

Approved \_\_\_\_\_

4-10-92

Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by SENATOR ROY M. EHRLICH at \_\_\_\_\_  
Chairperson

2:00 ~~a.m.~~/p.m. on April 9, 1992 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

- Emalene Correll, Legislative Research
- Bill Wolff, Legislative Research
- Norman Furse, Revisor's Office
- Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Chairman Ehrlich called the meeting to order at 2:00 p.m.

**Action on HB 3064 and SB 775:**

Senator Langworthy made a motion to reconsider action on **HB 3064**, seconded by Senator Burke. The motion carried. Senator Walker requested his vote be recorded as "No." Senator Burke and Senator Langworthy explained their decision to reconsider **HB 3064** which was in reference to reinserting Section 6 of **SB 775**. Senator Langworthy made a motion to amend **HB 3064** by adding Section 6 to what was **SB 775**, seconded by Senator Burke. No discussion followed. The motion carried. Senator Walker requested his vote be recorded as "No."

Staff briefed the Committee on the present status of **HB 3064** and **SB 775**.

The Chairman asked if any member of the Committee would like to address questions to any conferees or wish to offer an amendment to **HB 3064** or **SB 775**. Senator Walker made a motion to amend **HB 3064**, on page 4, line 24, by reinserting original language, and insert new language, "unless such compliance creates a conflict with the laws of the state in which the pharmacy is located, whereby such conflict shall be resolved by compliance with the law determined by the resident state board of pharmacy to have more strict requirements", seconded by Senator Ward. Discussion followed regarding requirements of states doing business in Kansas, and concern that strict requirements would discourage doing business with Kansas residents. Consumer protection, the need to find a middle ground and further study of the bill were discussed. The motion to amend failed.

The Chairman asked for wishes of the Committee on **HB 3064**. Senator Langworthy made a motion to recommend **HB 3064** as amended favorably for passage. Committee discussion related to protecting the consumer, supporting local pharmacies, and the convenience of mail order pharmacies. Senator Ward requested he be on record as opposing the reinsertion of language into the bill. No decision was made and **HB 3064** remains in Committee. A balloon copy of the bill with the proposed amendments is attached. (Attachment 1)

The meeting was adjourned at 2:40 p.m.



SENATE  
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 4-9-92

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

Chip Wheelen, Topeka

Ks Medical Soc.

BILL HENRY, Topeka

~~Pharm~~ Pharm Mfgs Assn

Rebecca Rice Topeka

KPA

Amy Muga LAWRENCE

Hernsen Langworthy

Mary Lou Lenz Missouri

Beekunja Ingelton

Bobb Williams

KS Pharmacists Assoc

Bick Liby Topeka

Gehrt & Roberts

HOUSE BILL No. 3064

By Committee on Public Health and Welfare

2-18

9 AN ACT concerning pharmacies; requiring registration of certain out-  
10 of-state pharmacies; amending K.S.A. 1991 Supp. 65-1643 and  
11 repealing the existing section.  
12

13 *Be it enacted by the Legislature of the State of Kansas:*  
14 Section 1. K.S.A. 1991 Supp. 65-1643 is hereby amended  
15 to read as follows: 65-1643. On and after the effective date of  
16 this act, it shall be unlawful:

17 (a) For any person to operate, maintain, open or establish  
18 any pharmacy within this state without first having obtained a  
19 registration from the board. Each application for registration of  
20 a pharmacy shall indicate the person or persons desiring the  
21 registration, including the pharmacist in charge, as well as the  
22 location, including the street name and number, and such other  
23 information as may be required by the board to establish the  
24 identity and exact location of the pharmacy. The issuance of a  
25 registration for any pharmacy shall also have the effect of per-  
26 mitting such pharmacy to operate as a retail dealer without  
27 requiring such pharmacy to obtain a retail dealer's permit. On  
28 evidence satisfactory to the board: (1) That the pharmacy for  
29 which the registration is sought will be conducted in full com-  
30 pliance with the law and the rules and regulations of the board;  
31 (2) that the location and appointments of the pharmacy are such  
32 that it can be operated and maintained without endangering  
33 the public health or safety; (3) that the pharmacy will be under  
34 the supervision of a pharmacist, a registration shall be issued  
35 to such persons as the board shall deem qualified to conduct  
36 such a pharmacy.

37 (b) For any person to manufacture within this state any  
38 drugs except under the personal and immediate supervision of  
39 a pharmacist or such other person or persons as may be ap-  
40 proved by the board after an investigation and a determination  
41 by the board that such person or persons is qualified by sci-  
42 entific or technical training or experience to perform such du-  
43 ties of supervision as may be necessary to protect the public

Senate Committee Amendments  
040992

Bill remains in committee.

