2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1434

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1434
February 15, 2011
14580

☐ Conference Committee

Committee Clerk Signature Mary Mann

Explanation or reason for introduction of bill/resolution:

Relating to permits to operate pharmacies.

Minutes:

Chairman Keiser: We'll open the hearing on HB 1434.

Representative Beadle, District 27 in SW Fargo: (See attached testimony #1.)

Representative Frantsvog: You referenced some studies. Are copies of those studies available?

Representative Beadle: I have some here and I will get those to you. (See attachment #1, pages 7 and 8.)
I do want to pass around some testimony from one of my constituents, a consumer who strongly encouraged me to introduce this legislation. Clarence Olson was unable to be here today so I will pass out his testimony. (See attached testimony #2.)

Representative Boe: You referenced your constituency many times. You referenced the competition from Minnesota and also that you have the lowest cost of pharmacies in the state.

Representative Beadle: I referenced that as a belief that was shown through some of the statistics that I read from the testimony last time around. I don't have the facts that prove that to be true.

Representative Boe: You put this bill in on behalf of your constituents but actually this is the one that affects my constituency. Your constituency will still have the same price prescriptions.

Representative Beadle: It affects all of our constituencies. The average price across North Dakota and Minnesota already shows he difference. Fargo has a lot of pharmacies that are able to be competitive. We have over 40 independents within our metro area. There is some competition within there. The argument is that when you open this up towards the rest of the area, you'll see the competition grow and flourish. I understand, especially with the rural area. Last time it was catered towards an urban / rural issue. The

argument was that it was going to push all the rural pharmacies out of business. If you talk to your constituents, one of the things that you'll see is they're not willing to drive 40 miles to save a buck. If they want to still go to their independent pharmacy, that's their own preference. That's one thing that I want to make known. Some of these fears are greatly over exaggerated. We're not the only rural agricultural state in the country. When you look towards the rest of the nation, we haven't seen the death of independent pharmacies especially in the rural areas across the rest of our nation. Look at South Dakota, Montana, Iowa, Nebraska; we're not the only rural based state with a strong agricultural sector. The fact that independents and chains can coexist across the country shows that some of those fears aren't grounded.

Representative Kasper: Do you consider the business of pharmacy and a pharmacist a profession?

Representative Beadle: Yes I would.

Representative Kasper: Your testimony states that we do not regulate ownership in other industries. However, do we not regulate the ownership of medical practices, dental practices, and optometric practices as far as those having to be owned by those professionals?

Representative Beadle: Correct me if I'm wrong, the argument was merely that when you look at the bulk of the businesses that operate within our state and the rest of the country, you see that some of these protectionist whether we have them with other industries or not, are not proven to be necessary.

Representative Kasper: Would you favor that in North Dakota a medical practice could be owned by a large corporation that is not involved in medical business at all?

Representative Beadle: Assuming the fact that the medical professionals that are working there go through the same educational requirements, the same licensing and continuing education requirements, and that they are still regulated by an overarching board to insure that they are following the rules and regulations of their industry, I would have no problem with that.

Representative Kasper: Your position would be that the idea that we want to make the practice of medicine a bottom line profit centered business as opposed to a profession focused on the consumers which are the clients and patients that we serve that would be ok with you?

Representative Beadle: Yes because when the consumer have choice, the ability to choose where they want to go, because when we allow competition to exist, it benefits the consumers. Competition is good for society and good for the State if we allow competition to flourish. When you have to compete in the marketplace, then you'll see the cost come down, the service is maintained and the quality is insured because otherwise you will lose your competitive advantage and no longer be able to get those customers to come into your building.

Representative Kasper: So it would be alright to turn the professions of North Dakota into profit centers owned by outside corporations as you're supporting this bill?

Representative Beadle: I feel that it would be right to make sure that the citizens have the option to choose for themselves where they want to shop.

Representative Kasper: I'm just asking about ownership.

Representative Beadle: I understand that. When it comes to ownership, that is fine because the consumers deserve to have the choice.

Representative Nelson: You said that there are over 24,000 independent pharmacy owners across the country and you used that as proof that it won't wipe out independent pharmacy ownership in the State. That number seems large to start with but I divided that number by the number of representatives in the House of Representatives in the United States and I run out of pharmacies long before I run out of fingers. We'd be down to about 5 or 6 pharmacies independently owned in North Dakota if we had the same ratio of independent pharmacies as our population. Would you expect that to happen?

Representative Beadle: Not at all. Just using the raw numbers like that, it's a bit of a stretch. When you look towards the very urban areas, you'll have a million people within a span of 1 of North Dakota's counties. Just because you can get to 1 pharmacy for 100,000 people, you're still only traveling 5 mile. You don't need to have the same number of retailers or the same number of operations in order to service that amount of constituents. The fact that you have ratios like that, I think you need to recognize the difference. Also, there are 24,000 pharmacy owners but not pharmacists themselves. The average pharmacy owner that's a member of the organization owns more than 1 pharmacy.

Representative Kasper: When you handed out the top 25 generics dispensed by volume, it says that Walgreens does not build the Rx savings club price to insurance. You mentioned in your testimony about business models. Do you feel that we should promote business models that charge insurance customers different prices than cash paying customers?

Representative Beadle: I think that we should promote models that the consumer feels need to be promoted. It's not the job of the legislature to choose which business model we prefer over others. That's the option of the consumer themselves. Not everybody has insurance. We need to recognize the difference. When you look at the difference in the savings price, the Walgreens are a savings club. That's something that you can buy into for about $20 per year. It's a significant savings for the consumer long term if you are using the program.

Representative Thoreson, Distrct 44 in Fargo: I stand here in support of this bill. I thought it was going to be up to the people of the State to determine it but due to a glitch, that did not happen. I think it is very important that we give the consumers the choice. I also believe in competition. As a small business person who has private businesses and large corporations competing in a radius around me, I understand that it is not easy but that's the way our system is built. I also think that it's right that we make the change. I

think we have many wonderful people working in the pharmacies in our State. We also have many wonderful people who are educated here in North Dakota in this line of work who've had to leave to find an opportunity. I think it's time for us to move forward with this. I understand that we will have this argument again if not.

Representative Kasper: Are you aware of the percentage of college graduates who graduate from our North Dakota Universities and leave the State in all lines of work?

Representative Thoreson: I do not have that statistic in front of me. I'm sure it's a great number of people. Probably a larger number do leave the State than stay in State. I would hope we always find opportunities to keep people here. People do move out and sometimes come back in. I do have a personal situation where I have someone in my family who is in this line of work who did have to leave the State and probably will never have the opportunity to return to North Dakota.

Representative Mark Owens, District 17 in Grand Forks: I stand before you in favor of this bill. I was not able to participate in 2009 during this discussion. I wish to remind the committee, that the arguments that were used in 2009 are the same ones used again. If you relate them to the arguments, they are almost identical to the ones in 2005 related to if Murphy's Oil sold gasoline in North Dakota, all the rural gas stations would close. People would drive 80 miles to fill up their tank. All the independents would close in the cities. Murphy's Oil would control the price and use it as a lost leader. None of those things happened. A very small independent corner neighborhood gas station in Grand Forks is still there today one block from a Valley Dairy that has 4 pumps and they're still doing fine. People will not be traveling 80 miles to get their prescriptions. I have been doing business with a private pharmacy in Grand Forks for over 15 years and I have no intension of changing whether this happens or not. My ex-father-in-law owned a pharmacy for 35 years until the expansion of interest ran him out of business in the early 80's. He ran it in a very small town of about 1500 and it was only 30 miles from a major city and people did not drive to that major city to shop at those big box stores. Thank you.

Representative Kasper: Are you familiar with that city where your relative owned that pharmacy today?

Representative Owens: Yes and my family has been in and around that town for about 120 years.

Representative Kasper: Has a new pharmacy opened since the 80's in that town?

Representative Owens: There has been 1 and that still leaves another private pharmacy that's in existence. At the time, there were 2 private ones. He went out of business, the other one stayed, and now there is a big box store there, either CVS or Walgreens.

Larry Gauper: (See attached testimony #3).

Representative Kasper: Do you have any idea how long it took to gather those 14,000 signatures?

Larry Gauper: We started around January. I suppose about 6 months. It's not easy getting signatures.

Chairman Keiser: On page 2, you state that these professionals want the ownership law repealed because it would mean more job opportunities. Do you have any data?

Larry Gauper: No. I go to an independent pharmacy in Fargo in the neighborhood and I probably wouldn't change. When I was first public on this issue, I thought I better not go in there. When I went in, one of the recent NDSU graduates that works there came to me and said "don't tell my boss, but I'm with you." I feel sorry for these kids behind these counters working for North Dakota pharmacist owners and that's their only choice in this State or they have to leave. There are many young people working in pharmacies out of State who would love to come back. Yet we have people in this House talking about jobs for North Dakota and higher salaries in professional jobs and this legislation should be wiped out.

Chairman Keiser: On page 8, you state that it's the only State in the union that you can walk into Walgreens and it's illegal to get a prescription filled. When I travel, I occasionally need a prescription and I call my doctor and he calls the prescription in and they can fill it. They can't do the same if they are called.

Larry Gauper: They cannot fill or dispense a prescription or because of the ownership restriction, they won't. They don't do it in Fargo. There is no pharmacist there as I understand.

Chairman Keiser: It may be true that they don't honor the $4 price but you're saying they cannot fill a prescription.

Larry Gauper: No.

Representative Beadle: When the new Walgreens opened up in Fargo last spring there was an article in the Forum that testified to that fact. Because of the ownership law, that is the only Walgreens in the country that you cannot get a prescription filled at. There is no pharmacist on staff because legally they are not allowed to. That's the only store in the country that they cannot get a prescription filled at. That's the only Walgreens in the State.

Chairman Keiser: In every other pharmacy, that person from California could get a prescription filled?

Representative Beadle: I can't testify to that.

Larry Gauper: I imagine if they had a doctor in advance and would say they were going to be traveling through North Dakota. That's a little primitive up there and they have this law. You better wire you prescription up to North Dakota to some independently owner drug store and then they'll fill it for you.

Chairman Keiser: So they can get their prescription, your testimony is inaccurate, it's what they can't do is use their Walgreen card.

Larry Gauper: They can't get a prescription filled at the Walgreens store in Fargo – period.

Chairman Keiser: That's the one place in the State they can't get it filled. In every other pharmacy they can?

Larry Gauper: I believe every other pharmacy they can but they have to have their prescription from their doctor.

Chairman Keiser: And that's true anywhere.

Representative Kasper: If this law were changed, let's assume that a town in North Dakota has a nursing home and they have a pharmacy that they owned. The other pharmacist went out of business. We still have 1 pharmacy in that city but it's now owned by the nursing home. Is a nursing home non-profit generally?

Larry Gauper: I imagine there is for profit nursing homes but we have a lot of them that are non-profit.

Representative Kasper: Most of them are non-profit. Do non-profits pay property tax?

Larry Gauper: I know at Blue Cross, we pay property tax and we're non-profit. Hospitals don't.

Representative Kasper: You talk about lifting the ownership restrictions provides a pathway for pharmacy services to grow and thrive after the current owner of the town's only drug store retires. Whether we have an ownership law or not, wouldn't a pharmacist be the one that would open their own store or buy that store from that retired person.

Larry Gauper: Is that the job of the North Dakota State government and the North Dakota Legislature to decide that economic model for that community? That's absurd in terms of free American enterprise to police that. That's my disagreement there. The second part about the out of state pharmacist to come back to North Dakota, to me that speaks to choices. If the fellow is going to retire, what choice does he have? He can sell to an NDSU graduate. You can't put a barber shop in some of these towns. You're going to sell a pharmacy to this kid. Where's he going to get the financing? Where's it going to come from today? Now 40 years ago or in the Bakken, that's a different story. The problem we have is the government being involve in policing this effort.

Representative Kasper: How many pharmacists does the average pharmacy employ?

Larry Gauper: One statistic I saw said that Walgreens or Wal-Mart will employ more because they are open 24 hours a day. A smaller drug store may not do that. I don't have accurate statistics.

Representative Boe: You live in Fargo and own your own home, are you free to do whatever you want on your property? Can you build anything you want?

Larry Gauper: No. There's covenants.

Representative Boe: Why do they have the covenants?

Larry Gauper: To maintain the neighborhood. Covenants are a poor example because they are hard to enforce. Zoning restrictions would be better.

Representative Boe: In this instance the government is telling you what you can and can't do. Wouldn't this law fit into that same category?

Larry Gauper: I see where you're heading with that and I don't buy it. Pharmacy is still going to be regulated in North Dakota by the Board of Pharmacy and some outfit is not going to come in here and set up with unlicensed pharmacists. Walgreens, Wal-Mart, Target, CVS, Thrifty White all have very high caliber standards for their pharmacist and for their stores and they are set by the State of North Dakota law. What I'm saying is the portion of the law that wants to police the economic choices of North Dakotans and restrict a young person from all the opportunities here, that's my argument. I'm saying we can't have government regulations somewhere. In this instance, government is overstepping its boundaries. We're looking for less government. That's a Republican concept. We have a Republican majority. Democrats, we have friends on that side. We want more choices and for the people without insurance too. Medicaid and the State Employees Association would benefit. It's unbelievable that we are here in 2011 arguing this position.

Representative Nathe: Last session, we heard very little from the hospitals. I'm curious of your reaction to that. Just before the vote on the floor, a hospital executive from Bismarck came to me and said he'd like to see this bill pass. In the process of the debate, he kept a very low profile. Have you been in touch with them or talked with anybody from the hospitals? Were they involved in the petition drive?

Larry Gauper: I'm not part of the affordable organization. Chip Thomas did provide written and floor testimony at the joint hearing at the Heritage Center. I would like to see them more vocal on this. I'm not saying that every facility is going to make a decision and it's probably an economically bad one according to my pharmacist friends. I want that decision to be left to that local hospital board. So if Sanford wants to start a pharmacy, who cares. Are we going to start policing them as legislators? If domestic insurance were the only ones that can sell in North Dakota, there'd be a lot of salesman out there selling out of State companies that couldn't do it. We don't want that restriction. We're living in a time when we're trying to attract businesses like Microsoft. We have tremendous growth near the Bakken Formation. Why can't we have a brand new Walgreens store in Williston or a CVS, Thrifty White, a good independent? They should have many as the free enterprise marketplace can support and it's not the job of the State Legislature to be the referee.

Jim Neuwatski: I was with Fessenden White Drug from 1979 to 1984. It was founded in the 1880's. Mr. Neuwatski gave a history of Thrifty White Drug and his ties to the chain along with other details of his life. He supports this bill and supplied copies of 2 newspaper articles (Attachment #4).

Andy Peterson, President of the North Dakota Chamber of Commerce: (See attached testimony #5.)

Representative Kasper: Each community in North Dakota can determine how many liquor licenses are offered in their community. That's a restriction of operating of businesses. Are you working to try to overturn that type of restriction?

Andy Peterson: At this time we are not but I've had some experiences with that in other states. There are a few other states where different cities have restricted the number of liquor licenses. The liquor license itself became very valuable for the business owner. In some cases, the business changed hands but it was really the license that changed hands. In some cases the license was worth 120 thousand dollars plus and the people were able to use it as equity at the bank. In this particular State, the Legislature overturned it and opened up the number of licenses to an unlimited amount as long as they met the government regulations in the particular town. Liquor licenses did fall in price and a few establishments did go out of business and a few that did come in. It really became about the market and not about the government telling who to go into the business.

Representative Kasper: But in North Dakota, you're not working in that area now?

Andy Peterson: Not at this time.

Representative Kasper: How many members does the North Dakota Chamber have state wide?

Andy Peterson: We have 1100.

Representative Kasper: How many board members?

Andy Peterson: We have 24.

Representative Kasper: When you made this decision to take this position, was it a board decision? Did you poll your membership? If so, do you have a result of your polling of your membership or how did you come to the decision to support the bill?

Andy Peterson: We have processes in place that take roughly a year for us to come to a position on something. We travel the State talking to different members, asking for their feedback, inviting them onto committees. Those committees do work and debate these issues through. It comes to our executive committee and they debate it and when it comes to the full board, they debate it and vote it up or down.

Representative Kasper: This bill came to us about a month ago as a surprise. Did you have prior knowledge about a year ago so you could take a position on this bill or in this case did you not use that process?

Andy Peterson: First, the free enterprise system is just a bedrock of one of our beliefs. Two, we had been through the process the last time and so we relied upon that in order to get to this point.

Representative Kasper: So you did no polling of your membership currently? It was just based on two years ago that you relied on?

Andy Peterson: We typically don't do polls. Polls are a very narrow snippet. Sometimes we will do a survey. We did not do a survey this time.

Brian Ament, President of North Dakota Society of Health Systems Pharmacists and a pharmacist: (See attached testimony #6.)

Chairman Keiser: Is there any restriction on hospitals owning an inpatient pharmacy?

Brian Ament: The only restriction is that we need to be licensed by the Board of Pharmacy and they do allow that.

Chairman Keiser: So every hospital does have a pharmacy?

Brian Ament: I believe most do, not all.

Chairman Keiser: If hospitals have an outpatient pharmacy, do they pay property tax on the footprint of that pharmacy?

Brian Ament: I'm unaware of whether they do or not.

Chairman Keiser: They do. However, for an outpatient pharmacy in a hospital, what costs are absorbed by the nonprofit that doesn't pay property taxes and has special franking rights. There are a lot of differences. What costs are absorbed for those hospitals that have been grandfathered in, what costs to operate that pharmacy are covered internally by the parent organization?

Brian Ament: You may have to ask somebody else that question.

Chairman Keiser: Would it be legal fees, administration, accounting, payroll, what do you think?

Brian Ament: I do not know which costs would go where in those situations.

Representative Johnson: You talked about the sterile IV products that, if it's a home patient, the hospitals would provide or can't provide. Is that what you're saying?

Brian Ament: When we make sterile IVs for our patients for home use, we can fill some prescriptions for outpatient IVs on the day that they receive services in our hospital as part of an own use exemption. When we go to refill those prescriptions for them for longer term therapies, we are not supposed to be able to do that because we are not licensed to provide any type of retail service and that would be in that line.

Representative Johnson: Do the area local pharmacists do that?

Brian Ament: The local pharmacies can do that in some cases but when you look at the rules that are coming as far as how they need to prepare those things, there will be very few if any retail stores that would be able to meet the requirements for preparing sterile IVs.

Chairman Keiser: If a hospital has an outpatient home health operation, typically for profit, where staff goes out to the homes and serves patients of that facility requiring additional treatment, can they use the in hospital pharmacy to get the materials for their home health service as part of that hospital?

Brian Ament: It would be under the same restrictions as the date they received the service.

Chairman Keiser: If the physician orders the home health treatment to continue on say a twice weekly basis and that's the prescription, can a home health nurse that is in the service provided by the hospital get that filled at the hospital and go out and provide that treatment if the hospital is offering that piece of business.

Brian Ament: I'm not sure. I would have to check on that. It would be a different situation. I have worked in the area of home infusion and we did have home health care nurses seeing patients. Those visits were one or two visits and then the IV therapy continued for 4 to 6 weeks or longer. The home health care services were ended long before the IV services were discontinued.

Representative Frantsvog: Couldn't you fill the prescription and have the infusion in a clinical setting?

Brian Ament: You're correct. We could do that. North Dakota is a very rural State and even some of our midsize cities we serve people that live 30 to 50 miles away. For them to come in to receive an infusion 1, 2 or up to 4 time a day, for weeks on end can be a big hardship.

Representative Nelson: How would a hospital that does not have a pharmacist on staff get the IVs and the drugs that they dispense in the hospital?

Brian Ament: Some of our smaller hospitals don't do much in the way of IVs because they don't have to for the types of patients they have. A number of IVs that are available can be received premade or premixed. Those are the ones that they provide if they don't have a pharmacist on staff. If their patients need something beyond that, they would probably transfer that patient to a different facility.

Representative Nathe: What is your take on the silence from the hospital association? I hear nothing either for or against this bill.

Brian Ament: I can't speak for the hospital association. I do know there probably is a greater number of pharmacists that work in a hospital setting that would support this than not.

Representative Kasper: Are you aware of how many cities that have a critical access hospital also have a pharmacy currently?
Brian Ament: I'm not aware but would guess that it's a high percentage.

Jerry Jurena, President of the North Dakota Hospital Assoc: I have not come with a testimony and I'll tell you why. Several or most of our members would like to see hospital ownership of pharmacies to do retail trade. We also have some very small critical access hospitals that rely on their local pharmacists and/or some contract services and prefer that we not take a position on this. Therefore we have taken a neutral position.

Chairman Keiser: We'll have Jerry come back when we get to neutral positions so you can address some of Representative Nathe's questions.

Jerry Jurena: You or Representative Kasper had a question on how retail pharmacies in a hospital are carved out. Yes, if they have square footage in the hospital when the cost report is done, that square footage is allocated based on all those expenses that you talked about, lighting, heating, administration, liability.

Rick Boehm, Pharmacy Director at State. Joseph's Hospital in Dickinson: (See attached testimony #7.)

Chairman Keiser: In terms of this therapy in the home; are those patients required to come into the hospital or can that prescription be filled at a retail pharmacist and they then can do it at home.

Rick Boehm: In our particular case, there's retail pharmacy in the Dickinson area that has the physical layout to provide it. Patients that need to have TPN where they are fed through an IV bed at home for an extended time must travel to Bismarck to get this prescription. That's not good for pharmacy in general. We need to take care of patients and have to be able to do it lawfully.

Chairman Keiser: If the law passed and you now had a retail pharmacy, that would be profitable enough now for you to put in all the equipment and provide this service?

Rick Boehm: I can't speak for CHI and St. Joe's is a part of CHI. Leaving the profits out of this, I think it's just good patient care.

Chairman Keiser: Is your hospital going to do it if you lose money?

Rick Boehm: It might. I can't say no. Home infusion is not a money maker. As other pharmacists that run infusion centers can tell you, it's not a money maker.

Chairman Keiser: If the law was to pass and you could have a retail pharmacy, we don't know whether you would provide that?

Rick Boehm: CHI would like to provide home infusion services.

Chairman Keiser: Who is that?

Rick Boehm: The group of hospitals that own State. Josephs.

Chairman Keiser: So it's a group of hospitals could then provide it to their members.

Rick Boehm: As a group of hospitals, St. Joes would like to provide home infusion services absolutely. They would like somebody in the western part of the State to service the western part of the State. We can't do it lawfully. We've had this conversation. I've been approached by CHI.

Representative Kasper: The fact that the patient can't get these infusion bags anyplace, is it because you have to make a special prescription bag for each client so it would have to be made in your hospital or is it something they could buy commercially.

Rick Boehm: A TPN is made up of components such as dextrose, amino acids, and the fatty acids that patient need to sustain themselves. Those type of compounds need to be made in a sterile environment. They can't be made on the counter or even with a hood in a non sterile room. There are requirements that state that type of thing needs to be made in a barrier isolator or in a flow hood inside of a sterile room. That would be USP 797.

Representative Kasper: You're stating that the hospital would build one of those sterile units and most likely be able to mix this locally? How do you get it now for the patient? Do they come to Bismarck and it's made here or how does that process work?

Rick Boehm: When they are an inpatient, we use our inpatient facility to do it. When the patient goes home, since we can't provide it lawfully, we're forced to have them sent to Bismarck to Community Pharmacy where they have a home infusion pharmacy.

Representative Kasper: Could you in Dickinson, make this packet and enter into an arrangement with your local pharmacies to purchase this packet from you and resell it to the patient so they wouldn't have to drive to get that material?

Rick Boehm: Our intent is to take care of our patients. When you get into packaging and reselling, you run into some additional legal obstacles.

Representative Kasper: If the obstacles were gone, would you be able to make that product in Dickinson and the local pharmacist could provide it to that local patient.

Rick Boehm: You may run into issues such as Robinson - Patman. I'd be reluctant to do that.

(See attachment #8 provided in support – Economic Impact of the Removal Pharmacy of Ownership Restrictions in North Dakota.)

Chairman Keiser: Reopen the hearing on HB 1434. Is there anyone to appear in opposition to HB 1434?

Howard Anderson, Executive Director for the Board of Pharmacy: (See attached testimony A.)

Representative Nelson: Is there any law in North Dakota that prevents the Walgreens in Fargo from having a pharmacy there or is it their business decision not to enter into agreement with a pharmacist?

Howard Anderson: They decided to establish a store in North Dakota so David Brenner could put it on the map and say they had a store in every State. They have never been eligible as a company for a pharmacy permit. Any large grocery store in major cities in the State has a pharmacy in them. That company is owned by a North Dakota pharmacist and they lease space from the grocery store. Walgreens could do the same thing. At one time, companies like Walgreens, Wal-Mart, and others had about 35% of their pharmacy departments leased. In the case of Wal-Mart, when Sam Walton died, they made a decision that they weren't going to have leased departments anymore. They could do that. In Fargo, Wal-Mart has a leased department. Three North Dakota pharmacists own that business and have a store in Wal-Mart. It's not a Wal-Mart pharmacy. Wal-Mart can't tell them what to do, how to advertise and so forth because the pharmacists are in control. Many of the national chains don't want that. That's true with Walgreens too. Their model is that they own the pharmacies in their stores now. It's not that they couldn't, but they don't want to.

Chairman Keiser: If Dickinson hospital wanted to have a retail pharmacy, it could but it would have to be leased space to a pharmacist who would open a pharmacy in that space. Is that correct?

Howard Anderson: That's correct. They could own 49% of it but they couldn't be in control of it.

Representative Gruchalla: The North Dakota Chamber is supporting this law. When we've had these challenges, when did their position change? Did they support this bill last session?

Howard Anderson: I can't speak for the Chamber of Commerce but I do not believe that their board decided to support the change two years ago. These things depend on the makeup of the board and whose there. From a business aspect, I would agree to change it. That's not how the Board of Pharmacy looks at it. We look at it as the pharmacist being in control for the benefit of their patients. That's what makes sense for the law. It is true that if you change the law, the marketplace is going to change some. Some will go away and some will open up businesses. Whether you would have more or less in the long run, I couldn't tell you that. There is a tendency to consolidate prescriptions in large stores and we're a little concerned about access. Would a store in Edgeley open up, I don't know. I don't think we could say that they'd all go away. We have good strong independents in North Dakota. They're going to be here for a while. That's not the reason the Board of Pharmacy supports the ownership law. I think the Chamber is coming from a business aspect. We have the best scenario in the country with pharmacist control of the pharmacies. That's what we don't want you to change.

Representative Kreun: The comment you made about pharmacists make decisions for patients. Is that just on the operational end or is that some kind of care in their medical condition that they take some charge of or what does that mean?

Howard Anderson: The bottom line decision, for example, how many prescriptions should you fill a day before you increase staffing? Do we have time to counsel patients? Should

this pharmacist call the doctor because it looks like this patient could save money with a different drug? All of those decisions which we put the pharmacist in the right place to make, such as those kind of decisions where corporate could say you need to fill more prescriptions today. I'm not saying that those are the wrong decisions and I;m not saying that the North Dakota pharmacist always makes the right one but what this law does is put him in the position to make the right decision for his patients.

Representative Kreun: Isn't that part of the licensure process no matter who owns the business to do those things. Isn't that what they're supposed to be doing, isn't that what they are trained to do? I know what you're saying but I don't know if that really relates to who owns the pharmacy. It's the pharmacist that is taking care of his patient and he's the one that should make those decisions. I don't think that would make a difference between the ownership.

Howard Anderson: We see instances where it does make a difference in the staffing questions and so forth. Someone came to me some time ago and said they were concerned that if the ownership law changes, my employment only choice will be another chain just like the one I work for now and that scares me. We had a discussion about how many technicians should you have in the pharmacy. Some would say we'll take as many technicians as we can get and fewer pharmacists because that can save money. Our pharmacists including the largest chain in North Dakota said we feel like we need our pharmacists there to talk to the patients. When North Carolina went to pass a law similar to North Dakotas that says you counsel every patient. Some of the people were there opposing that because it might cost more money. When our pharmacists were asked the question about only counseling the new patients, they said no. We want to counsel every patient and we want that to be the pharmacists' responsibility. Do they always do that? Maybe they don't but at least we've put them into the position so that's their decision.

Representative Nathe: After the 2009 decision, I spoke to many business owners here in Bismarck and they said how could that bill fail? I deal with independent competition every day, how can they get a restriction on competition and I don't. I'm curious how you would respond to that and to the 14,000 petitioners that signed that petition.

