Approved: March 17, 1998

MINUTES OF THE HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES.

The meeting was called to order by Chairperson Carlos Mayans, at 1:30 p.m. on March 16, 1998 in Room 423-S-of the State Capitol.

All members were present except: Representative Becky Hutchins - excused
Representative Tony Powell - excused

Committee staff present: Emalene Correll, Legislative Research Department
Robin Kempf, Legislative Research Department
Norman Furse, Revisor of Statutes
Lois Hedrick, Committee Secretary

Conferees appearing before the committee:
Bud Grant, Kansas Chamber of Commerce and Industry
Frank Muscato, Walmart Stores, Bentonville, Arkansas
Michael LaMunyon, Medi-Kwik Vending Services, Hutchinson
Larry Froelich, Executive Secretary, Board of Pharmacy
Bob Williams, Executive Director, Kansas Pharmacists Association
Pam Scott, Executive Director, Kansas Funeral Directors and Embalmers Association

Others attending: See Guest List (Attachment 1)

The minutes of the committee meeting held on March 10 and March 11, 1998 were distributed for review and, by policy, will be approved as read if no changes are reported to the Chairperson by 5:00 p.m. March 17.

Chairperson Mayans opened the hearing on **SB 270** - Sale of certain goods at flea markets. Bud Grant, on behalf of the Kansas Chamber of Commerce and Industry, introduced Frank Muscato, of Walmart Stores, Bentonville, Arkansas, to explain the need for **SB 270,** which was originally written to prohibit transient merchants from selling pharmaceuticals, baby food and infant formula, cosmetics and medical devices at flea markets. The amended Senate bill only includes drugs.

Mr. Muscato described his experiences encountered in his work of special investigations regarding retail theft and the sale of stolen merchandise. He outlined risks to the public health and losses in tax revenues on sales from flea market vendors. (See his testimony, Attachment 2.)

Emalene Correll noted that the bill, as amended by the Senate, deleted "pharmaceuticals" in one place and left the term in another; thus the bill may need further amendment. Representative Wells asked if there is a sufficient number of investigators to police flea markets. Mr. Muscato indicated his organization has 18 investigators throughout the country and through their work and experiences are able to investigate and substantiate illegal activities, and then involve local law enforcement agencies for prosecution. Representative Long asked if there are such problems in Kansas. Mr. Muscato advised his organization has done a substantial amount of work in Kansas, primarily in Wichita and Kansas City. Representative Horst asked if auctions posed the same problems, and Mr. Muscato indicated they do.

There being no others present to testify, the hearing on **SB 270** was closed.

The hearing on **SB 533** (sale of nonprescription medicines and drugs through vending machines) was opened. Michael LaMunyon, of Medi-Kwik Vending Services, testified in support of the bill, describing the over-the-counter medicines that would be dispensed through vending machines in Kansas if the bill is passed. (See testimony, Attachment 3.)

Larry Froelich, Board of Pharmacy, testifying on **SB 533** noted current Kansas law requires a dealer to hold a valid retail dealer's permit from the Board in order to sell and distribute certain non-prescription drugs. He recommended amendments if the bill is approved to (1) require a statement on each vending machine to identify the machines owner, advise purchasers to check expiration dates on the product before use, and provide the Board's telephone number to report violations; and (2) add language to include "controlled substances." (See testimony, Attachment 4.) Mr. Froelich noted that several states either prohibit or place limitations of vending machine sales of drug items.

The Chairperson noted that written testimony from the Nonprescription Drug Manufacturers Association has been given each member (see Attachment 5).

Bob Williams, Kansas Pharmacists Association, encouraged the committee to carefully consider the bill as it is a policy question. Also, if the bill is considered for passage, he recommended that the Senate amendments be approved. (See Attachment 6.) Mr. Williams indicated that Senator Kerr had initiated the bill in response to a request from Mr. LaMunyon.

Chairperson Mayans asked Mr. LaMunyon if he had placed vending machines in Oklahoma, and he answered that he owns 10 machines and a few are located in Enid and Oklahoma City. No licenses or fees are required there; and sales taxes are paid to Kansas because his place of business is in Hutchinson.

No others were present to testify on the bill; the hearing on **SB 533** was closed.

The hearing on **SB 506** (funeral merchandise agreements, contracts and plans, irrevocable provisions) was opened.

Pam Scott, Kansas Funeral Directors and Embalmers Association, testified in support of the bill which would increase the dollar amount (to $3,500) of funds that can be placed in an irrevocable pre-arranged agreement, contract, or plan. She indicated this would allow Kansas law to be consistent with at least 30 states that treat such irrevocable accounts as totally exempt when determing Medicaid payments. (See testimony, Attachment 7.) Representative Morrison asked where the monies are deposited, and Ms. Scott answered the law requires that funds be deposited in banks, savings and loans, or credit unions who do business in Kansas. Interest earned on these deposits are paid to the estates of the decedents. Representative Morrison asked why limit the dollar amount placed in such trust accounts. Ms. Scott answered that $8,000 was the amount originally suggested for the bill, but was reduced to $3,500 after SRS objected to the higher limit. There are provisions in SRS regulations limiting the amount that can be set aside without affecting Medicaid.

No others were present to testify on **SB 506**; so the hearing was closed.

Chairperson Mayans then asked the committee its wishes on the three bills just heard. It was indicated that **SB 270** and **SB 506** would be given further consideration; and **SB 533** would not.

Representative Geringer moved that **SB 506** be passed and asked that it be placed on the Consent Calendar. Representative Cook seconded the motion; the motion carried.

The meeting was adjourned at 2:55 p.m.

The next meeting is scheduled for March 17, 1998.

HOUSE COMMITTEE ON
HEALTH AND HUMAN SERVICES COMMITTEE
GUEST LIST
MARCH 16, 1998

NAME	REPRESENTING
FRANK MUSCATO	KCCI
Bud GRANT	KCCI
Mack Smith	Mortuary Arts Bd
Mike E. LAMUNYON	MEDI-QUICK
Arlene Lamunyon	" "
Carrie Reichert	Brad Smoot
Michelle Peterson	PPAG
Bob Williams	Ks. Pharmacists Assoc.
Rick Guthrie	Health Midwest
Susan Anderson	Heim & Weig
Vicki Schmidt	Ks. Bd of Rx
Larry Fredrick	
Meagan Engenauer	KFDA
Pat Scott	KFDA
John Kiefhaber	Ks Health Care Assn.
Amy Meyer	AP

HOUSE HHS COMMITTEE
Attachment 1
3 - 16 - 98

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

835 SW Topeka Blvd. Topeka, KS 66612-1671 (785) 357-6321 FAX (785) 357-4732 e-mail: kcci@kspress.com

SB 270 March 16, 1998

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Health and Human Services

by
Frank Muscato

Honorable Chair and members of the Committee:

My name is Frank Muscato and I currently work in special investigations regarding retail theft and the sale of stolen merchandise. I work closely with several retail organizations, as well as federal, state, and local law enforcement officials all across the country. My purpose here today is to give you some background on this issue and to express my concern with flea market vendors and the danger they pose to consumers.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 46% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The Shoplifter:

These people steal for their own personal use. They take food, clothing, etc.

HOUSE H&HS COMMITTEE
Attachment 2-1
3-16-98

Professional Retail Thief:

Wears special clothing, steals large numbers of same product. Takes orders on product to be stolen. Will travel from city to city, state to state to commit the thefts. Most of these thieves are supporting a narcotics habit. Most of these people can clear a shelf completely off in a matter of seconds.

Flea Market Vendor:

The illegal flea market vendors buy from the professional retail thieves. The going price is about one third the retail price of the product. They have order forms they give to thieves indicating what they want and what they will pay for the stolen OTC and HBA. The flea market vendors will buy as much product as the retail thieves will bring them. The overage of product the illegal flea market vendors buy is sold to repack warehouses for about half the retail price.

In Lexington, KY, we were recently involved in a case where a group traveled throughout Kentucky and surrounding states, stealing OTC, HBA and new release videos. These were sold to a Lexington, KY couple who ran a large flea market booth in Nashville, TN. The overage they bought from the retail thieves was shipped to a repack warehouse in New York. The main subjects in this group are in prison at this time.

Repack Warehouse:

The repack warehouses buy products from illegal flea market vendors, among other sources. The repack warehouse cleans the product and sells to distribution warehouses. In the past year, we, along with federal, state, and local authorities have shut down several repack warehouses and arrested the owners. Millions of dollars in stolen OTC, HBA and videotapes were recovered. Investigations are more successful in states that have legislation governing flea market vendors.

