

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by Representative Robert H. Miller at
Chairperson

1:30 a.m./p.m. on March 15, 1984 in room 526S of the Capitol.

All members were present except:

Representative Roe

Committee staff present:

Raney Gilliland, Research Department
Mary Torrence, Revisor of Statute's Office

Conferees appearing before the committee:

Representative Bill Fuller
Nancy Kantola, Kansas Cooperative Council
Jim Reeves, Mid-America Dairymen
Virginia Benton
Jim Moore, Associated Milk Producers
Ardeth Sauerwein
Mike Seck
Michael Ziebell, National Frozen Pizza Institute
Gary Dilweg, Schreiber Foods, Inc.

The meeting was called to order by Chairman Miller. He called attention to the agenda and asked members to remove SB118 from their agenda as it had been referred to this committee mistakenly.

HB3055 - Dairy Labeling

Representative Fuller gave testimony on the bill which would require labeling on imitation dairy products marketed in Kansas. See attachment A. An amendment was suggested. See attachment B.

Nancy Kantola, Kansas Cooperative Council, had copies of her testimony distributed as she had to leave. See attachment C.

Jim Reeves, Mid-America Dairymen, gave testimony which strongly supports the proposition that all products made in semblance of dairy products, but which are not real dairy products, be labeled as imitation. See attachment D.

Virginia Benton, Lebo, Kansas, gave testimony in support of the bill. Since filled milk is now allowed, Kansas consumers will be exposed to a deluge of imitation dairy products. These consumers have a right to know what they are buying. See attachment E.

Jim Moore, Division Manager - Associated Milk Producers, gave testimony in support of the bill. The need for this legislation developed when the Filled Dairy Products Act was declared unconstitutional in 1983 and resulted in the need to repeal both the Filled Dairy Product Act and the Filled Milk' Act. See attachment F.

Marjorie Warda, an instructor in Consumer Economics at Bethel College in Newton, gave testimony in support of the bill. She told the committee she concerned about the nutritional value of the imitation products. **J.**

Ardeth Sauerwein gave testimony in support of HB3055 because dairy farmers feel they need better labeling for dairy products. He said he was not opposed to imitation products, but the products need to be labeled so the consumer knows what he is purchasing.

CONTINUATION SHEET

Minutes of the F&SA Committee on March 15, 1984

There was discussion about the Minnesota and the New York law and how this bill was like them.

Mike Seck, an attorney with Fisher, Patterson, Sayler and Smith in Topeka, gave testimony in opposition to this bill on behalf of General Foods and Kraft. See attachment G.

There was discussion about federal preemption referred to in Mr. Seck's testimony. Also discussed was the federal definition of "imitation" and "substitute".

Michael Ziebell, National Frozen Pizza Institute, gave testimony in opposition to the bill. Non-uniform labeling requirements needlessly create costs for producers and consumers and serve to confuse the consumer. See attachment H.

Gary Dilweg, Director of Government Affairs for Schreiber Foods, Inc., gave testimony in opposition to the bill. See attachment I. He told the committee that he felt this bill would be in violation of the federal law.

When asked if he were an attorney, Mr. Dilweg stated that he was a former Wisconsin legislator. Mr. Dilweg stated that bills like this would create different labeling for each state which would be a problem and an economic factor.

Hearings were concluded on HB3055.

Chairman Miller asked for the committees attention concerning a bill draft which Representative Bob Frey has asked the committee to introduce dealing with a voluntary program of vehicle, trailer and semi-trailer inspections.

Representative Peterson made a motion, seconded by Representative Vancrum, to introduce Rep. Frey's bill. The motion carried.

Representative Ott made a motion, seconded by Representative Barr, to adopt the minutes of the March 13 & 14 meeting. The motion carried.

The Chairman explained that the parimutuel hearings were to be held on Monday and because of the time frame proponents and opponents will be given one hour each.

The meeting was adjourned.