Howard Anderson: If I was just going on competition, I would say you should eliminate the law. That's not why I support it. It's not the Board of Pharmacies view who does the business; it's that the pharmacist is in control of the decisions made. It's not the same as selling cars or gasoline. When you establish an environment like we have in North Dakota, everybody follows along behind it. Even the guys who are grandfathered because they know that their employees can go to work for those other guys. It's not just a choice of another change; it's one of those other guys. They act differently here and I can tell you that because we interact with our counterparts at national meetings all the time. When we have a complaint here, we're dealing with the pharmacist who filled the prescription and the pharmacists that own the store. We're not dealing with an attorney out of Salt Lake City trying to solve the patients' problem.

Representative Nathe: You stated in your testimony, a Fargo Forum article from 2005 that Medicare costs for prescription drugs were actually lower than in other states. That was 6 years ago. Do you have anything more recent than that?

Howard Anderson: I do not. The Pharmacy Association may have some more recent figures. I just quoted the article because the question comes up about are the people paying higher prices? We don't think so. I think they may have those for you.

Representative Nathe: Can we get those?

Mike Schwab, Executive Vice President of the North Dakota Pharmacist Association: (See attached testimony B.)

Representative Amerman: Can you give me an idea of what kind of schooling or training a pharmacist technician has?

Mike Schwab: I would prefer to defer that to Howard with the Board of Pharmacy since that is not really our area.

Chairman Keiser: Can we get those handouts today? They may have questions that they want to ask in a public hearing.

Mike Schwab: I will do that.

Representative Nathe: Would you have to admit that some of the closing of stores in Minnesota was due to economic conditions that MN went through in 2010, not solely on the consolidation?

Mike Schwab: To be truthful and honest, I hadn't thought about before. I'd have to think about that.

Representative Nathe: You state that over 60% of the pharmacies are rural. Am I to understand that most of the 14,000 signatures that you received are mostly rural signatures?

Mike Schwab: No. The signatures are from all over the State of North Dakota.

Chairman Keiser: Under economic impact in your testimony, you mentioned that experts have estimated that over 600 jobs would be lost, etc. Who are these experts? Is that a study that we can see?

Mike Schwab: If you'd like us to produce the study that was passed out in 2009, I will get that to you before the end of the hearing today. (See attachment B(1) and B(2) distributed later.)

Chairman Keiser: OK

David Olig, Pharmacy Owner: (See attached testimony C.)

Steve Boehning, Pharmacist in Fargo: (See attached testimony D.)

Representative Nathe: You state that if the law was overturned, while there may be an initial increase in pharmacists, after the big box takes hold, the net effect would be a loss of pharmacies and pharmacists job in the State. Can you walk me through that process?

Steve Boehning: The number of prescriptions filled in North Dakota is not going to change. If you overturn the law, some chains will be prepared to throw pharmacies in at a moment's notice. Initially, you will have some increase job openings. Once that attrition takes place, you will see a massive decline of high paying pharmacist jobs in this State. There isn't a statistic out there that doesn't prove that point.

Representative Frantsvog: You talked about technicians and their training. What kind of training is required in North Dakota to be a technician?

Steve Boehning: I will refer that to Howard Anderson. In North Dakota, you have to be certified with the board and have a 2 year degree or passing a program similar to that. Pharmacists cannot pluck someone off the street and make them a technician without that degree or have them go through a program to obtain that degree. Seventeen states in this country have none, no law regarding that and SD is one of them.

Representative Gruchalla: Is there a relationship between the number of techs per pharmacists to the mistakes that are made when you do these audits?

Steve Boehning: I don't have any statistics to give you a report on that. My discussion is pertaining to the economic impact. You're going to see more technicians and less pharmacists.

Bob Treitline, Pharmacist from Dickinson: (See attached testimony E and pg. 2 letter.)

Derald Payne: I'm coming to you as a customer. The reason I am testifying is that my local pharmacist gives me great customer service and this is the kind of service that we will lose if this bill goes through. Let's keep it local.

Tom Kelsch, Kelsch Law Firm: (See attachment F.) His testimony outlined this handout from NCPA.

Chairman Keiser: One of the arguments for changing the law was access to the $4 script. We haven't heard anybody talking about that on the positive of negative. Does your group take a position on that issue.

Tom Kelsch: My understanding is that the $4 script is not available under certain circumstances. If you have insurance and a large percentage of North Dakotans have that insurance that covers drugs. It also doesn't cover Medicaid. Given those two reasons, there might be minor benefits for some cash paying customers. It's a limited number of medications that are available. I view it as a sales ploy, it sounds good on a commercial on TV but the impact is not that great.

Representative Nelson: How does drug switching in a pharmacy situation work?

Tom Kelsch: My understanding is there are similar types of drugs depending upon the subscription. My uncle had a prescribed drug that would have cost him $500 dollars. His local pharmacist told him about a generic version of that drug for a much less cost even after Medicare and BC/BS kicked in. His pharmacist called his doctor and asked if this generic drug would do the same thing. Because he had that service, he was able to save.

Shane Wendel, Pharmacist: (See attached testimony G.)

Representative Kasper: One of the big marketing ploys in metropolitan areas is the $4 Wal-Mart drug. How do you compete on that $4 marketing method? If you had a comparable drug that they sell for $4, do you know what your price might be on that drug? Or is it hard to compare?

Shane Wendel: The minimum charge of a prescription for me is $8 because I don't loss lead anything. My cost for filling a prescription is almost $9. I don't ask for $50 on a script that costs me $12. If you look at the average, somebody is doing that.

Representative Kasper: Have you had an opportunity to look at what Wal-Mart is selling for $4? Is it a lot of common drugs?

Shane Wendel: I would defer that to Mike or somebody that is up on that. I couldn't give you a real educated comment.

Fred Stoskopf from Berthold: I've heard comments about free enterprise and it almost makes you think that we should get rid of all government everything. People say North Dakota has this pharmacy law, only one in the nation. We also have the only State Bank in the nation, the only state mill, the only state elevator. North Dakota is unique and this is a good law; let's keep it. We want to deal with professionals who are doing the actual work or running the actual agency. In five years, my wife and I have dealt with 3 corporation pharmacies. We both took Lipitor. When I switched pharmacies, I took my prescriptions in to the new independent pharmacy and the prescription was for 10 mg of Lipitor and we always got a jar of 100 pills. When I picked up the prescription the jar said 20 mg / 50 pills. I said this is wrong. The pharmacist popped a pill out on the table and showed him how to break the pill in half. She said it will save him a lot of money. For 5 years, 3 different pharmacies, they never mentioned this to us. Under today's prices, the difference between the 20 mg and the 10 mg Lipitor is from $88.07 to $123.49. That's a savings of $35.42 times 3.65 times a year is $129.28 per years savings just for me and the same amount for my wife. Also, when we switched to this private pharmacy, the pharmacist consulted with the doctor and suggested taking 2 of her pills before bedtime instead of all in the morning. She has felt much better ever since. You mentioned the $4 drugs from Wal-Mart. I looked at the list and we have 3 of them that we take. One of them, their cost is a few cents cheaper per pill and we take only 1 per week. On the other 1, between what I pay as well as what BC pays, the cost is $9.50 for 100 days. Wal-Mart is $10 for 90 days. On the 3rd one, between what I pay and what BC pays, its $8 for 100 days. Wal-Mart is $10 for 90 days. That's an example. Also, the independent just automatically switches us to the generic drug when it becomes available and it saves us quite a bit. I hope you all vote no on the ownership bill. (See attachment H on comparable prices.)

Chairman Keiser: Have you ever done an analysis on how much you think you save annually as a result?

Fred Stoskopt: No I haven't. I was shocked over the $130 for the one drug.

Representative Johnson: When the generic comes up your pharmacist will let you know. Do they contact you when you come in for your script and say it's now in a generic form and would you like to opt for that? Do they get your permission?

Fred Stoskopt: When it's occurred, they have just said we have the cheaper one for you. I could opt out of that but they know where I'm going.

Tim Weippert, Vice President of Pharmacy Operations of Thrifty White Drug: (See attached testimony I.)

Mike Rud, President of the North Dakota Retail Assoc. and North Dakota Marketers Assoc.: (See attached testimony J.)

Dan Duletski, Pharmacy Student from NDSU: (See attached testimony K.)

(Attachment L - testimony from Jordan Wolf – pharmacy student from NDSU.)

(Attachment M - testimony from Michelle McKay – pharmacy student from NDSU.)

Representative Kasper: When you traveling around the rest of the country, did you talk about starting salaries? If you did, could you share about offers from other State compared to North Dakota?

Dan Duletski: I did and I was working with an intern from the University of Kansas and she was taking a job in San Antonio at CVS and I was going to be paid $2000 more than she was.

Representative Kasper: That was just current?

Dan Duletski: That was. I would also like to add that a number of my class mates will be employed in the State of North Dakota upon graduation.

Representative Kasper: A lot of you classmate are not going to stay in North Dakota. Is it be because of lack of jobs or just that they want to see the rest of the country and see what it's like because they have had enough of North Dakota for awhile? Does that come up in your conversation?

Dan Duletski: Over half my class is from out of State. A lot of them return back to Twin City areas. Many like to go where it's warm. A lot do like to come back and I think that's due to the atmosphere that the ownership law creates here in North Dakota.

Terry Kristensen, Pharmacist in Bismarck: I'd like to comment on one of the things that the hospital group brought up as far as the home IVs or TPNs. About 20 years ago, Tony

Welder and I started a business to do that. We did a fair amount of it and had a good business going. We had a good working relationship with the nursing services at both hospitals. MedCenter decided to get into the home health service so consequently we did not get any referrals from them. St..A's did it next so we didn't get any from them. There is businesses out there that will do that but we can't get the referrals from the hospitals. That's my only comment.

Chairman Keiser: Is there anyone else here to testify in opposition to HB 1434? Is there anyone here to testify in a neutral position to HB 1434?

Tim Wahlin, Chief of Injury Services at WSI: (See attached testimony N and attachment O - spreadsheet.)

Chairman Keiser: I tried to contrast the Wal-Mart $4 generics, the Wal-Mart regular generics and compare it where there was comparable data for the two and I find only one entry where the North Dakota amount was greater, the Ibuprofen 3/20/2009. In every other case WSI paid more than the same prescription in a North Dakota pharmacy.

Tim Wahlin: I believe you're looking at the billed amounts.

Chairman Keiser: I'm looking at the amount paid.

Tim Wahlin: The amount paid is different in a couple of places.

Chairman Keiser: In every other item on this list, the amount paid to the North Dakota pharmacy for the same prescription was the same or less than paid to Wal-Mart.

Tim Wahlin: That's correct.

Chairman Keiser: This represents all the cases? There was no selection bias here?

Tim Wahlin: There was no selection bias on the Wal-Mart side. The 'Comparable ND Pharmacy', we did have to select because there may have been a number of them coming in so we tried to do that randomly.

Jim Neuwatski: If you are going to turn this down, please come back with a recommendation as to where to go.

Jerry Jurena: We talked about the possibility of a bill coming up last fall with our legislative committee and our board. At that time, we have more members that would open up a pharmacy if a hospital regulation was relaxed. We do have a few members that do not want to open up a pharmacy and they want to keep the process the way it is because they have a contract with a local pharmacist. We have people on both sides. With respect to our trade association, we took a neutral position this year.

Chairman Keiser: We are going to close the hearing on HB 1434.

(Attachments P and Q provided as attachments to minutes.)

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1434
February 16, 2011
14601

☐ Conference Committee

Committee Clerk Signature Mary Main

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 43-15-35 of the North Dakota Century Code, relating to permits to operate pharmacies.

Minutes:

Chairman Keiser: I want to thank each of you for your patience and perseverance yesterday. We gave it an excellent hearing. We can have discussion or take a motion, whatever the wishes of the committee are.

Vice Chairman Kasper: I move a do not pass.

Representative Frantsvog: Second.

Chairman Keiser: I hope we have some discussion on this bill as it is an important one.

Representative Kasper: Last session, we had a lot of outside people who came in and were in support of the bill and what was interesting as I listened, we had nobody from the Wal-Mart or Walgreens or from the outside area that were in support of the bill. The hospitals were supporting the bill last time are neutral which tells me there's really not a lot of support out there to make any change. It's been a way of life for almost 60 years and our businesses throughout our State have established a way of doing business and our communities are used to that model. If we change, we will change a way of life forever. The idea that this is going to open up competition, I thought the testimony from the pharmacy owners was compelling. This is not going to open up competition, it is going to inhibit competition and it's going to monopolize competition particularly with the power of the PBM's. The PBM's owned by Wal-Mart and others, when they can give pricing favoritism to the drug stores that they own and unfavortism to the independents, that's not right and that's not fair. We've got the law right the way it is and I would hope that the committee would support killing this bill.

Representative Ruby: I disagree with Representative Kasper. I think that we are picking a business model that we are giving a preference over and protecting a few. I understand the discussion about the PBMs but that is a whole different issue. I don't see this as the limiter of that because of the audits. We heard there are problems with PBMs with existing law. I don't see this fixing it. I don't think this is the right way to fix it by keeping the law in

place. We heard about the lower prescription drugs but they also said that because we have more utilization of generic. That will continue and why should we give preference over one restrict competition. In the long run, competition, the free market, is always the best way to assure the best service and the best price.

Representative Nathe: I hope we can resist this motion. I'm in agreement with Representative Ruby. I have a hard time with a law that restricts competition. It goes against every capitalistic bone in my body where we say we'll allow these 2 other corporations in but we'll stop every other corporation to come into the market. I have a hard time with that. As far as the rural argument, I have more faith in the small business owner as far as being able to compete against corporations. I'm a small business owner. I moved here 15 years ago to take on the corporations. My whole market was all corporate. We are successful today. I don't buy that argument. I realize it's a bit of a scare tactic and it is a tough issue. I have more faith in the small business owner. Everybody says, we know if this goes on the ballot, it will pass. I have heard that argument from everybody. If this bill will pass, if it goes on the ballot, the public wants this. Why are we voting to kill this? It doesn't make any sense to me. I can't support this motion.

Representative Amerman: I don't think it will be a slam dunk if it goes on the ballot. I think it will be a battle just like we heard yesterday and I'm not sure how it will turn out. Anytime you use Wal-Mart or the big box stores and fair competition in the same sentence, I think it's an oxymoron. I think it's a good motion and I'm going to support it.

Representative Vigesaa: I'm going to support this motion. I thought one of the statistics yesterday was interesting was to see what had happened in South Dakota and Wyoming when they adopted the law that they could have the big box chains. Fewer pharmacists, fewer pharmacies and the big box stores controlled over 50% of the prescriptions written in the State. That was telling because we are similar in size and population to those States. I think that if we allow them into our State, we will see the same result in North Dakota.

Chairman Keiser: I had a conversation this morning. Somebody who was at the hearing the entire time made the comment if you walked into the hearing yesterday, truly objective and listened to the testimony yesterday, it would be hard not to take the position to support this motion. I commented, I think we could have voted before the hearing, and the vote may have been very similar to what it's going to be because this really gets not to the testimony yesterday but to a philosophical issue more than a hearing. This is a difficult issue. I can argue both side of this issue very well. I'm going to support the motion, I did last time, I will again. Somebody made the comment yesterday, for those that want to make the argument of open competition, I hope that next session they will turn in a bill to eliminate the Bank of North Dakota and the State Mill and Elevator and put their name on it. That's the most unfair competition possible in this State. I think North Dakota is unique and I'm proud of that we can be different. I know that the Insurance Dept. tracks all of our hearings very well. The one concern I have is that for big box stores that have an affiliation with their own PBM that we better make sure that information isn't being shared back. If your forced to go on to a certain PBM to serve 7% of your customers, that information wouldn't be sent back up stream saying here are the names of customers that you might want to go look at because they are currently not in our system but they are potential customers. That can't happen right now but should this bill be passed and we open it up,

that's certainly a concern I would have. We would need some kind of oversight to insure that that kind of thing doesn't happen. That's a natural thing in business, to look for increasing your market share. I generally am a free enterpriser but I think, in this case, I listened to the testimony and arguments and I compelled to vote against it.

Representative Ruby: When I first got elected, the Senator from my district had been in the House. He had put in a bill to try to get the State to sell the Mill and Elevator.

Chairman Keiser: I was a co-sponsor by the way.

Representative Ruby: I would have supported that bill. I think that I'm being consistent with that and the fact that I put the bill in to try to remove those sacred cows. In my industry, if one company controlled all the landfills, they could control me to some extent as well. That could happen and I could put in a bill that would restrict the ownership of companies in my industry and protect that industry as well. I have not introduced that bill. I feel comfortable with my position and I'm consistent in my philosophy.

Representative Boe: During the campaign trail, I visited with one of my constituents. He was talking about initiated measures. His dad had given him the advice that if yesterday was ok, tomorrow probably will be ok too; vote no. I was wondering how I could use that advice in this case. I guess it would be to support the do not pass.

Chairman Keiser: Take the roll for a do not pass on HB 1434.

11 Yes 3 No 0 Absent Do Not Pass Carrier: Representative Kasper

Date: Feb 16, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1434

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

Motion Made By Rep Kasper Seconded By Rep Frantsvog

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark		✓	Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe		✓			
Representative Ruby		✓			
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 11 No 3

Absent 0

Floor Assignment Rep Kasper

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

REPORT OF STANDING COMMITTEE

HB 1434: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1434 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1434

HB 1434

Industry, Business and Labor Committee – Rep. George Keiser, Chair

Testimony presented by Rep. Thomas Beadle on 2/15/11

Good morning, Chairman Keiser and members of the House Industry, Business, and Labor Committee, thank you for the opportunity to speak today.

For the record, my name is Thomas Beadle, Representative of District 27 in southwest Fargo. I am here today in support of House Bill 1434, regarding issuance of pharmacy permits. This is not a new concept, as many of you know. Since the last legislative session, this issue became the focus of a public petition and media scrutiny. While campaigning, I heard about this issue quite often from my constituents. After the mistake in filing the petition that was signed by over 14,000 citizens of our state, I had over three dozen constituents request that I ensure that the legislature looks at this issue again.

After talking with many of the members of this committee, as well as members of the 61st legislative assembly, I discovered that last session this debate took a divisive and negative tone. I would like to take the focus of pharmacy ownership into a different direction: the citizens of North Dakota. I would like the focus of this to be on accurate, factual statements rather than hyperbolic generalizations.

I would like to clarify my motives; I introduced HB 1434 because my constituents asked me to. I have had NO contact with Walgreens, Walmart, or any other so-called "big box chain" regarding introducing this bill. This is a consumer driven measure that has actual impacts on the citizens of our state, especially the senior citizens that make up over a quarter of our population. You will hear compelling testimony on both sides of the issue, but I think there are some very persuasive reasons to consider a "Do Pass" on HB 1434.

First and most important; Competition benefits consumers. This bill is ultimately about competition. Competition is good and beneficial to our citizens, if we allow it to work. More competition will result in lower prices. For example, one study the committee saw in 2009 showed that prices of Thrifty White Drug are higher in North Dakota than in Minnesota. There is no real reason for that, other than lack of competition. Obviously, if Thrifty White and other independent pharmacies can thrive in Minnesota and compete with other chain pharmacies, the same could happen in North Dakota and would result in lower costs for our citizens.

Another study showed that independent pharmacies have cheaper medications than the retail price of chains. However, if you take a closer examination, you will note that the costs are based off of Linson Pharmacy in Fargo which faces direct competition from the big chains in the Fargo-Moorhead community. This just proves that competition lowers prices and allows chains and independent stores to co-exist! The fact that pharmacies in Fargo are able to offer competitive prices with their Moorhead counterparts, including Walgreens, Target, Walmart, CVS, and other independent pharmacies shows that competition effectively lowers prices.

In 2009, you also saw the testimony from Blue Cross/Blue Shield of ND, stating that a change in the pharmacy ownership law could save consumers money, and could result in lower insurance premiums for people throughout North Dakota. The lack of competition costs the consumers of North Dakota money. If they don't see it at the register at checkout, they will see it reflected in their insurance premiums over the course of the year.

Safety is not jeopardized by passing this bill. Every pharmacist in this state takes the same oath. I trust every licensed pharmacist in this state. I trust that they have passed all of their tests, and

will do their best to help every patient they can. I trust the pharmacists that are employed by CVS in this state, even though they are on the payroll of a large company. I trust that the state of North Dakota does an excellent job qualifying pharmacists.

Pharmacists of all stripes take offense to the notion that pharmacists who work in independent stores are better at providing care than those who work in chains. The Board of Pharmacy in North Dakota licenses every pharmacist in the same way; there are not different tests for independent pharmacists, rural pharmacists, or big box pharmacists.

The "big box stores" that the opposition seems concerned with are not out to undermine safety. Historically, they have excellent track records in maintaining patient care, and ensuring that the patients are taken care of to the best of their ability. Every pharmacist must have the same certifications, whether they are working independently or working in a larger chain. If they act in a manner that will jeopardize their patients well-being, or is potentially harmful to the consumer, than they will get their license revoked, regardless of the size of business that they work for. I am not arguing that we ought to prefer chain stores to independent retailers. I am arguing that our citizens have the right to choose for themselves.

The current pharmacy law is a significant barrier to entry for young pharmacists. I have talked to NDSU pharmacy students who are interested in opening their own pharmacy someday but do not have the money to start their own business. Stocking inventory, signing a lease, and paying salaries to employees are significant costs to a newly graduated student already saddled with loan debt. Passing this law would allow more people to open their own business because they could more easily partner in a venture with people with financial resources.

Additionally, not everyone is wired to be a small business owner. I have heard from people in the field that some new pharmacists have been reluctant to enter into business with an existing independent operation because there have been instances in which they are are forced to sign contracts that stipulate a forced buyout of the existing owner over a period of time if they wish to work there. This is used as a way for current pharmacy owners to guarantee that they have an "out" when they choose to retire. Many young pharmacists do not wish to sign contracts that stipulate this, as they don't have the desire to be responsible for scheduling, ordering retail items, or managing the business side of things. Many people that enter the field of pharmacy do it because they wish to provide great patient care; if they want to be employed in our state, sometimes their only option is to become a business owner. Many of those that wish to be a pharmacist, and not an owner, are left in a position where they find it very difficult to find employment IN North Dakota, and are forced to leave the state.

NDSU has an excellent pharmacy program that has trained many qualified pharmacists who seek to do the best for their patients. However, despite having an excellent educational portal in our state to train them, the vast majority of graduates from the pharmacy school leave the state after graduation, in part due to the lack of job opportunities. Since we are constantly debating how to best retain people in North Dakota, especially the medical professionals for our rural communities, we'd be best served by giving them an option that will allow them to get started and set up their practice in our state while they are laying the foundation for their families.

Repealing the current law is not the "death" of the independent pharmacy. Supporters of the current law often say that if we change the law, we will lose all of the small town pharmacies, and that the majority of independent pharmacies will go out of business. It is essential to recognize that these

arguments are greatly exaggerated. The same people who make that argument will also stand here and tell you that independent pharmacies offer better service and lower prices. If that is the case, then they will have nothing to worry about. The businesses that cater to consumers will continue to thrive. In the free market with fair competition, businesses that offer a product at a competitive price with quality service will flourish.

The legislative assembly heard these same arguments in past sessions, when the issue was debated on whether or not "big box chains" should be allowed to sell gas and groceries. The fears were that the giants would drive out all of the independent, locally owned operations. These fears were proven to be false. In the context of this debate on pharmacy ownership, we must remember that North Dakota is the ONLY state that has this sort of protectionist law on the books. According to the National Community Pharmacists Association, one of the largest organizations of independent pharmacy owners, there are over 24,000 independent pharmacy owners across the country, with the average entrepreneur owning multiple pharmacies. Despite the dramatization that chain stores will destroy independent pharmacies, this has not proven true in the rest of the nation, and we would expect nothing different in North Dakota.

I will request that you use your own judgment. Please don't get swept up into the fears of this bill's well-organized opposition. Take a hard look at the numbers, and you will see that some of the statements that SOUND true may not be so. For example, the opposition has produced several studies, including the so-called "New Rules Project." The problem is that their argument is not compatible with the facts. They argue that 70 pharmacies will close as a result of this bill. As members of the Industry, Business, and Labor Committee, you know the conditions necessary to open a new business. The

demographics, population, and potential for profit just doesn't exist for big chains to open up new locations in rural areas. Walgreens will not open up a new business in a town of 200 people. A CVS already exists in Bismarck, and independent pharmacies operate in the city and in surrounding rural areas. Please also consider that border cities have successful independent pharmacies despite competition, such as in Wahpeton/Breckenridge, Grand Forks/East Grand Forks, Fargo/Moorhead, and the proximity to Minnesota, South Dakota, Montana, and Canada along our state's borders.

In closing, North Dakota is a state of capitalism. My constituents have called the current pharmacy law a case of protectionism. We do not regulate ownership in other industries, including hospital or insurance ownership. We are a state that believes in competition that benefits the consumer, and pharmacies should not be exempt from this belief. **It is not our job to choose the preferable business model, be it chain or independent - that is the choice of the consumer.** Competition is good, it is good for the consumer and benefits the society. We need to allow competition to flourish, and act in accordance with the wishes of our constituents. Thank you for your time and I urge a Do Pass recommendation from the committee on House Bill 1434. I will stand for any questions that the committee may have.

#1
p9

TOP 25 GENERICS DISPENSED BY RX VOLUME IN 2008 ($20.00 annual fee to join)

MEDICATION	Linson Pharmacy - Fgo	Walgreens Regular Retail Price	Walgreens Rx Savings Club	Wal-Mart Pharmacy
[illegible]ronate 70mg #12	$ 23.80	$ 179.89	$ 24.97	$ 24.00
amlodipine 10mg #90	$ 74.09	$ 167.89	$ 81.97	$ 137.72
amoxicillin 500mg #30	$ 11.17	$ 14.99	$ 9.99	$ 4.00
atenolol 50mg #90	$ 12.85	$ 21.99	$ 9.99	$ 10.00
azithromycin 250mg #6	$ 23.99	$ 43.99	$ 29.99	$ 31.78
cephalexin 500mg #40	$ 14.36	$ 21.99	$ 9.99	$ 43.32
citalopram 20mg #90	$ 18.34	$ 88.29	$ 12.00	$ 10.00
fluoxetine 20mg #90	$ 13.53	$ 41.99	$ 12.00	$ 10.00
fluticasone nasal sp #1	$ 32.58	$ 69.99	$ 52.97	$ 52.36
furosemide 40mg #90	$ 14.08	$ 17.99	$ 9.97	$ 10.00
glyburide 5mg #90	$ 17.64	$ 31.49	$ 10.99	$ 10.00
hctz 25mg #90	$ 12.14	$ 16.99	$ 12.00	$ 10.00
K+ 20meq ER #90	$ 35.22	$ 47.89	$ 21.97	$ 27.46
levothyroxine 75mg #90	$ 17.52	$ 32.89	$ 12.60	$ 10.00
lisinopril 20mg #90	$ 19.13	$ 39.99	$ 12.00	$ 10.00
metformin 500mg #180	$ 16.21	$ 47.89	$ 10.99	$ 10.00
metoprolol 50mg #180	$ 17.45	$ 41.99	$ 12.00	$ 10.00
omeprazole 20mg #90	$ 101.08	$ 227.87	$ 141.97	$ 240.78
pantoprozole 40mg #90	$ 285.75	$ 317.89	$ 291.97	$ 346.54
[illegible]ertraline 100mg #90	$ 17.81	$ 113.59	$ 51.97	$ 61.62
[illegible]vastatin 20mg #90	$ 17.27	$ 113.59	$ 51.97	$ 15.00
[illegible]done 50mg #90	$ 12.69	$ 30.69	$ 12.00	$ 10.00
[illegible]printec #84	$ 42.47	$ 87.89	$ 36.00	$ 27.00
warfarin 5mg #90	$ 27.19	$ 29.99	$ 12.00	$ 10.00
zolpidem 10mg #30	$ 11.21	$ 69.94	$ 39.99	$ 47.72
(drugs shaded this color are not available from Wal-Mart in certain states due to predatory pricing laws)				
TOTALS:	**$ 889.57**	**$ 1,919.58**	**$ 984.26**	**$ 1,179.30**
		$ (1,030.01)	**$ (94.69)**	**$ (289.73)**
			10.6% higher	32.6% higher

**The Walgreens and Wal-Mart prices were obtained by calling the pharmacies in Moorhead and Dilworth, M.N.

This is the top 25 generic prescriptions filled by Linson Pharmacy in 2008 by number of Rx's.
Linson Pharmacy prices are cheaper in all categories.
Walgreens DOES NOT BILL THE RX SAVINGS CLUB PRICE TO INSURANCE.
This means that on the above medication list - Linson Pharmacy price to insurance is $1,031.01 less!