Health and Safety Issue:

Pharmacies will sometimes receive a recall on an over-the-counter product, that they will immediately take off the shelf. For example: in 1993, the vitamin L-Tryptophan was recalled because several people had become sick taking it and in fact a couple of people died. When it was recalled, it was immediately removed from the shelves of all reputable retailers. But who would notify flea market vendors and who would force them to remove the product? If a person bought the product from a flea market vendor after a recall and got sick or died, who would be held accountable?

There are strict FDA guidelines governing retailers who sell OTC. Storage is one of these guidelines. Who controls the area where the flea market product is stored, concerning temperature, tampering, or mishandling? At outdoor flea markets in this state, the temperature can reach 90 to 100 degrees. Once outside the controlled environment of a retail store, the stability of the product cannot be guaranteed.

OTC and HBA have expiration dates on the product. Retailers are obligated to control these. Product near and past expiration will be bought back by the manufacturer. There is no control of expired products sold at flea markets. These expired drugs and HBA could cause injury or make someone severely sick. For example: glucose strips used by diabetics are a popular flea market item. If a person tests his or her glucose level with a test kit that is expired, the reading may not be accurate, which could lead to a dangerous and life threatening situation for the person.

Government:

Who controls the taxes on the new product that is sold by the flea market vendor? All legitimate retailers have to pay city, county, state and federal taxes on their business, what about flea market vendors? I recently visited three flea market vendors in the northern Kentucky area who had approximately $20,000 worth of products in their booths. I purchased four OTC items and I did not pay any sales tax. In addition, the products sold for about half the retail price and three of the four were expired.

Conclusion:

I just want to emphasize that this bill will not shut down flea markets, only those vendors selling merchandise that poses a health threat to consumers. Kansas consumers will benefit from this bill. As more and more states around us pass flea market legislation, Kansas will become a dumping ground for stolen and dangerous products. I would hate to see that happen.

Thank you for your time and I will be happy to answer any questions you may have.

Attachment 1

Thus, the American consumer pays for these thefts in the form of higher prices. Because of this problem, it has become imperative for the retail chains to act aggressively in thwarting theft and fraud because their industry operates on a smaller profit margin and are suffering greater overall corporate losses than the manufacturers.

The major drug and grocery chains have been cooperating amongst each other to a greater extent and for a longer period than the manufacturers in combating theft. This is largely due to the tremendous losses the retail industry has suffered in the last six years.

The retail industry representatives indicated that U.S. grocery chains work approximately 10 months out of the year to support their losses due to theft. The last two months of annual sales go toward corporate profit. The drug and discount industry works six months out of the year to support their losses from theft.

To further illustrate the problem of theft affecting the retail industry, it should be noted that in the past five years, 50 percent of the retail businesses in the U.S. have gone out-of-business. The main cause of these store closings is "shrinkage" (theft and fraud). The retail industry representatives estimated that in the next three to five years, another 50 percent of the remaining U.S. owned retail chains will go out of business because of theft. The retail industry provides millions of jobs to Americans and provides a significant portion of U.S. tax revenue. With the loss of these companies, the effect on the American economy is disastrous.

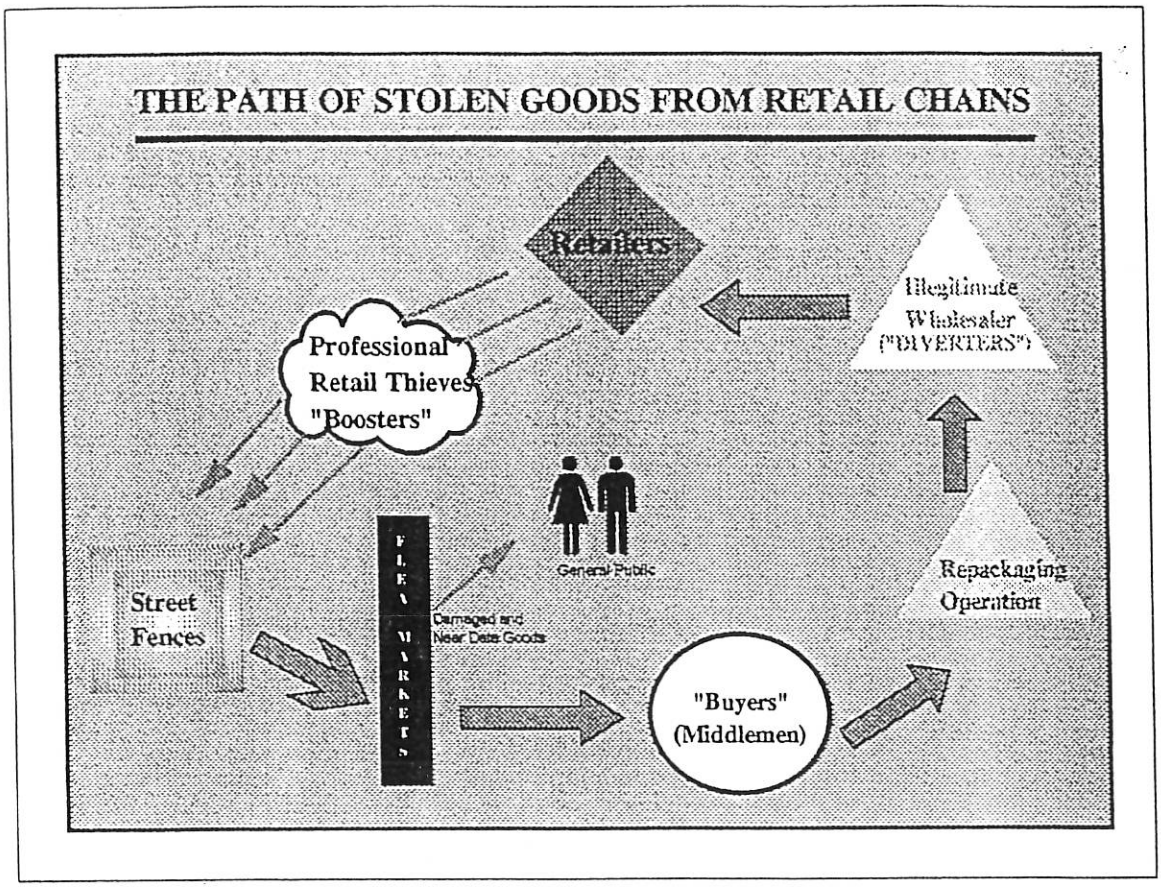
The overall retail industry in the U.S. accounted for $2.2 trillion in sales in 1995. Of that amount, the retail drug stores, food/drug grocery stores, and large discount chains represented $787 billion in sales, or approximately 64 percent of the overall retail industry. Retail representatives conservatively estimate that the grocery, drug and discount chains suffered approximately 4 percent in losses due to theft in 1996. Based upon those figures, these retail businesses experienced $31.5 billion in losses due to theft in 1995. The largest of these retailers experienced approximately $3.8 billion in theft losses alone in 1995.

All of the industry representatives indicated that most of the products being stolen are non-traceable health and beauty aids (HBAs), over-the-counter pharmaceuticals (OTCs), and other sundry products. Furthermore, the retail industry acknowledges that most of these thefts are being committed by professional shoplifting groups which are selling the goods into the illegitimate wholesale market.

This is an excerpt from the
Interstate Fencing Strategic Initiative Conference, February 1997.

The four retail corporations surveyed provided the following specific loss amounts for the drug, discount, supermarket/drug, and superstore industry for 1995:

Sources of Loss	Dollar Amount	5 Year Trend
Cargo Theft	$ 250 million	Decreasing
Warehouse Theft	$ 500 million	Stable
Employee Theft	$ 3 billion	Stable
Retail Theft	$ 25 billion	Increasing Significantly
Unaccounted losses (Vendor Fraud, accounting errors)	$ 2.75 billion	N/A


THE PATH OF STOLEN GOODS FROM RETAIL CHAINS
Retailers
Illegitimate Wholesaler ("DIVERTERS")
Professional Retail Thieves "Boosters"
General Public
Repackaging Operation
Street Fences
FLEA MARKETS
Damaged and Near Date Goods
"Buyers" (Middlemen)

Attachment 2

GENERAL INFORMATION

DEFINITIONS -

Kleptomaniac	This is a person who has a persistent impulse to steal. A kleptomaniac steals because of the urge to do so and not because of need. The kleptomaniac will usually steal infrequently.
Shoplifter	This is a person who may steal for profit or may steal for personal need. This person may steal infrequently or every day but does not usually steal a large volume of merchandise.
Booster	This is a person who steals in volume and does so every day, all day. A booster steals to increase his income. A booster is nearly always a drug addict.
Booster Bags	The term used for 30 gallon trash bags used by boosters to transport stolen OTC and HBA to fences. This bag 1/3 full of OTC can contain $1,000 retail value of OTC.
OTC	Over the counter drugs
HBA	Health and beauty aids
Expiration Dates	The date found on all OTC and some HBA that reflects the shelf life of the product. A fence will usually refuse to buy OTC or HBA that has a shelf life of less than a year. Those items with a short shelf life usually end up in flea markets or local owned discount stores.
Damaged Product	Is OTC, HBA, or any other product which is in a damaged package, has a store price tag on it which can not be removed or has a short shelf life. These products usually are sold in flea markets or locally owned discount stores.
Clean Up	Is the removal of security bars and price stickers. Blow dryers, alcohol, silicone spray, scotch tape and cotton swabs are used. Boosters never clean up. Some local fences will clean up. All repackers, wholesalers and interstate fences will clean up.