*Senate (H&W)*  
*Attachment #*  
*4-9-92*

1-2

1 health and safety; and no person shall manufacture any such  
2 drugs without first obtaining a registration so to do from the  
3 board. Such registration shall be subject to such rules and reg-  
4 ulations with respect to requirements, sanitation and equip-  
5 ment, as the board may from time to time adopt for the  
6 protection of public health and safety.

7 (c) For any person to distribute at wholesale any drugs with-  
8 out first obtaining a registration so to do from the board.

9 (d) For any person to sell or offer for sale at public auction  
10 or private sale in a place where public auctions are conducted,  
11 any drugs without first having obtained a registration from the  
12 board so to do, and it shall be necessary to obtain the per-  
13 mission of the board in every instance where any of the prod-  
14 ucts covered by this section are to be sold or offered for sale.

15 (e) For any person to in any manner distribute or dispense  
16 samples of any drugs without first having obtained a permit  
17 from the board so to do, and it shall be necessary to obtain  
18 permission from the board in every instance where the samples  
19 are to be distributed or dispensed. Nothing in this subsection  
20 shall be held to regulate or in any manner interfere with the  
21 furnishing of samples of drugs to duly licensed practitioners,  
22 to pharmacists or to medical care facilities.

23 (f) Except as otherwise provided in this subsection (f), for  
24 any person operating a store or place of business to sell, offer  
25 for sale or distribute any drugs to the public without first having  
26 obtained a registration or permit from the board authorizing  
27 such person so to do. No retail dealer who sells 12 or fewer  
28 different nonprescription drug products shall be required to  
29 obtain a retail dealer's permit under the pharmacy act of the  
30 state of Kansas or to pay a retail dealer new permit or permit  
31 renewal fee under such act. It shall be lawful for a retail dealer  
32 who is the holder of a valid retail dealer's permit issued by  
33 the board or for a retail dealer who sells 12 or fewer different  
34 nonprescription drug products to sell and distribute nonpres-  
35 cription drugs which are prepackaged, fully prepared by the  
36 manufacturer or distributor for use by the consumer and labeled  
37 in accordance with the requirements of the state and federal  
38 food, drug and cosmetic acts. Such nonprescription drugs shall  
39 not include: (1) A controlled substance; (2) a drug product the  
40 label of which is required to bear substantially the statement:  
41 "Caution: Federal law prohibits dispensing without prescrip-  
42 tion"; or (3) a drug product intended for human use by hy-  
podermic injection; but such a retail dealer shall not be

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1 authorized to display any of the words listed in subsection (s)  
2 of K.S.A. 65-1626 and amendments thereto, for the designation  
3 of a pharmacy or drugstore.

4 (g) For any person to sell any drugs manufactured and sold  
5 only in the state of Kansas, unless the label and directions on  
6 such drugs shall first have been approved by the board.

7 (h) For any person to operate an institutional drug room  
8 without first having obtained a registration to do so from the  
9 board. Such registration shall be subject to the provisions of  
10 K.S.A. 65-1637a and amendments thereto and any rules and  
11 regulations adopted pursuant thereto.

12 (i) For any person to be a pharmacy intern without first  
13 obtaining a registration to do so from the board, in accordance  
14 with rules and regulations adopted by the board, and paying  
15 a pharmacy intern registration fee of \$25 to the board.

16 (j) *For any person operating outside the state to ship, mail  
17 or deliver in any manner a dispensed prescription-only drug  
18 into this state without first having obtained a registration as  
19 a pharmacy from the board. That part of the out-of-state phar-  
20 macy operation dispensing the prescription for a Kansas res-  
21 ident shall comply with Kansas law and rules and regulations  
22 adopted by the board.*

23 Sec. 2. K.S.A. 1991 Supp. 65-1643 is hereby repealed.

24 Section 1. (a) No nonresident pharmacy shall ship, mail or de-  
25 liver, in any manner, prescription drugs to a patient in this state  
26 unless registered under this section as a nonresident pharmacy.  
27 Applications for a nonresident pharmacy registration under this  
28 section shall be made on a form furnished by the board. A non-  
29 resident pharmacy registration shall be granted for a period of one  
30 year upon compliance by the nonresident pharmacy with the pro-  
31 visions of this section and rules and regulations adopted pursuant  
32 to this section and upon payment of the registration fee established  
33 under K.S.A. 65-1645 and amendments thereto for a pharmacy  
34 registration. A nonresident pharmacy registration shall be renewed  
35 annually on forms provided by the board, upon compliance by the  
36 nonresident pharmacy with the provisions of this section and rules  
37 and regulations adopted pursuant to this section and upon payment  
38 of the renewal fee established under K.S.A. 65-1645 and amend-  
39 ments thereto for the renewal of a pharmacy registration.

