

SB40,SD1

Testimony



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Senate Committee on Judiciary & Labor @ 9am in Conference Room 016

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

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

Re: SB 40 SD1 RELATING TO PSEUDOEPHEDRINE

Chairs & Committee Members:

We wish to provide comments and proposed language to SB 40, SD1 in an attempt to find a balance between the needs of law enforcement's efforts to stifle those intent on misusing a necessary product for the tens of thousands of consumers coping with colds and allergies for themselves and their families in Hawaii each year.

We currently have federal restrictions on PSE products that require identification in order to purchase a product, and further, there are restrictions on quantities that may be purchased. Federal law currently limits purchases at no more than 3.6 grams per day, or no more than 9 grams per thirty day period of ephedrine or pseudoephedrine base, or their salts, isomers, or salts of isomers.

Since 2006 federal law has moved all PSE-containing medicines behind a sales counter, and requires a purchaser's signature in a logbook that is accessible by law enforcement. These laws have reduced meth labs nationally by more than 65 percent from their peak in 2003 to a low in 2007. According to the U.S. DEA, no meth labs have been found in Hawaii since 2006.

Because ten states have already adopted a National Precursor Log Exchange (NPLEx) program administered by the National Association of Drug Diversion Investigators (NADDI), we encourage your Committee to adopt the national limits on product purchases, in order to avoid confusion in the event Hawaii decides to join the program. This limit is also rationally based on the therapeutic dose for these products.

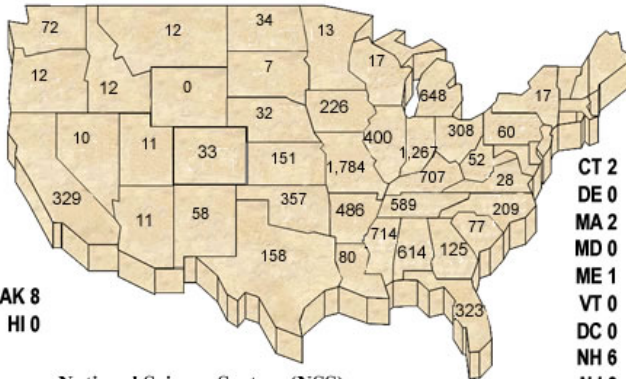
If the Legislature wants Hawaii to join other states in the NPLEx program, if it is required by law, program costs will be paid for by the nonprescription medicine industry. This program unifies the logbooks among all retailers in real-time and blocks illegal sales of pseudoephedrine before they happen. In the four U.S. States where it has been fully implemented, it blocks 40,000 grams of illegal pseudoephedrine sales every month, preventing potential meth labs.

We have attached a copy of the Model Pseudoephedrine Electronic Tracking Legislation that covers the issue more specifically. This would apply to language described on Page 7 of SB 40, SD1.

Maps of Methamphetamine Lab Incidents

NOTE: These maps include all meth incidents, including labs, "dumpsites" or "chemical and glassware" seizures.

**Total of All Meth Clandestine Laboratory Incidents Including Labs, Dumpsites, Chem/Glass/Equipment
Calendar Year 2009**

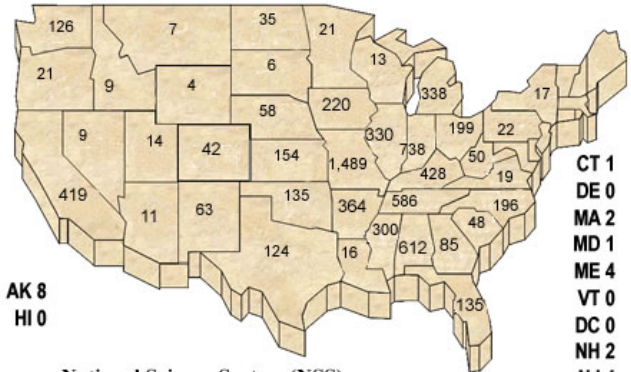


Source: National Seizure System (NSS)
Total: 10,064

Dates: 1/1/2009 to 12/31/2009

Map last updated September 2010

**Total of All Meth Clandestine Laboratory Incidents Including Labs, Dumpsites, Chem/Glass/Equipment
Calendar Year 2008**

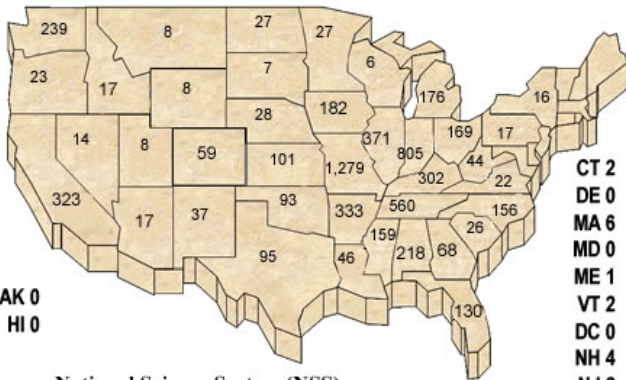


Source: National Seizure System (NSS)
Total: 7,485

Dates: 1/1/2008 to 12/31/2008

Map last updated September 2010

**Total of All Meth Clandestine Laboratory Incidents Including Labs, Dumpsites, Chem/Glass/Equipment
Calendar Year 2007**