Popular Products	Wanted by fences will very throughout the year but OTC, HBA, film, batteries, and tools will be in demand year round. In the spring, fishing gear and sports equipment such as baseball gloves will be in demand. During the Christmas season, video movies, perfume, batteries, cologne, and heavily advertised Christmas gifts will be in demand. Example: During the 1995 Christmas season, the most popular item for boosters was the snake light.
Active Booster Times	Are the days when various stores restock the shelves and during the hours and days of the week when the most shoppers are in the stores.
Booster List	Local fences will often use printed or hand written lists with prices the fence will pay to a booster. These lists are sometimes given to the booster so the booster will know what is needed. The list are most often used by the fence to tally the various stolen items and figure the amount owed to a booster. Often the fence will give the "booster sheet" to the booster or will discard it in the trash. Two samples of booster lists are included.
Profit/Price Comparison	A comparison chart is included which depicts the profit made at the various levels of the organized fence operation. This chart also reflects the profit made by one large national retailer for the items shown.

Attachment 3

The Intelligencer
Wheeling, WV
December 17, 1993

Local Man Arrested For Drugstore Thefts

PITTSBURGH (AP) — Six people, including one from Wheeling, have been arrested on charges of running a theft ring that stole from drugstores and sold the items at flea markets and small stores in Ohio and three other states.

Federal authorities, including the FBI and the Internal Revenue Service, led a task force that announced the arrests and indictments Wednesday.

A federal grand jury returned sealed indictments Tuesday based on "Operation Fence Fry," the task force that also included police from Pittsburgh and the suburban community of Shaler.

Police seized more than $1 million of stolen items.

"We're talking about nickels and dimes, but when we're talking about warehouses full of this stuff, it's a lot of nickels and dimes," said Pittsburgh Detective James Conn.

The network relied on thieves who are drug addicts and it extended from western Pennsylvania to Ohio, West Virginia and New York state, police said.

The shoplifters were known as "boosters." Police said the shoplifters' contacts would pay them one-third of the retail value of the items. Some of the contacts even provided addicts with cars.

"If they were in a legitimate business, they would probably be in the Fortune 500," said Cmdr. Ron Freeman of the Pittsburgh police.

The contacts then would sell the items to flea markets or other contacts who would sell the sundries at small drugstores throughout the northeastern United States, authorities said.

Some stolen goods ended up in a flea market in Rogers, Ohio, that attracts about 36,000 people on summer weekends, authorities said.

"It's so unfair that we, the honest consumers, have to pay more for the products than what they're worth simply because companies build in the price to cover losses," Freeman said.

The suspects were identified as David Misencik, 50, of Wheeling; Frank M. Spelic, 47, of Glenshaw, Pa.; Margaret Kelly, 43, of Pittsburgh; Pamela Jo Tallon, 35, of Pittsburgh; Robert Stark, 45, of Allison Park, Pa.; Ernest J. Kaschauer, 52, of Swissvale, Pa.

Spelic is charged with interstate transportation of stolen property, conspiracy, money laundering and submitting false tax returns. Kelly is charged with interstate transportation of stolen property, conspiracy and money laundering. The other four suspects are charged with conspiracy.

2-9

1	Baseball card - 1 -			
28	24ct TYLENOL & ADVIL 13-9-5-48-3-	.75	(10-A)	18.00
46	72ct TYLENOL 2-4-21-17-3-3-	2.50		30.00
1½	100ct TYLENOL & ADVIL 4--4 2½-2½	3.25	1½-27-40½-39-22-3-6½-13	544.75
86	100ct REGULAR 29-8-1½-6-11½-15-15-	2.50		215.00
1	100ct TYLENOL REGULAR /-	2.25		2.25
	165ct ADVIL	4.38		
81	165ct REGULAR 81-	3.50		283.50
	250ct TYLENOL & ADVIL	6.00		
	200ct REGULAR	3.50		
	48 SUPPOSITORIES	3.75		
	24 SUPPOSITORIES	2.25		
60	12 SUPPOSITORIES 18-2-6-34-	1.50		90.00
16	2oz CREAM 16-	2.25		36.00
43	1oz CREAM 4-6-17-5-11-	1.50		64.50
1^	90 CORRECTOL 4-6-	3.25		33.50
60	60 CORRECTOL 2-8-1-10-12-39-	2.25		139.50
78	30 CORRECTOL 14-2-4-14-7-2-10-9-	1.25	16-	97.50
17	MOUTHPIECE 2-2-2-9	3.75		56.25
	3/4oz REFILL	3.75		
14	1/2oz REFILL 5-9-	3.25		45.50
	1/3oz REFILL	3.25		
15	60 TABLET PRIME 8-7-	2.50		37.50
8	24 TABLET PRIME 1-7-	1.50		12.00
2	MONASTAT & GYN 2-	4.50		9.00
	TEST	4.50		
	B C	1.25		
136	24ct TYLENOL PM 4-15-4-44-3-15	1.50	19-28-4-	264.00
2	Burns - 25	8.00		200.00
2	Red roundup - 2-	6.00		12.00
19	T.D. 2-18-17-	8	(54.152-	204.00
3	Sega - C.D 3	22-	2593-	66.00

2-10

Description	Price	Units	Total	Description	Price	Units	Total
Polaroid SX 70 1 Pack	6.00						
Pola[illegible] SX 70 2 Pack	12.00						
Prep[illegible]on H 1 oz. Ointment	1.75						
Preperation H 12 Ct.	1.75						
Preperation H 2 oz. Ointment	2.75						
Preperation H 24 Ct.	2.75						
Preperation H 48 Ct.	4.00						
Primatene Mist 1/2 oz. Kit	4.75						
Primatene Mist 1/2 oz. Refill	3.75						
Primatene Mist 1/3 oz. Kit	3.50						
Primatene Mist 3/4 oz. Refill	4.75						
Primatene 24 Ct.	1.75						
Primatene 60 Ct.	3.00						
Q Test 1 Test	4.50						
Q Test 2 Test	5.50						
Senokot S 30	4.00						
Senokot S 60	5.00						
Senokot 50	4.00						
Senokot 100	5.00						
Tracer 50 Ct.	8.00						
Tylenol 100 Ct. (Reg.Strength)	2.50						
Tylenol 100 Ct. Gel Caps	4.25						
Tylenol 100 Ct. Red and Yellow	3.85						
Tylenol 150 Ct. Gel Caps	5.25						
Tylenol 175 Ct. Yellow	5.35						
Tylenol 200 Ct. Red	6.25						
Ty[illegible]ol 24 Ct. PM	1.75						
Ty[illegible]l 50 Ct. Gel Caps	2.00						
Tylenol 50 Ct. Red and Yellow	2.00						
Tylenol Cold and Sinus	1.50						
Tylenol Headache Plus 24 Ct.	1.25						
Tylenol Headache Plus 50 Ct.	2.00						
Tylenol Headache Plus 100 Ct.	2.00						
Tylenol Jr. Flats	1.00						
Tylenol PM 50 Ct.	2.50						
Tylenol Red and Yellow 24 Ct.	1.25						
Tylenol Sinus, Cold, Allergy	1.25						
Tylenol Sinus 24 Ct.	1.50						
Visene 1/2 oz.	.75						
Visene 1 oz.	1.25						
		Subtotal				Subtotal	
		Grandtotal				Grandtotal	

2-11

MEDI KWIK plus CONVENIENCE CENTER

Testimony before the House Committee for Public Health and Welfare.

Thank you for your time today.

Have you ever had a splitting headache and no aspirin with you? (Well, open your folder and you will find some for your next migraine). Or perhaps the breakfast you wolfed down is not agreeing with you and you cannot concentrate?! All of us have been in that situation. So why not check with a drug store? Well, if you had the time that would be great, but you have a meeting. And besides that you have a full bottle at home, why spend several dollars when you only need two? So what do you do? Hey! There's that new vending machine down the hall with Mylanta or Advil in it -whatever you need. What a great idea!