BILL FULLER
REPRESENTATIVE, 107TH DISTRICT
CLOUD AND OTTAWA COUNTIES
MILTONVALE, KANSAS 67466



TOPEKA

HOUSE OF
REPRESENTATIVES

March 15, 1984

COMMITTEE ASSIGNMENTS
CHAIRMAN: AGRICULTURE AND LIVESTOCK
MEMBER: INSURANCE
TRANSPORTATION

STATEMENT BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS
COMMITTEE CONCERNING HB 3055, WHICH ESTABLISHES LABELING
REQUIREMENTS FOR IMITATION DAIRY PRODUCTS SOLD IN KANSAS

Mr. Chairman and members of the Committee, I appreciate the opportunity to testify and thank you for holding hearings on HB 3055, which would require labeling on imitation dairy products marketed in Kansas.

In August, 1983, the Federal District Court found the "Filled Dairy Products Act" unconstitutional in the State of Kansas. This decision allows any and all mixtures of milk and dairy products to be marketed in Kansas. A "filled" dairy product is any dairy product with something else added, such as oil or flavoring. As a result of this court decision, Kansas is being flooded with artificial dairy products. Many of these products look, feel and taste like dairy products. HB 3055 is intended to protect the consumer by requiring labeling so that the consumer knows what he is buying. HB 3055 does not prohibit the sale of any dairy-like product in the state. Since milk and dairy products have gained the reputation of being a basic, high quality food group since the beginning of mankind, it seems reasonable to me that consumers be informed about artificial dairy products, especially since many of these artificial products are found in the dairy case in the supermarkets and often have the

Atch. A

words "milk" or "dairy" as a part of their trade name.

At this time I would like to discuss three of the concerns expressed on the House floor concerning this legislation. First, there were charges that the labeling requirements would consume too much space on the product packaging. This week I acquired some labels approved in Minnesota, which HB 3055 was patterned after. You can see that the labeling requirements are compact and are compatible to the identification and packaging of the product.

Another concern was a part of the enforcement provision on Lines 60 to 63: "Any person violating or failing to comply with any provision of this act or any authorized rule and regulation promulgated thereunder shall be deemed guilty of a Class B misdemeanor." Many other laws already on the books have a similar criminal penalty for violation. In fact, this House recently approved overwhelmingly, legislation to prevent the "bait and switch" practice in selling food, which had a similar criminal penalty section. I recognize that different attorneys have different philosophies on penalties and law. However, I encourage you not to strip the enforcement powers from this bill and tie the hands of the enforcement agency. We do not want the State Board of Agriculture exhausting a great deal of time or money in defending this law.

In my opinion, the only legitimate concern expressed on the House floor was made by Rep. Justice concerning the application of the penalty for an individual who possesses an imitation dairy product. Lines 57 and 58 of the bill reads: "It shall be unlawful for any person, directly or indirectly, to knowingly manufacture, sell, exchange or possess an imitation dairy product." It was

not the intent to jeopardize any individual for possession. The intent was to deal with possession on store shelves and warehouses. However, to completely eliminate the possibility of an individual being prosecuted for possession, I am offering you a suggested amendment which I recommend that you make to this bill. The amendment only addresses the manufacturing and selling of the product.

In closing, I want to make these points. (1) Passage of this legislation is important at this time before the state becomes completely saturated with artificial dairy products. (2) Workable enforcement provisions must be maintained in this bill. (3) Labeling requirements are reasonable in that they do not require excessive package space, nor need to distract from the attractiveness of the packaging. (4) The legislature has a responsibility to consumers in Kansas to give them the opportunity to, through labeling, know the product they are purchasing.

I remind you that consumers do not have any paid lobbyists while multi-million dollar corporations have representatives with seemingly limitless funds to oppose such legislation.

Thank you, Mr. Chairman and Committee. I encourage the passage of HB 3055 and would attempt to respond to questions.

MINNESOTA'S NEW ARTIFICIAL DAIRY PRODUCTS ACT

The amended Minnesota statute relating to the manufacturing and sale of artificial dairy products was signed into law by Governor Perpich on May 20, 1983.

This new act, Senate File 755, now Chapter number 202, allows for the manufacture and sale of artificial dairy products after January 1, 1984 in Minnesota provided they are properly labeled.