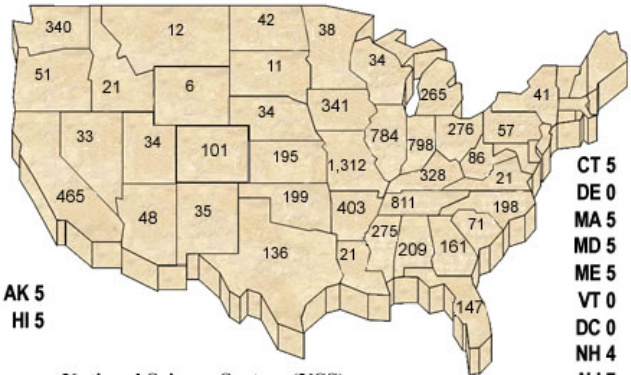


Source: National Seizure System (NSS)
Total: 6,233

Dates: 1/1/2007 to 12/31/2007

Map last updated September 2010

**Total of All Meth Clandestine Laboratory Incidents Including Labs, Dumpsites, Chem/Glass/Equipment
Calendar Year 2006**

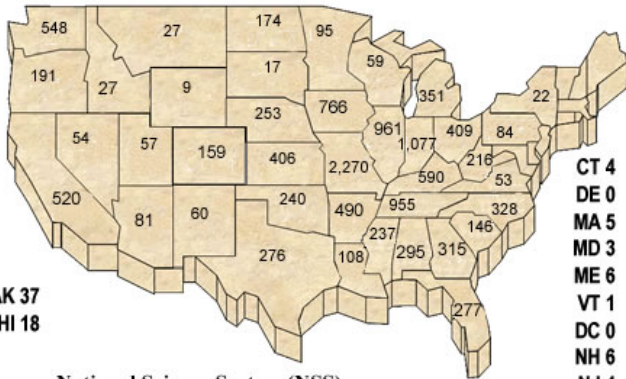


Source: National Seizure System (NSS)
Total: 8,486

Dates: 1/1/2006 to 12/31/2006

Map last updated September 2010

**Total of All Meth Clandestine Laboratory Incidents Including Labs, Dumpsites, Chem/Glass/Equipment
Calendar Year 2005**

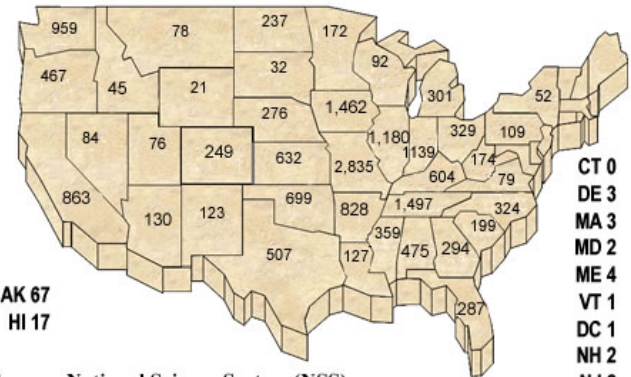


Source: National Seizure System (NSS)
Total: 13,403

Dates: 1/1/2005 to 12/31/2005

Map last updated September 2010

**Total of All Meth Clandestine Laboratory Incidents Including Labs, Dumpsites, Chem/Glass/Equipment
Calendar Year 2004**