Michael Bunn, Pharm. D., a consultant for Pharmacy Healthcare Solutions in Pittsburgh, PA.
(quotes from Mr.Bunn at a January, 2009 conference on Pharmacy Automation and Technology)
"The downside is prescriptions are divided among multiple pharmacies, and there is reduced pharmacist patient interaction."
"[illegible]ou need to compare the business v.s. the professional philosophy and find how those 2 can meet."
"[illegible]ith an enrollment fee program, the discounts are given to enrolled customers only, for traditional chain [illegible]macies, it allows them to capture additional revenues for those who don't participate."

Medicare Part D Plan
Advantage Freedom Plan by Rx America
(Admin. By Caremark/CVS)

Attachment #1
CVS (Fargo,ND)
Amount paid by patient
For 12 months $2,842.57

Attachment #2
Southpoint Phar. (Fargo, ND)
Amount paid by patient
$1,299.62 for 12 months

Difference = $1,542.95

Total drug cost for 12 months
$384.89 X 12 = $4,618.68

Total drug cost for 12 months
$178.88 X 12 = $2,146.56

Difference = $2,472.12

Attachment #3
Wallgreen Drug (Moorhead, Mn)
Amount paid by patient
For 12 months $2,657.38

Attachment #4
Foss Drug (Moorhead, Mn)
Amount paid by patient
$1,308.71 For 12 months.

Difference = $1,348.67

Total drug cost for 12 months
$368.00 X 12 = $4,416.00

Total drug cost for 12 months
$181.04 X 12 = $2,172.48

Difference = $2,243.52

Medicare Part D Plan
MedicareBlue Rx Option #1
Admin. By Prime Therapeutics

Attachment #5
CVS (Fargo, ND)
Amount paid by patient
For 12 months $3,015.66

Attachment #6
Southpoint Pharmacy (Fargo,ND)
Amount paid by patient
$1,077.31 For 12 months

Difference = $1,938.35

Total drug cost for 12 months
$398.15 X 12 = $4,777.80

Total drug cost for 12 months
$216.72 X 12 = $2,600.64

Difference = $2,177.16

Testimony #2

4404 9th Avenue Cir S Apt 202
Fargo, ND 58103-7017
February 14, 2011

Honorable George J. Keiser, Chairman
Committee on Industry, Business and Labor
House of Representatives
North Dakota State Capitol Building
600 East Boulevard Avenue Dept. 1500
Bismarck, ND 58505-0245

Dear Mr. Chairman and members of the committee:

It is my understanding that your committee has under consideration, House Bill #1434. This bill, if passed, would repeal the language in state law relative to the ownership requirements for a pharmacy in this state. Unfortunately, I am not able to be present in person to testify in favor of this bill due to my work schedule here in Fargo. Accordingly, I request that my statement herein be accepted as written testimony in support of House Bill #1434 and I ask that my comments be included in the record of the public hearing on this bill.

This is a people issue, Mr. Chairman and members of the committee. To the best of my knowledge and belief, the bill that is before you has NOT been submitted at the request of any retailers, big box or otherwise.

I got involved with this issue largely for personal reasons. If you recall from the testimony I submitted during the 2009 legislative session when this committee had before it House Bill #1440, which was subsequently defeated on the House floor; my wife suffers from a chronic form of leukemia and a number of other health issues. Accordingly, she must take numerous prescription medications on a daily basis. The prescription she takes to keep her leukemia in check is called Tasigna. Without insurance, this prescription costs $8,000 per month for a 30-day supply. Who has that kind of cash lying around? We sure do not. Thank God for good insurance coverage.

Then we see and hear about stories, particularly from our senior citizens, who have to skimp on their medications because they cost too much. They have to sacrifice in some cases their prescriptions for food on the table and a roof over their heads because their Social Security just does not stretch. By opening the pharmacy industry to some much-needed competition, I believe Mr. Chairman and members of the committee, that North Dakotans should see some much-needed relief from higher prescription drug costs.

As you are aware during the debate on House Bill #1440 during the 2009 legislative assembly, which also was before this committee; and the subsequent initiated measure campaign that was launched by a grass roots organization known as North Dakotans for Affordable Healthcare, this law has been on the books since 1963. Its original purpose was to prevent physicians from selling prescription medications. Instead, it has had the effect of stifling much needed competition in the prescription drug market, and it has created for the lack of a better choice of words, a government-protected monopoly that benefits only a small segment of our state's economy.

Why should two large corporations such as CVS Pharmacy and Thrifty White Drug - both out of state corporate entities - have the privilege of being able to offer retail pharmacy services in this state, while other companies and even hospitals cannot legally do so under the present scheme?

Then we hear from the independent drug store owners of this state. Many of these pharmacist owners fear that opening up the retail pharmacy industry to additional competition will hurt their businesses. Quite frankly, in the other 49 states that do not have this kind of a protectionist law, the small town corner drug stores and the big box retail pharmacies co-exist just fine. Please know that I sympathize with the many issues that face our rural communities. I grew up in small town North Dakota myself. Rugby, N.D. to be exact.

Then we hear from the out of state corporations that were in business in 1963 when the pharmacy ownership law was enacted - Osco Drug (which CVS acquired in a merger of the two companies a number of years ago) and Thrifty White Drug. Naturally, those two companies are going to want to maintain their stranglehold on the market; so they're going to do all they can to beat back this latest attempt to change the law. In my humble opinion, I must say that taking such a position really disserves their customers. By virtue of the fact that Thrifty White Drug is an employee-owned company, they are in full compliance with the present law and are able to demonstrate that each of their locations in North Dakota is owned at least 51 percent by a licensed pharmacist in good standing.

This artificial shield against competition and government protection for a small segment of our economy has to stop and I believe we've reached that point in this debate. I think that the members of the Legislature need to listen to the some 14,000 of our friends and neighbors here in North Dakota who signed petitions in 2009 and 2010 to request an initiated measure on this issue. Mr. Chairman and members of the committee, it is my belief and hope that you will accept this fact as a mandate from the people of North Dakota and I ask that the committee would give this bill a Do Pass recommendation. Thank you.

Some final points, if I may:

1. North Dakota consumers really are the losers here. By having this government protected monopoly in place, our friends and neighbors are not able to avail themselves of the much advertised national prescription drug offers. We are aware of the $4 and $10 generic prescription offers that are out there.
2. How can a vast majority of this Legislative Assembly be on record in supporting such an anti-competitive law? House Bill #1440 only got 35 Yes votes when it was defeated on the House floor in the 2009 regular session.
3. Fourteen thousand of our fellow North Dakotans signed petitions to request an initiated measure on this subject. Unfortunately, due to some paperwork discrepancies with the measure's filing with the secretary of state, the initiative was ruled invalid and was kept off the ballot. I would remind the committee that these 14,000 people represent a good cross-segment of our state's population. These people are among your friends, neighbors, co-workers and I would imagine even some of your family members. I certainly hope that this time around, that this Assembly will accept this fact as a mandate and that this legislation will be adopted.

Thank you for allowing me this time to share my thoughts with you. If you or any member of the committee has any questions for me, please feel free to contact me by mail at the above mailing address, by e-mail at rickolson@cableone.net, or by phone at (701) 205-3401 (home) or (701) 261-4200 (cell).

Sincerely,

Clarence F. "Rick" Olson
Fargo

Testimony #3

February 15, 2011
Comments to Business, Industry and Labor Committee
by Larry L. Gauper, Consumer, Fargo, ND

RE: **North Dakota Pharmacy Ownership Law** (HB 1434)

Chairman Keiser, Vice Chairman Kasper and committee members:

Thank you for this opportunity to comment once again on North Dakota's pharmacy ownership rules. I offer my opinion as a consumer, one who is a life-long North Dakotan, and now I'm demographically classified as a "senior citizen." I am not paid by any organization or business and I am here at my own expense to request that North Dakota's anti-competitive and protectionist "pharmacy ownership law" be repealed by passage of HB 1434. As you well know, North Dakota is the only state in the union that bars open competition in pharmacy retailing through a government regulation.

At the outset, I want to be very clear on this: I have the greatest respect for the working Registered Pharmacist. These men and women at the dispensing bench, whether fresh out of school or with years of experience, literally hold life and death in their hands. Every day – and sometimes during their off hours on nights and weekends - they carefully and professionally dispense medications to thousands of North Dakotans and millions of Americans – to maintain or improve health.

You're very familiar, I'm sure, with this debate; it's been going since the legislation was first passed by 38th Assembly back in 1963, 48 years ago. But I would like to call your attention to some things I've learned over the past several years as I debated this subject in public and private conversations.

First of all, I've learned to make a distinction between those pharmacists who own pharmacies in North Dakota and pharmacists who are their employees. In the latter category I also include those pharmacists who are working for hospitals and medical facilities throughout North Dakota. I believe most of these working professionals want the ownership law repealed because it would mean more job opportunities, higher wages and other benefits working for a national pharmacy retailer, which they enjoy in every other state but ours.

I have talked with a number of young graduates from NDSU's School of Pharmacy who are now working for national retailers in other states and who would love to return to North Dakota to be an employee of their company here, in their home state. To do that now, their only choices are to secure a job with an independent pharmacy owner, with CVS in a limited number of grandfathered locations, with Thrifty-White, a Plymouth, Minnesota, based chain that meets the letter of the law through an ESOP, or buy out a retiring pharmacist. Frankly, that last one is not happening as in days of yore.

On the other hand, in Minnesota, South Dakota, Montana and every other state in the union, they have all the choices, from successfully competitive independents to every national pharmacy retailer. What would be wrong with letting these young people – graduates of our taxpayer supported university – take full advantage of the opportunities their degree grants them in North Dakota? It varies from year-to-year, but, on average, 75% of NDSU's pharmacy graduates leave the state to practice their profession. Repeal of this government regulation would make it possible for more pharmacy grads to stay in the state that educated them.

There are also hospitals and nursing homes in rural areas who would like to own and operate their own pharmacy. And what would be wrong with that? One

pharmacist-owner told me "that wouldn't work economically." Excuse me, but I'd leave the decision of whether or not to open and/or own a pharmacy up to the hospital or nursing home that wants to do it. They should not be blocked from that option by an anti-competitive law. The legislature should not be deciding who can compete with whom in pharmacy in North Dakota.

Certainly, a hospital or nursing home based public pharmacy would compete with the local pharmacy/owner or the pharmacist in a given area, an owner that one, two or maybe three pharmacies, one of those "mini-chains" we find throughout the state. But I ask, what would be wrong allowing a wider range of competitive options? Who is the state protecting with the ownership law?

There's another advantage of repeal and this goes to the current owner of a pharmacy in a small town and to the residents of that area. Lifting of the ownership restriction provides a pathway for pharmacy services to grow and thrive after the current owner of the town's only drug store retires. There's another possibility, and this is a benefit to the local business community in mid-to-smaller cities: A national or regional retailer (besides just the single out-of-state based retailer current allowed) or, maybe, a regional health care provider, might want to open a pharmacy in that community.

What? A new business in a smaller, or medium-sized town employing professional graduates from North Dakota State University? Faced with these possibilities, what's a small town pharmacist-owner to do? Instead of looking at the possibilities for themselves and their communities, many of them talk to their local legislator, convincing them of the need for government protection of his or her current monopoly on pharmacy retailing in that community. And, unfortunately, the legislature has bought this argument for 48 years!

On top of that, and to the detriment of local pharmacist/owners wishing to sell the practice they have spent a lifetime building, they have very few choices: There's Thrifty-White and who else? The *Williston Herald* reported in 2008 that Thrifty-White purchased Western Dakota Pharmacy in that growing community in the heart of North Dakota's new economic boom. In the process of the takeover by Thrifty-White, the Western Dakota Pharmacy was closed and folded into the T-White operation. How does this provide more competition, better services and lower prices to the consumers in that area? If the pharmacy ownership law were repealed, chances are good Walgreens or CVS or, some other national retailer would open a pharmacy in that community. And, in our American economic system of free enterprise and open competition, what in the world would be wrong with that? I applaud Thrifty-White for their aggressive expansion in North Dakota. Good for them! But why must we have a government regulation that prohibits any national retailer from coming into a community and providing services, products and pricing to North Dakota residents?

Wide-open competition is a key factor in the growth of the oil and gas industry in North Dakota. As you well know, this has contributed to our state's new economic growth and the lowest unemployment in the nation. Smaller communities in the Bakken formation are growing at an exponential rate. Companies and their employees moving into our state, from oil drillers in the West to, in a different industry, Microsoft and Tech Park businesses in Fargo, expect and deserve the same kind of competition they must deal with in their marketplace. This means they also expect and deserve the same kind of choices in pharmacy retailing as any other state in the union. Why must North Dakota law bar that competition in pharmacy? The current pharmacy ownership limitation only serves the twin goals of limiting competition and keeping a cap on economic growth in North Dakota.

I'm no lawyer but I've heard lawyers speak of the "Swiss cheese" nature of our one-of-a-kind pharmacy ownership law. There are lots of holes in it, a number of difficult-to-understand "exceptions." One national retailer was grandfathered in; a couple of hospitals earned exceptions; and, of course, if you can come up with an ESOP, come on in. But national retailers are usually public companies, listed on the New York Stock Exchange. Because of that, we know more about these companies' finances than we know about the local mini-chains run by independent pharmacist-owners in North Dakota.

If you talk to residents of small towns and rural areas in North Dakota – not just to the local pharmacist-owner – you'll learn, as I did, that most of these people want the law repealed. They want the opportunity – as do the thousands of urban residents – to shop where they want to shop for the prescription drugs. If they value the local pharmacy in their smaller community, they'll support it. Just because some national retailer opens a pharmacy 90 miles away, doesn't mean the local pharmacy won't continue to be patronized. Right now, those who are unhappy with pharmacy pricing in rural areas, are using mail order. You probably have family doing that right now. And when North Dakotans turn to mail order, everybody loses: the local salaries are gone, the infrastructure is diminished. On every count, North Dakota loses with mail order.

There's a myth being perpetuated by proponents of keeping the status quo. Pharmacist-owners say they are deeply concerned about "saving the small town pharmacy." Oh, really?

I listened to a caller to a radio talk show in Fargo. Someone called into say that the prescription they needed cost $600 a month at their local pharmacy in north-central North Dakota. But, this person called a Fargo independent pharmacy, and this

pharmacist said he'd be happy to mail that drug to the small-town resident for around $500. So, the customer went that route.

In this scenario, why didn't the urban pharmacist tell the potential customer to go shop at his local pharmacy? Nope. He undercut the price of the drug store in that small community so he could have the business. I don't blame him, that's free enterprise, but I'm trying to figure how where the stated altruism of "saving the small town pharmacy" fits into that situation. Make no mistake: retaining the current ownership law has nothing to do with "saving the small town pharmacy" but it has a lot to do with protecting the market shares of urban pharmacy owners and those arbitrary "exceptions" the law allows.

I mentioned only one incident of an urban pharmacy price cutting a rural pharmacy, but I imagine it's going on throughout the state. Consumers want, need, demand the lowest possible prices on prescription drugs. That's fine with me the Fargo pharmacy came through for this small-town resident. That's competition! But why shouldn't there be more of it? Who are we protecting here with a totally needless government regulation?

There is also a ruse being touted about "North Dakota has the lowest prescription drug prices in the country," so we can't allow true competition from all the players in pharmacy. This erroneous concept is being sold primarily to legislators. I thought I'd check it out – not with complex spread sheets full of tiny numbers but where the drug meets my pocketbook.

I take a few maintenance drugs and, after my last physical, I had a new round or prescriptions filled at a pharmacy in Moorhead, Minnesota. You can't try that in Minot or Bismarck. When I received the notification of benefits report – that blue

sheet from Blue Cross that no doubt you're familiar with, the bottom line price for each of the three or four drugs I purchased, was lower by several dollars at the pharmacy located in Moorhead. And my prescriptions were filled by an NDSU graduate who told me he would love to work on the North Dakota side of the Red River for the same company that employs him in Minnesota. Why do we insist on blocking that opportunity for NDSU pharmacy graduates. It makes no sense to me.

You might say, "Well, that's just a few dollars of difference." Who cares? But those "few dollars" add up: A couple of years ago, Blue Cross Blue Shield of North Dakota did a study of other Blue Cross plans across the country – areas that aren't encumbered by the kind of government-created barrier we have in North Dakota. And that, of course, is the entire rest of the country. If current law were repealed our state, the North Dakota Blues' and their members would realize, conservatively, $6.3 million in annual savings in prescription drugs. Not a small part of that $6.3 million would be savings realized by the North Dakota Public Employees health plan, coverage that's paid for with North Dakota taxpayer dollars. Remember too – those are annual figures. Savings like the Blues projected would occur every year, and, in my opinion, grow.

And those prescription drug savings I just mentioned accrue to Blue Cross Blue Shield members, that is, those with insurance. What about those without insurance? These are the people who need those lower prescription drug prices the most and will probably be extremely diligent in taking advantage of the price shopping that wider competition will offer.

And then there's Medicaid. If Blue Cross Blue Shield projects over $6 million in annual savings after repeal, then, surely, Medicaid will realize substantial savings

too. That's taxpayer money being saved, by bringing more choices and real competition to consumers.

When I talk to my family and to health care professionals and residents of other states, they can't believe that the North Dakota legislature would continually maintain this kind of government regulation. More government, not less? "Hey, they ask, "Isn't North Dakota a RED state?"

If you want a laugh, just tell some out-of-stater that North Dakota is the only state in the union that you can walk into a Walgreens and it's illegal to a get a prescription filled. It's not so funny to those traveling through, who can't believe what they're hearing or when they go into the Fargo Walmart and are told at the pharmacy counter that his is not a Walmart pharmacy and that the company's national $4 program is not honored here. They find this strange, of course, because they're standing in a Walmart store.

What I can't understand, as a consumer and voter, is that repealing this law is consistent with the espoused ideals and goals of both political parties: Republican and Democratic. For Republicans, who believe in free enterprise, open competition, and fewer government regulations, it's a no-brainer. Likewise, for Democrats, who want to take away a government regulation that limits choices for their constituents, and, in the process, bring down prices (as I found through personal experience and as the Blues found in their study). This change is long overdue.

You've no doubt heard that almost 14,000 North Dakotans signed petitions to put this item on the ballot after last the last legislative assembly. I had more than one pharmacist-owner tell me that "if it gets on the ballot, it'll pass." The people who

signed that petition knew what they were signing. They want this law repealed. If it hadn't been for a clerical snafu, I wouldn't be here today, asking you, once again, to take legislative action to correct this huge error in the way North Dakota bars open competition in pharmacy retailing.

But, the error happened, but so did the signatures. You can't find a better gauge of public opinion than all those names on those petitions. Please, honor their request and my request. Vote a very strong "do pass" on HB-1434.

Thank you for your time, and if you have any questions, I'd be happy to try to answer them.

- Larry Gauper

#4, Pg 1

as expanded ... the old Kresge building at
n 1967, giving it ... 54 Broadway in 1971. Five ...

Andre... ...son
Readers can contact Forum columnist Andrea Hunter Halgrimson at ahalgrimson@forumcomm.com

Pharmacy issue resurfaces for debate

Bill would allow retailers to open pharmacies in North Dakota

By Teri Finneman
tfinneman@forumcomm.com

BISMARCK — A bill that would allow chain retailers like Walmart and Target to open pharmacies in the state is up for debate on Tuesday. House Bill 1434 deletes wording in North Dakota law that requires pharmacies to be majority-owned by pharmacists licensed in the state.


Beadle

The bill hearing is scheduled for 8 a.m. in the Brynhild Haugland Room in the state Capitol.

Bill sponsor Rep. Thomas Beadle, R-Fargo, called the legislation a "consumer bill," saying competition is good for prices and provides more options.

Brad Morrison of Market Pharmacy in Minot, however, wants to keep the current law as is.

"It's my feeling that the patient care is improved when the owner/manager has a pharmacist's perspective," he said.

The same issue came up during the 2009 Legislature and failed to make it on the 2010 ballot due to a flaw in the way petitions were circulated. North Dakota is the only state in the nation with this law.

Beadle said he isn't pushing the bill on behalf of big business. He said he's doing it for the more than 40 constituents who asked him to change the pharmacy law when he was campaigning.

"This is purely a consumer driven initiative this time around because they recognize the need for it," Beadle said.

Supporters and opponents won't have to wait long to see how the House responds to the bill. All bills must go to a floor vote within the next two weeks.

Teri Finneman is a multimedia reporter for Forum Communications Co.

Jim - Thrifty White Drug

#4, pg 2

The Jamestown Sun

Lawmakers debate pharmacy bill

By Teri Finneman
Forum Communications Co.

BISMARCK — A bill that would allow chain retailers like Wal-mart and Target to open pharmacies in the state is up for debate on Tuesday.

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Brad Morrison of Market Pharmacy in Minot, however, wants to keep the current law as is.

"It's my feeling that the patient care is improved when the owner/manager has a pharmacist's perspective," he said.

Bob Treitline, pharmacist and owner of ND Pharmacy in Dickinson, agreed and said the benefits of this bill do not outweigh the risks.

Treitline added he is concerned that if the bill passes, consumer access and the close pharmacist-to-pharmacist and consumer-pharmacist relationship many people have come accustomed to in North Dakota may be lost.

"In North Dakota, we are known for our friendliness and service ... we help each other out," Treitline said. "I think small pharmacies are more personal — we know our patients — they are not just consumers. I also think local pharmacies are more accommodating in meeting their consumers needs."

Treitline also said the passage of this bill would have a negative effect on the economy. He worries about losing local pharmacies, which in turn means the loss of competition, jobs and revenue.

Treitline added it's almost a necessity to have pharmacies in rural areas because of the distance people have to travel for medical care and medications.

The pharmacy ownership issue came up during the 2009 Legislature and failed to make it onto the 2010 ballot due to a flaw in the way petitions were circulated. North Dakota is the only state in the nation with this law.

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Press reporter Lisa Miller contributed to this report.

Teri Finneman is a multimedia reporter for Forum Communications Co.

Jim- Thrifty White Drug

Testimony #5

Testimony of Andy Peterson
North Dakota Chamber of Commerce
HB 1434
February 15, 2011

Chairman Keiser and members of the House Industry, Business and Labor Committee, my name is Andy Peterson, president of the North Dakota Chamber of Commerce. I am here today representing the North Dakota Chamber of Commerce, the principal business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. The North Dakota Chamber of Commerce would like to voice its support for HB 1434 and urge a do pass recommendation on this bill.

Our mission statement and legislative policy states: "The North Dakota Chamber supports competition in the free market system and believes the supply demand model should hold precedent." Our decision to take a position on this issue during the last session was not entered into without a long debate at both the committee and board level. In the end, we felt the Chamber, as the voice of business for North Dakota, has to be consistent in our support of the free market system and capitalism as the best business model to follow.

The incentives of the free market and capitalism are powerful forces that keep quality high and prices low in our society. The more we can allow access to entry into the market, the more benefit the people of North Dakota will receive from the increased competition. Competitive pressure is what makes companies better suppliers to their customers and, in turn, customers pay less for their purchases because of this competition. Restricting competitors from operating in a community ensures customers will not be well served.

This pharmacy bill will allow more retailers of pharmaceuticals to offer their products and services in our state. More suppliers make the competition among businesses better and the North Dakota Chamber of Commerce encourages you to support HB 1434.

Thank you for the opportunity to appear before you today. I would be happy to answer any questions at this time.

Attachment #6

February 15, 2011
Testimony of Brian Ament
President, North Dakota Society of Health-Systems Pharmacists

Chairman Keiser and the members of the IBL committee:

The ownership requirement for pharmacies in North Dakota has been around since 1963 and much has changed in healthcare in the nearly 50 years this law has been in place. Only a handful of hospitals held pharmacy permits at the time of the laws passage. Now, most hospitals do have a pharmacy permit and the practice of hospital pharmacy has been well established. Some examples of changes that we have seen since 1963 would include the example of a patient who went into the hospital to have a gall bladder removed would likely have stayed for 10 to 14 days in the hospital. Today, most of those procedures are done on an outpatient basis. Also, in 1963 a woman who had given birth to a baby would likely have been allowed to stay in the hospital for a week or so. Today, 2-3 days is the standard. These changes have resulted in a dramatic shift from providing mostly inpatient care to providing mostly outpatient care. The current law does adversely affect our ability to care for patients by preventing us from providing some outpatient therapies and by limiting some options for provision of diagnostic tests.

The current law prevents hospitals from providing retail pharmacy services to the public. We have seen an increased need to provide outpatient IV's. This need is seen when working with nursing homes as they try to care for their patients without having to transport them to a hospital to receive a daily infusion. It is better for the patient and safer for them to receive this type of therapy without having to leave the nursing home. Also, we are seeing an increased need for home infusion services. Many times this service is needed to either open up hospital beds or to allow a patient to be sent home earlier. Today, the hospitals in the larger cities are able to provide this service as they have been licensed since prior to the advent of the ownership law. The problem is that small rural hospitals are not able to dispense to these patients. We feel that services provided by the local hospital pharmacy would be better than requiring that this type of service be provided from 100 or more miles away. This need is becoming more critical as the ND Board of Pharmacy looks to implement rules related the safe preparation of sterile IV products. These rules will limit the ability of some IV's to be made outside of a properly equipped pharmacy.

Many hospitals provide diagnostic services which include nuclear medicine. One of the more common examples of this type of test is the cardiac adenosine stress test. For this test, a small amount of radioactive material is added to a medication and injected into the patient. Most hospitals in ND this process has been done in the radiology department. When rules regarding proper compounding of sterile products are adopted by ND, many hospitals will have to change how they prepare these products. The preparation of these products is best done by a nuclear pharmacy. The closest nuclear pharmacy to us is located in Moorhead, MN. The greatest difficulty in providing these services is that the half-life of the radioactive component is very short and so time and distance make the

provision of these products more expensive the further the end user is from the pharmacy. ND does have a great need for a nuclear pharmacy, particularly in western or central ND. Changing the law would allow someone experienced with nuclear pharmacy to provide services in ND.

The pharmacy ownership law, as it exists today, does restrict access to some aspects of patient care in ND. In particular, our ability to provide services related to outpatient IV's and diagnostic testing across ND is limited. I ask that as you debate the merits of repealing the entire ownership clause, that you consider these issues. If removing the ownership requirement is not possible, then I ask that you consider amending the legislation to allow hospitals to be separately licensed to provide outpatient services and also exempt nuclear pharmacies from the ownership clause.

Thank you,

Brian Ament, R.Ph., Pharm.D., MBA
President
North Dakota Society of Health-Systems Pharmacists
301 20th Ave NE
Jamestown, ND 58401
701-220-6541

TESTIMONY OF Attachment #7

RICK BOEHM, RPh

BEFORE THE

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE
NORTH DAKOTA STATE LEGISLATURE

FEBRUARY 14, 2011

Chairman Keiser, members of the House Industry, Business and Labor Committee, I am pleased to be here today to testify on behalf of proposed legislation to repeal the North Dakota's Pharmacy Ownership Law. I will briefly summarize my thoughts on this legislation and ask that my full statement be made a part of the hearing record.

When the Pharmacy Ownership Law was passed in 1963, it was intended to keep pharmacists owning pharmacies as pharmacists would provide the best overall care to the patient and would not have corporate influences affecting patient care. Originally, I believe the bill was noble and did just what it was intended to do. Unfortunately, medicine has changed and the law needs to change with it.

If a patient goes home from our Critical Access Hospital on IV therapy for antibiotics, electrolytes, or Total Parenteral Nutrition and they ask me to help provide these services on a local ongoing basis, my required answer is "**NO**". The Pharmacy Ownership Law restricts access to in-home treatment provided by the hospital as there is no exemption for hospitals filling retail scripts. Unfortunately, to the patient, there is no retail store [redacted]in 100 miles that has the physical layout, the required equipment such as clean room and laminar flow hood [redacted]arrier isolator, nor the training required to comply with the heavy USP 797 requirements. In addition, home infusion has not been a profitable venture for many pharmacies. Therefore, it should be looked at as a community service.

Being a Critical Access Hospital, we are limited to 25 beds. Often time's patients are only here for infusion of fluids or antibiotics. These are patients who could be potentially served at home, therefore, freeing up needed beds for the community. In complying with the existing Ownership Law, we can't do this. This was never its intent!

Unfortunately, the Pharmacy Ownership discussion has become such an emotional argument for some that they have lost site of its original intent. We need to refocus on the patient and how we can best provide quality, cost effective healthcare. This ownership law must be repealed or replaced with an exemption for hospitals. This needs to happen now, not two years from now. We owe it to our citizens of Southwest North Dakota.

Sincerely,

Rick Boehm RPh
Pharmacy Director
St. Joseph's Hospital and Health Center
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Attachment #8

Economic Impact of the Removal Pharmacy of Ownership Restrictions in North Dakota*

David T. Flynn, Ph.D.