That's the kind of service Medi-Kwik provides nationally for business and industry in 48 states. The only 2 states with laws currently restricting such a service are Arizona and Kansas. I hope today to change your minds on this 65 year old law and provide welcome assistance to companies in Kansas..

You'll notice that along with the copy of my testimony there is a copy of the flyer we use to market our product as well ~~as some samples of the medicines sold~~. The medicines are ***always*** vended in the manufacturer's sealed, tamper evident and expiration dated packages, the same way you may buy it from your local convenience stores. The machines are not the large glass fronted types, but smaller specialty machines, generally placed in climate controlled employee break rooms.

As mentioned, Medi-Kwik is a nationwide vending company providing over the counter medicines to businesses such as IBM, Xerox Corporation, AT&T, 3M, Sam's Club, and Sony to name a few. When we use the term "OTC medications" we mean products such as Tylenol, Advil Sinus, Mylanta, Midol, Bayer and Motrin.

The businesses mentioned have recognized the value of these machines because of 2 main reasons: #1 Production Costs and #2 (more importantly) Liability.

First, Production Costs: When the headache or indigestion of an employee is not treated with one of the products provided, the employee may simply go home from work. When the employee is provided with OTC medication, companies increase their production and profits. In some companies, it's estimated that the Occupational Health Nurse spends as much as 25% of his/her time dispensing medicines and doing the paperwork necessary to minimize exposure to liability. Couldn't that time be better used elsewhere?

Second, the issue of Liability: For those companies who do not have a nurse and dispense medicines through a "free-for-all" system, liability is an extremely serious issue. You'll notice on the flyer you have an incident involving a large suit on behalf of an employee who over-medicated himself from the company's medicine cabinet. Problems such as these are eliminated with a vending machine. The employee makes the choice of medicine, and purchases it. They are accountable for what they have taken--they assume that responsibility themselves, not the company. Purchasing a package of Tylenol or Advil Sinus medication is no different than if you would go into a supermarket and purchase something. With a contract set up outside the company, there is no worry of liability on the part of the employer.

However the question of safety does come up, especially if children are around. That is a reasonable concern. In your folder you will see information from the Poison Control Center*. Regarding children accidentally taking over the counter medication, medical attention isn't advised until the intake exceeds the allowed amount which is based on the body weight and the medication's active ingredient. To reach a level requiring medical attention for say a 40lb., 6 year old child, it would require that child to take five (5) packages of Advil, spending $3.75 (15 quarters). As for accessibility, as you can see from the photos in your folder, a lot of businesses, typical to every town around us, supply the same basic products we do, except in a much more open manner. These can easily be picked up and purchased by anyone, child or adult. So is the safety issue a real problem? No. There is no difference between buying an aspirin from a machine or from the clerk at the gas station.

* Located at the University of Kansas Medical Center in Kansas City, Kansas.

We are not proposing that the law be changed to vend antibiotics and blood pressure medicine - we leave that to the pharmacists. What we are asking is that you join the other 48 states and allow these over the counter medicines to be distributed in an accessible, safe and convenient manner for business and industry.

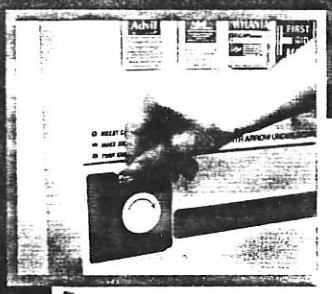
Thank you again for your time!

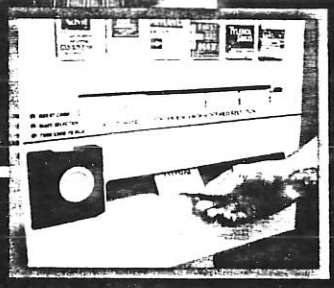
MEDI KWIK plus

No Cost! No Rental!
No Purchase!

New! Unique!

CONVENIENCE CENTER





Available in Floor
Stand or Wall Mount

PROVIDES
MEDICINE SERVICE
TO BUSINESS & INDUSTRY

- No expense to you.
- Indemnifies you against liability associated with providing medicine to customers or employees.
- Provides a full range of the name brand products you choose.
- Keeps employees productive and customers happy.
- Saves time currently spent procuring and dispensing medicine.
- Convenient weekly or monthly service as needed.
- Two years industry experience.

YOUR SATISFACTION GUARANTEED!

CONVENIENCE CENTER DISPENSES NON-PRESCRIPTION MEDICATIONS:

- **Tylenol**
- **Tylenol Sinus**
- **Advil**
- **Motrin**
- **Nuprin**
- **Mylanta**
- **Sudafed**
- **Excedrin**
- **Bayer Aspirin**
- **Alka-Seltzer**
- **First Aid Kits**
- **and More...**

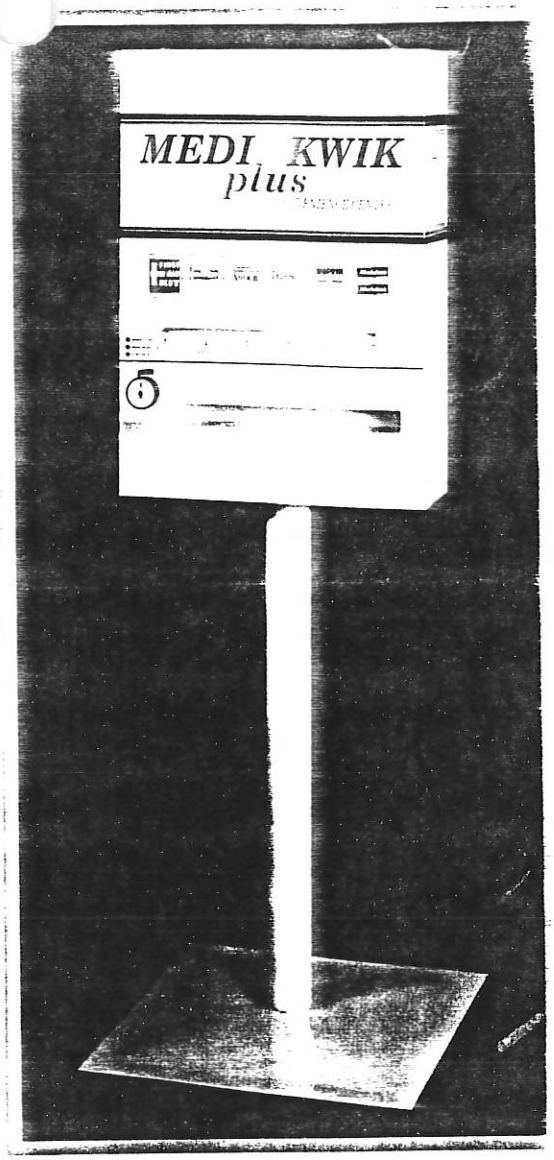
Company _____

Name _____ Title _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Extension _____



MEDI-KWIK Is The Answer!

THE OCCUPATIONAL HEALTH INDUSTRY BELIEVES IN OUR SOLUTION...

1995 AAOHN CONFERENCE PROCEEDINGS
Ref. Over-The-Counter Medications Advisory
"Use a vending machine for OTC medications... A vending machine with OTC medications provides all employees access to medications. Employees decide what medications they want and purchase it, thus accepting responsibility for their action and health care. Establish a contract with a vendor for a vending machine."

Research & preparation by
Susan A. Randolph

WHY BUSINESS & INDUSTRY BENEFIT...

"There are some very important reasons why we have chosen to use the Medi-Kwik Convenience Center, the main one being liability. As an example, an employee at one of our subsidiaries helped himself to several doses of cold medicine from the company's medicine cabinet. Later that same day he fell asleep while operating a fork lift and blamed his drowsiness on the medication supplied by the company. The liability suit that came from this incident cost us and our Workmen's Compensation carrier over $1 million. By no longer supplying free medication to our employees, but rather making it available for purchase through the Medi-Kwik Convenience Center, we have removed the burden of responsibility from the company and eliminated the liability factor. In addition, because we are no longer purchasing medicine for our employees (to which they had easy and unlimited access) we are saving a lot on money."

Richare W. Roberts, Media General Broadcast

For more information on saving money and protecting yourself from liability, simply fill out the tear-off portion and return to the address provided.

