display case and where the ~~[seller]~~  
2 pharmacy or retailer delivers the product directly  
3 into the custody of the ~~[purchaser,]~~ person purchasing  
4 or obtaining the substances;

5 (2) Any person purchasing or otherwise ~~[acquiring]~~  
6 obtaining any product, mixture, or preparation shall  
7 produce ~~[proper]~~ valid, government-issued  
8 identification containing the photograph, date of  
9 birth, printed name, signature, and address of the  
10 ~~[individual]~~ person purchasing or obtaining the  
11 substance;

12 (3) The pharmacy or retailer shall ~~[record, in an~~  
13 ~~electronic log on software provided by the narcotics~~  
14 ~~enforcement division of the department and approved by~~  
15 ~~the administrator,]~~ maintain a written or electronic  
16 log of required information for each sale of a  
17 nonprescription product containing pseudoephedrine,  
18 including:

19 (A) The date and time of any transaction under  
20 paragraph (2);

21 (B) The name, address, and date of birth of the  
22 person[+] purchasing or obtaining the substance;



1 (C) The type of identification provided by the  
2 [~~individual~~] person purchasing or obtaining the  
3 substance[+] and identification number;

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

5 (E) The name of the compound, mixture, or  
6 preparation, and the amount; and

7 (4) The pharmacy or retailer shall[+]

8 ~~(A) Record the information required under paragraph~~  
9 ~~(3) on an electronic worksheet on software~~  
10 ~~provided by the narcotics enforcement division of~~  
11 ~~the department; and~~

12 ~~(B) Electronically mail the worksheet record to the~~  
13 ~~narcotics enforcement division once a month.]~~  
14 require every person purchasing or obtaining the  
15 substance to sign a written or electronic log  
16 attesting to the validity of the information.

17 The information shall be retained by the pharmacy or  
18 retailer for a period of two years. The written or  
19 electronic log shall be capable of being checked for  
20 compliance against all state and federal laws,  
21 including interfacing with other states to ensure  
22 comprehensive compliance, and shall be subject to



1 random and warrantless inspection by county or state  
2 law enforcement officers.

3 (b) Beginning January 1, 2013, before completing a sale of  
4 an over-the-counter product containing pseudoephedrine, a  
5 pharmacy or retailer shall electronically submit the information  
6 required pursuant to subsection (a) to the National Precursor  
7 Log Exchange administered by the National Association of Drug  
8 Diversion Investigators; provided that the National Precursor  
9 Log Exchange is available to pharmacies or retailers in the  
10 State without a charge for accessing the system. The pharmacy  
11 or retailer shall not complete the sale if the system generates  
12 a stop sale alert. Except in the case of negligence,  
13 wantonness, recklessness, or deliberate misconduct, any pharmacy  
14 or retailer using the electronic sales tracking system in  
15 accordance with this subsection shall not be civilly liable as a  
16 result of any act or omission in carrying out the duties  
17 required by this subsection and shall be immune from liability  
18 to any third party, unless the pharmacy or retailer has violated  
19 this subsection, in relation to a claim brought for such  
20 violation.

21 (c) If a pharmacy or retailer selling an over-the-counter  
22 product containing pseudoephedrine experiences mechanical or



1 electronic failure of the electronic sales tracking system and  
2 is unable to comply with the electronic sales tracking  
3 requirement under this section, the pharmacy or retailer shall  
4 maintain a written log or an alternative electronic  
5 recordkeeping mechanism until such time as the pharmacy or  
6 retailer is able to comply with the electronic sales tracking  
7 requirement.

8 (d) A pharmacy or retailer selling an over-the-counter  
9 product containing pseudoephedrine may seek an exemption from  
10 submitting transactions to the electronic sales tracking system  
11 in writing to the administrator stating the reasons therefore.  
12 The administrator may grant an exemption for good cause shown,  
13 but in no event shall the exemption exceed one hundred eighty  
14 days. Any pharmacy or retailer that receives an exemption shall  
15 maintain a hard copy log and shall require the person purchasing  
16 or obtaining the substance to provide the information required  
17 under this section before completion of any sale. The log shall  
18 be maintained as a record of each sale for inspection by any law  
19 enforcement officer or inspector of the board of pharmacy during  
20 normal business hours.