* The analysis and opinions contained in this report are those of the author and do not necessarily reflect the opinions of the Bureau of Business & Economic Research, the College of Business & Public Administration, or the University of North Dakota

Executive Summary

This report employs economic impact analysis to study the effects of a proposed change in North Dakota's pharmacy ownership rules. The results indicate significant economic benefit to the state economy. The two scenarios created display this sizable benefit. The theoretical maximum scenario generates $49.6 million in additional output through consumer spending and other factors. With the output increase there are also nearly 350 new jobs and $1.85 million in additional tax revenues. A more conservative scenario indicates an output increase of $11.8 million, a tax collection increase of $437,000 and 82 new jobs. Competition benefits consumers and as a result benefits the overall economy in North Dakota.

Introduction

North Dakotans for Affordable Healthcare (NDAH) seeks to introduce competition into North Dakota's pharmacy market. The removal of restrictions on pharmacy ownership is their preferred method of introducing competition. The current situation in North Dakota is that corporate ownership of pharmacies is not allowed, restricting access to corporations such as Wal-Mart, Target, Walgreens and regionally based corporations such as Hugo's (grocery store) and Pamida. In this report I provide insight into the issues of prescription drug prices on the national level and the income of pharmacists and pharmacy technicians in North Dakota relative to other states. In addition, I perform an economic impact analysis describing likely results to North Dakota's economy as a result of a change in pharmacy ownership laws. The study ends with conclusions based on the results of the impact analysis.

Prescription Drug Prices

National Data

The level of prices and inflation are a constant concern in the current US economy and much of the world. Price changes alter the available budget resources for consumers, and when unanticipated fluctuations in prices occur consumer spending plans may need to change drastically, particularly when changes are in the area of health care. Anecdotally, I have heard from many people about ever-rising drug prices and the adverse impacts on low income households, people living on fixed incomes, and many others on a frequent basis. In fact, there is another group that suffers as a result of price increases but we seldom hear about, those with good incomes but significant medical expenses. These households have typically made a choice to spend any amount necessary on medical care for family members and therefore sacrifice on other expenses, such as houses and consumer goods.[1]

The Bureau of Labor Statistics (BLS) tracks an index value for prescription drug prices as part of their medical care commodities series.[2] Using this index I calculate an annual percentage change from July of 2001 to July of 2008 and a total percentage change over this 7 year period. The percentage change in prescription drug prices over this time period is 24.6%, higher than the overall percentage change in the CPI. Table 1 below displays the one year percentage change in prescription drug prices and compares the rate to the increase in the overall CPI. Figure 1 provides a graphical perspective for the data in Table 1. Both Figure 1 and Table 1 show that the annual percentage changes in prescription drug prices are quite large until the 2006 to 2007 period, in fact they are above the overall increase in prices for the same period. While prices in general fell from 2006 to 2007 we see that drug prices fall by more and that they continue to stay below the general rate of inflation to the end of the analysis. The 2006 to 2007 calculation coincides with the introduction of Wal-Mart's $4 drug plan.[3] The increase from 2007 to 2008 is at a lower rate than the general inflation currently rippling through the U.S. economy. The primary culprit for the current increase is higher fuel prices, and the uncertainty surrounding the permanency of this change. Fuel price increases are driving up prices for almost all goods where shipping is an important part of the final retail price, such as food.

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[1] There are no statistics developed to describe the impacts of drug prices on these groups so quantitative analysis is not possible. The author admits to considering his own household in this category.

[2] The data used come from BLS series CUSR0000SEMA and are seasonally adjusted. The data include all drugs dispensed by prescription and include purchases through mail. These are transaction prices between the pharmacy, the patient, and any third party payer.

[3] It should be noted that Target, Walgreen's and others followed suit soon after Wal-Mart's announcement and continue to do so.

Figure 1. Annual percentage change in prescription drug prices and overall CPI.

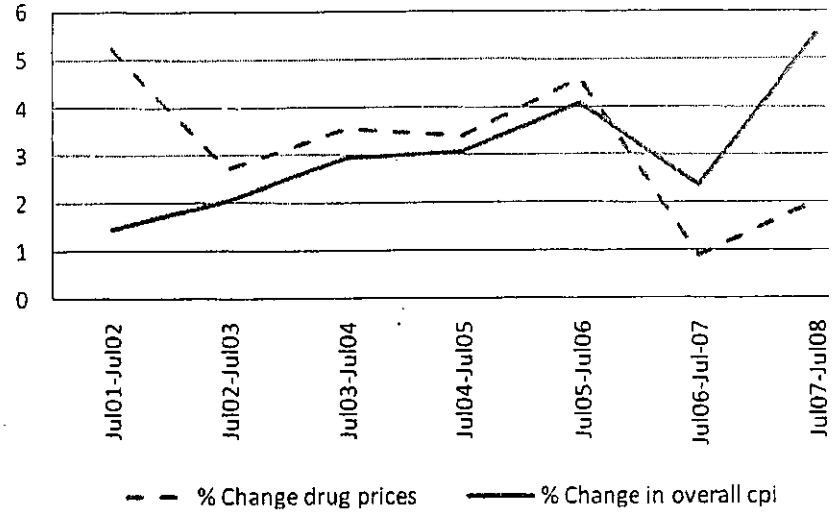

Table 1. Percentage change in prescription drug price index July to July for various years

Period	% change in drug prices	% change in overall cpi
Jul01-Jul02	5.2	1.5
Jul02-Jul03	2.7	2.1
Jul03-Jul04	3.6	2.9
Jul04-Jul05	3.4	3.1
Jul05-Jul06	4.6	4.1
Jul06-Jul-07	0.9	2.44
Jul07-Jul08	2.0	5.5

The precise share of the reduction in medical care commodity inflation attributable to Wal-Mart and other discount retailers offering pharmacy services requires further analysis with more detailed data, though the likelihood of the dramatic drop in price inflation for prescription drugs being a coincidence is small in my opinion. I also provide data for North Dakota and Minnesota White Drug's prices compared with Wal-Mart's in Table 2 below.[4] This clearly demonstrates that Wal-Mart's lower prescription drug prices contributed to the recent reduction in prescription drug price inflation nationwide.

[4] For Tables 2 and 3 data supplied by Wal-Mart for period 8/01/2007 through 7/31/2008.

North Dakota, Minnesota Data

To demonstrate regional consistency with the national data Table 2 provides a comparison of generic drug prices between Wal-Mart and White Drug's in North Dakota and Minnesota.[5] Wal-Mart's price is a significant improvement in many cases.[6]

Table 2. Comparison of Wal-Mart prices with North Dakota & Minnesota White Drug's, generic and brand name drugs, by volume.

QTY	DRUG	Dosage	Wal-Mart's Price	North Dakota White Drug's Price	Minnesota White Drug's Price
#30	HCTZ	25mg	4.00	11.89	9.99
#30	Lisinopril	20mg	4.00	13.89	13.89
#60	Tramadol	50mg	4.00	18.79	18.79
#60	Metformin	500mg	4.00	19.99	19.99
#30	Fluoxetine	20mg	4.00	15.19	15.19
#30	Fluoxetine	40mg	4.00	72.09	37.52
#60	Metoprolol	50mg	4.00	22.29	17.39
#30	Pravastatin	40mg	4.00	15.99	15.99
#30	Cyclobenzaprine	10mg	4.00	16.09	16.09
#20	SMZ/TMP DS		4.00	14.19	14.09
#20	Ciprofloxacin	500mg	4.00	33.49	12.99
#30	Plavix	75mg	147.84	162.79	162.79
#30	Singulair	10mg	130.68	127.19	127.19
#30	Nexium	40mg	171.72	189.09	159.99
#30	Lipitor	20mg	126.62	142.69	129.70
#30	Prevacid	30mg	165.46	186.89	157.01
#30	Lipitor	10mg	288.68	100.09	100.09

The average savings North Dakotans would receive from a Wal-Mart pharmacy would be significant, averaging $16.92 per fill. The savings received by Minnesotans from Wal-Mart averages $9.04. Annual savings for users of Lipitor or Prevacid would amount to more than $130 and $250 respectively. The data in Table 2 also indicate lower prices for Minnesotans from White Drugs. North Dakotans pay on average $7.88 more for their prescriptions from the same pharmacy outlet, White Drugs. Clearly, there are savings to be had for consumers of prescription drugs with a change in the ownership rules for pharmacies.

Impact Analysis

The significant savings levels represent an opportunity for North Dakota's economy to experience a further buffer against recessionary forces prevalent in other parts of the country. Consumer savings, Total results and the major sector results. Highlight impacts on pharmacy sector. Maximum theoretical amount, results from any changed sector as a result of more consumption. Highlight tax results too.

There are two scenarios developed for the impact analysis that incorporate the consumer sector, insurers, and pharmacies.[7] The first scenario, explained in a more complete fashion later, estimates the maximum

[5] This data also supplied by Wal-Mart for the period 8/1/2007 through 7/31/2008.
[6] Data provided by Wal-Mart based on survey from 8/16/2008 to 8/18/2008 from selected North Dakota White Drug's.

possible impact from a change in pharmacy ownership rules. The other scenario estimates the impact using percentages and ratios from Blue Cross/Blue Shield of North Dakota (BCBS) data. For each scenario I report the output and employment impacts for top sectors as well as for pharmacies if outside the top. I also report the tax impact resulting from the scenario.

Scenario 1: The task set forth in this scenario is estimating the maximum possible impact from a change in pharmacy ownership laws. The maximum impact relies on the data provided by BCBS. Table 3 displays estimated expenditures on prescription drugs by BCBS members by location and by type of pharmacy for out-state expenditures. This is the baseline data and our scenario creates changes in spending as a result from changes in the law.

Table 3. Cost breakdown for prescription drug expenditures.[8]

Area & Store	Total amount	Consumer share	BCBS share
In-state total cost	$152,212,555.69	$60,885,022.28	$91,327,533.42
Out-state total cost[9]	$50,944,515.85	$20,377,806.34	$30,566,709.51
Wal-Mart total cost	$8,347,921.82	$3,339,168.73	$5,008,753.09
Non-WM	$42,596,594.03	$17,038,637.61	$25,557,956.42

The first assumption is that the introduction of discount retailer pharmacies results in a reduction of prices such that all prescription drug prices are at the level of Wal-Mart. The second assumption is that all out-state prescription drug purchases are repatriated to North Dakota. We do not engage in any changes in consumer behavior here as there are no good estimates of these changes, particularly for groups such as those lacking health insurance.[10]

Table 4. Cost breakdown assuming all prescription drug expenditures are at Wal-Mart average costs.

Area & Store	Total amount	Consumer share	BCBS share
In-state total cost	$117,169,981.58	$46,867,992.63	$70,301,988.95
Out-state total cost[11]	$35,298,376.64	$14,119,350.65	$21,179,025.98
Wal-Mart total cost	$8,347,921.82	$3,339,168.73	$5,008,753.09
Non-WM	$26,950,454.82	$10,780,181.93	$16,170,272.89

The resulting savings to North Dakota consumers from the assumption of Wal-Mart average prices is $14,017,029.65, while the savings to BCBS is $21,025,544.47.[12] The consumer savings are distributed

[7] The one sector lacking from the analysis is the government sector through such programs as Medicare or Medicaid. At this time we do not have data providing an estimate of the change in program spending from lower prescription drug prices. We continue to seek this information and will update any and all analyses as soon as they are available.
[8] BCBS provided 2006 claims, a sample quarter breakdown expenditure type and average cost figures that allowed for the creation of Table 3.
[9] Out-state costs are broken down into Wal-Mart and non-Wal-Mart expenditures. The average cost sharing ratio was provided by BCBS as was the other pieces used to develop the data in this and other scenario tables.
[10] Certainly it seems logical to assume an increase in purchases of prescription drugs when the price falls, particularly for those with more limited resources and lacking health insurance. The problem is that there is no definitive estimate of the extent of this change at this time. The Census Bureau estimates there are 69,000 North Dakotans lacking health insurance, more than 10% of the state population.
[11] Out-state costs are broken down into Wal-Mart and non-Wal-Mart expenditures. The average cost sharing ratio was provided by BCBS as was the other pieces used to develop the data in this and other scenario tables.

across income categories according to the Census Bureau American Community Survey population breakdown according to income. Existing pharmacies in North Dakota will incur a retail markup loss under this scenario. A sizable portion of consumer prescription drug prices comes from manufacturing expense, research and development, as well as wholesale markup and transportation costs. The loss to pharmacies is equal to the retail markup on the combined consumer and BCBS amount, $35,042,574.12. In addition, the lower cost availability of prescription drugs in North Dakota is assumed to attract back all prescriptions filled out of state, but at the average cost for Wal-Mart prescriptions, a total of $35,298,376.64.[13]

Table 5. Output impacts from Scenario 1.

	Impact Amounts			
Sector	**Direct**	**Indirect**	**Induced**	**Total**
Insurance Carriers	$21,152,790	$1,068,180	$97,045	$22,318,010
Insurance Agencies/brokerages	$0	$3,501,022	$15,484	$3,516,507
Hospitals	$801,957	$0	$423,007	$1,224,964
Offices of physicians/dentists	$695,489	$0	$392,025	$1,087,515
Food service & drinking places	$533,919	$63,960	$341,964	$939,843
Wholesale trade	$349,849	$110,761	$250,900	$711,510
Real estate	$165,012	$355,087	$165,994	$686,093
Depository Institutions	$285,833	$190,769	$192,156	$668,758
Securities, commodity contracts, investments	$57,327	$398,904	$70,068	$526,299
Power generation & supply	$237,792	$80,027	$158,956	$476,744
Pharmacies	$164,154	$4,788	$51,154	$220,096
Grand Totals	$35,106,064	$8,430,843	$6,066,517	$49,603,424
Tax Totals	$1,287,315	$198,407	$362,578	$1,848,299

The output impacts are quite large with a total economic impact of $49.6 million. Insurance and medical services are among the sectors benefitting the most from such a change, though financial services and food service also benefit. There is also a benefit to the pharmacy sector as well with an increase in output of over $200,000. There are important employment impacts as well.

[12] BCBS indicated that eventually all savings would pass on to members, but that would take time so we apply the initial BCBS savings to their business model.

[13] I emphasize that this is a theoretical maximum. It is obviously highly unlikely that all out of state prescriptions will be filled in North Dakota.

Table 6. Employment impacts from Scenario 1.

	Impact Amounts			
Sector	Direct	Indirect	Induced	Total
Insurance Carriers	102.1	5.2	0.5	107.7
Insurance agencies/brokerages	0.0	38.9	0.2	39.0
Food service & drinking places	12.5	1.5	8.0	22.0
Hospitals	7.7	0.0	4.0	11.7
Offices of physicians/dentists	6.5	0.0	3.7	10.2
Real estate	1.9	4.0	1.9	7.8
Food and beverage stores	4.7	0.2	2.7	7.6
Nursing and residential care facilities	4.7	0.0	2.5	7.2
General merchandise stores	4.3	0.2	2.5	7.1
Social assistance except daycare	4.2	0.0	2.4	6.6
Pharmacies	2.6	0.0	1.0	3.5
Grand Totals	201.2	80.2	66.8	348.2

Insurance and medical services of various types are among the chief beneficiaries from the change in law, though clearly the gains are spread around with restaurants, discount retailers, grocery stores and others sharing in the almost 350 jobs created under this scenario.

Scenario 2: Scenario 2 pulls back from the theoretical maximum and distributes in-state changes in a pattern similar to that found in the current out of state data. Roughly 25% of out of state prescription claims from BCBS were filled at Wal-Mart. The assumption for this scenario is that 25% of in state prescriptions will be filled at Wal-Mart type stores. In addition, the Wal-Mart portion of out of state fills is assumed to come into the state. Prescriptions filled at Wal-Mart use the Wal-Mart total cost and those from other in state pharmacies use the in state cost. The initial figures for this scenario are the same as we see in Table 3 from scenario 1. The adjusted figures based on this scenario are found in Table 7.

Table 7. Cost breakdown under scenario 2.

Area & Store	Total amount	Consumer share	BCBS share
In-state total cost	$143,802,337.91	$57,520,935.16	$86,281,402.74
In-state non Wal-Mart Pharmacies	$115,681,542.33	$46,272,616.93	$69,408,925.40
In-state Wal-Mart pharmacies	$28,120,795.58	$11,248,318.23	$16,872,477.35
Out of state Wal-Mart fills returning	$8,347,921.82	$3,339,168.73	$5,008,753.09

The total savings to the consumer sector as a result of this scenario are $3,364,087.12 while BCBS looks to save $5,046,130.67. The total negative for the pharmacy sector results in $8,410,217.79, though this is offset by the former out of state Wal-Mart amount of $8,347,921.82, implying a negative of only $62,295.97.

Table 8. Output impacts from Scenario 2.

	Impact Amounts			
Sector	Direct	Indirect	Induced	Total
Insurance Carriers	$5,076,669	$256,318	$23,096	$5,356,083
Insurance agencies/brokerages	$0	$840,258	$3,685	$843,925
Hospitals	$192,470	$0	$100,674	$293,143
Offices of physicians/dentists	$166,918	$0	$93,300	$260,218
Food service & drinking places	$128,141	$15,193	$81,386	$224,719
Wholesale trade	$83,964	$26,417	$59,713	$170,094
Real estate	$39,603	$84,330	$39,506	$163,439
Depository Institutions	$68,600	$45,538	$45,732	$159,870
Securities, commodity contracts, investments	$13,758	$95,667	$16,676	$126,101
Power generation & supply	$57,070	$18,752	$37,831	$113,653
Pharmacies	$1,986	$1,124	$12,174	$15,285
Grand Totals	$8,387,978	$2,014,829	$1,443,801	$11,846,608
Tax Totals	$303,642	$47,262	$86,292	$437,196

Despite the more limited assumptions in scenario 2 than those found in scenario 1 there is still a positive output impact of nearly $12 million. The pharmacy impact is smaller, though remains positive despite the negative net gain for pharmacy dollars. Clearly the pharmacy specific changes were outweighed by the BCBS effects and the changes in consumer income. The same positive impacts are evident in the employment impacts for scenario 2 as well.

Table 9. Employment impacts from Scenario 2.

	Impact Amounts			
Sector	Direct	Indirect	Induced	Total
Insurance Carriers	24.5	1.2	0.1	25.8
Insurance agencies/brokerages	0.0	9.3	0.0	9.4
Food service & drinking places	3.0	0.4	1.9	5.2
Hospitals	1.8	0.0	1.0	2.8
Offices of physicians/dentists	1.6	0.0	0.9	2.4
Real estate	0.4	1.0	0.4	1.8
Food and beverage stores	1.1	0.0	0.7	1.8
Nursing and residential care facilities	1.1	0.0	0.6	1.7
General merchandise stores	1.0	0.0	0.6	1.7
Social assistance except daycare	1.0	0.0	0.6	1.6
Pharmacies	0.0	0.0	0.2	0.2
Grand Totals	47.7	19.2	15.9	82.7

Output growth occurs in the same top sectors as from before. Despite the initial negative impact on the pharmacy sector in the end there is no loss of employment there.

Impact Conclusions

Scenario 2 shows that under realistic assumptions about changes occurring as a result of the amendment of the law governing pharmacy ownership a significant positive economic impact occurs for the state of North Dakota. The maximum benefits achievable, described in scenario 1, represent a large improvement but are less realistic than scenario 2. It is highly unlikely that all out of state spending returns to North Dakota. There will always be emergencies that require prescriptions to be filled outside the borders of North Dakota. In addition, the significant number of border communities makes it likely that BCBS covers residents of Minnesota that will fill prescriptions outside North Dakota at pharmacies nearer their residence.

However, there are reasons to believe the impacts would be larger than those estimated in scenario 2. The benefits to government, beyond increased tax revenues provided in the output impact tables, are not yet included. Specifically, we have not yet incorporated the cost savings to government from lower prescription drug prices. As mentioned before that information is not currently available and will be incorporated as soon as it is. Those cost savings should have an impact on spending for government. Government may transfer the funds to other priorities or return it to taxpayers, either situation creating a new chain of spending to add to the overall economic impact results.

The impacts on the pharmacy sector may in fact be larger too. There is little data regarding the change in spending behavior on prescription drugs after the reduction in price, particularly for those who lack health insurance. Common sense tells us purchases increase, but by how much is unclear. An often overlooked benefit of this would be the increased health of the population at large. The likely result is a healthier population that would be more productive, have fewer sick days, transfer disease less readily, all of which would result in a stronger state economy with a higher gross state product.

Relative Income of Pharmacists

The economic impact analysis indicates no loss of pharmacy employment under the assumptions of the two scenarios. This is good news, particularly given the current labor market for pharmacists and pharmacy technicians. In particular, the current competitive nature of the market for pharmacists indicates problems for retaining them in North Dakota.

Table 10 displays regional figures for employment and annual wage of pharmacists for North Dakota and its bordering states. As can be seen, the wages North Dakota are lower than elsewhere.[14] The appendix contains a table with data for all 50 states and shows that North Dakota is in fact the lowest annual mean wage for the United States. This could be a symptom of an insufficient level of competition in the state. NDSU reports that slightly more than one-third of the pharmacists from their program stay to work in state.[15]

[14] This and other information can be found from the Bureau of Labor Statistics website and the various surveys and databases they track.

[15] Available from NDSU College of Pharmacy, Nursing, and Allied Sciences website. (Accessed 8/20/2008).

Table 10. Regional employment of pharmacists, annual mean wage and difference with ND annual mean wage.

State	Employment	Annual mean wage	Difference from ND annual mean wage
Minnesota	4,990	$105,440	$21,730
Montana	1,020	$87,260	$3,550
North Dakota	810	$83,710	
South Dakota	1,040	$88,650	$4,940
Wyoming	480	$91,320	$7,610

North Dakota ranks 18th in the United States for pay for pharmacy technicians, a surprise given its poor performance for pharmacists.

Table 11. Regional employment of pharmacy technicians, annual mean wage and difference with ND annual mean wage.

State	Employment	Annual mean wage	Difference from ND annual mean wage
Minnesota	6,030	$29,360	$890
Montana	850	$28,290	-$180
North Dakota	450	$28,470	
South Dakota	910	$26,320	-$2,150
Wyoming	430	$29,000	$530

The positive output and employment impacts suggested by scenario 1 and 2 may help correct some of the problems indicated by the Bureau of Labor Statistics data.

Conclusion

Competition benefits consumers. The more competitors exist to supply a product, the higher the supply of the product and, everything else equal, the lower the market price. North Dakota's prescription drug consumers currently face higher prices than those in other states due to a restriction on competition: the pharmacy ownership laws. Common sense and the preceding economic impact analysis indicate that a change in the law will not result in a loss of services to North Dakotans. It is also the case that increases in competition are typically followed by improvements in the quality of service. Allowing Wal-Mart, Target, Walgreen's, Hugo's, Pamida, and others to operate pharmacies raises the potential of increased quantity and quality of pharmacy service and lower prescription drug prices creating significant economic benefits to North Dakotans.

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Appendix

Table 12. United States Employment and Income for Pharmacists by State

State	Employment	Annual mean wage	State	Employment	Annual mean wage
Alabama	4440	101140	Montana	1020	87260
Alaska	360	109810	Nebraska	1980	89120
Arizona	4940	97570	Nevada	2240	99760
Arkansas	2580	94410	New Hampshire	1140	102170
California	23030	112020	New Jersey	7900	98200
Colorado	4080	98570	New Mexico	1510	95980
Connecticut	2820	101850	New York	15310	97270
Delaware	780	93360	North Carolina	7590	102480
District of Columbia	590	83870	North Dakota	810	83710
Florida	17690	98190	Ohio	11260	95750
Georgia	7530	98070	Oklahoma	3280	92210
Hawaii	1310	95000	Oregon	3100	99410
Idaho	1410	99870	Pennsylvania	11810	89650
Illinois	9250	96730	Puerto Rico	1850	58740
Indiana	5680	93400	Rhode Island	1150	95500
Iowa	2820	89150	South Carolina	3950	98540
Kansas	2480	94130	South Dakota	1040	88650
Kentucky	4000	103800	Tennessee	6130	105280
Louisiana	3820	90150	Texas	17660	103820
Maine	1190	108930	Utah	1840	100440
Maryland	4640	94460	Vermont	450	102100
Massachusetts	6780	88920	Virginia	5790	98570
Michigan	8640	97640	Washington	5250	97860
Minnesota	4990	105440	West Virginia	1890	100080
Mississippi	2250	95630	Wisconsin	5060	102910
Missouri	5360	98500	Wyoming	480	91320

Note: Annual wages have been calculated by multiplying the hourly mean wage by 2,080 hours.
Available from the Bureau of Labor Statistics website, www.bls.gov

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Table 13. United States Employment and Income for Pharmacists by State

Area name	Employment	Annual mean wage	Area name	Employment	Annual mean wage
Alabama	6080	23380	Montana	850	28290
Alaska	520	33970	Nebraska	2090	25880
Arizona	6440	28770	Nevada	2210	31390
Arkansas	2850	23770	New Hampshire	1180	26530
California	24540	35450	New Jersey	7410	27890
Colorado	3760	30580	New Mexico	1700	27480
Connecticut	3120	30860	New York	12790	28760
Delaware	1200	24830	North Carolina	9920	24700
Florida	21550	26940	North Dakota	450	28470
Georgia	9300	25530	Ohio	12450	24980
Hawaii	1060	33150	Oklahoma	4030	23970
Idaho	1430	27180	Oregon	3720	31770
Illinois	16000	26530	Pennsylvania	14740	25180
Indiana	7070	25990	Rhode Island	1140	30120
Iowa	3410	25080	South Carolina	5090	24480
Kansas	2530	25790	South Dakota	910	26320
Kentucky	6120	23700	Tennessee	8770	26620
Louisiana	4030	24830	Texas	25430	27750
Maine	1590	26010	Utah	2390	29460
Maryland	5050	28790	Vermont	440	26740
Massachusetts	5810	29480	Virginia	6920	26240
Michigan	10470	27550	Washington	5370	34700
Minnesota	6030	29360	West Virginia	2480	22720
Mississippi	2320	24080	Wisconsin	6540	27070
Missouri	9510	23810	Wyoming	430	29000

Note: Annual wages have been calculated by multiplying the hourly mean wage by 2,080 hours.
Available from the Bureau of Labor Statistics website, www.bls.gov

Testimony A

BOARD OF PHARMACY
State of North Dakota

Jack Dalrymple, Governor

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Howard C. Anderson, Jr, R.Ph.
Executive Director

House Bill No 1434 – Pharmacy Ownership
House Industry Business and Labor
Peace Garden Room – State Capitol Bldg
8:00AM – Tuesday – February 15th, 2011

Chairman Keiser and members of the House Industry Business and Labor Committee, for the record I am Howard C. Anderson, Jr, R.Ph., Executive Director of the North Dakota State Board of Pharmacy. Thank you for the opportunity to speak with you today.

The North Dakota State Board of Pharmacy strongly supports the current law, which we refer to as "the pharmacy control law".

The laws you and your predecessors have passed or sustained, have served North Dakota very well in the area of Pharmacy services. We have 244 pharmacies in ND, 48 of them hospitals, four of which have their own out-patient pharmacy. This means we have 29 per 100,000 people and even without our 20 retail telepharmacies we have almost 26 retail pharmacies per 100,000 people in North Dakota which is way ahead of the 16 in the next closest state. **WHAT A RINGING ENDORSEMENT FOR NORTH DAKOTA'S PHARMACY OWNERSHIP LAW.** We have more competition, more access, more service to North Dakota patients then any other state. Our Pharmacists provide excellent service to the patients of North Dakota. Pharmacy dispensing fees continue to gradually decline, while the cost of the drugs themselves continue to escalate. We have lost a few pharmacies but we have also opened a few. Our most recent additions are Professional Pharmacy West in Bismarck and Wall's LTC Pharmacy in Grand Forks.

In the 2009 Session HB 1440 was defeated. In the 2007 Session HB 1299 was modified to a study. Six years ago the North Dakota Senate defeated a similar bill, SB 2283, by a wide margin. Eight years ago HB 1407 received just a few votes. A *Fargo Forum* Article before the 2005 session pointed out that "Medicare costs for prescription drugs in North Dakota are actually lower than almost all other states". In spite of the National advertising from some for a four dollar one month supply of generic drugs, per patient, per month costs for prescription drugs are lower in North Dakota BECAUSE pharmacists here provide such a high level of service to their patients. Medications are taken appropriately, with proper counseling and patient information, and generics are dispensed at as high a rate as any place in the country. All this is due to the pharmacists of North Dakota operating under the Laws & Rules, You, as our Legislature have created over the years. This is certainly *NOTHING* to be **ASHAMED** of.

Whenever you want good patient care, and personal attention for the customer, you have to have enough time and enough professionals to provide that care. North Dakota pharmacists have that ability, because of the environment you have created for us. We are the best in the country. PLEASE do not let that slip away.

