

1999 SENATE POLITICAL SUBDIVISIONS

SB 2368


1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2368

Senate Political Subdivisions Committee

Conference Committee

Hearing Date February 5, 1999

Tape Number	Side A	Side B	Meter #
1		x	1434 to 3555
Committee Clerk Signature 			

Minutes:

SENATOR LEE: OPEN HEARING ON SB2368

SENATOR NELSON: introduce bill, see testimony

ANN CRUZ: Support for this bill

SENATOR FLAKOLL: forbid selling of milk at a street fair

SENATOR NELSON: no, because you have a permit at a street fair, cannot come up with a sales slip

SENATOR FLAKOLL: small things of cookies and chips you couldn't sell at a rummage sale

SENATOR NELSON: only applies to food sold to children under 2

SENATOR FLAKOLL: but the bill doesn't say anything about an expiration date at any location

SENATOR NELSON: does Pepsi have an expiration date

DISCUSSION

SENATOR WATNE: pawn shop considered a transient merchant

SENATOR NELSON: not sure what a transient merchant is, story of hurricane Andrew and insurance company reselling the product and quality of product

SENATOR LEE: not exactly expired product

SENATOR NELSON: what is the definition according to the century code

SENATOR NELSON: reading of the definition of transient merchant

SENATOR WATNE: not a pawn shop

SENATOR LEE: questions for SENATOR NELSON:

RON NESS: SEE RELATED TESTIMONY

SENATOR LYSON: part on new merchant and missing amendments

RON NESS: Line 8, adding to the effect that it addresses new products that could be sold to people under the age of two.

SENATOR LYSON: bought these types of products before

RON NESS: something new, this would not address, but brand new items in the package that need to be addressed

DISCUSSION

RON NESS: anything with an expiration

SENATOR NELSON: beanie babies are bought for resale, I would like to say a strip down model of this legislation.

RON NESS: we would support this

SENATOR LEE: collection of products and the reselling of an item that SENATOR LEE:

purchased

Page 3

Senate Political Subdivisions Committee

Bill/Resolution Number sb2368

Hearing Date February 4, 1999

RON NESS: amendments on line 17 and two years to provide evidence of purchase

SENATOR LEE: how about a raffle and what would be done with this

RON NESS: that would be evidence enough if you told them that you received the product from a raffle, take amendments and do what you wish

SENATOR LEE: do for discussion

MOTION: CLOSE HEARING ON SB2368

FURTHER COMMITTEE DISCUSSION

February 11, 1999

DISCUSSION ON SB2368

MOTION: DO PASS AS AMENDED

PROPOSED AMENDMENTS TO SENATE BILL NO. 2368

Page 1, line 8, replace "and" with "or"

Page 1, line 9, replace "with" with "that has" and replace "expiration date" with "expired shelf life"

Page 1, line 10, replace "store" with "or service establishment"

Page 1, line 11, remove "by transient merchants"

Page 1, line 12, after "retail" insert "or at an industry or association trade show".

Page 1, line 13, replace "which" with "that"

Page 1, line 14, remove the comma and after "expires" insert "and shall present, within ten days of demand, a receipt for any product sold which must include the price paid and the date of sale"

Renumber accordingly

Date: 2-11-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2368

Senate Political Subdivisions Committee Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass as amended

Motion Made By Watne Seconded By Flakoll Lyson

Senators	Yes	No	Senators	Yes	No
Senator Lee (Chairman)	/				
Senator Lyson (Vice-Chaiman)	/				
Senator Flakoll	/				
Senator Watne	/				
Senator Kelsh	/				
Senator Nelson	/				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Nelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2368: Political Subdivisions Committee (Sen. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2368 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "and" with "or"

Page 1, line 9, replace "with" with "that has" and replace "expiration date" with "expired shelf life"

Page 1, line 10, replace "store" with "or service establishment"

Page 1, line 11, remove "by transient merchants"

Page 1, line 12, after "retail" insert "or at an industry or association trade show"

Page 1, line 13, replace "which" with "that"

Page 1, line 14, remove the comma and after "expires" insert "and shall present, within ten days of demand, a receipt for any product sold which must include the price paid and the date of sale"

Renumber accordingly

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2368

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2368

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-2-99

Tape Number	Side A	Side B	Meter #
2	x		27.1 - 59.9
Committee Clerk Signature <i>Lisa Hornes</i>			

Minutes:

SB 2368 Relating to the sale of goods, drugs, and cosmetics; and to provide a penalty.