Please Place Stamp Here

Business Reply Mail

3-5

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NDMA

NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION

Better Health
Through Responsible
Self-Medication

February 7, 1998

The Honorable Sandy Praeger
Chairperson, Senate Public Health & Welfare Committee
Statehouse
300 SW Tenth Street
Topeka, Kansas 66612-1504

RE: **Kansas Senate Bill 533 -- Permits Over-the-Counter Medicines in Vending Machines**

Dear Senator Praeger:

On behalf of the Nonprescription Drug Manufacturers Association (NDMA)[1], I am writing in support of Kansas Senate Bill 533. As you know, this legislation would revise existing law in Kansas to permit the sale and distribution of nonprescription, over-the-counter medicine through vending machines. It would, however, require that such medications be sold only in the original, unbroken tamper evident and expiration-dated packaging.

This legislation will offer benefit to Kansans because it will make safe and effective over-the-counter medicines more widely available to consumers. At the same time, the tamper-evident and expiration-dating requirements for packaging assure the quality and security of these products.

Nonprescription medicines are carefully regulated by the federal Food & Drug Administration (FDA) and are required to be safe and effective for their indicated uses based on the labeling that appears on their packaging. These labels include FDA-mandated directions for usage, dosing instructions, warnings about drug interactions and possible side effects. Thus, while many consumers choose to speak with a pharmacist or doctor before using a nonprescription drug (and this legislation does not interfere with or discourage that practice), all the necessary information to safely use these products is contained on the package. By allowing these products to be dispensed from vending machines, the legislature will be making it more convenient for consumers to get antacids, headache relievers, cough& cold medicines and upset stomach remedies quickly -- and that means faster relief from these everyday ailments. Our

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[1] The Nonprescription Drug Manufacturers Association (NDMA) is the 117-year-old trade association which represents manufacturers -- both large and small -- of nonprescription or over-the-counter (OTCs) medicines such as cold remedies, antacids, pain relievers, and many others. The Association's members account for approximately 95 percent of all OTC medicines sold in the United States. A nonprescription drug is one that the U.S. Food and Drug Administration has found to be safe and effective for direct consumer use based on the required label directions and warnings

members strongly support this pro-consumer legislation.

NDMA wishes to thank you and the Public Health & Welfare Committee for your leadership in this area. Should you have any questions or concerns about this matter, please don't hesitate to contact me.

Sincerely yours,

Steven M. Mister
Assistant General Counsel & Deputy Director
of State Government Relations

cc: Members of the Senate Committee on Public Health & Welfare
Norman C. Grant, Kansas Retail Council

smm/s

The Poison Control Center, at the University of Kansas Medical Center in Kansas City (1-800-332-6633), advises medical attention based on the ingestion of product per kilogram of body weight. Our figures are based off of children 6 years and younger.
In the 1996 report of activity by the Poison Control Center, most cases of needed medical attention for the ingestion of prescription and non-prescription medication in children are for children under the age of 6 years.

Product:	**Use**:	**Dose per package**:	**Concern about toxicity begins at**:
Mylanta	Anti-acid	1100mg	minimal toxicity
	The P.C.C. does not consider Mylanta as having a toxicity risk.		
Bayer Aspirin	Pain relief	650mg	150mg/kilogram of body weight
	It would require 4 packages of vended product to make a 40lb child ill.		
Tylenol	Pain relief	1000mg	150mg/kilogram of body weight
	It would require 3 packages of vended product to make a 40lb. child ill.		
Midol	Menstrual Formula	1000mg	150mg/kilogram of body weight
	It would require 3 packages of vended product to make a 40lb. child ill.		
Advil	Pain relief	400mg	100mg/kilogram of body weight
	It would require 5 packages of vended product to make a 40lb. child ill.		
Motrin	Pain relief	400mg	100mg/kilogram of body weight
	It would require 5 packages of vended product to make a 40lb. child ill.		

American Occupational Health Conference 1995
Las Vegas, NV

Conference Proceedings

Wednesday, May 3, 1995
Course 611: Over the Counter Medications
Susan A. Randolph, MSN, RN, COHN

"Use a vending machine for OTC medications. A vending machine with OTC medications provides all employees access to medications. Employees decide what medication they want and purchase it, thus accepting responsibility for their action and health care. Establish a contract with a vendor for the vending machine. Decide which unit dose medications should be included, the amount to be stocked, frequency of restocking with attention to expiration dates, etc."(page 48)

Lastly, what requires the most occupational nursing involvement is to develop nursing guidelines for standing orders or protocols. So this involves the most nursing time and it's the most complex.

--Here she shows a slide and discusses developing standing orders and protocol for abrasion, or laceration--

In closing to review we have discussed the various laws that govern medications--the Nurse Practice Act, Pharmacy laws, the Medical Practice Act. We reviewed protocol, standing orders, nursing clinical guidelines, we have described various ways to provide OTC medications with varying levels of occupations health nursing involvement. I think it really is up to you to decide how you want to handle medications in your particular work site with OTC's based upon the resources that you have. With that I will be happy to answer any questions.

Q.--I'm from Florida and I just wanted to alert you all to a potential problem that we've had in the state of Florida for the last year, and that is that the Board of Medicine has questioned the validity of standing orders outside the hospital setting. There is some work going on now to try to resolve this issue, but I think you need to know that this probably will be spreading throughout the country. Also, as a supplier of OTC's and Rx medications, I would like to add one item to your log, and that is that each time you have a self-administered medication log, that you consider putting on the adverse or side effects of that med. So that before an employee actually signs out for that medication, he or she in fact knows what the side effects are.

Q.--Can you discuss the issue of liability of the employer in self-administered and vending machines, and are there court cases of where they have taken issue with the employer providing these medications?

A.--I have not heard of any liability issues regarding that. That was something that I've talked with the Board of Nursing about and with the pharmacy people, and the fact that if it comes in a vending machine and the person buying it is part of the issue where they have made that particular choice, it would be no different than if I go into a pharmacy or drug store or supermarket and purchase something. I think that is why you would want to have a contract set up so that it's really outside of the company. If the nurse is doing a restocking and checking of that, then that can be a liability issue.

Q.--I have a question about the unit dose packages and the size of the type that's on there. In most cases its not really readable. Is there any consideration of regulations of what size the type has to be?

A.--That I do not know. The type does vary. I agree it is hard to read. As employees get [illegible] es harde[illegible] read. T[illegible] nay be a concern.

Q.--Are there companies that provide the information on the packets in language other than English--possibly Spanish?

using medications. Possibly, have the employee bring a list in of the medications the obstetrician approves.

Q.--What options if any does a single nurse unit with no physician backup have to administer OTC medications?

A.--Legally, she has no ability to administer OTC's without some sort of a standing order. If there is not a company physician, there has to be someone that is on board as far as treating occupational illnesses and injuries that are beyond the first aid care that the nurse can provide. You can certainly approach that physician about signing off on some standing orders. That can be very limiting, because some places have a whole laundry list of medications.

Q.--Does the liability issue change any when you have a company that is using their occupational health nurse as far as administering the medications to their employees, and now the company has several contract employees. They are not employees of that particular company, but they are employees of the contract service. Is there any difference in administering medications to those employees?

A.--That's a policy decision. Usually, you are responsible for the companies employees. As far as contract employees would be for emergency situations only, and for routine complaints, they are sort of on their own, unless there is something written in between the employer and the contractor to provide coverage for those employees.

Q. If you are administering hospital unit dose packages, can you give the person a little slip that gives side effects, or even a reproduction of the label or a supplemental slip that gives the information?

A.--I guess in that situation, I would use whatever the insert is and I would copy that so that you're not actually handwriting that out.

Q.--Is it possible to get the nurse or the physician out of the legal loop by simply stating something to the effect of these medications are here for your convenience and we recommend you follow the manufacturer's recommendations.

A.--I guess you could. I don't see a whole lot of difference between that and the self-administered system.

Q.--We had received something in the mail saying it was against the law to put drugs in vending machines. Do you know anything about OSHA mandating or regulating that.

A.--No, I don't, but that would not be under the jurisdiction of OSHA, anyway. I think that some of that might vary from state to state. In traveling, I've been in a lot of hotels where I've seen OTC's available for purchase. It's really no different than going to a drug store or supermarket and buying that for myself.

Kansas State Board of Pharmacy

LANDON STATE OFFICE BUILDING
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TOPEKA, KANSAS 66612-1231
PHONE (785) 296-4056
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STATE OF KANSAS

BILL GRAVES
GOVERNOR

EXECUTIVE DIRECTOR
LARRY C. FROELICH

BOARD ATTORNEY
DANA W. KILLINGER

1998 KANSAS LEGISLATIVE SESSION
Senate Bill No. **533**

House Committee on Health and Human Services

Monday, March 16, 1998

REPRESENTATIVE CARLOS MAYANS, Chairman
REPRESENTATIVE JIM MORRISON, Vice Chairman
COMMITTEE MEMBERS

Mr. Chairman and members of the committee, my name is Larry Froelich and I serve as the executive secretary to the Board of Pharmacy. I appear before you today to express my concerns with **SB 533**.

