

MINUTES OF THE House COMMITTEE ON Agriculture and Livestock

The meeting was called to order by the Chairman, Bill Fuller at
Chairperson

9:00 a.m. on February 28, 1984 in room 423-S of the Capitol.

All members were present except: Representatives Apt and Arbuthnot, who were excused.

Committee staff present:

Raney Gilliland, Legislative Research Department
Norman Furse, Revisor of Statutes Office
Kathleen Moss, Committee Secretary

Conferees appearing before the committee:

Harlan Priddle, Secretary of Agriculture
Don Jacka, Assistant Secretary of Agriculture
Brace Rowley, Commissioner, Dairy Division, State Board of Agriculture
Ken Wilke, Attorney, State Board of Agriculture
Jim Moore, Associated Milk Producers, Inc.

The meeting was called to order by the Chairman, Bill Fuller, who announced that this begins two days of hearings on three bills dealing with dairy products. Conferees were encouraged to respond to any of the bills. HB 3055 concerns establishment of an Artificial Dairy Products Labeling Act. HB 3072 is a repealer, and HB 3073 deals with licensing and gallonage fees.

Secretary of Agriculture, Harland Priddle was recognized. He explained that HB 3072 and HB 3073 were clean up bills, while HB 3055 is something quite different. He distributed a history of the Filled Milk Act. (See Attachment 1.)

Don Jacka, Assistant Secretary of Agriculture, analyzed the three bills and explained their effects on Kansas industry, especially the dairy industry. He noted that filled milk is a dairy product which has something added. It is not pure. In 1927, legislation was passed to protect consumers from fraud. The Federal Milk Act was passed in 1923. Since 1927 Kansas had the Filled Milk Act in force. Later came the Filled Dairy Products Act. The 1927 law was taken to Court in 1972, and the Federal Filled Milk Act was found unconstitutional. Interim studies were held in 1972, 1973 and 1974, and there was legislation passed which addressed filled dairy products.

In August, 1983, the Federal District Court found the Filled Dairy Products Act unconstitutional in the State of Kansas. The decision allowed any and all mixtures of milk and dairy products into the State of Kansas. He said that HB 3072 would repeal the present statute, and noted that its passage and the court decision would allow dairy products with a mixture of something else to be sold in Kansas. Ice creams sold and manufactured must be registered in the state. By repealing the Dairy Products Act, many more products than pure ice cream will come into the state for sale. Present law requires gallonage tax on ice cream and this legislation would apply the same registration for frozen dairy desserts or mixes. Those fees would be \$70 for ice cream and dairy dessert manufacturers. Retailers' fees would be \$40.

Questions were answered by Brace Rowley, Commissioner for the Dairy Division of the State Board of Agriculture, and Ken Wilke, Attorney for the State Board of Agriculture. Licensing, sanitation, definitions of various products, and inspections were discussed.

Harlan Priddle discussed HB 3055, stating that the bill will require the most committee work. He noted the market has grown dramatically in the last decade, and that now five percent of the cheese has been replaced by imitation cheese, which results in the loss of farm income. There are a number of products that look, feel and taste like

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Agriculture and Livestock,
room 423-S, Statehouse, at 9:00 a.m.~~pm~~ on February 28, 1984

dairy products. He noted that when the federal act was found unconstitutional, the industry was left wide open. He stated that HB 3055 is basically a first step and merely a vehicle or starting place for a Labeling Act for the State of Kansas.

Don Jacka said that the intent of HB 3055 is to protect the consumer. He explained that anything can be mixed with milk and sold across the counter and since there is no provision for labeling, the consumer does not know what he is getting. He explained that the definition section speaks of artificial instead of imitation because that is the way federal standards list them.

Jim Moore appeared for the Associated Milk Producers, Inc. He pointed out that there are artificial and imitation dairy products being sold in Kansas, and that there is no prohibition on the filled dairy products. He stated he would like to have labeling requirements and a designation of real dairy products. He expressed concern with the words "artificial" and "imitation" and suggested an emblem or symbol to recognize real dairy products. He noted there is a "real seal" emblem used over most of the nation.

The Chairman adjourned the meeting at 10:00 A.M. The next meeting will be Wednesday, February 29, 1984, 9:00 A.M., Room 423-S.

FILLED MILK HISTORY

- 1927 Filled Milk Law enacted K.S.A. 65-707(E)(2)
- 1940 FMA upheld - Carolene Products v. Mohler, 152 K.2
- 1943 FMA upheld - State ex rel. v. Sage Stores, 157 K.404
- 1944 FMA upheld - US Supreme Court, Sage Stores v. Kansas, 323 U.S. 32
- 1953 Filled Dairy Products Act, K.S.A. 65-725 et seq. enacted
- 1972 Federal Filled Milk Act declared unconstitutional
- 1975 Milnot appeared in Topeka - AG asked to enforce Act
- 2/2/76 AG opinion 76-52 - refused to find FDPA unconstitutional
- 8/2/76 State ex rel. v. The Milnot Co. filed - Shawnee Co. Dist. Ct., Case No. 131736
- 4/77 SB 453 introduced in Legislature - Change FDPA to label Act
- 1977 (Summer) Special Interim Committee on Agriculture & Livestock. Proposal No. 4 "Filled Milk and Filled Milk Products." Proposal noted existence of current litigation - suggested more aggressive enforcement (p. 17)
- 10/4/77 Win Schulers, Inc., v. W. W. Duitsman, et al., Shawnee Co. Dist. Ct., Case No. 77-CV-0768
- 12/5/77 Presto Food Products Inc. v. W. W. Duitsman, et al., Shawnee Co. Dist. Ct., Case No. 77-CV-958
- 5/19/80 State ex rel. v. Milnot Co., FDPA constitutionality upheld. Appeal taken by Milnot but appeal withdrawn in Nov., 1980.
- 7/11/80 Win Schuler Case dismissed by Win Schuler - product withdrawn
- 9/11/80 Presto Food Products Case dismissed - product reformulated
- 1981 HB 2325 - change exemption on proprietary food compounds
HB 2353 - Repeal FDPA
Hearings on bill 3/4/81 - no other hearings
Bills carried over into 1982 session - no further action

Attachment 1

FILLED MILK HISTORY (Continued)

12/7/81 Strehlow v. Kansas State Board of Agriculture filed Shawnee Co. Dist. Ct.

12/23/81 Temporary Restraining Order issued prohibiting sale of Meadow Fresh

1/19/82 General Foods representatives met with Dairy Commissioner; advised product illegal in Kansas but statute in litigation

4/15/82 Shawnee Co. Dist. Ct. finds FDPA unconstitutional

5/11/82 Appeal filed by Board in Strehlow

5/14/82 General Foods Corp. v. Priddle, et al., filed Fed. Dist. Ct., Case No. 82-4111

5/19/82 Federal Court issues Temporary Restraining Order against agency

6/7-8/82 Trial in General Foods case

10/1/82 Kraft Foods v. Priddle filed in Federal Dist. Ct.

1/13/83 Ks. Supreme Ct. ruled in Strehlow - FDPA unconstitutional as applied to Meadow Fresh

1983 Session HB 2162 - virtually identical to 1981 HB 2372
HB 2372 - changes FDPA to labeling act

8/9/83 General Foods Case - rules FDPA unconstitutional

9/9/83 Kraft Foods Case dismissed as moot

10/7/83 General Foods filed Attorney's Fees Petition