

To: House Health and Human Services Committee

From: Peter Obetz, Vice President of Legislation  
Kansas Trial Lawyers Association

Re: 2004 HB 2538

Date: February 11, 2004

Chairman Jim Morrison and members of the House Health and Human Services Committee. Thank you for the opportunity to submit comments in opposition to HB 2538. My name is Peter Obetz and I currently serve as Vice President of Legislation for the Kansas Trial Lawyers Association, KTLA. KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system.

KTLA supports the purpose of HB 2538 as related to allowing for the donation of unused prescription drugs so that the unused prescription drugs can be used by others instead of being discarded.

However, there are three basic areas of concern: (1) clarification concerning expiration dates; (2) immunity; and (3) definition of "bad faith".

First, we submit that a clarification of Section 1 (b) should be made so that it is clear that prescription drugs can be donated only before their expiration date. The language in HB 2538 appears to allow donation of prescription drugs either earlier than six months before the expiration date, or later than six months after the expiration date. We have attached a balloon with our proposed amendments which we request you approve.

Second, Sections 3(a) and (b) provide immunity for essentially everyone in the chain. HB 2538 expressly gives a pharmaceutical manufacturer immunity for criminal prosecution, tort liability or other civil action for injury or death. On behalf of Kansas consumers, KTLA objects to blanket immunity for a pharmaceutical manufacturer who sells or donates prescription drugs which kill or injure Kansas consumers. Immunity for a pharmaceutical manufacturer - regardless of whether it sells or donates the prescription drug which kills or injures Kansas consumers -- violates public policy. This immunity provision is a significant departure from existing public policy and tort law in the State of Kansas and therefore is opposed by the Kansas Trial Lawyers Association.

KTLA does not object to immunity for the state board of pharmacy, the secretary of health and environment, any private individual or corporation other than a pharmaceutical manufacturer, or a governmental entity that donates prescription drugs to the repository program. The objection is limited to immunity being given to pharmaceutical manufacturers in Sections 3 (a) and (b).

Third, HB 2538 refers to donating, accepting or dispensing drugs in “bad faith”. However, “bad faith” is not defined. We submit that a definition of “bad faith” should be included in Section 1 and should include altering, changing, modifying, reformulating, tampering and misbranding.

Thank you for the opportunity to express our concerns about HB 2538.