The current Kansas Pharmacy Practice Act defines "Retail Dealer" in K.S.A. 65-1626. The definition: "Retail Dealer" means a person selling at retail nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Under section (f) of this statute, "It shall be lawful for a retail dealer who is the holder of a valid retail dealer's permit issued by the board or for a retail dealer who sells 12 or fewer different nonprescription drug products to sell and distribute nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts." Current fees for a retail dealer is $12.00 per location.

West Virginia has almost the same definition for "Drugs" as Kansas. I have enclosed a copy of their rule that shows that this practice is **illegal** in that State. It is also **illegal** in **Connecticut**. Previous testimony said it was legal in 48 States.

I would like to suggest additional language to this bill. Oregon has the language: "Each vending machine that contains nonprescription drugs must have an obvious and legible statement on the machine that identifies the owner of the machine, advises the customer to check the expiration date of the product before using, and lists the phone number of the Board of Pharmacy." Oregon also requires that the Board be informed in writing of the current location of all its vending machines. They also license the vendors at $50.00 per year, previously licensing each location at $15.00.

With the current language, Ephedrine and some Codeine containing cough syrups could be sold in vending machines. I would like to suggest language that adds controlled substance to this statute.

I believe that the proposed bill requires further changes for protection of the public. I will be glad to answer any questions the committee may have.

HOUSE HHS COMMITTEE
Attachment 4-1
3-16-98

WEST VIRGINIA

WV BReg 15-1-2.
Definitions.

The following words and phrases as used in this Rule have the following meanings, unless the context otherwise requires:

2.1. The term "Drug" means

(a) substances recognized as drugs in the official "United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, or Official National Formulary," or any supplement to any of them;

(b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) substances (other than food) intended to affect the structure of any function of the body of man or animals; and

(d) substances intended for use as a component of any article specified in subdivisions (a), (b) or (c) of this subsection. It does not include devices or their components, parts or accessories.

WV BReg 15-1-16.
Sale of Drugs by Mechanical Devices; Sharing Compensation.

16.1. The sale of drugs and medicines by mechanical devices or vending machines are prohibited.

16.2. Sharing compensation.

The independent judgment of a pharmacist is a public trust, and his first allegiance is to the patient whom he or she serves. No pharmacist shall, except with a person licensed to practice pharmacy, or in the course of his or her employment with a duly licensed institution, clinic or foundation, directly or indirectly share compensation arising out of or incidental to his or her professional employment with, or accept professional employment from any person or persons who for compensation prescribe drugs used in the compounding or dispensing prescriptions.

GEORGIA

GA PracAct 26-4-2.
Definitions.

As used in this chapter, the term:

(1) .....

(7) "Drug" or "drugs" means:

(A) Articles recognized or for which the standards of specifications are prescribed in the official compendium;

(B) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(C) Articles other than food, intended to affect the structure or any function of the body of man or other animals; or

(D) Articles intended for use as a component of any article specified in subparagraph (A), (B), or (C) of this paragraph, but does not include devices.

GA PracAct 26-4-8.
Penalty for dispensing drugs by vending machines.

Any person who shall sell or dispense drugs by the use of vending machines shall be guilty of a misdemeanor.

(Ga. L. 1956, p. 724, 2; Code 1933, 79A-9904, enacted by Ga. L. 1967, p. 296, 1.)

CONNECTICUT

CT BReg Sec. 20-175-44.
Sale of patent or proprietary medicinal compounds in vending machines

No patent or proprietary medicinal compounds, preparations or units put up in sealed or unsealed containers, labeled and accompanied with directions for use with the name and address of the manufacturer or distributor thereof, shall be sold or offered or exposed for sale or dispensed by any means in any type of vending machines.

MAINE

ME PracAct 13792.
Sale by certain methods prohibited

It shall be unlawful for any person to sell, distribute, vend or otherwise dispose of any drug, medicine or pharmaceutical or medical preparation by means of any public exhibition, entertainment, performance, carnival or by vending machines.

K racAct 65-1645.

Applications for registrations and permits; renewals, forms; establishment of fees; establishment of retail dealer classes; display of registrations and permits; expiration dates; penalty fee for renewal after lapse.

(a) Application for registrations or permits under K.S.A. 65-1643 and amendments thereto shall be made on a form prescribed and furnished by the board. Applications for registration to distribute at wholesale any drugs shall contain such information as may be required by the board in accordance with the provisions of K.S.A. 1991 Supp. 65-1655 and amendments thereto. The application shall be accompanied by the fee prescribed by the board under the provisions of this section. When such application and fees are received by the executive secretary of the board on or before the due date, such application shall have the effect of temporarily renewing the applicant's registration or permit until actual issuance or denial of the renewal. However, if at the time of filing a proceeding is pending before the board which may result in the suspension, probation, revocation or denial of the applicant's registration or permit, the board may declare, by emergency order, that such application for renewal shall not have the effect of temporarily renewing such applicant's registration or permit. Separate applications shall be made and separate registrations or permits issued for each separate place at which is carried on any of the operations for which a registration or permit is required by K.S.A. 65-1643 and amendments thereto except that the board may provide for a single registration for a business entity registered to manufacture any drugs or registered to distribute at wholesale any drugs and operating more than one facility within the state, or for a parent entity with divisions, subsidiaries or affiliate companies, or any combination thereof, within the state when operations are conducted at more than one location and there exists joint ownership and control among all the entities.

(b) The fees required for the issuing of the registrations or permits required by K.S.A. 65-1643 and amendments thereto shall be fixed by the board as herein provided, subject to the following:

(1) Pharmacy, new registration not more than $150, renewal not more than $125;

(2) pharmacist, examination fee not more than $350;

(3) pharmacist, examination fee for previously licensed pharmacist not more than $250;

(4) pharmacist, renewal fee not more than $100;

(5) pharmacist, evaluation fee not more than $250;

(6) pharmacist, reciprocal licensure fee not more than $250;

(7) pharmacist, penalty fee, not more than $250;

(8) manufacturer, new registration not more than $500, renewal not more than $400;

(9) wholesaler, new registration not more than $500, renewal not more than $500, except that a wholesaler dealing exclusively in nonprescription drugs, the manufacturing, distributing or dispensing of which does not require registration under the uniform controlled substances act, shall be assessed a fee for registration and reregistration not to exceed $50;

(10) special auction not more than $50;

(11) samples distribution not more than $50;

(12) institutional drug room, new registration not more than $40, renewal not more than

$35;

(13) retail dealer selling more than 12 different nonprescription drug products, new permit not more than $12, renewal not more than $12; or

(14) certification of grades for each applicant for examination and registration not more than $25.

(c) For the purpose of fixing fees, the board may establish classes of retail dealers' permits for retail dealers selling more than 12 different nonprescription drug products, and the board may fix a different fee for each such class of permit.

(d) The board shall determine annually the amount necessary to carry out and enforce the provisions of this act for the next ensuing fiscal year and shall fix by rules and regulations the fees authorized for such year at the sum deemed necessary for such purposes. The fees fixed by the board under this section immediately prior to the effective date of this act shall continue in effect until different fees are fixed by the board by rules and regulations as provided under this section.

(e) The board may deny renewal of any registration or permit required by K.S.A. 65-1643 and amendments thereto on any ground which would authorize the board to suspend, revoke or place on probation a registration or permit previously granted pursuant to the provisions of K.S.A. 65-1643 and amendments thereto. Registrations and permits issued under the provisions of K.S.A. 65-1643 and 65-1644 and amendments thereto shall be conspicuously displayed in the place for which the registration or permit was granted. Such registrations or permits shall not be transferable. All such registrations and permits except retail dealer permits shall expire on June 30 following date of issuance. Retail dealers' permits shall expire on the last day of February. All registrations and permits shall be renewed annually. Application blanks for renewal of registrations and permits shall be mailed by the board to each registrant or permittee at least 30 days prior to expiration of the registration or permit. If application for renewal is not made before 30 days after such expiration, the existing registration or permit shall lapse and become null and void on the date of its expiration, and no new registration or permit shall be granted except upon payment of the required renewal fee plus a penalty equal to the renewal fee. Failure of any registrant or permittee to receive such application blank shall not relieve the registrant or permittee from the penalty hereby imposed if the renewal is not made as prescribed.

History: L. 1953, ch. 290, § 31; L. 1962, ch. 37, § 5; L. 1967, ch. 342, § 4; L. 1974, ch. 252, § 4; L. 1975, ch. 319, § 31, L. 1979, ch. 195, § 1; L. 1979, ch. 196, § 1; L. 1982, ch. 263, § 4; L. 1986, ch. 235, § 5; L. 1987, ch. 236, § 5; L. 1989, ch. 356, § 199; L. 1991, ch. 187, § 4; L. 1991, Ch. 189, § 2; July 1.