Chairman Berg opened the hearing on the bill.

Sen. Judy Lee, for Sen. Carolyn Nelson, introduced and testified in support of the bill.

(see attached written testimony)

Committee members discussed the restriction on resale items, collection items, expired items, and specific problems to bring this about. Avon bottles may not have an expiration date and may be OK to sell. There has been a problem in some areas on shoplifter items being sold in a organized gang environment.

Sen. Marv Mutzenberger, testified in support of the bill. The bill protects public from danger of products and that is his primary interest.

Ron Ness, Retail Association, testified in support of the bill.

(see attached written testimony)

His organization is after groups that sell in large quantities not the small groups who sell like at garage sales. Retailers lose much on theft and resale each year because of this organized crime.

Berg asked what the problem is and why the bill.

Ness said that the problem is with large retailers such as Wal Mart.

Frank Muscato, National Investigator, Wal Mart, testified in support of the bill.

(see attached written testimony)

The committee members discussed items that were not dated and those that were dated. Muscato said receipts are required for dated items. Sometimes UPC labels are taken off and a refund is received for more than a products sold for initially. In North Dakota this kind of activity is not as common.

Galen Jordre, ND Pharmaceutical Assoc., testified in support of the bill. Drug items that are sold by unauthorized people and also outdated can cause health problems.

Glassheim asked what kind of drugs can be sold.

Jordre explained that drugs can be sold but there must evidence where drugs came from. This bill keeps the chain of control in place.

Chairman Berg closed the hearing on the bill.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2368

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-3-99

Tape Number	Side A	Side B	Meter #
1		x	5272 - end
2	x		0 - 769
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes: **SB 2368**

Chairman Berg opened the discussion of SB 2368.

Rep. Keiser made a motion for a Do Not Pass.

Rep. Severson second the motion.

Rep. Klein: This bill is similar to the other bill on pawn shops. It becomes a complete impossibility to try and enforce this at flea markets and rummage sales. I can't imagine that if you go to a flea market and buy out dated medicine and someone doesn't have a receipt for these items that were bought ten years ago. It makes no sense at all. Enforcing it would be impossible.

Rep. Ekstrom: I understand your concern, but I think what this is really addressing is the fencing of new goods at flea markets and other outlets. It gives law enforcement one more tool to go to that individual that has the 40 bottles of aspirin that they are selling at a reduced rate and say to that person that they have to have a receipt for these items. It isn't going after someone who has

the old Avon bottles or the left over items they didn't sell. It's going after the guys that specifically are going in and sweeping the shelves clean at Walmart and then selling the items at a flea market.

Chairman Berg: Part of my concern with the bill is that it is Walmart's problem. They need to control the theft in their own store. To some degree, like the pawn shop bill, they are trying to shift this on someone else. The reality is for second hand stores and pawn shops to understand that they may not have a lot of money to get things through there. I wonder if we are setting up some barriers unintentionally by passing this.

Rep. Klein: We are trying to solve a problem that is the responsibility of the individual. If you go to a flea market or a rummage sale to buy something, you know what you are getting. It is something that you as a buyer should be aware of. To try and protect everybody is an impossibility.

Rep. Froseth: I believe that the law enforcement does have the right to inspect a flea market. If they see suspicious merchandise, then they do have the right to confiscate it and hold it until they find out the source.