It is **North Dakota** which is the leader in the country in providing Telepharmacy services to rural areas. We have a robust hospital telepharmacy program now serving 14 hospitals in North Dakota and Minnesota out of ePharmacy Direct, out o Fargo. This is because of what you have allowed.

Allow me to review the History of this law for you. NDCC 43-15-35 was passed in 1963 by the North Dakota Legislature with the intention of keeping the professional pharmacist with his/her ethical standards, in control of pharmacies. The Oath of the Professional Pharmacist to keep concern for their patients uppermost in their professional practice contributes significantly to protection of the public's health, welfare and safety.

There have been attempts to legislatively repeal NDCC 43-15-35 in 1975, 1987, 1993, 2003, 2005 and 2007, 2009 and court challenges in 1968, 1972 and 1982. In all cases, these attempts were defeated by large margins. We believe that every sitting Governor since 1963 has supported the law.

In 1972, a decision by the North Dakota State Board of Pharmacy to deny a pharmacy license to Snyder's Drug Stores was appealed to the North Dakota District Court and the North Dakota Supreme Court. These courts relied on a 1928 US Supreme Court Decision called *Liggett v.Baldridge* to say the law was unconstitutional. The North Dakota State Board of Pharmacy appealed to the United States Supreme Court and in the case argued by Bismarck Attorney A. William Lucas, the US Supreme Court, by a 9 to 0 opinion reversed the 1928 *Liggett v. Baldridge* decision and upheld the Constitutionality of the North Dakota Law. On remand the North Dakota Supreme Court agreed. Attorney Lucas stated that he believes that this law has been one of the most thoroughly constitutionally and legislatively tested statutes in the North Dakota Century Code.

In the decision, written by Justice William O. Douglas, he stated very clearly, "*those who control the purse strings control the policy*". This has been the basic tenet from the beginning in the North Dakota State Board of Pharmacy's interpretation and application of this law.

Let me explain grandfathering. In 1963, a provision was made to allow pharmacies currently in business to stay in business as long as the ownership of those pharmacies did not change.

Until 1996 the Board of Pharmacy interpreted that to mean retail pharmacies. In 1996, the North Dakota Supreme Court said that it looked to them like hospitals, which had pharmacy permits in 1963, could do at their licensed locations, whatever they wanted to with their pharmacy permit. In 1963 when the law was passed, no one had ever envisioned hospitals would be in the out-patient pharmacy business. Even though legislators in 1963 did not envision hospitals in the out-patient business, many of them who continue to hold their pharmacy permit are in the out-patient pharmacy business at their hospital's permitted location as grandfathered permit holders.

There are two members on our board who work for North Dakota Hospitals and the have expressed some concern about the inability of hospitals and clinics to provide coordinated care at all locations, but the board has said that they feel strongly that the ownership and control of pharmacies, by pharmacists, has been good for North Dakota and none of them wish to jeopardize what we have, when these issues could be resolved with a leased pharmacy, owned by North Dakota pharmacists working within a business associate agreement to provide coordinated care to the clinic and hospital patients.

There are currently nine *grandfathered* hospital pharmacies in North Dakota out of the total of forty-eight licensed hospitals in the state. In the 2007 Session you added a provision that if a community was losing it's only pharmacy, to allow the hospital in that community to own and operate a retail pharmacy. There have since been three instances where this could have occurred, but hospitals have not chosen to pursue the option.

Within the hospital where the hospital pharmacy is serving their in-patients, there are procedures which link the hospital pharmacist with the Pharmacy and Therapeutics Committee through the Medical Staff to the Board of Directors of the hospital. This allows all policies and procedures of the hospital/healthcare institution to be vetted through these several levels of control. Once we get outside the hospital/healthcare institution in a clinic setting or another location, these requirements do not apply.

The Supreme Court accepted your reasons for our Law in 1973. Today we see work place issues and medication errors headlined in the national pharmacy press. We see pharmacists in some pharmacies that have had to form a union in order to insist that they be allowed a bathroom, lunch or work break during their shifts. This does not happen in North Dakota. The environment you and your predecessors in the Legislature put in place has served North Dakota consumers well.

In North Dakota non pharmacist administrators do not determine how many prescriptions must be filled before there is an additional pharmacist or pharmacy technician to help. Pharmacists make those decisions.

The ownership law is the best opportunity for pharmacists to be masters of their own destiny in the patient's best interest. The ownership law insures that pharmacists who have pledged their oath to uphold healthcare standards and professional ethics determine policy.

North Dakota can serve as a light for the rest of the county. We have the best level of pharmacy services in practice in North Dakota, compared to ANY state.

Remember, "*Those who control the purse strings control the policy.*"

We hope you agree and will keep it that way.

Thank you.

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Testimony B

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House Bill 1434 – 51% Pharmacy Ownership Law
House Industry, Business and Labor Committee
Chairman – Rep. George Keiser
February 15, 2011 – 8:00 a.m.

Chairman and members of the committee, my name if Mike Schwab, the Executive Vice President of the ND Pharmacists Association. I appreciate the opportunity to speak with you today. The ND Pharmacists Association strongly urges you to vote NO on HB 1434.

Chairman and members of the committee, I know most of you have had the opportunity to hear and discuss this issue before, but not everyone on this committee has had the opportunity to hear why the current law has treated this state and its citizens extremely well over the years. Once again, we feel it is necessary for all of you to hear why the pharmacy ownership law is just and reasonable.

First, we must remind this committee the law has been heard and challenged on the Senate and soundly defeated in the past. During the Interim session in 2008, the Interim Health and Human Services committee, which, was chaired by former Representative Rick Berg, conducted a study of the current pharmacy ownership law. Upon completion of the study, the committee provided NO recommendation to change the law. The House has also heard versions of this law and has soundly defeated legislation of this nature numerous times in the past with the most recent challenge of the law being soundly defeated during the 2009 legislative session. Our pharmacy ownership law has also been legally challenged. The ND Supreme Court and the United States Supreme Court both upheld the law as meeting the "test of reasonableness". The Courts further stated, "The law is in the best interest of the public's health, safety and welfare" and "The term pharmacy was intended to identify a particular type of establishment within which a health profession is practiced, and thus was intended to be more than a mere means of making a profit." The history of this law clearly shows and states support for the current pharmacy law and we ask that you do not lose sight of this fact. Just as those who have come before you and sit among you, we believe it is laudable for the Legislature to attempt to free professions to as great an extent as possible from all the taints of commercialism, especially in today's markets.

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Access to Pharmacy Services

Currently, we have, quite arguably, the best access to pharmacy services in the country. Unlike most states, North Dakota still has a great deal of access in our rural communities. According to the National Rural Health Association, rural areas report a higher prevalence of chronic disease, including heart disease, cancer and diabetes. In ND, when other service providers are hard to come by in many rural areas, we still have our pharmacists. It is also critical to note that 90% of our rural pharmacies provided services to long-term care facilities, group homes and assisted living facilities. ND has more pharmacies per capita than our neighboring states, which represents a high degree of access in our rural and urban markets. Changing the current pharmacy ownership law will only bring vulnerability and a fewer range of healthcare services to many areas of the state, especially in our rural markets.

Price

We want to touch on the "price" of prescriptions. In ND, cash price prescriptions are already 16.7% below the national average. This information and data is gathered from the National Association of Chain Drug Stores 2009-2010 annual report. This report is conducted by a national association that represents this countries largest pharmacy chains. This isn't our data or data we made up, it is their own data and report!

The $4 programs (which already exist in ND) are extremely limited and represent less than 1% of the total prescriptions available in the ND market. We also must keep in mind, if an individual has insurance, these $4 programs basically do not apply. Over 92% of North Dakotans have some sort of insurance coverage. If you have Medicaid, Medicare, VA or other insurance, your prices are already pre-determined through your prescription drug plan coverage. Again, we are talking about the individuals who pay cash and in ND and the average cash price prescription is already 16.7% below the national average. In ND, we are extremely competitive on price and well below our regional average and the national average.

Less Choice and Less Competition...not more!

Even though we have all been told changing this law will increase choice and competition, it has yet been proven this is truly the case. When we look at what is taking place in the pharmacy market in other states, we see less choice and competition in the pharmacy markets. If you look at our neighboring states, you quickly see there are fewer pharmacies per population, not only in the rural

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markets but even in the urban markets. If you look at the following urban areas such as Sioux Falls, SD, Billings, MT, Cheyenne, WY, St. Cloud, MN and then look at Fargo, ND. You will quickly see there is more pharmacy access per population and there are more pharmacy owners per population in Fargo, ND than the other cities outlined. In all the other cities, 3 main pharmacy chains account for more than 50% of the pharmacies. In Fargo, ND there are at least 19 different pharmacy owners giving citizens more choice and more competition.

City	Population	Total Pharmacies	Pharmacies Per Pop.	# of Different Owners
Sioux Falls, SD	238,122	31	1 per 7,681	12
Billings, MT	154,553	25	1 per 6,182	14
Cheyenne, WY	86,353	12	1 per 7196	7
St. Cloud, MN	189,148	18	1 per 10,508	11
Fargo/WFargo, ND	159,587	27	1 per 5,911	19

(Data from 2009 Census and 2009 Bureau of Labor Statistics)

Take a look at what happened in MN during 2010. Walgreens purchased 25 Synder Drug Stores and immediately closed 22 of the 25 pharmacies within days. Some of the MN communities were left with no pharmacy services, 400 jobs were lost, city's lost local tax revenue, families lost access to their local pharmacy, and less choice and less competition resulted. This is a trend that is happening in most states.

Economic Impact

In the past, experts have estimated over 600 jobs could potentially be lost, 70 pharmacies could potentially close and the state could lose more than 20 million dollars annually if the law is changed and ND starts to mimic other states. We are talking about a direct impact and there would be additional secondary and systemic impacts as well. We all understand most of the revenue earned by local businesses stays in our communities and state, usually being spent multiple times over.

Pharmacist Salaries in ND

We also want to touch on pharmacist salaries and pharmacy technician salaries briefly for committee members. If you look at the regional averages for pharmacist salaries, ND is within $3,000-5,000 respectively. It is important to note, over 60% of North Dakota's pharmacies are rural pharmacies, which holds our average pharmacist salary down in terms of the dollar average. Pharmacist salaries in our four main cities are very equitable compared to cities of the same size that surround us. To compare Minneapolis, MN to the ND market is not reasonable. You can pick any

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profession in ND and compare it to the Minneapolis area and you will find salaries in the Minneapolis areas are going to be higher in basically every instance.

Employment opportunities for Pharmacists

If you look at similar states, you will quickly find there are fewer pharmacists employed per population. You will also find there is more pharmacy technicians employed. The fact remains, if we change the law, we will more than likely see a decrease in pharmacist positions available and an increase in pharmacy technician positions available. Currently, in ND, we have a pharmacist to pharmacy technician ratio of 2:1 in the retail setting. In some states, they have no ratio requirements and in a number of states, large chain pharmacies are trying to change the pharmacy technician ratios so pharmacies can employ more pharmacy technicians under the supervision of pharmacists. Again, to say changing the law will increase pharmacist positions available just doesn't add up based on what is going on in other states around the country.

SD, MT and WY…Pharmacists Per Population = 1 per 940

ND…Pharmacists Per Population = 1 per 735

Signatures from ND citizens!!!

First, we would like to address comments related to the opposition's mentioning of the 2010 petition effort they spearheaded. For starters, the opposition spent numerous months collecting signatures and barley gathered the number of signatures required to even place the issue on the ballot. To say the public is demanding we change the law is simply not the case.

Last comment I want to make is…just as the ND Secretary of State's Office, the ND Attorney General's Office and the ND Supreme Court found the signatures to be invalid, we would respectfully ask members of this committee to also acknowledge the petition signatures as invalid for purposes of our discussions and as the vote on this bill moves forward.

If you think back to the 2009 legislative session, you will recall, our pharmacies collected over 22,000 signatures from citizens of ND who clearly provided their signature asking to maintain the current pharmacy ownership law. Those signatures were collected over a six week period. This year, pharmacies started collecting signatures on January 26, 2011. In less than 3 weeks, we have collected over 13,000 signatures and they keep coming. This is pretty remarkable and should not go unnoticed. I will read exactly what our signature logs state at the very top of the page. This is what citizen's see and

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read before they willingly sign the signature logs. Over the next day, members of this committee, as well as all House members, will be receiving a packet which contains signatures from citizens of this great state. These are your constituents and it is clear what they want you to do and that is Vote No on HB 1434.

For all the reasons duly noted and many more, we ask you to Vote No on HB 1434. We appreciate your time and attention today. I would happy to try and answer any questions committee members might have.

Respectfully Submitted,

Mike

Mike Schwab
NDPhA - EVP

Attachment B(1)

POLICY BRIEF
January 2009

The Benefits of North Dakota's Pharmacy Ownership Law

JUSTIN DAHLHEIMER
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STACY MITCHELL
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Executive Summary

For over four decades, North Dakota's Pharmacy Ownership Law has ensured that pharmacists control and have a stake in the health care services they provide North Dakotan communities. While a Wal-Mart-backed group claims that eliminating the Pharmacy Ownership Law would lead to lower drug prices and other economic benefits, independent data indicate that the law greatly benefits the state's consumers and that its repeal would harm North Dakota's economy:

- Compared to neighboring states, North Dakota has more pharmacies per capita and more pharmacies dispersed across rural areas, ensuring that residents have access to vital health care services.
- Average prescription drug prices in North Dakota are among the lowest in the country.
- The vast majority of North Dakota's pharmacies are locally owned. If national retailers and mail order pharmacies were to attain the same market share in North Dakota as they have elsewhere, we estimate that about 70 independent pharmacies, employing approximately 600 people, would close.
- This shift from locally owned to chain pharmacies would result in a *net loss* of nearly $23 million in direct economic benefits (wages and business income) to the state annually. This in turn would cause sizable indirect economic losses and reduce state and local tax revenue.

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Introduction

In 1963, the North Dakota Pharmacy Ownership Law was enacted with the purpose of ensuring that pharmacists control and have a stake in the health care services they provide to North Dakotan communities. The law requires that in order to obtain a permit to operate a pharmacy:

> "The applicant for such permit is qualified to conduct the pharmacy, and is a licensed pharmacist in good standing or is a partnership, each active member of which is a licensed pharmacist in good standing; a corporation or an association, the majority stock in which is owned by licensed pharmacists in good standing; or a limited liability company, the majority membership interests in which is owned by licensed pharmacists in good standing, actively and regularly employed in and responsible for the management, supervision, and operation of such pharmacy."[1]

As a North Dakota pharmacist explained, the Pharmacy Ownership Law is rooted in the state's long-standing commitment to protecting the welfare and safety of its citizens:

> "[The 1890 Pharmacy Practice Act requires] the governor to appoint a state board of pharmacy, which is responsible for examining and licensing applicants for licensure as pharmacists, for issuing permits to operate pharmacies and for *regulating and controlling the dispensing of prescription drugs and the practice of pharmacy for the protection of the health, welfare and safety of the citizens of North Dakota.* This is the basis of the ownership law. If that protection is to be guaranteed, then the decisions pertaining to the pharmaceutical care of people in North Dakota must be made by a registered pharmacist — and there is no better way of making sure this happens than by requiring that pharmacists own a majority stake in pharmacies." [Emphasis added.][2]

Because the law specifies that pharmacies must be at least 51% owned (majority) by a licensed pharmacist, it prevents corporate-owned chains, like Walgreen's or Wal-Mart, from obtaining a permit to operate a pharmacy, as they do in the 49 other states.

The law was challenged in the courts, most notably in a 1972 case, *Snyder's Drug Stores, Inc. v. North Dakota State Bd. of Pharmacy*, 202 N.W.2d 140 (N.D. 1972). This case was heard by the United States Supreme Court on appeal, after the North Dakota State Supreme Court had ruled the law was unconstitutional based on a prior U.S. Supreme Court decision, *Ligget Co. v. Baldridge*, 278 U.S. 105 (1928). The U.S. Supreme Court reversed the *Ligget* decision, overturning the North Dakota State Supreme Court ruling and remanded the case back to the North Dakota State Supreme court. This time, however, the North Dakota State Supreme Court upheld the Pharmacy Ownership Law, concluding that reasons given in support of the law were legitimate. Among those reasons: "*Supervision of hired pharmacists by registered-pharmacist owners would be in the best interests of public health and safety.*"[3] Other rationale held that pharmacies' primary purpose is to provide a vital health care service where the practitioners should have the authority to enact policies and run their businesses as they see fit, serving more than just to make a profit.

Over the following decades the law survived more legal challenges. Corporate chains now look to the legislature to repeal the law. This year, a Wal-Mart-backed group, the North Dakotans for Affordable Healthcare (NDAH), has launched a well-funded campaign and lobbying effort to build support for repealing the law.

Although NDAH claims that lifting the law would lead to lower prices and other economic benefits, independent data indicate that the law greatly benefits the state's consumers and that its repeal would harm North Dakota's economy:

- Compared to neighboring states, North Dakota has more pharmacies per capita and more pharmacies dispersed across rural areas, ensuring that residents have access to vital health care services.
- Average prescription drug prices in North Dakota are among the lowest in the country.

- The vast majority of North Dakota's pharmacies are locally owned. If national retailers and mail order pharmacies were to attain the same market share in North Dakota as they have elsewhere, we estimate that about 70 independent pharmacies, employing approximately 600 people, would close.
- This shift from locally owned to chain pharmacies would result in a *net loss* of nearly $23 million in direct economic benefits (wages and business income) to the state annually. This in turn would cause sizable indirect economic losses and reduce state and local tax revenue.

Rural Access

North Dakotans can look across state lines, into South Dakota, to get a sense of what rural life would be like without the Pharmacy Ownership Law. Rural access to pharmacies is notably less robust in South Dakota, which does not require pharmacies to be owned by pharmacists.

This difference in rural access is evident when geographically represented. Figure 1 shows the locations of chain and local pharmacies in the states of North and South Dakota. The map illustrates that, not only are there more local pharmacies in North Dakota, but they are scattered more uniformly throughout the state. The map reveals that pharmacies in South Dakota are more concentrated in larger–population census tracts, while pharmacies in North Dakota are distributed more broadly across areas with smaller populations.

This observation is further supported by the data in Table 1, which shows that a much higher proportion of North Dakota's low-population census tracts are served by at least one pharmacy. The differences are significant. Census tracts with 2,001-3,000 people are 31% more likely to have a pharmacy in North Dakota than those in South Dakota. And, while only one-quarter of census tracts with 1,001– 2,000 people in South Dakota have a pharmacy, nearly half of those in North Dakota do.

Figure 1: Pharmacy Locations and Total Population[4]

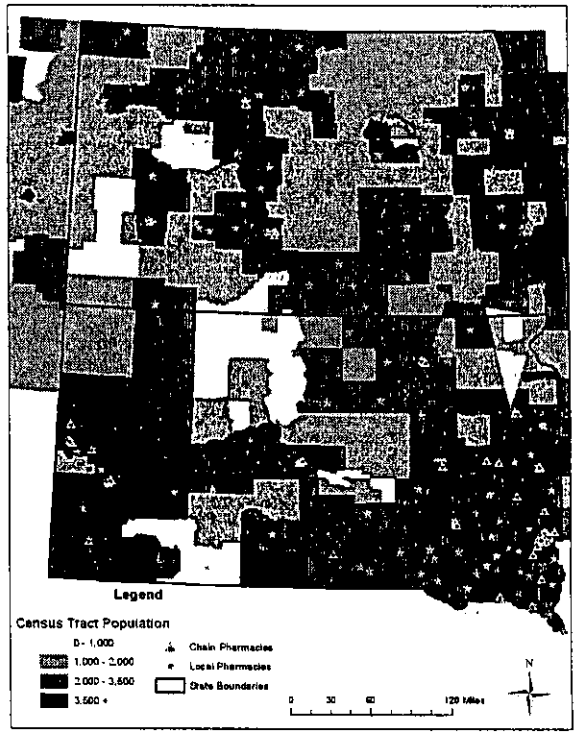

Table 1: Pharmacy Access in North and South Dakota

Census Tract Population	# of Census Tracts	# Served by a Pharmacy	% Served by a Pharmacy
North Dakota			
0 - 1,000	18	0	0%
1,001 - 2,000	72	33	46%
2,001 - 3,500	71	39	55%
3,500 +	66	37	56%
South Dakota			
0 - 1,000	40	1	3%
1,001 - 2,000	30	7	23%
2,001 - 3,500	79	33	42%
3,500 +	86	36	42%

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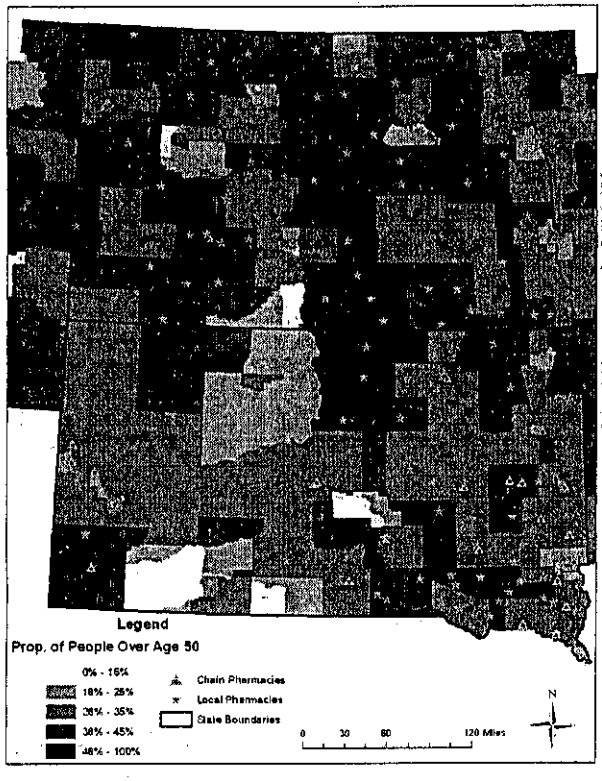
North Dakota also has more pharmacies in communities that do not have another pharmacy within 10 miles. Over half of North Dakota's rural independent pharmacies (46) are located in communities where not a single other pharmacy is available for over 10 miles. In South Dakota, one-third of the state's rural independent pharmacies (33) are located in similar communities.[5]

Another way to measure access is to examine whether the population served by pharmacies is the population that often uses them. The uniform spread of North Dakota's independent local pharmacies ensures that people in areas more apt to need a pharmacy's services won't have to travel far. Figure 2 describes the locations of the pharmacies in terms of the proportion of the census tract population that is over the age of 50.

All of this data indicates the North Dakota Pharmacy Ownership Law is having its intended impact, ensuring greater access to pharmacies in all areas regardless of population density, while also serving a proportionately older population.

Figure 2: Pharmacy Locations and Age of Population



Prices and Service Quality

Data also contradicts the argument that the Pharmacy Ownership Law has led to higher drug prices for North Dakotan residents. In 2005, the national average per drugstore prescription was $72.61, compared to $62.05 in North Dakota.[6] In 2007 the national average price per prescription was $69.90. For that same year, North Dakota came in under the national average at $65.28 per prescription.[7]

Additionally, *Consumer Reports* surveyed prices for four common drugs and found that major drugstore chains (including CVS, Walgreen's RiteAid, and others) were more expensive than the independent drugstores.[8]

Should North Dakota end up with fewer independent pharmacies serving rural areas, it will cost many North Dakotan's more in transportation-related expenses as they travel farther to obtain their mediations.

While North Dakota's drug prices are under the national average, the state's level of service is among the best in the nation thanks to the abundance of independent local pharmacies located in the state.

Consumer Reports has repeatedly ranked independent pharmacies #1 overall since it began conducting drugstore "consumer satisfaction" surveys in 1998.[9] The magazine reports that chain drugstores "typically made readers wait longer, were slower to fill orders, and provided less personal attention."[10] In addition to finding independent drugstores' pharmacists to be more accessible, approachable and knowledgeable, *Consumer Reports* found that independent pharmacies offer more health services such as: disease-management education, in-store health screenings for cholesterol, services such as compounding (customizing medications for patients with special needs), and home delivery.[11] Independent drugstores often carry medical supplies that many chain drugstores typically do not, such as canes, walkers, or wheelchairs.[12] In some rural areas, an independent pharmacy is the only provider of these vital healthcare services.

B(1), pg 5

Economic Impact

The entry of chain pharmacies into North Dakota would have a negative impact on independent drugstores and the state's economy. If national retailers and mail order pharmacies were to attain the same market share in North Dakota as they have elsewhere, the result would be a *net loss* of nearly $23 million in direct economic benefits (wages and business income) to the state annually. This in turn would cause sizable indirect economic losses and reduce state and local tax revenue.

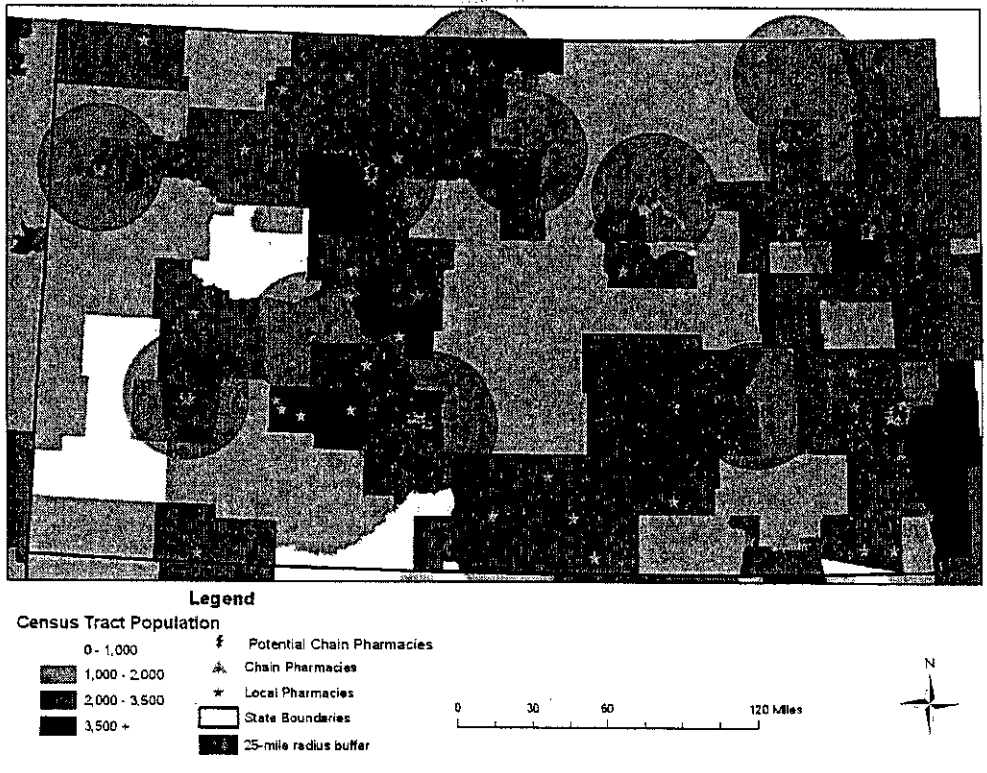
Figure 3 shows locations where chain pharmacies would likely open if the Pharmacy Ownership Law were repealed. These locations include existing supermarkets and general merchandise stores that typically have a pharmacy as part of their operations in other states (Wal-Mart, Target, Sam's Club, Pamida, Coburns's, Hy-vee, etc.). Several of the sites identified in Figure 3 also have sufficient population to attract Walgreens. In South Dakota, Walgreens has 14 outlets in 7 cities, including 6 in Sioux Falls and 3 in Rapid City.

As chains expand in North Dakota, revenue at the state's independent pharmacies will decline. After examining the distribution of independent pharmacies in South Dakota and other states, we anticipate that two groups of North Dakota pharmacies will experience significant impacts: those in and near cities where chains locate pharmacies and those in very rural, low-population areas far removed from cities. As discussed above, North Dakota has a remarkable number of pharmacies serving rural areas. If the Pharmacy Ownership Law is repealed, we anticipate that the number of rural pharmacies will decline to levels found in South Dakota and other states.[13]

Another repercussion of abolishing the Pharmacy Ownership Law will be an increase in the market share of out-of-state mail-order pharmacies. As rural pharmacies disappear, more residents will turn to mail order companies for their prescriptions.

This shift in market share, from independent pharmacies to chains and mail order companies, will negatively impact North Dakota's economy.

