
A BILL FOR AN ACT

RELATING TO PSEUDOEPHEDRINE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 329-75, Hawaii Revised Statutes, is amended to read as follows:

"§329-75 Sales of products, mixtures, or preparations containing pseudoephedrine; reporting requirement for wholesalers. (a) Notwithstanding any other law to the contrary, 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, without regard to the number of transactions~~[, of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers as the only active ingredient or in combination with other active ingredients]~~; provided that the pharmacy or retailer shall comply with the following conditions:

- (1) The product, mixture, or preparation shall be sold or distributed from an area not accessible by customers or the general public, such as behind the counter or



1 in a locked display case and where the seller delivers
2 the product directly into the custody of the
3 purchaser;

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

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

16 (A) The date and time of any transaction under
17 paragraph (2);

18 (B) The name, address, and date of birth of the
19 person;

20 (C) The type of identification provided by the
21 individual obtaining the substance~~[+]~~ and
22 identification number;



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

2 (E) The name of the compound, mixture, or
3 preparation, and the amount; and

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

5 ~~(A) Record the information required under paragraph~~

6 ~~(3) on an electronic worksheet on software~~

7 ~~provided by the narcotics enforcement division of~~
8 ~~the department; and~~

9 ~~(B) Electronically mail the worksheet record to the~~

10 ~~narcotics enforcement division once a month.]~~

11 require every purchaser to sign a written or

12 electronic log attesting to the validity of the

13 information.

14 The information shall be retained by the pharmacy or

15 retailer for a period of two years. The electronic

16 log shall be capable of being checked for compliance

17 against all state and federal laws, including

18 interfacing with other states to ensure comprehensive

19 compliance, and shall be subject to random and

20 warrantless inspection by county or state law

21 enforcement officers.



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

18 (c) If a pharmacy or retailer selling an over-the-counter
19 product containing pseudoephedrine experiences mechanical or
20 electronic failure of the electronic sales tracking system and
21 is unable to comply with the electronic sales tracking
22 requirement under this section, the pharmacy or retail



1 establishment shall maintain a written log or an alternative
2 electronic recordkeeping mechanism until such time as the
3 pharmacy or retail establishment is able to comply with the
4 electronic sales tracking requirement.

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

18 (e) The National Association of Drug Diversion
19 Investigators shall forward Hawaii transaction records in the
20 National Precursor Log Exchange to the narcotics enforcement
21 division of the department of public safety weekly and provide
22 real-time access to National Precursor Log Exchange information



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

11 (f) This system shall be capable of generating a stop sale
12 alert, which shall be a notification that completion of the sale
13 would result in the seller or purchaser violating the quantity
14 limits set forth in this section. The system shall contain an
15 override function that may be used by a seller of
16 pseudoephedrine who has a reasonable fear that imminent bodily
17 harm will result if the sale is not completed. Each instance
18 where the override function is used shall be logged by the
19 system.

20 ~~[(b)]~~ (g) No person shall knowingly purchase, [possess,]
21 receive, or otherwise acquire products containing 3.6 grams or
22 more [than] per day or nine or more grams [of any product,



1 ~~mixture, or preparation containing any detectable quantity of~~
2 ~~pseudoephedrine or its salts, isomers, or salts of optical~~
3 ~~isomers within a thirty day period,]~~ per thirty-day period of
4 pseudoephedrine base, except that this limit shall not apply to
5 any quantity of such product, mixture, or preparation dispensed
6 pursuant to a valid prescription.

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

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

17 ~~[(e)]~~ (j) Notwithstanding any other provision of this
18 chapter to the contrary, every wholesaler shall report to the
19 administrator all sales made to any retailer, of any product,
20 mixture, or preparation containing any detectable quantity of
21 pseudoephedrine, its salts, optical isomers, or salts of optical
22 isomers, as the only active ingredient or in combination with



1 other active ingredients. The department shall provide a common
2 reporting form that contains at least the following information
3 about the product, mixture, or preparation:

4 (1) Generic or other name;

5 (2) Quantity sold;

6 (3) Date of sale;

7 (4) Name and address of the wholesaler; and

8 (5) Name and address of the retailer.

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

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

20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

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



Report Title:

Pseudoephedrine; Tracking

Description:

Establishes an electronic tracking system for the sale of products containing pseudoephedrine base beginning 1/1/13. Requires the department of public safety narcotics enforcement division to implement the electronic tracking system in conjunction with the existing narcotics tracking system no later than 1/1/15. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