Chairman Berg: I think where this is coming from is a cosmetic companies that sell through individuals, and one of those people in some state has set up to sell those cosmetics in a flea market setting. What that does is undermine all the other people that are selling one on one.

Rep. Stefonowicz: There is something to be said, however, for selling at a flea market drugs that are outdated. We should prohibit that if at all possible. If you buy something there that is outdated in an unopened box, some people are not careful about reading the expiration date and it should not be offered for sale if it's beyond that date. I've looked at the states that are

considering this. For cities like Mesa AR. this is the primary occupation for most of the people there and other states as well. It would be hard to regulate them.

End of tape 1, side B. Start tape 2.

Rep. Severson: As a store owner I never sell items that are outdated.

Rep. Keiser: You could probably go into any store around and be able to buy outdated products.

For those people that do sell outdated products they are in violation of federal laws. That could be argued in a court of law. Despite that, the ability to have a receipt is a non issue. Who keeps receipts for everything they buy.

Rep. Ekstrom: This bill does not mention appliances. It only mentions food, drugs and cosmetics.

For instance, test strips for diabetics. If they buy these outdated items they could get false readings.

Chairman Berg: I think the point made was that you have to use the same standard for these products.

Rep. Glassheim: The reason that you don't care about VCR's, and you do care about the cosmetics and other things is they seem to do with things that can cause physical bodily harm. Whereas the buyer has no knowledge of what the product is like inside and what it can do to you. I think that is the rationale as to why these items are singled out.

This bill is really a schizophrenic bill. There are two issues in it and they go against each other. One is a health and safety issue which has to do with dating of things you can ingest or harm you. The other is a theft protection bill. I'm not sure where they merge. The first part of the bill could be salvaged, but I'm not sure about the second part.

There was no further discussion.

Page 4

House Industry, Business and Labor Committee

Bill/Resolution Number Sb 2368

Hearing Date 3-3-99

The roll call vote was 11yea, 4 nay, 0 absent. The motion carried.

Rep. Klein will carry the bill.

Date: 3-3-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2368

House Industry, Business and Labor Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken do not pass

Motion Made By Keiser Seconded By Severson

Representatives	Yes	No	Representatives	Yes	No
Chairman Berg	/		Rep. Thorpe	/	
Vice Chairman Kempenich	/				
Rep. Brekke	/				
Rep. Ekstrom		/			
Rep. Froseth	/				
Rep. Glassheim		/			
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux		/			
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefanowicz		/			

Total (Yes) 11 No 4

Absent _____

Floor Assignment Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 3, 1999 2:19 p.m.

Module No: HR-38-3964
Carrier: Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2368, as engrossed: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **DO NOT PASS** (11 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2368 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

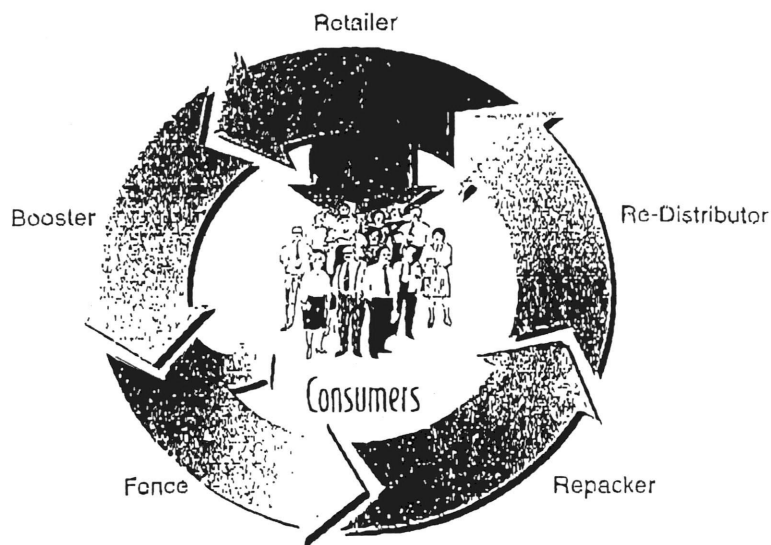
SB 2368

Ron Hess

The Organized Retail Theft Ring

Understanding Organized Retail Theft

The following excerpts are from a presentation to the 1998 NCRMA Annual Meeting by William D. Delahoyde, Esq.



