

Statement of

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Before the,

Committee on Government Reform  
Subcommittee on Criminal Justice, Drug Policy and Human Resources  
United States House of Representatives

Regarding

“Organized Retail Theft: Conduit of Money Laundering”

Violations of Texas Health and Safety Code Chapter 431

Houston, Texas

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I am Frank Borden, Assistant Director, Manufactured Foods, Division, Bureau of Food and Drug Safety with the Texas Department of Health (TDH). TDH is mandated by Texas Health and Safety Code, Chapter 431, Texas Food, Drug, and Cosmetic Act (Act) to license and inspect of all firms in Texas that are engaged in the manufacture and distribution of foods, drugs, medical devices, and cosmetic products. The Act provides authority for inspections, detentions, condemnation, record verification, enforcement, and criminal, civil, and administrative penalties. The Act also allows TDH access to copy and verify all records pertaining to infant formula.

December 4, 2002, Texas Governor Rick Perry asked the Bureau of Food and Drug Safety, to attend the WIC Advisory Committee concerning theft of powdered infant formula and other high priced consumer products in Texas. The committee is comprised of Federal, State, and local law enforcement agencies and industry. The committee attempted for several months to curb the theft and illegal redistribution and repacking of these high priced consumer products such as infant formula, prescription and over-the-counter drugs, and medical devices back into commerce. At the December meeting, the Bureau presented to the committee the authorities granted to TDH by our Act and offered our assistance to the WIC Committee. As a result, TDH began coordinating with various local, state, and federal law enforcement agencies through out Texas.

Since then, TDH has been worked closely with law enforcement on the unlicensed distributors. Our main concern is the possible contamination, adulteration, tampering, and misbranding of the stolen infant formula that could affect the safety of Texas children who are enrolled in the WIC program. One child injured is one too many.

Law enforcement develops leads and identifies unlicensed distributors for TDH. TDH staff accompanied by law enforcement officers then inspects these distribution facilities. There are many organized infant formula theft operations. We have found formula throughout Texas stored in filthy garages, mini storage facilities, vehicles, and bars. Products are repacked and lot numbers are changed or removed. In some cases, the products are contaminated with insects and/or are out of date. To date, over one million dollars of adulterated infant formula is now in secure locations under the protection of TDH.

TDH has spent thousands of hours investigating these distributors. Of the firms identified by law enforcement, none were licensed, and none could provide product records that verify the source of the infant formula. Evidence indicates that the distributors were making up to a million dollars or more a year. Many of them were enrolled on state welfare programs such as Medicaid, the food stamp program and were declaring incomes to the IRS of less than \$10,000 a year. In addition, some had visas that were expired for up to ten years while collecting government benefits.

As of November 2003, TDH has referred about 40 cases to the Texas Attorney General's Office for civil prosecution. Civil penalties for violation of the Act are up to \$25,000 a day per violation. The Texas Attorney General, John Abbott has appointed three special prosecutors to file these cases on behalf of TDH.

In 2003, the 78<sup>th</sup> Texas Legislative Session increased the criminal penalties for violations of the Act from a misdemeanor for the first time conviction to a state jail felony for the second conviction. However, District Attorney's are reluctant to prosecute these violations.

Since TDH started conducting these inspections with law enforcement, we have seen a decrease of distribution of the stolen infant formula back into commerce in Texas through unlicensed distributors. However the thefts continue. Thieves are now selling the infant formula, high-priced drug, and device items at flea markets. In 1999 an Act, Chapter 35 of the Business and Commerce Code became law. It states that infant formula, drugs (over-the-counter & prescription), and contact lenses cannot be distributed at flea markets. Due to the extraordinary number of flea markets through out the state, TDH does not have the resources to conduct investigations at all flea markets. In addition, TDH is now investigating pawnshops that are buying infant formula and over-the-counter drugs from thieves and selling the products at flea markets. A more recent development is the discovery of infant formula for sale in the classified sections of local newspapers.

Our investigations have also revealed that stolen infant formula is going to unlicensed distributors who have moved from Texas and set up their operations in other states. In addition, the product is readily available through Internet auction sites. This is a national problem. There is a need for strict consistent legislation concerning the distribution of infant formula, drugs, and medical devices in all states.