Figure 3: Potential Pharmacy Locations



B(1), pg 6

Numerous studies have found that independent businesses spend a much larger share of their revenue within the state where they operate than national chains do. This is due in part to the fact that independent businesses rely more on other local businesses for goods and services, such as banking, accounting, and printing. Chains carry out most of these functions at corporate headquarters and have little need for the services of local professionals and other businesses near their stores. Independent businesses also keep profits local and spend a larger share of their revenue on local payroll, because, unlike chains, all of their management is on site.[14]

A 2008 study conducted by the firm Civic Economics quantified this difference with respect to pharmacies. The study determined that, of every $100 spent at an independent pharmacy, $17.20 went to local wages and goods and services purchased in the local area, while $100 spent at a chain pharmacy generated only $9.70 in benefit for the local economy. (The numbers are relatively low compared to other types of businesses because a large share of the price of a prescription goes to the drug-maker.)[16]

Using these figures, we estimate the direct, in-state economic impact of North Dakota's pharmacy sector in Table 2 based on the current distribution of market share among independent, chains, and out-of-state mail order companies. We assume that mail order generates virtually no in-state economic benefit. Overall, the state's $430 million pharmacy sector generates over $67 million in *direct* economic impact in the state. (These direct impacts in turn create *indirect* and *induced* economic impacts, which are likely sizable, but we do not estimate them here.)

Tables 3 and 4 present two scenarios for how North Dakota's pharmacy sector may be affected by the repeal of the Pharmacy Ownership Law.

Scenario 1 assumes that North Dakota's independent pharmacies manage to hold on to 45% of the market, a larger share than they have in the rest of the country. This represents a loss of $172 million in sales and the closure of about 70 pharmacies that employ roughly 600 people. Chains, including supermarkets and mass merchandisers, expand to 45% of the market, and mail order doubles to 10%. We also assume that pharmacy sales increase to $450 million as some of the spending that North Dakota residents currently do at out-of-state pharmacies shifts to in-state pharmacies.[17] Although pharmacy revenue increases, because more spending goes to chains and mail order, the direct economic

Economic Impact of North Dakota's Pharmacies[15]

TABLE 2: CURRENT

	Market Share	Pharmacy Sales	Direct In-State Economic Impact
Independent Pharmacies	87%	374,100,000	$64,345,200
Chain Pharmacies*	8%	34,400,000	$3,336,800
Out-of-state Mail Order	5%	21,500,000	$0
Total		$430,000,000	$67,682,000
* Includes supermarkets and mass merchandisers.			

TABLE 3: SCENARIO 1

	Market Share	Pharmacy Sales	Direct In-State Economic Impact
Independent Pharmacies	45%	202,500,000	$34,830,000
Chain Pharmacies*	45%	202,500,000	$19,642,500
Out-of-state Mail Order	10%	45,000,000	$0
Total		$450,000,000	$54,472,500
Change in Economic Impact of Sector			*-$13,209,500*
* Includes supermarkets and mass merchandisers.			

TABLE 4: SCENARIO 2

	Market Share	Pharmacy Sales	Direct In-State Economic Impact
Independent Pharmacies	30%	135,000,000	$23,220,000
Chain Pharmacies*	50%	225,000,000	$21,825,000
Out-of-state Mail Order	20%	90,000,000	$0
Total		$450,000,000	$45,045,000
Change in Economic Impact of Sector			*-$22,637,000*
* Includes supermarkets and mass merchandisers.			

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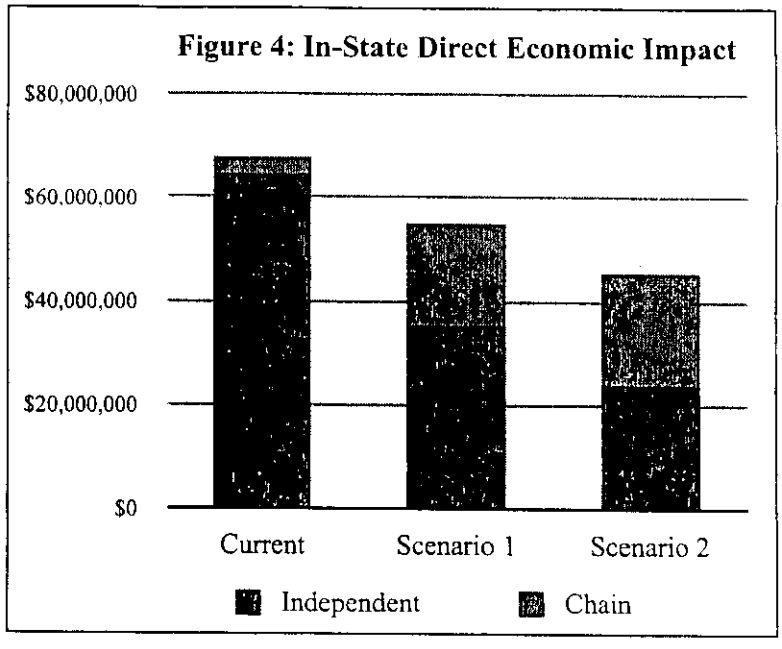
impact of the sector declines to $54 million, a net loss of $13 million worth of income for North Dakota workers and businesses.

Scenario 2 assumes that repealing the Pharmacy Ownership Law results in North Dakota's pharmacy sector mirroring the national market, with independents slipping to 30% market share, chains expanding to 50%, and mail order growing to 20%.[18] This reduces the direct economic impact of North Dakota's pharmacy sector to $45 million, a loss of almost $23 million worth of income for workers and businesses. (Again these are the direct economic losses only. The indirect losses are likely much larger.)



These economic losses will in turn cause a reduction in individual and corporate income taxes. Although we do not estimate the tax losses here, the magnitude of the direct economic losses suggest that the tax revenue losses will run into the millions of dollars.

Conclusion

North Dakota, largely as a result of its unique Pharmacy Ownership Law, outperforms other states in every key measure of pharmacy services. Rural areas of the state have far more pharmacies and greater access to these vital health care services than is found in other states. Independent pharmacies generally provide superior health care and better customer service compared to chains and mass merchandisers, according to 10 years of data from *Consumer Reports*.

North Dakota consumers also benefit from prescription drug prices that are well below the national average. Even if opponents are correct in their claim that repealing the law will reduce drug prices by 3%, that modest savings must be weighed against the very real and substantial costs that North Dakota residents will incur as access to pharmacies and the important health care services they provide declines.

The Pharmacy Ownership Law also supports the state's economy by fostering a pharmacy sector that is predominantly locally owned. Locally owned pharmacies spend a much larger share of their revenue on wages paid to local employees and goods and services purchased from in-state businesses. Repealing the law would shift a substantial share of the market to chains and mail order pharmacies, causing a net loss to the state of as much as $23 million annually in direct economic benefits.

However, in this discussion of dollars and cents, it is easy to stray from the core intentions of the Pharmacy Ownership Law—to keep control of a vital health care provider at the level closest to its customers. North Dakota has made it a priority to ensure that the services rendered are focused on maintaining public health and safety and not to be driven by a profit margin. Who better to know what North Dakotan citizens need from their pharmacies than a fellow North Dakotan?

References

1. North Dakota Century Code 43-15-35 (e).
2. Bruce Rodenhizer, "A few truths you should know." January 21, 2009. *Grand Forks Herald.* Bruce Rodenhizer, "Pharmacy law protects states' residents." January 3, 2009. *Grand Forks Herald.*
3. North Dakota Legislative Council Staff. September 2008."Pharmacy Ownership Restrictions: Summary of Litigation Challenging the Restrictions," 1-2. Retrieved from http://www.legis.nd.gov/assembly/60-2007/docs/pdf/99482.pdf
4. CVS purchased a corporate chain that was in place before 1963, called Osco Drugs, allowing the national chain to operate them within the state.

   Data sources for Figures 1-3 and Table 1:

   Pharmacy locations taken from ReferenceUSA Database, 2008. Population and demographic data taken from United States Census, 2000.
5. Center for Rural Health Policy Analysis. November 2007. "Reliance on Independently Owned Pharmacies in Rural America." Retrieved from http://www.unmc.edu/ruprihealth/Pubs/PB2007-6_PharmLocBrf_1127.pdf
6. National Association of Chain Drug Store: The Chain Pharmacy Industry Profile; Section 3: The Pharmacy, 2006 Report.
7. National Association of Chain Drug Store: The Chain Pharmacy Industry Profile; Section 3: The Pharmacy, 2008 Report.
8. Consumer Reports. June 2008. "America's Best Drugstores": p.12 -17.
9. Ibid.
10. Consumer Reports. October 2003. "Time to Switch Drugstores?"
11. Ibid.
12. Consumer Reports, June 2008.
13. This will occur as some residents of rural areas begin to fill their prescriptions while making periodic shopping trips to larger communities. Drugstore profit margins are typically very slim, particularly for rural pharmacies, so that a loss of even 10% of sales can be enough to put a drugstore in the red and, ultimately, out of business.
14. Civic Economics. 2004. "The Andersonville Study of Retail Economics." Retrieved from http://www.civiceconomics.com/Andersonville/

    Institute for Local Self-Reliance. September 2003. "The Economic Impact of Locally Owned Businesses vs. Chains: A Case Study in Midcoast Maine." Retrieved from http://newrules.org/retail/midcoaststudy.pdf
15. North Dakota pharmacy sales derived from the 2002 U.S. Census, adjusted for inflation.
16. Civic Economics. 2008. "Local Works: Examining the Impact of Local Businesses on the Western Michigan Economy." Retrieved on 12/2/2008 from http://www.civiceconomics.com/localworks/
17. The vast majority of out-of-state prescription spending is likely attributable to residents who spend winters elsewhere. This spending will not be captured by in-state pharmacies regardless of changes in the Pharmacy Ownership Law.
18. National Community Pharmacists Association. 2008. "2008 NCPA Digest."

Other publications from the New Rules Project of the Institute for Local Self-Reliance

Meeting Minnesota's Renewable Energy Standard Using the Existing Transmission System, by John Bailey, George Crocker, John Farrell, Michael Michaud, and David Morris. November 2008.

Energy Self-Reliant States: Homegrown Renewable Power, by John Farrell and David Morris. November 2008.

Rural Power: Community-Scaled Renewable Energy and Rural Economic Development, by John Farrell and David Morris. September 2008.

Balancing Budgets by Raising Depletion Taxes, by Justin Dahlheimer. June 2008.

Concentrating Solar and Decentralized Power: Government Incentive Hinder Local Ownership, by John Farrell. May 2008.

Driving Our Way to Energy Independence, by David Morris. April 2008.

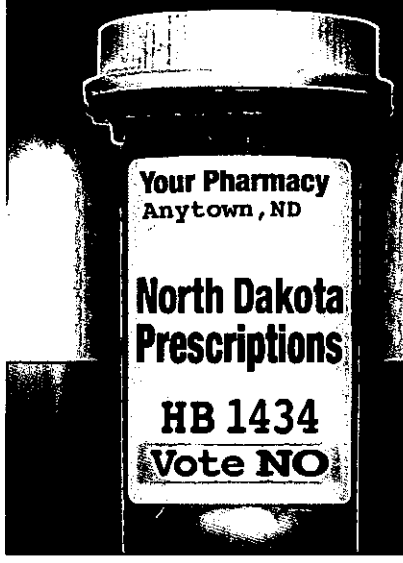
Municipal Broadband: Demystifying Wireless and Fiber-Optic Options, by Christopher Mitchell. January 2008.

About ILSR

Since 1974, the Institute for Local Self-Reliance (ILSR) has worked with citizen groups, governments and private businesses to develop practices that extract the maximum value from local resources.

A program of ILSR, the New Rules Project helps policy makers to develop rules as if community matters.

Attachment B(2)



Once We Change We Can Never Go Back

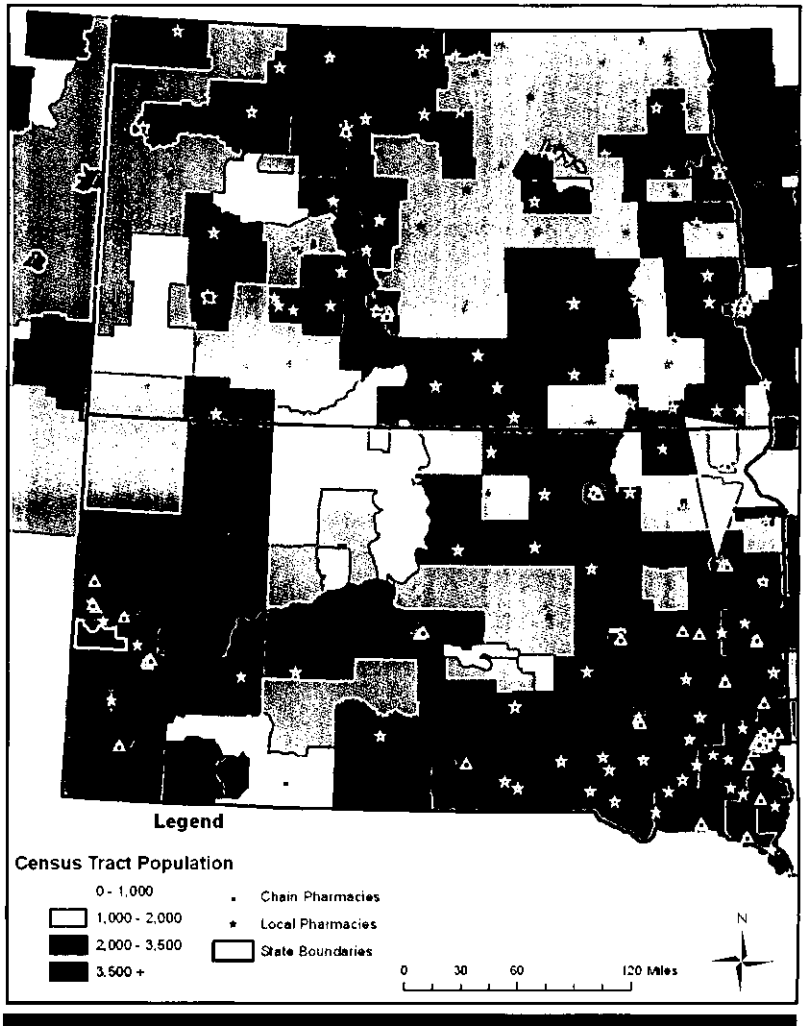
Don't let what happened in South Dakota.... happen in North Dakota!

Here's what happens

When the big-box chains move into a state, they centralize their locations in larger population areas. Then, using their ***$4 Marketing Gimmick,*** they'll convince consumers to leave their trusted pharmacies. Soon, independent pharmacies close...leaving consumers without local access, without local service, and potentially higher prices.

Review these maps and see how North Dakota and South Dakota compare after the big-boxes moved into our neighbor state. Notice the many areas in South Dakota ***without nearby pharmacies.***

	Counties with NO Pharmacy	Counties with One or Less Pharmacies
North Dakota	3	12
South Dakota	15	35



Economic Impact?

Experts estimate 600 jobs will be lost if the law is changed!

With these lost jobs and businesses closing, there would be a negative impact of at least $23,000,000 per year.

We all understand that most of the revenue earned by local businesses stay in our communities and state – usually spent seven (7) times over.

Vote NO On HB 1434

Paid for by North Dakotans for Prescription Facts

Testimony C

2/15/11

HB 1434

Chairman Keiser and members of the N.D. house I.B.L. committee:

My name is David Olig. I have been a pharmacist in ND for nearly 36 years, and a pharmacy owner for the last 28. My father, wife and one of our daughters are also pharmacists. ND pharmacy runs very deep in our family.

I am here today to ask for a DO NOT PASS on HB1434.

My testimony today is based on facts and data collected through industry standards, not opinion or emotion.

There has been a study done recently on the purchase of 24 items at 5 Walmarts in 5 different cities in ND. Although this study is by no means an exhaustive scientific/economic study, it does show what can happen in a market when competition is reduced or eliminated. Prices paid for these items in smaller retail markets where competition has been reduced, such as James town and Bottineau are significantly and consistently higher than in markets in Minot, Bismarck, or Dickinson. Bottineau has lost 4 of it's major retailers since the opening of the Walmart store. This elimination of competition also leads to fewer choices available to area residents.

Superstores eliminate the main streets in our communities and essentially become the "company store" in the region. This scenario plays out exactly the same in the provision of pharmacy services. Three of the largest pharmacy chains in the US currently own or are associated with their own PBM's, a term I know you are familiar with. This association leads to the elimination of competition through a number of scenarios. First, PBM's pay themselves a higher rate than they pay other contracted provider pharmacies. Second, PBMs often do not contract with provider pharmacies in a region where they currently have stores. Third, PBMs often have closed preferred provider networks, where patients receive their prescriptions without charge or considerably higher copays or are forced to utilize mail order pharmacies owned by them. Virtually every one of these scenarios is currently being played out today in ND and other markets, all of which add to higher prescription drug prices and the elimination of competition.

ND prescription drug prices, as compared to the seven state upper Midwest region (SD,MN,WY,IA,NE, WI,) are substantially lower. Facts and figures taken from a recent survey completed by the National Association of Chain Drugstores demonstrates this. The cash prescription price differential for North Dakota is currently $11.30/ prescription less than the regional average. This is in direct competition to the big box $4 prescription programs in the surrounding states. The savings in North Dakota as compared to the region, overall, on over 9 Million prescriptions filled is greater than $68 million dollars.

A large factor in these prescription prices is the number of generic prescriptions filled. ND has been a leader in the nation in this area. I feel this is largely due to the fact that the pharmacists in ND have relationships with their patients and maintain a desire to save their patients money while providing the most cost effective therapy. The NACDS studies also have shown repeatedly that independent pharmacies do a much better job at generic fill rates than their chain pharmacy counterparts.

Much has been made of the $4 prescription phenomenon, yet the details suggest a different story. Look closely and you will find that less than 1% of prescriptions filled fall under the eligibility requirements of these marketing schemes. It has been said that many North Dakotans are going across the, soon to be flooding, Red River to fill their prescriptions. What we are actually seeing in our practices is that most of those patients are coming back when they find out that if they have more than their single $4 prescription filled they paid considerably more than they would have at their community pharmacy in ND. In addition, there are thousands of cash prescriptions being filled by MN residents in our ND pharmacies each year. You must also remember that the $4 program only applies to cash prescriptions, less than 10% of all prescriptions filled in ND and that the program can be terminated at any time. It is a marketing ploy.

In closing, if the argument for overturning the ND pharmacy ownership law is purely economic, and reduced prescription drug costs, it simply does not stand up to the scrutiny of the FACTS. Overturning the pharmacy ownership law in ND does not make good economic sense for our patients or the state of ND.

I will be happy to try to answer any questions you might have.

Respectfully submitted,

David Olig, R.Ph.

Testimony D

February 15th, 2010

House Industry, Business and Labor Committee

Chairman Kaiser

Chairman and Members of the Committee;

My name is Steve Boehning and I am a pharmacist in Fargo ND for Linson Pharmacy. I am a NDSU graduate and a native North Dakotan. I have been practicing pharmacy for 20 years and am licensed in ND, SD, and MN. I have practiced in all three states that I am licensed in, including a chain store in Sioux Falls, SD. I moved back to Fargo in 1997, mainly because of the ND ownership law and the professionalism the law requires.

I am here to speak to you today about how the current law promotes more competition and career opportunities than other states. There have been some opinions expressed that if the law were changed it would increase the number of pharmacist positions in ND and increase wages. This would allow more NDSU graduates to stay in ND if they wanted. IN FACT THE EXACT OPPPOSITE IS TRUE! In general, big box pharmacies employ fewer pharmacists per shift and per prescription and utilize more technicians and ancillary personnel. To examine if this is true I used the 2009 Bureau of Labor Statistics data and the 2009 census.

The results show that the law in ND increases the number of pharmacist positions in ND and helps the state retain the maximum number of graduates. I took the total number of pharmacist positions in the United States and divided that into the total population. The results were; 1 pharmacist per 1,146 residents and 1 technician per 904 residents. In ND it is 1 pharmacist per 735 residents and 1 technician per 1,176 residents. I usually like to compare regional numbers instead of national to get a more accurate picture. I took the three states of ~~MN~~ MT, SD, and WY and compared the same data. I used these three states because they are the most similar in rural nature and low populations. In the 3 state regions there was 1 pharmacist per 940 residents and 1 technician per 1001 residents.

If ND would then revert to the 3 state regional averages, ND LOSES 192 PHARMACIST POSTIONS AND GAINS 96 TECHNICIAN POSITIONS. If ND would revert to national numbers, ND WOULD LOSE 316 PHARMACISTS AND WOULD GAIN 165 TECHNICIANS. This is the big box store effect. Fewer pharmacists and more technicians. In fact, the SD house just passed legislation recently to increase the technician-to-pharmacist ratio to 3:1 and to continue to require no training/certification for its technicians. Seventeen states do not even require a technician-to-pharmacist ratio.

It has also been perceived that if the law was overturned that salaries would increase and benefit ND. Again, the exact opposite is true. Using the same data and geographical region, ND's average pharmacist salary was within $5,000 per year (5%), and technician salary was higher by $982 per year. The higher technician salary is because ND currently requires a 2 year degree and certification to be a pharmacy technician. The net result; IF ND WERE TO LOSE 192 PHARMACISTS AND GAIN 96

TECHNICIANS AND SALARIES WERE TO CHANGE TO THE 3 STATE REGIONAL AVERAGE, THERE WOULD BE A LOSS OF $11,925,672.00 IN STATE WAGES!!

It has been mentioned the independent pharmacy would survive just fine if the law was overturned. This is also not true. I examined the number of independent pharmacies versus big box stores using the 2009-2010 National Association of Chain Drug Stores Report (NACDS). This is the data generated by the big box pharmacies. In the MT, SD, WY region 43.6% of pharmacies are independent and there is 1 pharmacy per 4961 residents. In ND there are 70.9% independent pharmacies and 1 pharmacy per 4284 residents. Again, if ND was to revert to the 3 state averages the net result would be; 50 LESS INDEPENDENT PHARMACIES AND AN INCREASE IN 29 CHAIN PHARMACIES. THE NET RESULT IS A LOSS OF 21 PHARMACIES.

I also wanted to examine the effect in comparison to similar cities to Fargo/West Fargo. To do this I examined Sioux Falls-SD, Billings-MT, Cheyenne-WY and St. Cloud-MN metro areas. I used these four cities because of the similarity in geographical nature and metro population. For Fargo/West Fargo, I eliminated the populations of Moorhead, Dilworth, etc. I then examined the number of pharmacies per population and the number of differently owned pharmacies per population. In the four cities above the average were 1 pharmacy for 7769 residents and 1 pharmacy per 15186 residents with different ownership. IN ALL FOUR CITIES, 3 CHAINS COMPRISED MORE THAN 50% OF THE PHARMACIES. In Fargo/West Fargo metro it was 1 pharmacy per 5911 residents and 1 pharmacy per 8399 residents with different ownership. If Fargo/West Fargo were to change to the four city averages, there would be a loss of 6 pharmacies and a loss of 8 pharmacies with different ownership. This again is the big box store effect. Less differently owned pharmacies per resident, less competition, less jobs.

My wife's family is from, and still resides in Sioux Falls, SD and I used to work and live there. I can tell you from personal experience that if the law is overturned there will not be increased opportunity for NDSU grads or pharmacists wanting to relocate. Here is why. As the data has shown, chain drug stores created an oligopoly in the Sioux Falls market. The number of pharmacists per resident is significantly lower. When a retail position opens in Sioux Falls, which rarely happens, the chain moves people wanting to relocate into the city before hiring a new graduate. This extremely limits the number of graduates able to stay in the major cities. This will happen in all of ND's major cities also. The big box stores also want higher technician-to-pharmacist ratios and minimal requirements for technicians because it is much cheaper. This again limits pharmacist opportunities.

The major difference in pharmacy in ND compared to the states and cities referenced is the ownership law. There can be no question that if the law was overturned, while there may be an initial increase in pharmacists, after the big box effect takes hold the net effect would be a loss of pharmacies and pharmacists jobs in ND. The statistics do not lie. I used a national database for labor and population statistics and the big box stores own report.

Big box stores do not look at pharmacy as a healthcare profession. It is a product only business. Wal-Mart has gone on record as stating this belief. Wal-Mart's pharmacy sales account for approximately 5% of its total sales. The best interest of the consumer is not what they care about. It is traffic in their

stores. It is the big box philosophy to create store traffic and corporate profits while trying to dispense as many prescriptions as possible with as few pharmacists as possible. This does not work well in rural ND, where the pharmacists may be the only accessible healthcare profession for hundreds of miles.

In summary, no matter what stat you look at, ND will lose pharmacies and pharmacists if this law is overturned. The result will be lower high paying jobs in ND. This will make it harder to retain our young professionals from NDSU whom are paying high dollars to get their degree in ND. The law promotes true free market competition, increases high paying jobs, and allows greater access to pharmacies and pharmacists than any other state. There could be a loss of 192 pharmacists, over 21 pharmacies and over $11,000,000 in wages. This holds true for rural areas versus urban. The law does exactly what it is supposed to; increase competition, increase jobs, increase access. Why would changing this benefit ND?

Thank you for your time.

Steve Boehning, R.Ph.

Testimony E

2-15-2011

Chairman Keiser and IBL members my name is Robert Treitline from Dickinso, N.D. I own and operate two pharmacies, one in Dickinson and another in Williston, we have operated the pharmacies since 1983.

I have attached a letter from a oilfield worker in the Williston area to testify how the transition of pharmacy services in western North Dakota is seamless and without interruption. There was an article this past summer in one of the newspapers from the eastern part of the state that indicated there was a problem with oilfield workers getting their medication, that pharmacies would not take their insurance plans and other issues. I can testify that there is not a problem and never has been a problem. We take and honor over 200 different insurance plans and programs. We spend hours per week in calls to many out-of-state pharmacies for prescriptions copies to provide pharmacy services to the oilfield workers. This is a very time consuming process but we do it even with a smile to provide the type of services us in North Dakota are accustom to. We get many comments from the oilfield workers on the fast, courteous, and professional service we provide .

I also want to touch on the positive ability of operating a pharmacy in a corporate arrangement. I was the first pharmacy permit issued under the ownership law. I formed a corporation with Osco Drug and myself back 1981, I held 51% ownership of the corporation and opened and operated the two pharmacies in Western North Dakota. I had five different owners of the minority stock over the past 28 years. (Sometimes the big corporations don't have the same commitment to our communities as independent owners do) . I now own all the stock and simple lease space from the owners of the buildings I occupy. Corporate managers from Osco, Albertson's, American Stores , Buttrey Foods, and Supervalue, on many occasions had visited our store and would comment on the professional services we provided to our communities. They admitted those type services were not in their business model to provide to their communities. My comment was, that is what makes us unique and different from the other states.

Robert Treitline RPh

ND Pharmacy Inc.

446 18th St. West

Dickisnon, ND 58601

E, pg 2

2-13-11

My name is Matthew Fleck, I'm from Vancouver, Washington and am currently working in the oilfield in Williston North Dakota.

I have filled Prescriptions at N D Pharmacy and there is little or no waiting, the staff is friendly and knowledgeable, the hours of opperation are accommodating and the prices are competitive or as low as they were where I come from, and billing my Insurance has not been a problem.

I would advise any oilfield employee to fill prescriptions at any Pharmacy in North Dakota.

Sincerely, Matthew Fleck

1715 29th St W
Williston, ND
58801
" 12020 NE 35th St. "
Vancouver, WA
98682

701-570-5080

Attachment F

NCPA
NATIONAL COMMUNITY PHARMACISTS ASSOCIATION

WWW.NCPANET.ORG

STATEMENT FROM THE NATIONAL COMMUNITY PHARMACISTS ASSOCIATION IN OPPOSITION TO H.B. 1434 FEBRUARY 15, 2011

The National Community Pharmacists Association (NCPA) represents the nation's community pharmacists, including the owners of nearly 24,000 pharmacies. These independently owned pharmacies generate more than $93 billion in annual sales and dispense over 40% of all retail prescriptions. Our members in North Dakota are concerned about the impact of this proposal on their ability to continue to service their patients.

Consumers, our patients, have consistently ranked our industry, i.e. independent pharmacists, as "the most trusted profession" and excellent providers of customer service. The pharmacists in North Dakota provide exemplary service in their communities. On a daily basis they counsel patients and provide compounding, medication therapy management (MTM), and durable medical equipment. In fact, the pharmacists in North Dakota were number 1 in the nationwide total of MTM cases completed in 2007.