40 (b) As conditions for the granting of a registration and for the  
41 renewal of a registration for a nonresident pharmacy, the nonres-  
42 ident pharmacy shall comply with the following:

4 (1) Provide information to the board to indicate the person or

persons applying for the registration, the location of the pharmacy from which the prescription drugs will be dispensed, the names and titles of all principal owners and corporate officers, if any, and the names of all pharmacists dispensing prescription drugs to residents of Kansas;

(2) be registered and in good standing in the state in which such pharmacy is located;

(3) maintain, in readily retrievable form, records of prescription drugs dispensed to Kansas patients;

(4) supply upon request, all information needed by the board to carry out the board's responsibilities under this section and rules and regulations adopted pursuant to this section;

(5) maintain pharmacy hours that permit the timely dispensing of drugs to Kansas patients and provide reasonable access for the patients to consult with a licensed pharmacist about such patients' medications;

(6) provide toll-free telephone communication consultation between a Kansas patient and a pharmacist at the pharmacy who has access to the patient's records, and ensure that the telephone number(s) will be placed upon the label affixed to each prescription drug container dispensed in Kansas; and

(7) provide to the board such other information as the board may reasonably request to administer the provisions of this section.

~~(c) Each nonresident pharmacy shall comply with the following:~~

~~(1) All statutory and regulatory requirements of Kansas for controlled substances, including those that are different from federal law;~~

~~(2) all the statutory and regulatory requirements of Kansas regarding drug product selection laws;~~

~~(3) labeling of all prescriptions dispensed, to include but not be limited to identification of the product and quantity dispensed;~~

~~(4) all the statutory and regulatory requirements of Kansas for dispensing prescriptions in accordance with the quantities indicated by the prescriber; and~~

~~(5) the Kansas law regarding the maintenance and use of the patient medication profile record system.~~

(d) Each nonresident pharmacy shall develop and provide the board with a policy and procedure manual that sets forth:

(1) Normal delivery protocols and times;

(2) the procedure to be followed if the patient's medication is not available at the nonresident pharmacy, or if delivery will be delayed beyond the normal delivery time;

(3) the procedure to be followed upon receipt of a prescription

And by relettering subsections accordingly

1-5

3 for an acute illness, which policy shall include a procedure for  
4 delivery of the medication to the patient from the nonresident  
5 pharmacy at the earliest possible time, or an alternative that assures  
6 the patient the opportunity to obtain the medication at the earliest  
7 possible time; and

8 (4) the procedure to be followed when the nonresident pharmacy  
9 is advised that the patient's medication has not been received within  
10 the normal delivery time and that the patient is out of medication  
11 and requires interim dosage until mailed prescription drugs become  
12 available.

13 (e) Except in emergencies that constitute an immediate threat  
14 to the public health and require prompt action by the board, the  
15 board may file a complaint against any nonresident pharmacy that  
16 violates any provision of this section. This complaint shall be filed  
17 with the regulatory or licensing agency of the state in which the  
18 nonresident pharmacy is located. If the regulatory or licensing  
19 agency of the state in which the nonresident pharmacy is located  
20 fails to resolve the violation complained of within a reasonable time,  
21 not less than [90] days from the date that the complaint is filed, [or  
22 ~~fails to resolve the violation complained of to the satisfaction of the~~  
23 ~~board]~~ disciplinary proceedings may be initiated by the board. The  
24 board also may initiate disciplinary actions against a nonresident  
25 pharmacy if the regulatory or licensing agency of the state in which  
26 the nonresident pharmacy is located lacks or fails to exercise  
27 jurisdiction.

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28 (f) It is unlawful for any nonresident pharmacy which is not  
29 registered under this act to advertise its services in this state, or  
30 for any person who is a resident of this state to advertise the  
31 pharmacy services of a nonresident pharmacy which has not reg-  
32 istered with the board, with the knowledge that the advertisement  
33 will or is likely to induce members of the public in this state to  
34 use the pharmacy to fill prescriptions. A violation of this section is  
35 a class C misdemeanor.

may

36 (g) Upon request of the board, the attorney general [shall] bring  
37 an action in a court of competent jurisdiction for injunctive relief  
38 to restrain a violation of the provisions of this section or any rules  
39 and regulations adopted by the board under authority of this sec-  
40 tion. The remedy provided under this subsection shall be in addition  
41 to any other remedy provided under this section or under the  
42 pharmacy act of the state of Kansas.

43 (h) The board may adopt rules and regulations as necessary and  
44 as are consistent with this section to carry out the provisions of  
45 is section.

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2  
3 (i) The executive secretary of the board shall remit all moneys  
4 received from fees under this section to the state treasurer at least  
5 monthly. Upon receipt of each such remittance, the state treasurer  
6 shall deposit such moneys in the manner specified under K.S.A.  
7 74-1609 and amendments thereto.

8 (j) This section shall be part of and supplemental to the phar-  
9 macy act of the state of Kansas.

Sec. 3 2. This act shall take effect and be in force from and after  
its publication in the statute book.

Amend Senate Bill No. 775, as introduced, into this bill.  
Insert a repealer and adjust the title accordingly.