21 (e) The National Association of Drug Diversion  
22 Investigators shall forward Hawaii transaction records in the



1 National Precursor Log Exchange to the narcotics enforcement  
2 division of the department of public safety weekly and provide  
3 real-time access to National Precursor Log Exchange information  
4 through the National Precursor Log Exchange online portal to law  
5 enforcement in the State as authorized by the narcotics  
6 enforcement division; provided that the narcotics enforcement  
7 division executes a memorandum of understanding with the  
8 National Association of Drug Diversion Investigators governing  
9 access to the information; provided further that the department  
10 of public safety narcotics enforcement division shall establish  
11 the electronic tracking system in conjunction with the State's  
12 existing narcotics tracking system beginning no later than  
13 January 1, 2015.

14 (f) This system shall be capable of generating a stop sale  
15 alert, which shall be a notification that completion of the sale  
16 would result in the pharmacy or retailer, or person purchasing  
17 or obtaining the substance, violating the quantity limits set  
18 forth in this section. The system shall contain an override  
19 function that may be used by a pharmacy or retailer selling  
20 pseudoephedrine who has a reasonable fear that imminent bodily  
21 harm will result if the sale is not completed. Each instance



1 where the override function is used shall be logged by the  
2 system.

3 ~~[(b)]~~ (g) No person shall knowingly purchase, ~~[possess,]~~  
4 receive, or otherwise acquire products containing more than 3.6  
5 grams per day or more than nine grams ~~[of any product, mixture,~~  
6 ~~or preparation containing any detectable quantity of~~  
7 ~~pseudoephedrine or its salts, isomers, or salts of optical~~  
8 ~~isomers within a thirty day period,]~~ per thirty-day period of  
9 pseudoephedrine, except that this limit shall not apply to any  
10 quantity of such product, mixture, or preparation dispensed  
11 pursuant to a valid prescription.

12 ~~[(e)]~~ (h) Any person who violates ~~[subsection]~~ subsections  
13 (b) through (g) is guilty of a class C felony.

14 ~~[(d)]~~ (i) The department, by rule, may exempt other products  
15 from this section, if the administrator finds that the products  
16 are not used in the illegal manufacture of methamphetamine or  
17 other controlled substances. A manufacturer of a drug product  
18 may apply for removal of the product from this section if the  
19 product is determined by the administrator to have been  
20 formulated in such a way as to effectively prevent the  
21 conversion of the active ingredient into methamphetamine.





1           ~~[(e)]~~ (j) Notwithstanding any other provision of this  
2 chapter to the contrary, every wholesaler shall report to the  
3 administrator all sales made to any retailer, of any product,  
4 mixture, or preparation containing any detectable quantity of  
5 pseudoephedrine, its salts, optical isomers, or salts of optical  
6 isomers, as the only active ingredient or in combination with  
7 other active ingredients. The department shall provide a common  
8 reporting form that contains at least the following information  
9 about the product, mixture, or preparation:

- 10           (1) Generic or other name;
- 11           (2) Quantity sold;
- 12           (3) Date of sale;
- 13           (4) Name and address of the wholesaler; and
- 14           (5) Name and address of the retailer.

15           ~~[(f)]~~ (k) Intentional or knowing failure of a retailer or  
16 pharmacy to transmit any information as required by this section  
17 shall be a misdemeanor and shall result in the immediate  
18 suspension of that retailer's ability to sell any product,  
19 mixture, or preparation containing any detectable quantity of  
20 pseudoephedrine, its salts, optical isomers, or salts of optical  
21 isomers as the only active ingredient or in combination with  
22 other active ingredients until authorized by the administrator."



1 SECTION 2. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 3. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.

APPROVED this 15 day of JUN, 2012



GOVERNOR OF THE STATE OF HAWAII