Discount stores, chain drug stores, and super-market/grocery stores are presently losing approximately \$3-\$10 billion dollars in merchandise annually to organized retail theft. Organized theft rings are operating in locations throughout the country. While the true scope of the problem eludes the industry due to lack of hard data, we do know that organized retail theft is increasing and outpacing the ability of retailers to address the problem.

Organized Theft Rings

An organized theft ring consists of Boosters, Fences, Repackers, and Re-Distributors.

The Booster

The Booster is a professional retail thief who:

- Is part of an organized network
- Steals massive amounts of goods for resale
- Steals daily
- Steals to sustain a drug habit or lifestyle

An individual booster steals:

- \$500-\$3,000 per day
- \$200,000-\$1,000,000 per year

A group of boosters steals:

- \$4-\$20 million per year

The Fence

Fences may operate flea markets, pawn shops, convenience stores, etc., through which they:

- Buy the stolen goods
- Offer for sale damaged and near date goods
- Re-sell first quality goods to Repackers

The Repacker

The Repacker may operate locally as a "Salvage Operator" or regionally as a "Liquidator/Distributor." The

Repacker:

- Obtains stolen goods from various Fences
- Conducts the "clean-up" of stolen goods
- Re-boxes or shrinkwraps stolen goods for resale

The Re-Distributor

A Re-Distributor acquires and resells illicit goods into the nation's retail system by:

- Obtaining stolen goods from various Fences and Repackers
- Finalizing the "clean-up" of stolen goods
- Reboxing or shrinkwrapping stolen goods for sale to outlets or jobbers

Some frequently stolen products include aspirin and ibuprofen, over-the-counter drugs, pregnancy test kits, and batteries. The impact on retailers is enormous. In 1995, US retail sales totaled \$848 billion dollars. However, \$3-\$10 billion dollars, or .25%-.33% of total sales were lost in shrink due to organized retail theft (total shrink was 1%-3%, or \$10-\$30 billion dollars). In addition, retailers experienced losses related to:

- Empty shelves
- Loss of inventory control
- Increased emergency replenishment
- Increased expenditures protecting product
- Restrictions on product access
- Lost sales
- Reduced profits

For more information about organized retail theft and how to stop it, contact William D. Delahoyde, Esq., at Market Integrity Services, 5561 McNeely Drive, Suite 302, Raleigh, NC 27612 or call 919-787-0050.

FLEA MARKET LEGISLATION UPDATE

State Laws Addressing Flea Market Sales:

- | | |
|------------------|--------------------|
| 1. Illinois | 8. North Carolina |
| 2. Kansas | 9. Ohio |
| 3. Minnesota | 10. Rhode Island |
| 4. Missouri | 11. South Carolina |
| 5. New Hampshire | 12. Tennessee |
| 6. New Jersey | 13. West Virginia |
| 7. New York | |

Flea Market Bills are pending in the following states for the current session:

- | | |
|--------------------|------------------|
| 1. Alabama | 10. Mississippi |
| 2. Arkansas | 11. Nevada |
| 3. Arizona | 12. New Mexico |
| 4. Colorado | 13. Pennsylvania |
| 5. Connecticut | 14. Texas |
| 6. Florida | 15. Utah |
| 7. Indiana | 16. Virginia |
| 8. Maryland | 17. Washington |
| 9. (Massachusetts) | |

30 states
Potential

States in which Enhanced Flea Market Bills are Being Considered:

- | | |
|-------------|-----------------|
| 1. Missouri | 3. (Oklahoma) |
| 2. Ohio | 4. Rhode Island |

Amendments to SB2368

Line 12 insert after the word "retail." This act also does not apply to:

1. the sale of a motor vehicle or trailer that is required to be registered or is subject to the certificate of title laws of this state;
2. the sale of wood for fuel, ice, or livestock;
3. business conducted in any industry or association trade show;
4. property, although never used, whose style, packaging or material, clearly indicates that such property was not produced or manufactured within recent times;
5. the sale of arts or crafts by a person who produces such arts and crafts.