Artificial dairy products are any food which by its composition, intended use, sensory qualities, physical properties, package or label description purports to resemble or imitate any dairy product.

Artificial dairy products must be labeled as follows:

1. Statement, "An Artificial Dairy Product" must appear on the upper 30% of the principle display panel of the package or container. The type size must be one half the size of the product name but not less than one quarter of an inch.
 2. The product name must be presented in bold face type and generally parallel to the base of the container.
 3. The principle display panel must state the difference in fat or oil used and the major difference in the basic ingredients used to replace nonfat milk solids.
 4. The nutritional panel must contain quantitative nutritional differences between the artificial dairy product and the dairy product it resembles in comparative columns in accord with the U.S.R.D.A.'s.
-

① AN ARTIFICIAL DAIRY PRODUCT

SHREDDED

② Imitation Low Moisture Part-Skim Mozzarella Cheese

③ MADE WITH SOYBEAN OIL AND CASEIN

NET WT. 8 OZ. 227 GRAMS

INGREDIENTS: WATER, CASEIN, PARTIALLY HYDROGENATED SOYBEAN OIL, SALT, KASAL LACTIC ACID, NATURAL FLAVOR, MODIFIED FOOD STARCH, SODIUM CITRATE, SORBIC ACID (PRESERVATIVE), SODIUM PHOSPHATE, GUAR GUM, ARTIFICIAL COLOR, VITAMIN A PALMITATE, MAGNESIUM OXIDE, FERRIC ORTHOPHOSPHATE, ZINC OXIDE, VITAMIN B₂, FOLIC ACID, PYRIDOXINE HCL (VITAMIN B₆), NIACINAMIDE, THIAMINE MONONITRATE (VITAMIN B₁), VITAMIN B₁₂.

④

NUTRITIONAL INFORMATION
SERVING SIZE: 1 OZ.
SERVINGS PER CONTAINER: 8

PERCENTAGE OF U.S.
RECOMMENDED DAILY
ALLOWANCES (U.S. RDA)

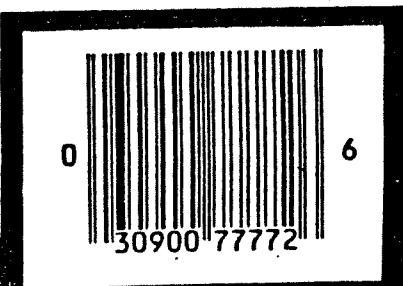
	OUR PRODUCT	LOW MOISTURE PART-SKIM MOZZARELLA	OUR PRODUCT	LOW MOISTURE PART-SKIM MOZZARELLA
CALORIES	90	80	10	20
PROTEIN	6g	8g	8	4
CARBOHYDRATE	1g	1g	0	0
FAT	7g	5g	0	8
*PERCENT OF CALORIES FROM FAT	72%	55%	0	0
*POLYUNSATURATED	3g	0g	20	20
*SATURATED	1g	3g	0	0
*CHOLESTEROL (0mg/100g)	0mg	(55mg/100g)	15mg	
VITAMIN A			8	4
VITAMIN C			0	0
THIAMINE			0	0
RIBOFLAVIN			10	8
NIACIN			0	0
CALCIUM			20	20
IRON			0	0

*THIS INFORMATION ON FAT AND CHOLESTEROL CONTENT IS PROVIDED FOR INDIVIDUALS WHO, ON THE ADVICE OF A PHYSICIAN, ARE MODIFYING THEIR TOTAL DIETARY INTAKE OF FAT AND CHOLESTEROL.

