

Approved: 2-2-98  
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chair Sandy Praeger at 10:00 a.m. on January 28, 1998 in Room 526-S of the Capitol.

All members were present except:

Committee staff present:

Robin Kempf, Legislative Research Department  
Norman Furse, Revisor of Statutes  
Jo Ann Bunten, Committee Secretary

Conferees appearing before the committee:

Larry Buening, Executive Director, Board of Healing Arts  
Bud Grant, Kansas Chamber of Commerce and Industry  
Frank Muscato, Wal-Mart/Consumer Protection

Others attending: See attached list

**Introduction of Bills**

Larry Buening, Executive Director, Board of Hearing Arts, requested introduction of a bill relating to the definition of a disciplinary counsel. Senator Salmans made a motion that the Committee recommend introduction of the proposed legislation, seconded by Senator Langworthy. The motion carried.

Senator Salmans requested introduction of a Committee bill that would transfer powers from the Behavioral Sciences Regulatory Board to the Secretary of the Kansas Department of Health and Environment. Senator Becker made a motion that the Committee recommend introduction of the proposed legislation, seconded by Senator Langworthy. The motion carried.

**Hearing on SB 270 - Sale of certain goods at flea markets**

Bud Grant, Kansas Chamber of Commerce and Industry, addressed the Committee in support of SB 270 which would prohibit transient merchants from selling such items as baby food, infant formula, pharmaceuticals, over-the-counter drugs, cosmetics, and medical devices at flea markets. He then introduced Frank Muscato, special investigator with Wal-Mart who has worked closely with several retail organizations, as well as with federal, state, and local law enforcement officials all across the country on this issue. Mr. Muscato briefed the Committee on how stolen merchandise is sold to illegal flea market vendors, and the danger to the public in buying these items at flea markets. He noted that the bill would not shut down flea markets in general, only those vendors selling merchandise that poses a health threat to consumers as outlined in his written testimony. (Attachment 1) During Committee discussion it was pointed out by Mr. Muscato that the states of Tennessee, Florida, Maryland and Arizona have introduced such legislation, and that New York, Massachusetts, Ohio, North Carolina, South Carolina, New Jersey and Missouri have such laws in effect.

**Action on SB 467 - Psychologists and masters level psychologists; examinations; fees**

After Committee discussion on SB 467, Senator Hardenburger made a motion the Committee recommend SB 467 favorably for passage, seconded by Senator Salmans. The motion carried.

**Adjournment**

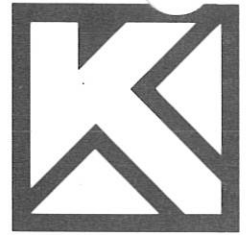
The meeting was adjourned at 11:00 a.m.

The next meeting is scheduled for January 29, 1998.



# LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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January 28, 1998

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee on Public Health and Welfare

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 tak

Senate Public Health & Welfare

Date: 1-28-98

Attachment No. /

### **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.

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:

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

# THE PATH OF STOLEN GOODS FROM RETAIL CHAINS





## GENERAL INFORMATION

### DEFINITIONS -

<u>Kleptomaniac</u>	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.
<u>Shoplifter</u>	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.
<u>Booster</u>	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.
<u>Booster Bags</u>	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.
<u>OTC</u>	Over the counter drugs
<u>HBA</u>	Health and beauty aids
<u>Expiration Dates</u>	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.
<u>Damaged Product</u>	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.
<u>Clean Up</u>	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 vary 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 lists 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.

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 extends 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.

78	24ct TYLENOL & ADVIL 13-9-5-48-3-	.75	(10-A)	118.00
46	72ct TYLENOL 2-4-21-7-3-3-	2.50		110.00
1	100ct TYLENOL & ADVIL 4-4-2 1/2-2 1/2	3.25	1 1/2-2 1/2-4 1/2-3 1/2-2-3-1 1/2-1 1/2	544.75
86	100ct REGULAR 29-8-1 1/2-10-1 1/2-15-15-	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 18-2-10-34-	1.50		90.00
14	2oz CREAM 16-	2.25		316.00
43	1oz CREAM 4-10-17-5-11-	1.50		64.50
1^	90 CORRECTOL 4-6-	3.25		325.00
6-	60 CORRECTOL 2-8-1-10-12-29-	2.25		139.50
78	30 CORRECTOL 14-2-4-14-7-2-10-9-	1.25	16-	97.50
18	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		39.50
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		
36	24ct TYLENOL PM 4-15-14-44-3-15	1.50	19-28-4-	264.00
2	BURNS- 25	8.00		200.00
2	Red roundup-2-	6.00		12.00
19	700 D. 2-10-11-	8	(54, 152-	208.00
3	SEGA- C.D 3	22-	2593-	66.00

Description	Price	Units	Total	Description	Price	Units	Total
Polaroid SX 70 1 Pack	6.00						
Polaroid SX 70 2 Pack	12.00						
Preparation H 1 oz. Ointment	1.75						
Preparation H 12 Ct.	1.75						
Preparation H 2 oz. Ointment	2.75						
Preparation H 24 Ct.	2.75						
Preparation 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						
Tylenol 24 Ct. PM	1.75						
Tylenol 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