Line 14 insert after the word "name," a receipt with the date of transaction and the price paid for the product,

Line 17 insert after the word "made." It is a violation of this act for a transient merchant required to maintain receipts to knowingly: Falsify, obliterate, or destroy such receipts; fail or refuse to make such receipts available for inspection within a period of time which is reasonable under the individual circumstances surrounding such request; provided however, nothing contained in this provision requires the transient merchant to possess such receipt on or about his or her person without reasonable notice; or fail to maintain the receipts required by this section for at least two years.

Line 18 insert after the word "infraction" for the first violation, and is guilty of a class B misdemeanor for the second violation, and any third or subsequent violation is guilty of a class A misdemeanor.

MARY KAY[®]

February 3, 1999

Senator Carolyn Nelson
1125 College St.
Fargo, North Dakota

Dear Senator Nelson:

On behalf of Mary Kay Inc. and our independent sales force in North Dakota, let me express support for your SB 2368 which is scheduled to be heard in committee tomorrow.

We support the proposed legislation which addresses the sale of consumer products at flea markets and similar venues. Such sales cause concern about product quality, consumer health and safety, theft and sale of stolen goods, and other "gray market" activities.

Several states have passed similar legislation. We salute you and the legislature for addressing this concern through SB 2368.

Thank you for your time.

Sincerely,



Anne Crews
Vice President


Mary Kay Inc.
16251 Dallas Parkway
Dallas, TX 75248
972/687-5729
Fax 972/687-1613

NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360




COMMITTEES:
Judiciary
Political Subdivisions



Senator Carolyn Nelson
District 21
1125 College Street
Fargo, ND 58102-3433

SB 2368 is a bill to restrict sales of manufactured and packaged baby food, any drug, any cosmetic and any product with an expiration date at places other than retail space or authorized places for transient merchants.

This bill would discourage sales of baby food at rummage sales, flea markets or door to door without permission from a manufacturer or distributor. The number one concern must be the health and welfare of the child. Who knows where that baby food has been?



In one of my other lives, I sell Mary Kay skin care, color cosmetics, fragrances and sunscreen products. Our consultant agreement says "I understand that display or sale of Mary Kay products in public, retail or service establishments of any kind is inconsistent with the terms of this Agreement." Upon termination of an agreement, the Company will repurchase any inventory purchased during the past year at 90% of the purchase price. In testimony for the South Carolina Legislature, Anne Crews, Vice President, Corporate Affairs said "There have been many reported instances about Mary Kay product, whose shelf life has expired or has been damaged, being re-sold at flea markets and similar venues. These sales are a concern regarding product quality, customer health and safety, theft and sale of stolen goods, and other "gray market" activities. " The company has a 100% satisfaction guarantee, but we need only service our own customers with that guarantee.

In another committee, we heard that the average shoplifting is \$85. All of the product being considered in this bill is small, easy to shoplift.

All of the products have a direct impact on the health and welfare of the user. We need to know where that product has been, is it contaminated, how old is it, who had the original authority to sell it. These things all must be known to safeguard the well being of the users.

This bill does not apply to sales for future delivery by sample, catalog, brochure or a sales presentation in response to an invitation by the owner of the premises on which the sale is made.

A person who violates this section is guilty of an infraction.

You will hear from the health department and the retail marketers association. I also have a letter of support From Anne Crews, Mary Kay Cosmetics.



Thank you for your consideration of SB 2368.