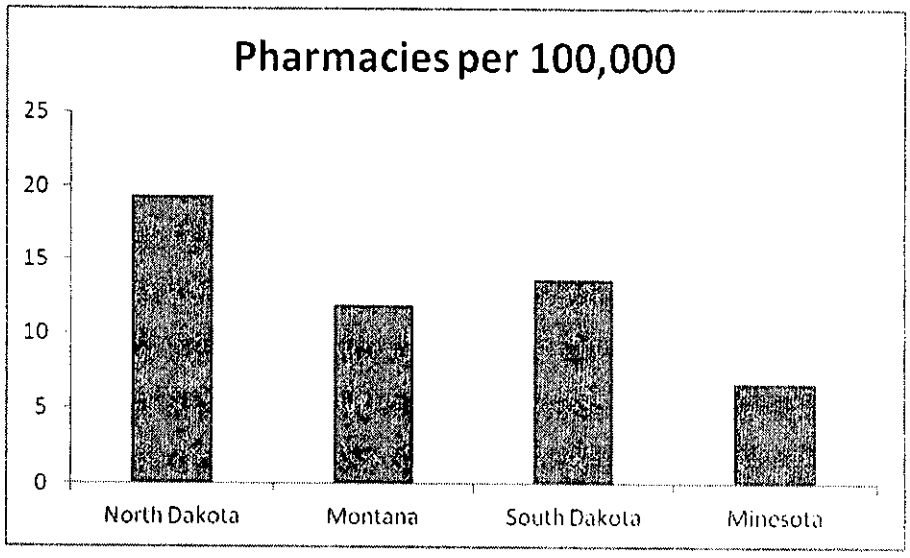
NCPA strongly opposes H.B. 1434 and instead supports the continuation of the North Dakota pharmacy ownership law. We believe that its continuation is critical to the North Dakota residents of the state and to your economy.

The marketplace under the current law is competitive and cost effective.

Community pharmacies in North Dakota maintain a key role in the state's economy. Recent data indicate that in 2010 North Dakota community pharmacies generated almost $600 million in total sales and employed approximately 2,000 state residents.

North Dakota has a very competitive market. One measure of that competitiveness can be evaluated by the number of pharmacies per 100,000 people in neighboring states. Based upon an analysis performed by NCPA using Census data along with National Council for Prescription Drug Programs (NCPDP) data, North Dakota has more pharmacies per 100,000 people than its neighboring states:

100 Daingerfield Road
Alexandria, VA 22314-2888
(703) 683-8200 PHONE
(703) 683-3619 FAX



North Dakota has 131 pharmacies and a population of 675,905, giving the state more pharmacies per 100,000 people than its three neighboring states with 19.4. This number indicates a high degree of access at a time when many pharmacies in rural areas are closing.

Due to the high level of competition among North Dakota's community pharmacies, prescription prices are lower in the state of North Dakota when compared to national prices. According to the *2010 Chain Pharmacy Industry Profile* by the National Association of Chain Drug Stores[1], the average prescription price nationally was $75.65. This is $6.5 higher than the average prescription price in North Dakota of $69.14. For patients covered under Medicaid, the average prescription price was $75.47 in North Dakota, which was $5.66 lower than the national average price for a Medicaid prescription of $81.13.

A repeal of the current law would negatively impact the marketplace.

Many of the out of state businesses that would presumably enter the North Dakota marketplace if the current law is repealed have engaged in business practices which have been the subject of government investigations and settlements. Other business practices have resulted in a detrimental impact on a state's economy.

Two of the largest chain pharmacies have been the subject of recent government settlements:

- In February 2008, **Caremark CVS** agreed to pay $38.5 million to the United States and 23 states and the District of Columbia to settle Medicaid prescription fraud allegations. The allegations concerned switching patients from one prescription to a more expensive prescription to boost its Medicaid reimbursement levels. The settlement also includes an amount up to $2.5 million as reimbursement for certain medical tests.
- In June 2008, **Walgreens** settled drug switching allegations, which resulted in overcharging Medicaid with the United States and 42 participating states and the Commonwealth of Puerto Rico for $35 million. The case initiated when a pharmacist whistleblower became concerned with Walgreens' drug switching programs, which he believed were for the sole purpose of increasing Walgreens profits with no medical benefit to the patient.

Also there have been four lawsuits against **Walgreens** for prescribing errors since 2006, leading to a cumulative total of over $61 million dollars being awarded for prescription error verdicts.

According to a study published by David Neumark, Junfu Zhang, and Stephen Ciccarella titled "The effects of Wal-Mart on local labor markets"[ii], the authors found that the big-box retailer Wal-Mart had a negative effect on both retail level employment and wages for the retail industry. Their comprehensive study, which looked at employment and payroll data between 1977 and 2002, found that a Wal-Mart store opening replaces 1.4 retail workers for every retail job Wal-Mart creates, and a decrease in county-level earnings by 1.5 percent.

According to Wal-Mart's Annual Report (2008) and it's March 31 10-K filing with the Securities and Exchange Commission, it is involved in lawsuits, which include wage and hour "Off the Clock" Class Actions and Gender discrimination cases. They appear to be involved in at least 80 lawsuits in the United States. Further, according to (http://www.wal-martlitigation.com/), an Internet site that tracks litigation concerning Wal-Mart:

> "How often is Wal-Mart sued?" is one of the questions we are most frequently asked. Wal-Mart is sued two to five times every business day somewhere in the United States in federal court alone. One of the goals of the Wal-Mart Litigation Project is to obtain a photocopy (or e-mail copy) of each actual lawsuit filing, called a Complaint or Petition. These filings will become part of the "information packets" the Wal-Mart Litigation Project sells to lawyers. In this manner, a lawyer with a specific type of case, i.e. falling merchandise, can contact lawyers in his or her geographical area and work together on matters of proof, discovery, expert witnesses and the like. In 1999 Wal-Mart was sued approximately 845 times in cases that were filed in or removed to federal court."

"Andersonville Study of Retail Economics"[iii] looked at the economic impact of chain retail outlets versus locally owned retail outlets in the Andersonville neighborhood in Chicago, Illinois. This study found that locally owned stores had a stronger impact on the economy than chain stores. The study found that a square foot of a locally owned business on average contributed $179 to the local community, compared to only a $105 for a chain store. The primary reason for this discrepancy is due to the fact that for every $100 spent at a locally owned store, $68 stayed within the community, versus a chain store where only $43 out of every $100 remained in the local community.

A repeal of the current law would negatively affect access to quality pharmacy services by North Dakota patients.

According to the Center for Rural Health Policy Analysis, 998 rural independent community pharmacies have closed their doors since April, 2008. Of these, 158 rural independent community pharmacies were the sole provider in their area, and have ended up closing their doors without another pharmacy (chain or independent) setting up shop in the community[iv]. It is a fear among many patients and pharmacists, that encouraging chain pharmacies to set up shop in metropolitan areas may provide an additional burden on community pharmacies in nearby rural areas; exacerbating this trend of access being reduced for patients in rural areas.

In closing, we want to urge you to oppose H.B. 1434 and instead continue to support your pharmacy ownership law. It has been clearly demonstrated that the pharmacists of North Dakota are an asset to their community and to the state's economy. NCPA appreciates the opportunity to bring these concerns to your attention. Thank you.

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[i] "The 2010 Chain Pharmacy Industry Profile", National Association of Chain Drug Stores.

[ii] David Neumark, Junfu Zhang, Stephen Ciccarella. "The effects of Wal-Mart on local labor markets", Journal of Urban Economics, December 2006.

[iii] "The Andersonville Study of Retail Economics", by Civic Economics. October 2004.

[iv] Donald Klepser, Liyan Xu, Fred Ullrich, Keith Mueller, Ph.D. "Independently Owned Pharmacy Closures in Rural America", Center for Rural Health Policy Analysis, July 2008.

Testimony G

Shane Wendel
Central Pharmacy
4 8th St N
New Rockford, ND 58356

Chairman Keiser and IBL committee members,

Thank you for the opportunity to speak today. I want to address the issue of pharmacy access and the effect this bill will have on rural North Dakota. I have worked at Central Pharmacy in New Rockford for 14 years and have owned the business for 2 years. Central Pharmacy is the only pharmacy in town. Central Pharmacy severs about a 35 mile radius and also provides all the pharmacy services to Lutheran Home of the Good Shepherd which has 80 residents and about 100 employees. We also provide pharmacy services to 4th Corporation Group Home whom we service the needs of 25 residents and 30 employees.

North Dakota has better access to rural pharmacy delivering cost effect prescriptions than our neighbor to the south of South Dakota. This is because of the ownership law. Predatory pricing and the perception of low prices is bought though advertising by big box corporations. This would kill rural North Dakota pharmacies. The average price of a prescription in my pharmacy in 2010 was about $52 and in 2008 about $53. The national average cost of a prescription is about $75 in 2010 according to the NACDS. Buying drugs in North Dakota is not expensive when compared to the rest of the nation. The reason drugs are a bargain in North Dakota is because of our high generic dispensing rate. This high rate is not by chance. North Dakota pharmacists like me choose to spend extra time finding the most cost effective medication for our patients. North Dakota State University College of Pharmacy calls this pharmacoeconomics. I am able to take time because I own my pharmacy and I can do what is best for my patients not what is best for my corporate office. Quality not quantity is what healthcare needs. Quality is what North Dakota needs to keep. Central Pharmacy has a higher cost of dispensing than almost all chain stores. This is because my volume is lower than an average big box store. However, I still have a total overall cost that is much less than the national average, (patient care). All that is needed to make my small business fail is a 15% decline in my prescription volume and a 30 mile radius of pharmacy access will be gone forever. As many as 70 communities exist just like mine with a very similar story. Small town Main Street we all know has struggled to continue and maintain services these rural farming and oil communities need. This bill will drastically accelerate the consolidating and centralizing of pharmacy services at the expense of access. BCBS tried to cut our operating profits by up to 70% in 2005 and justifying these costs by showing centralization lowers the cost of prescriptions. Travel costs, late treatments and lack of drug information are a cost they don't pay or considered in this study. Rural consumers will always pay the price of centralized services.

North Dakota's population is over 50% rural and over 60% of North Dakota pharmacies are also in this category. We must continue to protect and value our rural economies. The 51% ownership law allows rural North Dakota pharmacies a better chance to continue the services we provide as a state below the national average cost. I ask for your support to protect rural pharmacies to continue to deliver the best pharmacy care and most affordable prescription drugs for all of North Dakota.

Thank you

Shane Wendel Pharm.D.

Fred Stoskopf

Attachment H

12-10

BCBS → 232.39/50 (20mg)

ME → 88.07 copay

162.92/50

BCBS → 325.84/100 (10mg)

ME → 123.49

LIPITOR

SAVE 35.42/100 DAY

$129.28 YR

TOTAL SAVINGS ME

$92.86

$338.90 YR

TOTAL SAVINGS BCBS

Testimony I

HB 1434 – Pharmacy Ownership

Tim Weippert, R.Ph. – Vice President of Pharmacy Operations
Thrifty White Drug

Chairman Keiser and members of the House Industry, Business, and Labor committee, for the record my name is Tim Weippert, Vice President of Pharmacy Operations of Thrifty White Drug. I am a resident of West Fargo, ND. I have worked for Thrifty White Drug for 33 years and have lived in ND for all of them. I would strongly urge the committee to give HB 1434 a DO NOT PASS recommendation

Thrifty White is an employee owned chain of 87 stores. We are the oldest chain of pharmacies in the nation stretching 126 years. Our history traces back to our first store in Jamestown in 1884. We have a proud and storied history of serving North Dakotans in towns as big as Fargo to as small as Rolette, Maddock and Mohall. In total we have 30 pharmacies across the state. As I previous mentioned Thrifty White is a unique pharmacy chain as our employees are our owners. This has always been our greatest strength as a company due to all employees seeing the rewards of their hard work. A majority of our stock is owned by pharmacists and a majority our ESOP trustees and members of the Board of Directors are licensed pharmacists in the state of North Dakota.

We believe as a company that our services and products must exceed the expectations of our customers. Our stores serve many long term care facilities across the state including skilled nursing homes, assisted living facilities and basic care living facilities to name a few. We operate 5 telepharmacies within North Dakota maintaining crucial pharmacy services in these rural towns. We also work with hospitals and hospice facilities within the communities we serve. Thrifty White offers free delivery and mail out services for prescriptions, 30 day charge accounts, vaccinations, free blood pressure checks, medication therapy management services, and on call services. Thrifty White prides itself in being an active member and investing in the communities we serve. Thrifty White also encourages their pharmacists and pharmacy technicians to be active in the state pharmacist association with pharmacists and technicians that have or are currently serving on committees and in leadership roles, to pharmacists serving on the Board of Pharmacy.

I would like to talk about a service we offer to patients in all our stores. It is our generic drug discount program similar to the ones offered by big box retailers. This is a membership club which we call the Rx Savings club. We offer this in all our stores. We believe we have an equal or greater number of drugs covered when compared to Walgreen's or WalMart.

The results we have witnessed with this program are staggering. Just 0.7% of our total prescription volume filled is thru this program. Thrifty White has engaged in an intensive marketing of this program to our customers since July 2009. We believe that these generic programs work for such a small percentage of prescriptions due to the fact that 93% of prescriptions that are filled are filled thru a 3rd party of some sort today. They only represent up to 155 different drugs out of the nearly 11,000 drugs available. Thrifty White has found this to be truly a marketing gimmick from the results it has seen over the course of the last 18 months.

As we operate in Minnesota, we recently saw the exposed dangers of the increasing centralization of pharmacy services. I would like to share a couple examples which illustrate the business practices of these big box retailers regarding this.

In January of 2010, Walgreen's purchased 25 Snyder's pharmacies across urban and rural Minnesota. They immediately closed 22 of them and files were transferred to other pharmacies up to varying miles away. This left patients scrambling to obtain their medications and left communities and nursing home facilities without pharmacy services. One of these towns was Cold Spring, Minnesota.

Cold Spring is a vibrant town of a little over 3000 people located just 30 minutes south of St Cloud, MN. The pharmacy and store was a busy practice employing 18-20 people.

Staff at the store found out that Walgreen's would be quickly closing the town's only pharmacy leaving the town without critical pharmacy services and employees without a job. Walgreen's had no interest in maintaining the current location and would be transferring all the prescriptions to their store about 15 minutes away. Obviously this created uproar in the community as they would have to travel to receive their prescriptions. The city lost a crucial tax-paying business. The long term care home and 2 medical clinics lost local pharmacy services.

Another example just happened 2 months ago, this time Walgreen's bought the files of an independent pharmacy in Pierz, MN. Similarly, they had no interest in operating a store in a town of this size (about 1,300 residents) and all the prescriptions were transferred 20 minutes away to their store in Little Falls, MN. I would like to read you an excerpt of an article published in the Morrison County Record which illustrates the unfortunate circumstances.

The city wants to keep its pharmacy and the jobs that go along with it. Mayor Toby Egan said the city needs a pharmacy, since it is home to two clinics — Pierz Family Clinic and St. Joseph's Clinic in Pierz, several assisted living facilities and the Pierz Villa.
"Being as we are an elderly-type community with assisted living, nursing homes, things like that, residents need the convenience of being able to go to the doctor's office and then just stop and pick up their prescription in town," said the mayor. "It's going to hurt bad if people have to go all the way to Little Falls to fill a prescription."
Egan doesn't think mail-order a good fit for the community. People want to visit with the pharmacist, he said.
"You'll go in with a doctor's prescription and something may not look right to a pharmacist," said Egan. "Just having that communication between a doctor and pharmacist is important."
Not being able to fill a prescription in town isn't the only problem Egan sees for the community.
"If we're sending people out of town, it's going to hurt our gas stations, our hardware business, grocery store, and more. It'll have a domino effect," he said.

Luckily we were able to restore services to these two communities to reestablish pharmacies in these communities. We hired back most of the original staff in both cases to maintain the trusted professional relationships which patients had established. If the ownership law is overturned this story could be in our backyard.

We operate in 5 other states, so I get a firsthand account of the practice of pharmacy in nearby states. Let me emphasize the fact that in reference to others around us, North Dakota's practice of pharmacy truly shines and continues to set the example of where the profession needs to be. The thanks go to you, the legislators, and your predecessors for maintaining and creating this forward thinking law. The competition within the practice of pharmacy in North Dakota is alive and well. Changing this law will do nothing but diminish that. I urge the committee to maintain the current practice of pharmacy and vote NO on HB 1434.

Respectfully submitted,

Tim Weippert, R.Ph.
V.P. Pharmacy Operations
Thrifty White Pharmacy
tweippert@thriftywhite.com

Attachment J

ND Petroleum Marketers Association
ND Retail Association

NDPMA

HB 1434 Testimony

February 15, 2011; House Industry, Business and Labor Committee

Chairman Keiser and members of the House Industry, Business and Labor Committee: For the record, my name is Mike Rud. I'm the President of the North Dakota Retail Association and the North Dakota Petroleum Marketers Association. On behalf of the joint association's 800 members, NDRA/NDPMA urges a **"DO NOT PASS" on HB 1434.**

Our groups agree with a report released in 2009 by the Institute for Local Self-Reliance that repealing the law will cost the state millions of dollars in annual economic activity, reduce the number of pharmacies in rural areas and lessen the overall quality of pharmacy services in the state.

The opportunity for the big box stores to set up pharmacies in their shops already exists. All the big box has to do is rent out the space. This current law seems to be working fine in North Dakota grocery stores where pharmacies have opened businesses. In fact, most grocery stores have seen increased traffic because of the "pharmacy" presence. I know of a Fargo grocery store where the health and beauty aids section has seen a 35% increase in sales since the pharmacy opened.

The question needs to be asked by every Legislator, "Why isn't the current system workable for the big box operations?" Only those folks can supply the real answer to this question. NDRA believes passage of this bill will have a major negative impact on main street North Dakota in rural areas.

1025 North 3rd Street • PO Box 1956 • Bismarck, ND 58502 • 701-223-3370 • Fax 701-223-5004
Web Address: ndretail.org • ndpetroleum.org

I've attached with my testimony two articles from newspapers in Minnesota as examples for your review. The first talks about the closure of Snyder Drug in Cold Spring, MN in 2010. Following that story are quotes taken from city leaders in Pierz, MN after its pharmacy was purchased and then closed. The last quote from Pierz Mayor Toby Egan is why our associations are so passionate about maintaining the current law.

Not only are we concerned about the well-being of the ND pharmacist and client access, but we also have a vested interest in representing the needs of all main street businesses. If you lose one key business in your town, chances increase for others to follow to suit. **The big box stores aren't interested in the financial stability of our rural communities. These businesses simply want to further the one-stop shopping mentality along the major transportation corridors of North Dakota!**

NDRA and NDPMA believe if the State of North Dakota is going to promote rural economic development it must uphold the current pharmacy ownership law.

Mr. Chairman and committee members, NDRA/NDPMA urges a **"DO NOT PASS" recommendation on H.B. 1434.**

Thank you for your time and consideration.

J, pg 3

Cold Spring RECORD

75¢

Cold Spring, MN 56320 | Your Hometown Newspaper Since 1899 | Tuesday, January 19, 2010

Snyder Drug Closing

The word started spreading through town last week Tuesday that Cold Spring would be losing a long-time business; Snyder Drug Store was going to close. It didn't take long to find out the rumor was true.

Walgreens Corporation recently purchased Minnesota's 25 Snyder Drug Stores and will be closing all but three. Cold Spring's store is on the list of the stores that will be closing.

To make matters worse, it will happen quickly. This Thursday will be the last day prescriptions will be available at the store. Other services will be available through February. This will leave all the store's customers looking for a drug store to fill their prescriptions—the closest options being St. Joseph, Paynesville, Waite Park or St. Cloud.

Cold Spring's Mayor, Doug Schmitz, obtained a Walgreens Corporation contact number and phoned the corporate offices in an effort to convince the company to keep this store open—to no avail. Mayor Schmitz was told that "this was a corporate decision" and there was little chance anything would be changing.

walgreens buys and closes
Wolf Drug - Pierz, MN Dec 1, 2010

"Being as we are an elderly-type community with assisted living, nursing homes, things like that, residents need the convenience of being able to go to the doctor's office and then just stop and pick up their prescription in town," said the mayor. "It's going to hurt bad if people have to go all the way to Little Falls to fill a prescription."

Egan doesn't think mail-order a good fit for the community. People want to visit with the pharmacist, he said.

"You'll go in with a doctor's prescription and something may not look right to a pharmacist," said Egan. "Just having that communication between a doctor and pharmacist is important."

Not being able to fill a prescription in town isn't the only problem Egan sees for the community.

"If we're sending people out of town, it's going to hurt our gas stations, our hardware business, grocery store, and more. It'll have a domino effect," he said.

Attachment K

House Bill No 1434 – Pharmacy Ownership
House Industry Business and Labor
February 15th, 2011

Chairman Keiser and members of the House Industry, Business, and Labor Committee, for the record my name is Daniel Duletski, a 4th year pharmacy student at NDSU. Thank you for the opportunity to speak with you today.

I have worked in an independent pharmacy while going to school the past 4 years and will be working for an independent pharmacy in Dickinson upon graduating this May. As a future pharmacist in ND, the pharmacy ownership law is incredibly important to me. It is the environment and atmosphere the law creates in ND pharmacies that made me want to stay and practice here. This law insures that pharmacy is practiced the way it is intended to be and makes sure patients receive the care they deserve.

Right now, I have no plans of owning a pharmacy and will receive no financial gain by keeping the law as it is now. But what I do have in the future is the privilege to work in the same pharmacy environment that has served North Dakotans for decades. In addition, I will have the knowledge that what I do is for the right reasons and not about numbers.

During my final year of pharmacy school, I have had the opportunity to travel to various states around the country and work with pharmacists and interns from those areas. In conversation, something that always came up is the ownership law we have in ND. Each of these people commented that, that is a great law and every state ought to have a law like that. Two of them made the comment that they should move and come work in North Dakota. When you hear comments like that it's hard to ignore the importance of this law and the positive effect it has on pharmacy practice.

While working in one of these out of state locations I was able to see first-hand the difference between chains and independents and form my own opinion. It didn't take long and I realized how big the difference truly is. At times it didn't even feel like I was working in a pharmacy or that there was a patient to take care of. The pharmacist-patient relationship was virtually nonexistent and the level of service was not where it should be, especially when it comes to taking care of a patient's health. I could give you multiple examples, but will just say the way the pharmacy operated and took care of patients was bothersome. Honestly, I've heard stories, but to witness it first hand was something else.

Over Christmas break I worked in the pharmacy in Dickinson and we received a great complement from a new patient of ours. The man was from out of state, working in the oil field. He dropped off his script, we got his information, and told the man it would be 5 to10 minutes. He laughed; he'd never had a prescription filled in 10 minutes. We had the man's prescription ready after a few minutes. He came to the register, was counseled by one of the pharmacists, and was asked if he had any questions. The man replied saying no, but continued by saying, you guys are really, really good, I watched you guys while I was waiting and have never been to a pharmacy like this one. You're busy and still talked to me. You guys are really good at what you do. A tremendous complement!

When someone says something like that, it sends shivers down your spine. And not only is this a complement to our pharmacy, but to all the pharmacies across ND.

What North Dakota has is special and to jeopardize that would be a tragedy.

Thank you

Attachment L

HB 1434: A Devastating Proposal
A Written Testimony by Jordan A. Wolf

Chairman Kaiser and members of the House Industry, Business and Labor committee, for the record my name is Jordan Wolf. I am currently in my third year of the Pharmacy program at North Dakota State University and I am a born and raised Fargoan. I would like to take this opportunity to present a written testimony on my own behalf in opposition to HB 1434, which would repeal of the North Dakota "Pharmacy Ownership Law." I strongly urge the committee to give HB 1434 a DO NOT PASS recommendation. I stand opposed to this bill as both a future pharmacist and a citizen of North Dakota. If passed, it would lead to an array of negative outcomes that would be deleterious to pharmacy within the state of North Dakota, as well as to our state itself.

The passing of this particular law will negatively affect our state in a variety of ways. The Institute for Local Self-Reliance projected in their 2009 study that if this particular law were to be overturned, it would result in a direct financial loss of approximately $23 million to North Dakota each year. This loss would be compounded by the ensuing indirect economic losses. This is a staggering and threatening projection, especially in a time when so many states are becoming insolvent. To add to the economic threat, the same report also projected that approximately 70 independent pharmacies would be driven out of business if the corporate pharmacies were granted access to our state. This would further result in the loss of around 600 jobs. Our state currently boasts a uniquely low rate of unemployment, and it would be quite alarming if that were to change. Although we do not allow corporate, non-pharmacist-owned pharmacies to operate within our state, North Dakota has the fourth highest concentration of employees within the profession of pharmacy, compared to the rest of the nation. This indicates that our state is not suffering from a lack of availability of pharmacy jobs, and it shows that we are also retaining an impressive proportion of graduating, well educated students. Based on my experiences as a pharmacy student, as well as my interactions with my peers, I would confidently assert that our state's unique pharmacy practice model is largely responsible for retaining pharmacy students in North Dakota after graduation.

The repeal of the North Dakota pharmacy ownership law would serve as a devastating blow to the profession of pharmacy, both in our state and nationally. North Dakota's pharmacy population is distributed quite differently from the rest of the nation, with 90% of our community pharmacies being independently owned. This is a stark contrast from other states, as only 30% of all community

pharmacies in our nation are independently owned. Unfortunately, that percentage continues to dwindle. Research in both the United States and in various European countries has shown that independently owned pharmacies are significantly associated with better-quality and more diverse and available pharmacy services. *Consumer Reports* also consistently favors independent pharmacies to corporate-owned pharmacies and has done so since the 1990's. North Dakota exemplifies the reasons for which independent pharmacy triumphs, as the Institute for Local Self-Reliance illustrates when it says "North Dakota, largely as a result of its unique Pharmacy Ownership Law, outperforms other states in every key measure of pharmacy services."

North Dakota has a very strong and innovative population of pharmacists that continually work for the well-being of their patients and to improve the practice of pharmacy on a national level. The State Board of Pharmacy, the North Dakota Pharmacists Association, and the North Dakota State University College of Pharmacy, Nursing, and Allied Sciences all work very closely toward this cause. These collective groups have collaborated on many successful projects, including: The NDPERS Diabetes Management Program, the Drug Repository Program, the Prescription Drug Monitoring Program, the Prescription Connection, the North Dakota Retailer Meth Watch Program, and Medication Therapy Management. A number of these projects were done in conjunction with the Attorney General's office, and the Attorney General himself has offered commendations for the efforts. This collective group has also helped to pioneer telepharmacy, and has worked to develop a model that has been the intrigue of other states looking to branch into this area of pharmacy that insures rural access. Finally, pharmacists have been working with physicians and other health professionals all over the state to initiate e-Prescribing and other practices that make things safer for the patient.

Although pharmacy in North Dakota has been successful, the repeal of this law will be detrimental to any future success, as it will reduce the number of rural pharmacies and, according to the Institute for Local Self-Reliance, "degrade the overall quality of pharmacy services in the state." As our rural populations are very important in our state, it would not be responsible to deprive them of essential services such as pharmacy. Pharmacy is not a typical retail business; it is an important service that provides for the health and welfare of its patrons. Therefore, we cannot get caught up in misguided debates about issues such as the presence of free market economies. In all reality, it is impossible for pharmacy to become a pure free market by granting corporate access because many of the large corporate chain pharmacies have become vertically integrated with Pharmacy Benefit Managers and

their own mail order systems that take money out of the state. This integration, in turn, allows them to set the reimbursement rates for competing pharmacies. It is difficult for any business to thrive when its competitor is dictating its reimbursements.

I would implore you to consider this issue very carefully and recapitulate the decisions that have been made by the European Court of Justice, the United States Supreme Court, and the North Dakota Supreme Court in regard to this vital issue. After all, the North Dakota Supreme Court did maintain that the "supervision of hired pharmacists by registered-pharmacist owners would be in the best interests of public health and safety."

When voting on HB 1434, please consider the well-being of both North Dakota and its citizens and consider what pharmacy does for this wonderful state. If this bill is passed, it could never be undone, so instead of gambling on North Dakota's economy and general well being, please choose to vote against HB 1434.

Thank You,

Jordan Wolf

Attachment M

February 15, 2011

Distinguished House Industry, Business and Labor Committee Members,

I am writing to urge you to vote against changing the current North Dakota Pharmacy ownership law as set forth in HB1434. In the interest of full disclosure, I am currently a pharmacy student at NDSU, but I write this as a lifelong resident of North Dakota and a citizen focused on the best interest of our state and its people.

HB1434 proclaims to:

1. Bring competition to the field of pharmacy in ND;

2. Bring North Dakota "up-to-date" with the rest of the nation in pharmacy practice;

3. Provide ND residents with low price medications.

I am a strong proponent of competition in the marketplace to provide people with the best possible options. Allowing large chain pharmacies and large non-pharmacy retail chains to open pharmacies does not allow for true competition; it is in fact just the opposite. First of all, the large companies are able to come in and drive out the rest of the smaller firms until all that remain are the giants (and this doesn't just mean pharmacies, how many mom-and-pop shops of any kind remain in Fargo, Grand Forks or Bismarck since Walmart and Target have come to town?). Report after report offers testimony of exactly this happening in each community these behemoths enter. How does this foster competition? Also, a company such as Walmart or Target, has no basis running a pharmacy. They sell merchandise, medications are not simply merchandise. Many people think that just because our patients leave with a tangible product, we are interchangeable and replaceable, it's not that simple. No one would think it's appropriate for a car dealership to open a hospital or an adult bookstore to open an elementary school (and yes this is a fair comparison to what is being proposed). Why then is pharmacy less valued?