K racAct 65-1626.
Definitions.

For the purposes of this act:

(a)

(ff) "Retail dealer" means a person selling at retail nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include:

(1) A controlled substance;

(2) a drug the label of which is required to bear substantially the statement "Caution: Federal law prohibits dispensing without prescription"; or

(3) a drug intended for human use by hypodermic injection.

KS PracAct 65-1643.

Registration or permit required; pharmacies, manufacturers, wholesalers, auctions, sales, distribution or dispensing of samples, retailers, institutional drug rooms; certain acts declared unlawful.

On and after the effective date of this act, it shall be unlawful:

(a) For any person to operate, maintain, open or establish any pharmacy within this state without first having obtained a registration from the board. Each application for registration of a pharmacy shall indicate the person or persons desiring the registration, including the pharmacist in charge, as well as the location, including the street name and number, and such other information as may be required by the board to establish the identity and exact location of the pharmacy. The issuance of a registration for any pharmacy shall also have the effect of permitting such pharmacy to operate as a retail dealer without requiring such pharmacy to obtain a retail dealer's permit. On evidence satisfactory to the board:

(1) That the pharmacy for which the registration is sought will be conducted in full compliance with the law and the rules and regulations of the board;

(2) that the location and appointments of the pharmacy are such that it can be operated and maintained without endangering the public health or safety;

(3) that the pharmacy will be under the supervision of a pharmacist, a registration shall be issued to such persons as the board shall deem qualified to conduct such a pharmacy.

(b) For any person to manufacture within this state any drugs except under the personal and immediate supervision of a pharmacist or such other person or persons as may be approved by the board after an investigation and a determination by the board that such person or persons is qualified by scientific or technical training or experience to perform such duties of supervision as may be necessary to protect the public health and safety; and no person shall manufacture any such drugs without first obtaining a registration so to do from the board. Such registration shall be subject to such rules and regulations with resect to requirements, sanitation and equipment, as the board may from time to time adopt for the protection of public health and safety.

(c) For any person to distribute at wholesale any drugs without first obtaining a registration so to do from the board.

(d) For any person to sell or offer for sale at public auction or private sale in a place where public auctions are conducted, any drugs without first having obtained a registration from the board so to do, and it shall be necessary to obtain the permission of the board in every instance where any of the products covered by this section are to be sold or offered for sale.

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

(f) Except as otherwise provided in this subsection (f), for any person operating a store or place of business to sell, offer for sale or distribute any drugs to the public without first having obtained a registration or permit from the board authorizing such person so to do. No retail dealer who sells 12 or fewer different nonprescription drug products shall be required to obtain a retail dealer's permit under the pharmacy act of the state of Kansas or to pay a retail dealer new permit or permit renewal fee under such act. It shall be lawful for a retail dealer who is the holder of a valid retail dealer's permit issued by the board or for a retail dealer who sells 12 or fewer different nonprescription drug products to sell and distribute nonprescription drugs which are prepackaged, fully prepared by the manufacturer or distributor for use by the consumer and labeled in accordance with the requirements of the state and federal food, drug and cosmetic acts. Such nonprescription drugs shall not include:

(1) A controlled substance;

(2) a drug product the label of which is required to bear substantially the statement: "Caution: Federal law prohibits dispensing without prescription"; or

(3) a drug product intended for human use by hypodermic injection; but such a retail dealer shall not be authorized to display any of the words listed in subsection(s) of K.S.A. 65-1626 and amendments thereto, for the designation of a pharmacy or drugstore.

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

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

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

History: L. 1953, ch. 290, § 29; L. 1967, ch. 342, § 3; L. 1975, ch. 319, § 29; L. 1979, ch. 193, § 3; L. 1982, ch. 262, § 3; L. 1982, ch. 263, § 7; L. 1983, ch. 210, § 2; L. 1986, ch. 231, § 29; June 1.

K[illegible] BReg 68-11-2.
[illegible]s for premises registrations and permits.

(a) Pharmacy registration and permit fees shall be as follows.

(1) Each new pharmacy registration shall be $140.00;

(2) Each renewal pharmacy registration shall be $125.00.

(b) Manufacturer registration and permit fees shall be as follows.

(1) Each new manufacturer registration shall be $300.00;

(2) Each renewal manufacturer registration shall be $300.00.

(c) Wholesaler registration and permit fees shall be as follows.

(1) Each new wholesaler registration shall be $300.00;

(2) Each renewal wholesaler registration shall be $300.00.

(3) Each wholesaler who deals exclusively in nonprescription drugs and for which no registration is required under the uniform controlled substances act there shall be a fee of $50.00.

(d) Institutional drug room registration and permit fees shall be as follows.

(1) Each new institutional drug room registration shall be $25.00;

(2) Each renewal institutional drug room registration shall be $20.00.

(e) Other registration and permit fees shall be as follows.

(1) For each retail dealer selling more than 12 different nonprescription drug products there shall be a permit fee of $12.00;

(2) Each auction permit shall be $35.00;

(3) Each sample distribution permit shall be $30.00.

(Authorized by and implementing K.S.A. 65-1645 as amended by L. 1987, ch. 236, Sec. 5; effective May 1, 1983; amended May 1, 1988; amended June 6, 1994.)

As Amended by Senate Committee

Session of 1998

SENATE BILL No. 533

By Committee on Public Health and Welfare

1-28

AN ACT concerning the sale of medicines and drugs through vending machines; amending K.S.A. 65-650 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-650 is hereby amended to read as follows: 65-650. *(a)* Any person, firm or corporation who shall offer for sale or sell or distribute any *prescription* medicine, *prescription-only* drug or poison through or by means of any vending machine or other mechanical device, or who shall use any vending machine in or for the sale or distribution of any *prescription* medicine, *prescription-only* drug or poison, shall be ~~deemed~~ guilty of a *class C nonperson* misdemeanor and upon conviction shall be fined not less than ~~twenty-five~~ ~~dollars~~ ~~($25)~~ $25 nor more than ~~five~~ ~~hundred~~ ~~dollars~~ ~~($500)~~ $500.

(b) No nonprescription drugs shall be sold through a vending machine in anything other than the manufacturer's original, tamper evident and expiration-dated packet. ***Any vending machine in which nonprescription drugs are offered for sale or sold shall be located in a climate controlled area, and the drugs offered for sale or sold in such vending machine shall not be older than the manufacturer's expiration date. A violation of this subsection (b) is a class C nonperson misdemeanor and upon conviction the violator shall be fined not less than $25 nor more than $500.***

Sec. 2. K.S.A. 65-650 is hereby repealed.

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

4-10

Founded 1881

NDMA

Better Health
Through Responsible
Self-Medication

NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION

March 12, 1998

The Honorable Carlos Mayans
Chairman, House Health & Human Services Committee
Statehouse
300 SW Tenth Street
Topeka, Kansas 66612-1504

RE: **Kansas Senate Bill 270 -- Prohibits Flea Market Sales of Drugs & Cosmetics**

Dear Chairman Mayans:

On behalf of the Nonprescription Drug Manufacturers Association (NDMA)[1], I am pleased to write to express our **support for Senate Bill 270** which will restrict the sale at flea markets of certain over-the-counter drugs (especially those which carry expiration dates). NDMA supports the intended result of this legislation -- to reduce the resale of stolen products that may be outdated or adulterated and therefore dangerous to consumers -- and applauds your introducing the bill.

NDMA shares the concerns of our members (manufacturers of OTCs) and those of retailers about the cases of stolen or adulterated products being sold at flea markets. The theft of OTC medicine from retailers and wholesalers is a rapidly growing problem. NDMA has been alarmed by the reports from retailers, wholesalers, and even manufacturers' warehouses about "shelf-sweeping" operations and other forms of shoplifting. Even our direct-marketing members have informed us that their products sometimes show up at flea markets by unauthorized representatives or in violation of their company policies against flea market sales.

These activities not only mean lost revenues to retailers but also pose a risk to consumers as well. Often, these stolen goods end up at flea markets being sold by vendors who know their "merchandise" is stolen and who have no regard for their expiration dating, directions for proper handling, and proper storage. Once consumers get an expired or mishandled product home, they may not remember where they purchased it -- only the name of the manufacturer or distributor on the label. While these products are rarely harmful once expired, they are nevertheless deleterious

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[1] The Nonprescription Drug Manufacturers Association (NDMA) is the 117-year-old trade association which represents manufacturers -- both large and small -- of nonprescription or over-the-counter (OTCs) medicines such as cold remedies, antacids, pain relievers, and many others. The Association's members account for approximately 95 percent of all OTC medicines sold in the United States. A nonprescription drug is one that the U.S. Food and Drug Administration has found to be safe and effective for direct consumer use based on the required label directions and warnings.