Anne Crews
Vice President, Corporate Affairs

To: Chairman Berg and Members, North Dakota House Industry, Business and Labor
Committee
From: Anne Crews, Vice President, Corporate Affairs, Mary Kay Inc. *Anne Crews*
Subject: SUPPORT of S.B. 2368
Date: March 1, 1999
CC: Senator Carolyn Nelson

On behalf of Mary Kay Inc and our independent sales force in North Dakota, let me
express support for S.B. 2368 by Senator Nelson, which aims to regulate sales of
consumer products in flea markets and similar venues. The bill passed the Senate as
amended last month.

Mary Kay Inc. skin care, color cosmetics and OTC products such as sunblock are
intended to be offered by means of direct personal sales. Each customer is afforded the
opportunity for personal and professional attention from a trained Mary Kay Independent
Beauty Consultant.

There have been many reported instances of Mary Kay product, whose shelf life has
expired or has been damaged, being resold in flea markets. These sales are a concern
regarding product quality, customer health and safety, the potential for product
tampering, theft and sale of stolen goods and other "gray market" activities.

We believe that requiring merchants to maintain written proof of authorization to sell the
product, as suggested in S.B.2368, is an appropriate way to address this concern.

Thank you for your time.

Mary Kay Inc.
16251 Dallas Parkway
Dallas, TX 75248
972/687 5729
fax 972/687 1613



RON NESS • PRESIDENT

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SB 2368 House Industry, Business, and Labor

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NELSON'S FURNITURE, BOTTINEAU

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TRACY SIPMA
COUNTRY GENERAL STORE, DICKINSON

RYAN THOMPSON
SUNNY CYCLE, MANDAN

Mr. Chairman and members of the committee my name is Ron Ness. I am the President of the ND Retail Association. I appear before you in support of SB 2368.

Retail Theft is a serious issue – steps must be taken to put a stop to this problem. The amount of organized theft has outgrown retailers ability to address the problem. It's time to send a message to criminals. The intent of this bill is to reduce the resale of stolen products in at least some venues. Statistics say about 10% of stolen items are moved through flea markets. This bill will not effect honest vendors. The documentation requirement makes vendors keep records like retailers

Theft/Flea Market Info:

- Businesses loose more than 38 billion a year to shoplifters and employee theft.
- One ND retailer estimates 4.4 million in losses per year to shoplifting.
- ND has lost many retail businesses in recent years and theft is a factor in those business closings.
- 1/10th of customers shoplift
- Shoplifted items regularly fenced through flea markets:
 - Over the counter medications (Tylenol, sudafed, other medications).
 - Health and beauty aids.
 - Batteries for household use.
 - Razor blades.
 - New release videos and CDs, (music & computer games).
 - Tools
 - Fishing equipment
 - Clothes
 - Baby formula
 - Small electronic items (calculators, computer parts, & tape recorders).

Why Pass: Selling outdated items possess a threat to consumers using the products and to the manufacturers names who are on the product. This bill will help deter criminals from fencing their items in public under the guise of flea markets.

We urge a do-pass recommendation on SB2368. Thank you, I would be happy to answer any questions.

Flea Market Legislation

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 some flea market vendors selling stolen property in North Dakota. This bill is not to cause a hardship to honest vendors who are making or supplementing their income at flea markets.

The Shoplifter:

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

Professional Retail Thief (Booster):

Boosters sometimes wear special clothing and steal large numbers of the same product. They take orders on product to be stolen, and will travel from city to city, state to state to commit the thefts. Most of these boosters are supporting a narcotics habit. Many boosters work in groups of three or four and commit theft by shelf-sweeping, UPC switches, box stuffing, walk-outs, two-for one receipts, or bogus receipt returns, among many other methods of theft. Most of these boosters can completely clear a shelf in a matter of seconds.