There are state laws regulating who can own dentists offices, other medical practices, even corporate farming operations in North Dakota. Pharmacy is a highly specialized profession that entails far more than simply counting 30 or 60 pills and dumping them in a bottle. If this were not the case would the professional program be a minimum of 6 years in length? We are taught that patient care is paramount and the current law allows us to think outside the box when necessary to assist them with getting the most out of their medications. We understand the financial constraints expensive

medications can place on our patients and constantly work to find options to make these medications more affordable through rebate programs, drug manufacturer coupons and other available programs to help those in need afford their medications.

The current ownership laws are often chastised for being antiquated and out of date. Again, this couldn't be further from the truth. Yes, North Dakota is the only state in the Union to have the benefit of this law, but it makes us the true innovators in the practice of pharmacy. Pharmacists from other states are constantly approaching those from North Dakota to "pick their brains" about the new expanded roles they are able to fill in providing patient-centered care. One example of this is the telepharmacy program. Through the wonderment of modern technology, communities that would otherwise not have pharmacy services are able to get medication and counseling without traveling long distances. Another program beginning to be utilized by independent pharmacies is Medical Therapy Management, where patients can come in for a full medication review to determine any issues with their medication regimen including drug interactions, duplication of therapy and even less expensive therapeutically equivalent alternatives. The large chains do not seek to offer expanded services to patients as they generally seek only to get them in the door to purchase other products. It is well known, and well publicized that these companies operate their pharmacies at a net profit loss as they are only offered to "get people in the door."

This brings me to my final point. There is nothing keeping Walmart and Target, or any other retailer, from opening a pharmacy under their roof. They simply must have 51% pharmacist ownership. The other 49% can be the large retailer; they could even subsidize the cost of the prescriptions to the advertised $4 price for these customers. The optical shops they have are privately owned, any banks they have located inside are separately owned entities. If they truly are so interested in customer service and care, they have options to serve the public in the communities they inhabit.

I have no plans to own an independent pharmacy in North Dakota. My husband (also a lifelong North Dakotan) and I, along with our 3 young children have made every effort to stay in North Dakota (including dealing with a 9 month stint of unemployment for my husband last year and his current underemployment for his level of education) and we plan to stay after I graduate next May. If this bill passes and the law changes, there will be even fewer high paying jobs in North Dakota for young professionals and we may have to look to another state for employment. If you are truly seeking to keep North Dakotans in the state after graduation, this is one opportunity to provide many necessary jobs to do just that.

M. pg 3

Again, I ask your support for the people of North Dakota. Please vote against HB1434.

Respectfully,

Michelle R. McKay

Doctorate of Pharmacy candidate, 2012
District 41 Fargo

Attachment N

2011 House Bill No. 1434
Testimony before the House Industry, Business, and Labor Committee
Presented by: Tim Wahlin, Chief of Injury Services
Workforce Safety & Insurance
February 15, 2011

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services at WSI. I am here on behalf of WSI to provide information to the Committee to assist in making its determination.

WSI has not taken a position on this proposed legislation. As a result, I appear to testify in a neutral position. We appear to simply deliver our data and explain.

WSI was contacted by Representative Kasper regarding information on billings for generic medications filled at Wal-Mart pharmacies outside of North Dakota. This same type of information was presented during the 2009 legislative session.

Wal-Mart does not subscribe or contract with US Script, our pharmacy benefit management company (PBM), which does create some difficulty. This prevents real time adjudiciation at the point of sale including the reimbursement levels. As of July 1, 2010 our administrative rules changed clarifying that all prescriptions were required to be billed online to our PBM. The third party billing company which Wal-Mart continues to use has refused to comply with our administrative rules and continues to bill in a paper format. Since they are non-compliant with our administrative rules, these invoices are returned to the billing company with instructions on how to come into compliance with the administrative rule. The combination of these two events has further decreased the number of prescriptions dispensed at a Wal-Mart pharmacy.

The spreadsheet that you have before you was prepared by WSI's Pharmacy Director.

We have broken down our generic prescriptions into two categories: Those that are contained on Wal-Mart's website describing their $4.00 generic program; and those generics that are not on that list. You will note that in the re-billing through Wal-Mart's PBM, WSI is not charged $4.00 for the qualifying medications.

The prescriptions dispensed at a Wal-Mart pharmacy were obtained from paper invoices sent by the third-party billing company that Wal-Mart uses. The time frame of these prescriptions are those dispensed between January of 2009 and September of 2009.

Immediately after the 2009 session, we instructed US Script, to pursue a contract with Wal-Mart. This was based on feedback that we had received from the Wal-Mart representatives during the 2009 session indicating they were receptive to the idea of contracting with WSI's PBM program. After repeated attempts we received notice that Wal-Mart had decided not to accept our contract.

Since the point of sale adjudication of prescriptions is vitally important to the proper application of pharmacy benefits, WSI contacted those injured workers who were utilizing a pharmacy not directly contracted through our PBM. The purpose of the contact was to switch our injured employees to a pharmacy that could properly bill for prescriptions online, in a real-time environment.

The vast majority of the injured workers who were contacted did indeed switch to a contracted pharmacy. This resulted in a substantial decrease in all prescriptions paper billed to the agency by the same third party billing company that Wal-Mart uses for their workers compensation billing.

Ironically, it is very likely that if Wal-Mart becomes an in-state provider, the increase in covered perscriptions will require their participation with our PBM. Should this occurs, these differences will be resolved.

In selecting comparative prescriptions dispensed at an in-state pharmacy, the medications and quantities had to be identical to validly conduct the comparison. A date of service chosen for the comparison likewise needed to be close to the date of service of the Wal-Mart pharmacy.

If you would be so kind as to refer to the spreadsheet I will explain this further. Under the $4.00 generic heading you will see that the first prescription listed is cyclobenzaprine, 10mg tablets, which were dispensed on February 5, 2009. A quantity of 20 tablets were dispensed for a 5 day supply. On that same date, the same medication was dispensed in a North Dakota pharmacy, again for a quantity of 20 tablets for a 7 day supply. The amounts that we were billed and the amounts that were paid are listed for purposes of comparison. The next prescription listed is for the medication tetracycline 500mg capsules. A quantity of 30 was dispensed for a 30 day supply. There were no prescriptions dispensed for this same medication within a reasonable time frame or with an exact quantity to make a comparison. Hence the N/A appears under the Date of Service column for the comparable North Dakota pharmacy.

The North Dakota side of the spreadsheet represents pharmacies across the state. These include independent pharmacies, chain pharmacies, clinic pharmacies, pharmacies owned by hospitals, pharmacies in urban areas and pharmacies in rural areas from across the state.

In the vast majority of the cases, WSI is being billed less from the comparable North Dakota pharmacy than from the Wal-Mart pharmacy. Of course, the amount billed and the amount paid are two different things entirely. Our PBM adjudicates these prescriptions based upon our fee schedule. As a result, the amount billed becomes irrelevant to us unless the amount billed is actually less than our fee schedule. In that case the prescription would be paid at the pharmacy's usual and customary price, which is the lower amount.

I would be happy to answer any questions that the committee might have.

Attachment O pg 1

Walmart $4.00 Generics

Date of Service	Medication	Quantity	Days Supply	Amount Billed	Amount Paid
2/5/2009	Cyclobenzaprine 10mg	20	5	$24.65	$24.65
2/16/2009	*Tetracycline 500mg	30	30	$8.19	$8.19
3/13/2009	Trazodone 100mg	30	30	$23.78	$23.78
3/17/2009	Tetracycline 500mg	30	30	$8.19	$8.19
3/18/2009	SMZ/TMP 800-160mg	6	3	$11.78	$5.76
3/20/2009	Ibuprofen 800mg	30	10	$12.84	$6.58
3/20/2009	*Indomethacin 25mg	21	7	$12.18	$8.88
3/25/2009	Cyclobenzaprine 10mg	30	20	$34.48	$34.48
4/9/2009	Albuterol Neb 0.083%	75	6	$23.00	$8.24
4/27/2009	Ibuprofen 800mg	30	7	$13.23	$13.23
4/30/2009	Cephalexin 500mg	30	10	$38.10	$9.41
5/1/2009	*Albuterol Neb 0.083%	75	6	$23.00	$8.24
5/6/2009	Sodium Sulfacetamide 10%	15	30	$9.57	$7.19
5/19/2009	*Tetracycline 500mg	30	30	$8.19	$8.19
5/22/2009	*SMZ/TMP 800-160mg	6	3	$11.78	$5.76
6/4/2009	Trazodone 100mg	30	30	$23.78	$23.78
6/7/2009	Ibuprofen 600mg	60	15	$17.36	$7.34
6/11/2009	*Cephalexin 500mg	12	4	$19.86	$6.76
6/15/2009	Tetracycline 500mg	30	30	$8.19	$8.19
6/29/2009	Naproxen 500mg	40	20	$45.54	$9.20
7/1/2009	Amoxicillin 500mg	21	7	$13.88	$7.69
7/13/2009	*Tetracycline 500mg	30	30	$8.19	$6.60
8/17/2009	Naproxen 500mg	30	15	$35.40	$8.15
9/24/2009	Naproxen 500mg	40	20	$45.54	$9.20
	* Excluded from totals			$409.17	$215.06

Comparable ND Pharmacy

Date of Service	Quantity	Days Supply	Amount Billed	Amount Paid
2/5/2009	20	7	$ 14.95	$ 6.33
N/A				
3/12/2009	30	30	$30.48	$7.13
3/2/2009	30	10	$ 8.00	$ 5.88
3/2/2009	6	3	$ 9.75	$ 5.76
3/20/2009	30	10	$ 20.12	$ 13.23
N/A				
3/25/2009	30	30	$ 11.62	$ 7.00
4/9/2009	75	3	$ 12.05	$ 8.24
4/23/2009	30	7	$ 14.95	$ 13.23
4/22/2009	30	10	$ 23.99	$ 9.41
N/A				
5/24/2009	15	7	$ 10.08	$ 7.19
N/A				
N/A				
6/4/2009	30	30	$ 8.95	$ 7.13
6/12/2009	60	30	$ 23.95	$ 7.34
6/15/2009	12	3	$ 14.20	$ 6.76
N/A				
6/24/2009	40	20	$ 52.40	$ 9.20
7/28/2009	21	7	$ 14.65	$ 7.69
N/A				
8/4/2009	30	15	$ 11.67	$ 8.15
9/24/2009	40	20	$ 18.35	$ 9.20
			$ 300.16	$ 138.87

Walmart Regular Generics

Date of Service	Medication	Quantity	Days Supply	Amount Billed	Amount Paid

Comparable ND Pharmacy

Date of Service	Quantity	Days Supply	Amount Billed	Amount Paid

1/19/2009	Oxycodone/APAP 7.5-325mg	120	30	$	201.72	$	62.96	1/26/2009	120	30	$	183.10	$	62.96
1/19/2009	Cyclobenzaprine 10mg	120	20	$	163.20	$	122.90	1/23/2009	120	30	$	115.95	$	13.01
1/23/2009	Tramadol 50mg	180	30	$	155.89	$	22.01	1/23/2009	180	30	$	150.94	$	22.01
2/5/2009	Hydrocodone/APAP 10-650mg	30	2	$	19.36	$	7.39	2/4/2009	30	5	$	17.19	$	7.39
2/9/2009	Hydrocodone/APAP 5-500mg	50	16	$	13.86	$	8.15	2/10/2009	50	12	$	19.69	$	8.15
2/10/2009	Tramadol 50mg	40	5	$	35.15	$	8.78	2/10/2009	40	5	$	17.35	$	8.78
2/13/2009	Morphine 30mg ER	60	30	$	96.51	$	30.75	2/26/2009	60	30	$	91.25	$	30.75
2/15/2009	*Hydrocodone/APAP 10-325mg	360	30	$	231.44	$	76.82	N/A						
2/17/2009	*Oxycodone/APAP 7.5-325mg	120	30	$	201.72	$	62.96	N/A						
2/17/2009	Cyclobenzaprine 10mg	120	20	$	163.20	$	122.90	2/20/2009	120	30	$	64.75	$	13.01
2/20/2009	Sertraline 100mg	60	30	$	151.63	$	10.84	2/20/2009	60	30	$	182.24	$	10.84
2/23/2009	Hydrocodone/APAP 10-325mg	120	20	$	80.87	$	28.94	2/23/2009	120	20		95.55	$	28.94
2/23/2009	Tramadol 50mg	180	30	$	155.89	$	22.01	2/23/2009	180	23	$	46.71	$	22.01
3/12/2009	Morphine 60mg ER	120	30	$	362.06	$	161.81	3/12/2009	120	30	$	161.81	$	161.81
3/13/2009	Tramadol 100mg	120	20	$	95.45	$	16.34	3/13/2009	120	30	$	93.96	$	16.34
3/13/2009	Methocarbamol 750mg	90	22	$	45.01	$	16.76	3/17/2009	90	30	$	39.95	$	16.76
3/14/2009	Hydrocodone/APAP 10-325mg	360	30	$	232.61	$	76.82	3/30/2009	360	30	$	248.08	$	76.82
3/14/2009	Gabapentin 300mg	90	30	$	112.82	$	15.40	3/13/2009	90	30	$	130.76	$	15.40
3/16/2009	Morphine 30mg ER	60	30	$	96.51	$	30.75	3/23/2009	60	30	$	91.25	$	30.75
3/16/2009	*Oxycodone/APAP 7.5-325mg	120	30	$	201.72	$	62.96	N/A						
3/16/2009	Cyclobenzaprine 10mg	120	20	$	163.20	$	122.90	3/17/2009	120	30	$	146.72	$	13.01
3/18/2009	Fentanyl Dis 25mcg	10	30	$	134.91	$	95.30	3/18/2009	30	10	$	131.03	$	95.30
3/21/2009	Hydrocodone/APAP 7.5-325mg	30	2	$	21.70	$	14.80	3/19/2009	30	4	$	23.55	$	14.80
3/23/2009	Hydrocodone/APAP 10-325mg	120	20	$	80.87	$	28.94	3/26/2009	120	20	$	87.06	$	28.94
3/24/2009	Sertraline 100mg	60	30	$	158.72	$	10.84	3/23/2009	60	30	$	68.45	$	10.84
3/25/2009	Hydrocodone/APAP 7.5-325mg	30	7	$	21.70	$	14.80	3/19/2009	30	4	$	23.55	$	14.80
3/27/2009	Hydrocodone/APAP 5-500mg	20	2	$	8.55	$	6.26	3/27/2009	20	3	$	8.70	$	6.26
3/30/2009	*Tramadol 50mg	21	1	$	22.73	$	5.76	N/A						
3/31/2009	*Tramadol 50mg	21	1	$	22.73	$	5.76	N/A						
4/1/2009	Hydrocodone/APAP 5-500mg	60	7	$	15.63	$	8.78	4/1/2009	60	8	$	16.81	$	8.78
4/5/2009	Tramadol 50mg	180	30	$	155.89	$	22.01	4/2/2009	180	30	$	51.08	$	51.08
4/9/2009	Propoxyphene/APAP 100-650	20	5	$	14.62	$	7.10	4/8/2009	20	2	$	10.99	$	7.10
4/10/2009	*Alprazolam 0.5mg	3	1	$	7.67	$	5.12	N/A						
4/10/2009	Hydrocodone/APAP 5-325mg	40	2	$	24.51	$	14.41	4/9/2009	40	20	$	33.49	$	14.41
4/13/2009	Hydrocodone/APAP 10-325mg	360	30	$	232.61	$	76.82	4/27/2009	360	30	$	249.29	$	76.82
4/15/2009	Hydrocodone/APAP 5-500mg	60	7	$	15.63	$	8.78	4/1/2009	60	8	$	12.99	$	8.78

4/15/2009	Morphine 60mg ER	120	30	$ 362.06	$ 161.81	4/6/2009
4/16/2009	Morphine 30mg ER	60	30	$ 96.51	$ 30.75	4/22/2009
4/16/2009	Fentanyl Dis 25mcg	10	30	$ 134.91	$ 95.30	4/14/2009
4/17/2009	*Propoxyphene/APAP 100-650	10	2	$ 9.82	$ 6.05	N/A
4/20/2009	Propoxyphene/APAP 100-650	30	7	$ 19.44	$ 8.15	4/20/2009
4/20/2009	Oxycodone/APAP 7.5-325mg	120	30	$ 201.72	$ 62.96	4/27/2009
4/20/2009	Cyclobenzaprine 10mg	120	20	$ 163.20	$ 13.01	4/23/2009
4/23/2009	Hydrocodone/APAP 10-325mg	120	20	$ 80.87	$ 28.94	4/23/2009
4/24/2009	Sertraline 100mg	60	30	$ 158.81	$ 10.84	4/30/2009
5/1/2009	Propoxyphene/APAP 100-650	20	5	$ 14.62	$ 7.10	5/12/2009
5/4/2009	Topiramate 25mg	60	20	$ 142.96	$ 16.72	5/5/2009
5/5/2009	Tramadol 50mg	180	30	$ 155.89	$ 22.01	5/5/2009
5/11/2009	*Tramadol 50mg	70	17	$ 57.77	$ 11.62	N/A
5/12/2009	*Nortriptyline 10mg	180	30	$ 67.61	$ 14.02	N/A
5/13/2009	*Hydrocodone/APAP 10-325mg	360	30	$ 232.61	$ 76.82	N/A
5/14/2009	*Morphine 60mg ER	120	30	$ 362.06	$ 56.51	N/A
5/18/2009	Fentanyl Dis 25mcg	10	30	$ 134.91	$ 95.30	5/18/2009
5/18/2009	Hydrocodone/APAP 5-500mg	40	6	$ 12.08	$ 7.52	5/18/2009
5/18/2009	*Oxycodone/APAP 7.5-325mg	120	30	$ 201.72	$ 62.96	N/A
5/18/2009	Cyclobenzaprine 10mg	120	20	$ 163.20	$ 122.90	5/11/2009
5/19/2009	Hydrocodone/APAP 5-500mg	50	16	$ 13.86	$ 8.15	5/20/2009
5/22/2009	Sertraline 100mg	60	30	$ 158.81	$ 10.84	5/20/2009
5/28/2009	*Tramadol 50mg	70	17	$ 57.77	$ 11.62	N/A
5/29/2009	Hydrocodone/APAP 10-325mg	120	20	$ 80.87	$ 28.94	5/23/2009
6/1/2009	Oxycodone/APAP 5-325mg	45	3	$ 17.57	$ 8.78	6/11/2009
6/2/2009	Hydrocodone/APAP 5-500mg	60	7	$ 15.63	$ 8.78	6/1/2009
6/2/2009	Hydrocodone/APAP 10-325mg	25	2	$ 20.80	$ 9.99	6/17/2009
6/5/2009	Tramadol 50mg	180	30	$ 155.89	$ 22.01	6/5/2009
6/9/2009	*Hydrocodone/APAP 10-325mg	360	30	$ 232.61	$ 76.82	N/A
6/11/2009	Tramadol 50mg	120	20	$ 95.45	$ 16.34	6/11/2009
6/11/2009	*Amitriptyline 10mg	80	30	$ 18.00	$ 6.77	N/A
6/12/2009	Oxycodone/APAP 5-325mg	30	2	$ 13.39	$ 7.52	6/12/2009
6/12/2009	Hydrocodone/APAP 7.5-325mg	30	2	$ 21.70	$ 14.80	6/9/2009
6/12/2009	Hydroxyzine Pamoate 25mg	15	3	$ 8.09	$ 6.18	6/18/2009
6/13/2009	Morphine 60mg ER	120	30	$ 362.06	$ 91.81	N/A
6/15/2009	Oxycodone/APAP 7.5-325mg	120	30	$ 364.92	$ 62.96	6/23/2009
6/15/2009	Cyclobenzaprine 10mg	120	20	$ 163.20	$ 122.90	6/8/2009

120	30	$ 161.81	$ 161.81
60	30	$ 88.49	$ 30.75
30	10	$ 141.50	$ 95.30
30	7	$ 23.95	$ 8.15
120	20	$ 204.75	$ 62.96
120	30	$ 146.72	$ 13.01
120	20	$ 87.06	$ 28.94
60	30	$ 29.68	$ 10.84
20	3	$ 11.07	$ 7.10
60	30	$ 157.95	$ 16.72
180	23	$ 36.10	$ 22.01
10	30	$ 131.34	$ 95.30
40	7	$ 12.70	$ 7.52
120	30	$ 64.75	$ 13.01
50	12	$ 27.45	$ 8.15
60	30	$ 46.95	$ 10.84
120	20	$ 87.06	$ 28.94
45	12	$ 15.79	$ 8.78
60	7	$ 16.06	$ 8.78
25	3	$ 21.95	$ 9.99
180	30	$ 42.29	$ 22.01
120	30	$ 52.65	$ 16.34
30	3	$ 13.51	$ 7.52
30	6	$ 12.35	$ 12.35
15	4	$ 14.24	$ 6.18
120	30	$ 169.92	$ 62.96
120	30	$ 64.75	$ 13.01

6/15/2009	*Tramadol 50mg	70	17	$	57.77	$	11.62	N/A				
6/18/2009	Fentanyl Dis 25mcg	10	30	$	134.91	$	95.30	6/17/2009	10	30	$ 139.95	$ 95.30
6/18/2009	Morphine 30mg ER	60	30	$	96.51	$	30.75	6/19/2009	60	30	$ 36.09	$ 30.75
6/19/2009	*Oxycodone/APAP 5-325mg	25	2	$	11.98	$	7.10	N/A				
6/21/2009	Sertraline 100mg	60	30	$	158.54	$	10.84	6/23/2009	60	30	$ 68.45	$ 10.84
7/1/2009	Hydrocodone/APAP 5-325mg	30	3	$	19.63	$	12.06	7/6/2009	30	5	$ 16.17	$ 12.06
7/6/2009	Tramadol 50mg	180	30	$	155.89	$	22.01	7/7/2009	180	30	$ 125.41	$ 22.01
7/8/2009	*Tramadol 50mg	70	17	$	57.77	$	11.62	N/A				
7/10/2009	*Hydrocodone/APAP 10-325mg	360	30	$	232.61	$	76.82	N/A				
7/10/2009	*Tramadol 50mg	88	11	$	72.84	$	13.32	N/A				
7/14/2009	Hydrocodone/APAP 5-500mg	40	6	$	12.08	$	7.52	7/13/2009	40	7	$ 11.88	$ 7.52
7/15/2009	Morphine 30mg ER	60	30	$	96.51	$	30.75	7/6/2009	60	30	$ 108.40	$ 30.75
7/15/2009	*Morphine 60mg ER	120	30	$	362.06	$	91.81	N/A				
7/16/2009	Fentanyl Dis 25mcg	10	30	$	134.91	$	95.30	7/16/2009	10	30	$ 131.34	$ 95.30
7/17/2009	*Nortriptyline 10mg	180	30	$	67.61	$	14.02	N/A				
7/20/2009	*Oxycodone/APAP 7.5-325mg	120	30	$	201.72	$	62.96	N/A				
7/20/2009	Cyclobenzaprine 10mg	120	20	$	163.20	$	13.01	7/10/2009	120	30	$ 64.75	$ 13.01
7/20/2009	Sertraline 100mg	60	30	$	150.34	$	10.84	7/20/2009	60	30	$ 46.95	$ 10.84
7/24/2009	Hydrocodone/APAP 10-325mg	120	30	$	80.87	$	28.94	7/21/2009	120	20	$ 54.99	$ 28.94
7/27/2009	Hydrocodone/APAP 5-500mg	50	16	$	13.86	$	8.15	7/22/2009	50	14	$ 15.40	$ 8.15
8/4/2009	Tramadol 50mg	180	30	$	155.89	$	22.01	8/4/2009	180	30	$ 125.41	$ 22.01
8/4/2009	*Tramadol 50mg	70	17	$	57.77	$	11.62	N/A				
8/17/2009	Hydrocodone/APAP 5-500mg	30	3	$	10.32	$	6.89	8/17/2009	30	5	$ 16.50	$ 6.89
8/17/2009	Cephalexin 500mg	40	10	$	54.54	$	10.88	8/24/2009	40	10	$ 29.29	$ 10.88
8/18/2009	Ciprofloxacin 500mg	28	14	$	135.83	$	7.71	8/3/2009	28	14	$ 15.99	$ 7.71
8/18/2009	Hydrocodone/APAP 5-500mg	40	6	$	12.08	$	7.52	8/19/2009	40	5	$ 11.88	$ 7.52
8/24/2009	Fentanyl Dis 25mcg	10	30	$	134.91	$	95.30	8/21/2009	10	30	$ 135.38	$ 95.30
8/27/2009	Hydrocodone/APAP 5-500mg	50	12	$	13.86	$	8.15	8/28/2009	50	6	$ 24.85	$ 8.15
8/28/2009	*Ibuprofen 600mg	270	60	$	19.60	$	15.55	N/A				
9/4/2009	Tramadol 50mg	180	30	$	155.89	$	22.01	9/3/2009	180	30	$ 123.95	$ 22.01
9/8/2009	*Hydroxyzine Pamoate 25mg	80	6	$	26.56	$	11.28	N/A				
9/10/2009	Oxycodone/APAP 5-325mg	80	6	$	27.36	$	11.72	9/2/2009	80	10	$ 21.62	$ 11.72
9/16/2009	Hydrocodone/APAP 5-500mg	60	6	$	15.63	$	8.78	9/16/2009	60	8	$ 16.19	$ 8.78
9/22/2009	Hydrocodone/APAP 5-500mg	50	12	$	13.86	$	8.15	9/17/2009	50	7	$ 11.19	$ 8.15
9/23/2009	Hydrocodone/APAP 5-500mg	40	5	$	12.08	$	7.52	9/14/2009	40	4	$ 16.62	$ 7.52
9/24/2009	Hydrocodone/APAP 7.5-500mg	40	3	$	20.43	$	8.59	9/17/2009	40	5	$ 14.09	$ 8.59
9/26/2009	Tramadol 50mg	40	5	$	35.15	$	8.78	9/28/2009	40	10	$ 7.65	$ 7.65

* Excluded from totals	$ 8,578.78 $ 2,963.00	$ 5,887.47 $ 2,284.27

Attachment P

TESTIMONY
H.B. #1434
TOM WOODMANSEE
NORTH DAKOTA GROCERS ASSOCIATION

The Board of Directors of the North Dakota Grocers Association does **OPPOSE** the passage of H.B. #1434 as it is written. With many of our grocery retailers now providing lease space for pharmacies, we do not believe it is necessary to change North Dakota law simply because a select few "large" retailers do not like it.

The opportunity exits now for any retailer to have a pharmacy simply by leasing out the space. There are other reasons they are not doing so and only those retailers can answer that question.

The vast majority of North Dakota's pharmacies are locally owned and the average prescription drug prices in North Dakota are still among the lowest in the country. Passage of this bill **will have** an impact on main street business and especially in our rural areas.

Mr. Chairman and members of the House Industry Business & Labor Committee, NDGA does hope you will recommend a **DO NOT Pass on H.B. #1434**.

Thank you for allowing me to submit testimony on H.B. #1434.

Attachment Q

From: Marilyn Schoenberg, Lobbyist for Natural Health and Healing. 207 N. Elm St., Hebron, ND 58638. 701-260-8633

LETTER TO THE EDITOR OF THE DICKINSON PRESS

(PHARMACISTS ARE KEY TO GETTING OFF DRUGS)

Why in the world is the American public clamoring for cheaper drugs from Walmart? I thought we were supposed to be getting "off" drugs in this country! Our government is spending billions of dollars on fighting the War on drugs while adults are teaching kids by their examples that drugs are the answer. (53)

The legal system severely punishes drunk drivers, but most people going into treatment get prescribed a lot of drugs from doctors.

In the last twenty years, I, myself, have gone off over twenty prescription drugs - no thanks to doctors; but lots of thanks to "pharmacists." I read, I studied, I did research on the internet, but most of all I questioned and interviewed "pharmacists". You don't have to make an appointment to see a pharmacist; and they will talk to you for free. (63)

my "local" and "independent"

We live in a drug culture; we live in a death culture of mass addiction and pandemic levels of suicide. Medical doctors, and especially psychiatrists, are the worst drug pushers in America; but pharmacists can help save this nation, the same way they helped me save my life. (48)

Oct. 29, 2010 a Friday

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America can flourish and grow

Thanks, Bob - for what you're doing for all of us, Marilyn 260-8633

Happy Valentine's Day mo21411