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in that the may no longer be effective and they may fail to treat the conditions for which they are purchased, leaving consumers to suffer longer before getting appropriate medication.

At the same time, we are concerned that any such legislation to restrict the sale of OTCs at flea markets not unduly interfere with the rights of legitimate direct selling representatives who may sell their products through home sales presentations, home shopping parties and similar methods. We have reviewed the language of Senate Bill 270 and believe it would not interfere with the rights of those individuals to conduct their livelihoods. NDMA is satisfied that this bill would balance the interests of those parties with the growing need to combat shoplifting and illegitimate sales of stolen or expired products.

Accordingly, NDMA offers its support for Senate Bill 270 and would be pleased to assist you if we can be of any help in the passage of this legislation. Enclosed is a copy of our position paper on this matter which I encourage you to share with the other members of the legislature.

Thank you for your leadership on this issue. Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

Steven M. Mister

Steven M. Mister,
Assistant General Counsel & Deputy
Director for State Government Relations

Encl: NDMA Position Paper: *Restrictions on Flea Market Sales*

cc: James G. Sheehan, Kansas Food Dealers Association
Norman C. Grant, Kansas Retail Council

SMM/s

The Nonprescription Drug Manufacturers Association
POSITION PAPER:
State Legislation to Restrict
The Sale of OTCs at Flea Markets

The Nonprescription Drug Manufacturers Association (NDMA)[1] supports legislation to restrict the sale of over-the counter drugs which are subject to an expiration date by itinerant vendors at flea markets. NDMA believes this legislation provides important protection for consumers from expired or damaged products; deters shoplifting and theft from retailers and warehouses by eliminating a market for these stolen goods; and strikes a balance between these concerns and the interests of legitimate direct-selling and in-home shopping representatives.

NDMA strongly endorses the goal of legislation to halt the sale of stolen merchandize at flea markets. NDMA shares the concerns of our members (manufacturers of OTCs) and those of retailers about the cases of stolen or adulterated products being sold at flea markets. The theft of OTC medicine from retailers and wholesalers is a rapidly growing problem. NDMA has been alarmed by the reports from retailers, wholesalers, and even manufacturers' warehouses about "shelf-sweeping" operations and other forms of shoplifting. Even our direct-marketing members have informed us that their products sometimes show up at flea markets by unauthorized representatives or in violation of their company policies against flea market sales.

These activities not only mean lost revenues to retailers but also pose a risk to consumers as well. Often, these stolen goods end up at flea markets being sold by vendors who know their "merchandise" is stolen and who have no regard for their expiration dating, directions for proper handling, and proper storage. Once consumers get an expired or mishandled product home, they may not remember where they purchased it -- only the name of the manufacturer or distributor appears on the label.

At the same time, however, NDMA is aware of concerns that any such legislation to restrict the sale of OTCs at flea markets not unduly interfere with the rights of legitimate direct selling representatives who may sell their products through home sales presentations, home shopping parties and similar methods. It is important that such a law would not interfere with the rights of those individuals to conduct their livelihoods. Legislation which balances the interests of those parties with the growing need to combat shoplifting and illegitimate sales of stolen or expired products protects consumers and retailers alike. NDMA urges for the passage of such legislation.

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[1] The Nonprescription Drug Manufacturers Association (NDMA) is the 116-year-old trade association which represents manufacturers -- both large and small -- of nonprescription or over-the-counter (OTCs) medicines such as cold remedies, antacids, pain relievers, and many others. The Association's members account for approximately 95 percent of all OTC medicines sold in the United States. A nonprescription drug is one that the U.S. Food and Drug Administration has found to be safe and effective for direct consumer use based on the required label directions and warnings.

NDMA/smm/s

THE KANSAS PHARMACISTS ASSOCIATION
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ROBERT R. (BOB) WILLIAMS, M.S., C.A.E.
EXECUTIVE DIRECTOR

TESTIMONY

SB 533
House Committee on Health & Human Services
March 16, 1998

My name is Bob Williams, I am the Executive Director of the Kansas Pharmacists Association. Thank you for this opportunity to address the Committee regarding Senate Bill 533.

The Kansas Pharmacists Association believes that the selling of drugs in vending machines is bad policy.

However, if the State of Kansas is to approve the selling of drugs in vending machines, we believe the amendments to SB 533 added in the Senate will help protect the public.

Thank you.

100 Years of Service

AFFILIATED WITH NFDA

KANSAS FUNERAL DIRECTORS AND EMBALMERS ASSOCIATION, INC.

1200 S. KANSAS AVENUE • P.O. BOX 1904 • Topeka, Kansas 66601-1904
Phone (913) 232-7789 • FAX (913) 232-7791

Date: March 16, 1998

To: House Health & Human Services Committee

From: Pam Scott, Executive Director
Kansas Funeral Directors and Embalmers Association

Re: Senate Bill No. 506

Chairman Mayans and members of the Committee, I am Pam Scott, Executive Director of the Kansas Funeral Directors and Embalmers Association (KFDA). I appear before you in support of Senate Bill No. 506 which would increase the dollar amount of funds that can be placed in an irrevocable pre-arranged funeral agreement, contract or plan.

Kansas law currently provides, in K.S.A. 16-303(c), that pre-arranged funeral agreements, contracts and plans may only be made irrevocable as to the first $3000 of funds set aside. Therefore, funds set aside for a funeral in excess of $3000 must be placed in a revocable funeral agreement. With the average price of an adult funeral exceeding $4000, this happens frequently. In such cases the funeral home and consumer must execute two pre-arranged funeral contracts. This creates much confusion among consumers prearranging and prefinancing their funeral services. This is especially true of the elderly who are often spending down assets to become eligible for nursing home coverage through Medicaid. They do not understand why two contracts are necessary especially when revoking such a contract would jeopardize their eligibility for Medicaid benefits. The necessity of two contracts also creates excessive paperwork for the funeral home. Two pre-arranged funeral agreements have to be written and then reported to the State Board of Mortuary Arts.

The KFDA would like to see K.S.A. 16-303(c) amended to allow a consumer to place $3500 for funeral services plus sufficient funds to cover the retail price of a casket, urn, and outside burial container in an irrevocable pre-arranged funeral account. This amendment will provide those establishing prearranged funeral accounts more freedeom to choose the type of account they want to place their funds in.

HOUSE HHS COMMITTEE
Attachment 7-1
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I would like to stress that this amendment does not require that the funds be placed into an irrevocable account. It only allows the consumer the right to choose the irrevocable funding mechanism.

Pre-arranged funeral accounts are often established when a person is preparing to go on some form of public assistance. A common example is an elderly individual attempting to obtain nursing home benefits through Medicaid.

To do so they must meet certain financial eligibility requirements. The Department of Social and Rehabilitation Services (SRS), when determining eligibility for assistance, currently excludes from resources $3000 of irrevocable burial funds plus additional funds for burial space. Burial space is defined to include a casket, urn, outside burial container, a burial plot, opening and closing costs and or grave marker. The only change this amendment would have on these current eligibility requirements would be to increase from $3000 to $3500 the amount that can be set aside as burial funds. This amount has not been changed since at least 1991. In many cases, especially if a body has to be transported back to Kansas from another state, the $3000 is insufficient to cover the expenses. The bill would not change the dollar amount that can be set aside for burial space items (merchandise).

The KFDA anticipates no significant increase in the amount of funds that will be set aside by consumers under these proposed amendments. In 1997, the average dollar amount set aside in a prearranged funeral account trusted in the KFDA Master Trust was approximately $3500. This is significantly below the dollar amount SRS allows to be set aside for prearranged funeral agreements.

I have discussed these proposed amendments with the Department of Social and Rehabilitation Services and they have indicated they have no objections to these changes.

At least 30 states have statutes or regulations that treat irrevocable pre-arranged funeral accounts as totally exempt assets when determining eligibility for Medicaid. These states include Missouri, Oklahoma, Colorado, and Iowa. By making our law more consistent with the laws of these other states, we will also remedy a problem which arises when a person pre-arranges their funeral in Kansas, where they wish to be buried, but then move to another state, perhaps to be closer to family. Currently, if they apply for public assistance in the new state, and that state requires all funds be irrevocable, that person may not be eligible for assistance in that state due to the revocable nature of some of the

burial funds in Kansas. This amendment should make our law more consistent with the laws of the majority of states.

I would like to thank you for the opportunity to appear before you today and request your support of Senate Bill No. 506. I would be happy to address any questions you may have.