Flea Market Fences:

Most flea market fences buy from professional retail boosters. The going price is about one quarter the retail price of the product. Some fences have order forms they give to boosters indicating what they want and what they will pay for the stolen property. These flea market fences will buy as much product as the retail boosters will deliver. The overage of product that the flea market fences buy is sold to repack warehouses for one-third to one-half the retail price. (Example: On March 31, 1998, the new release Disney video The Little Mermaid was released. Wal-Mart Stores, Inc. purchased 3 million at a cost of \$16.16 each. The following day, April 1st, I was at two different flea markets that were selling the video for \$14.00. This is an example of how fast these thefts occur and property is moved to flea market fences.)

Repack Warehouse:

The repack warehouses buy products from illegal flea market fences, among other sources. The repack warehouse cleans the product and sells to distribution warehouses. In the past four years, 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, videotapes, tools, small electronics, batteries, film and fishing equipment were recovered. Investigations are more successful in states that have legislation governing flea market fences.

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 the illegal flea market vendors and who would force them to remove the product. If a person bought the product from an illegal 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? Once out the controlled environment of a retail store, the stability of the product cannot be guaranteed.

OCT has 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 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.

Methamphetamine Concerns:

A further concern is the over-the-counter cold products on which retailers restrict amounts a person can buy. These products can be easily purchased at flea markets with no questions asked. Example: I recently purchased eleven boxes of Sudafed (with the ingredient pseudoephedrine that is used by some individuals to make methamphetamine) at a flea market, for 99 cents for each box. This product sells for \$3.49 at discount pharmacies. At Wal-Mart Stores, a customer can only purchase items that contain a total of 9 grams of pseudoephedrine.

Government:

Who controls the taxes on the new and unused product that is sold by the illegal flea market vendor? All legitimate retailers have to pay city, county, state and federal taxes on their business. What about the flea market vendors? I have visited flea markets throughout the country and only one time during the many purchases I have made, have I paid tax (New Jersey).

Conclusion:

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

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

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2368

Page 1, line 7, after "in" insert "subsection 2 of" and replace
"51-04-02" with "51-04-01"

Renumber accordingly



Senator Carolyn Nelson
District 21
1125 College Street
Fargo, ND 58102-3433

NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



COMMITTEES:
Judiciary
Political Subdivisions

TO: House Political Subdivisions Committee
BY: Senator Carolyn Nelson
RE: SB 2368
DATE: March 2, 1999

SB 2368 is a bill to restrict sales of manufactured and packaged baby food, any drug, any cosmetic, and any product with an expiration date at places other than retail space or authorized places for transient merchants.

This bill would discourage sales of baby food at rummage sales, flea markets, or door-to-door, without permission from a manufacturer or distributor. The number one concern must be the health and welfare of the child. Who knows where that baby food has been?

In one of my other lives, I sold Mary Kay skin care, color cosmetics, fragrances, and sunscreen products. Our consultant agreement says "I understand that display or sale of Mary Kay products in public, retail, or service establishments of any kind is inconsistent with the terms of this Agreement." Upon termination of an agreement, the company will repurchase any inventory purchased during the past year at 90% of the purchase price. In testimony for the South Carolina Legislature, Anne Crews, Vice President of Corporate Affairs said, "There have been many reported instances about Mary Kay product, whose shelf life has expired or has been damaged, being resold at flea markets and similar venues. These sales are a concern regarding product quality, customer health and safety, theft and sale of stolen goods, and other "gray market" activities. The company has a 100% satisfaction guarantee, but we need only service our own customers with that guarantee.

In another committee we heard that the average shoplifting is \$85. All of the product being considered in this bill is small and easy to shoplift.

All of the products have a direct impact on the health and welfare of the user. We need to know where that product has been, if it is contaminated, how old it is, and who had the original authority to sell it. These things all must be known to safeguard the well-being of the users.

This bill does not apply to sales for future delivery by sample, catalog, brochure, or sales presentation in response to an invitation by the owner of the premises on which the sale is made.

A person who violates this section is guilty of an infraction.

I have letters of support from Anne Crews, Mary Kay Cosmetics, and The National Non-Prescription Drug Association.