Source: National Seizure System (NSS)
Total: 18,581

Dates: 01/01/2004 - 12/31/2004

Map last updated September 2010

Model Pseudoephedrine Electronic Tracking Legislation

- (a) (1) A retailer shall not sell to the same person, and a person shall not purchase, products containing more than three and six tenths (3.6) grams per day or more than nine (9) grams per thirty day period of ephedrine or pseudoephedrine base, or their salts, isomers, or salts of isomers. The limits shall apply to the total amount of base ephedrine and pseudoephedrine contained in the products, and not the overall weight of the products.
- (2) Nonprescription products containing pseudoephedrine or ephedrine shall be maintained behind the counter or in a locked case where the customer does not have direct access.
- (b) The retailer shall require any person purchasing a nonprescription product that contains pseudoephedrine or ephedrine to present valid government issued photo identification at the point of sale. The retailer shall record the name and address of the purchaser; name and quantity of product purchased; date and time purchased; and purchaser identification type and number, such as driver license state and number, and require the purchaser's signature in a logbook.
- (c) Beginning January 1, 2011, a retailer shall, before completing a sale under this section, electronically submit the required information to the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI). Absent negligence, wantonness, recklessness, or deliberate misconduct, any retailer utilizing the electronic sales tracking system in accordance with this subdivision 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 any provision of this subsection in relation to a claim brought for such violation.
- (d) If a retailer selling a nonprescription product containing pseudoephedrine or ephedrine experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, the retailer shall maintain a written log or an alternative electronic recordkeeping mechanism until such time as the retailer is able to comply with the electronic sales tracking requirement.
- (e) NADDI shall forward state transaction records in NPLEx to the appropriate state agency weekly, and provide real-time access to NPLEx information through the NPLEx online portal to law enforcement in the state as authorized by the agency.
- (f) This system shall be capable of generating a stop sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits set forth in this section. The seller shall not complete the sale if the system generates a stop sale alert. The system shall contain an override function that may be used by a dispenser of ephedrine or pseudoephedrine who has a reasonable fear of imminent bodily harm if they do not complete a sale. Each instance in which the override function is utilized shall be logged by the system.
- (g) A violation of any provision of this section is a Class A misdemeanor, punishable by fine only. If a product is dispensed in violation of subsection (a), the owner or operator of the wholesale or retail establishment dispensing the product shall be in violation of subsection (a).
- (h) This section does not apply to a person who obtains the product pursuant to a valid prescription.
- (i) This section shall supersede any local laws or ordinances regulating sales of products containing pseudoephedrine or ephedrine.

Preserving Access to Pseudoephedrine:

The Issue: Illegal Meth Production

Pseudoephedrine (PSE), a safe and effective active ingredient found in leading cold and allergy medicines to provide congestion relief, can be used to illegally manufacture methamphetamine. As a result, some policymakers and law enforcement officials are seeking to require a doctor's prescription to obtain PSE-containing medicines, even though the vast majority of these medicines are sold to law-abiding consumers.

Since 2006 federal law and some state laws have moved all PSE-containing medicines behind a sales counter, limited purchases to 3.6 grams per day and 9 grams per 30 days, and required a purchaser's signature in a logbook that is accessible by law enforcement. These laws reduced meth labs nationally by more than 65 percent from their peak in 2003 to a low in 2007.

But meth lab incidents in some states started increasing because criminals have identified ways to skirt these sales limits by "smurfing" – when criminals move from store to store to purchase illegal amounts of PSE to be used for the production of meth. Furthermore, meth cooks have deployed new ways to make smaller quantities of meth in more frequent batches, such as the one-pot, or "shake and bake," method.

The Solution: Preventing Illegal Sales

Twelve states have gone a step further and enacted laws requiring electronic stop sale systems, or e-tracking, of PSE sales. Electronic tracking unifies the logbooks that were previously kept in each individual store, preventing criminals from skirting the limits by visiting multiple stores.

Electronic blocking technology:

- Stops meth crimes before they happen by blocking illegal sales
- Blocks 40,000 grams of PSE sales in Illinois, Iowa, Kentucky and Louisiana alone each month
- Provides law enforcement with a record of purchase attempts and helps them identify meth cooks and ultimately, meth labs. The National Sheriffs Association passed a resolution in 2009 calling for implementation of just this type of multi-state system.

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.

A unified electronic tracking system combined with a national meth registry system would block illegal pseudoephedrine sales, identify meth cooks and keep them out of the system, while allowing legitimate consumers to treat their healthcare needs.

How Much PSE is Diverted for Meth Manufacture?

An estimated 16 million Americans purchase pseudoephedrine each year, with sales being proportionate to a state's population and having no correlation with the number of meth lab incidents. While estimates that the diversion rate is high have no factual basis, there is plenty of evidence that diversion is actually very low.

What we know about sales:

- In 2009 alone there were over 50 million packages of pseudoephedrine sold (not including WalMart) and about 10,000 meth labs reported in the US.
- A Kentucky report calculated approximately 2.2% of pseudoephedrine sold in that state in 2009 would be needed to fuel meth production in the 491 labs for which law enforcement estimated lab capacity.
- Just under 500,000 people purchased OTC medicines with pseudoephedrine over the past year in Kentucky. Less than 2% of purchasers bought more than 38 grams over the year, or roughly a dozen packages.

A Stronger, Smarter, Lasting Solution

As an industry, we are calling on Congress to amend the Combat Methamphetamine Epidemic Act to require that all pseudoephedrine sales be tracked through a nationwide electronic tracking system and that all convicted meth offenders be prohibited from purchasing cold and allergy medicines containing pseudoephedrine.

Mandating prescription-only sale of these common cold medicines, as some have proposed, would be ineffective and burdensome – on legitimate consumers, the healthcare system and law enforcement.

We must use proven technology to target meth abusers and protect legitimate access to medicines containing pseudoephedrine that many cold and allergy sufferers depend on for relief. We are committed to our nation's continued fight against meth and believe this is the right, comprehensive, and common sense solution.