DIST. BY PREBLE CHEESE CO., P.O. BOX 610, GREEN BAY, WI 54305

K0558

KEEP REFRIGERATED



DIST. BY PEBBLE CHEESE CO
P.O. BOX 810, GREEN BAY, WI 54305

PERCENTAGE OF U.S. RECOMMENDED
DAILY ALLOWANCES (U.S. RDA)

NUTRITIONAL INFORMATION
PER SERVING COMPARISON
SERVINGS PER CONTAINER: 32

OUR
PASTEURIZED
PROCESS
CHEESE SPREAD
PRODUCT

32	80	PROTEIN
4	50	VITAMIN A
0	50	VITAMIN C
0	20	THIAMINE
0	60	RIBOFLAVIN
0	55	NIACIN
0	20	CALCIUM
0	40	IRON
10	10	CHOLESTEROL
30	100	SATURATED
30	100	POLYUNSATURATED
50	50	FROM FAT
50	50	FAT
20	20	CARBOHYDRATE
40	40	PROTEIN
70	70	CALORIES

OUR
PASTEURIZED
PROCESS
CHEESE SPREAD
PRODUCT

PERCENTAGE OF CALORIES
FROM FAT

PERCENT OF CALORIES
FROM FAT

PROTEIN

CALORIES

PROTEIN

CARBOHYDRATE

FAT

FROM FAT

POLYUNSATURATED

SATURATED

CHOLESTEROL

THIS INFORMATION ON FAT AND CHOLESTEROL CONTENT IS PROVIDED FOR INDIVIDUALS WHO, ON THE
ADVICE OF A PHYSICIAN, ARE MODIFYING THEIR TOTAL DIETARY INTAKE OF FAT AND CHOLESTEROL.

INGREDIENTS: WATER, PARTIALLY HYDROGENATED SOYBEAN OIL, CASEIN, REDUCED LACTOSE WHEY,
SODIUM CITRATE, LACTIC ACID, SALT, SUCROSE, SODIUM PHOSPHATE, NATURAL FLAVOR, SORBIC ACID
(PRESERVATIVE), ARTIFICIAL COLORING.

B0107



AN ARTIFICIAL DAIRY PRODUCT
MADE WITH SOYBEAN OIL AND CASEIN

Imitation Pasteurized Process Cheese Spread

NET WT. 32 OZ. (2 LBS.) 907g

Imitation Pasteurized Process Cheese Spread

NET WT. 32 OZ. (2 LBS.) 907g



AN ARTIFICIAL DAIRY PRODUCT

SHREDDED

Imitation
Cheddar
Cheese

MADE WITH SOYBEAN OIL AND CASEIN

NET WT. 8 OZ. 227 GRAMS

INGREDIENTS: WATER, CASEIN, PARTIALLY HYDROGENATED SOYBEAN OIL, NATURAL FLAVOR, KASAL, WHEY, SKIM MILK, SALT, LACTIC ACID, MODIFIED FOOD STARCH, SODIUM CITRATE, SODIUM PHOSPHATE, ACETIC ACID, SORBIC ACID (PRESERVATIVE), ARTIFICIAL COLOR, GUAR GUM.

NUTRITIONAL INFORMATION
PER SERVING COMPARISON
SERVING SIZE: 1 OZ.
SERVINGS PER CONTAINER: 8

PERCENTAGE OF U.S.
RECOMMENDED DAILY
ALLOWANCES (U.S. RDA)

	OUR PRODUCT	CHEDDAR CHEESE	OUR PRODUCT	CHEDDAR CHEESE
CALORIES	80	110	PROTEIN	10 15
PROTEIN	8g	7g	VITAMIN A	0 0
CARBOHYDRATE	1g	LESS THAN 1g	VITAMIN C	0 0
FAT	8g	10g	THIAMINE	0 0
*PERCENT OF CALORIES FROM FAT	87%	74%	RIBOFLAVIN	2 8
*POLYUNSATURATED	2g	0g	NIACIN	0 0
*SATURATED	1g	8g	CALCIUM	20 20
*CHOLESTEROL	10mg/100g/10mg	1105mg/100g/130mg	IRON	0 0

*THIS INFORMATION ON FAT AND CHOLESTEROL CONTENT IS PROVIDED FOR INDIVIDUALS WHO, ON THE ADVICE OF A PHYSICIAN, ARE MODIFYING THEIR TOTAL DIETARY INTAKE OF FAT AND CHOLESTEROL.

DIST. BY PREBLE CHEESE CO., P.O. BOX 810, GREEN BAY, WI 54305

KEEP REFRIGERATED

K0557



30900 70500

YURIKA

Nutri-Whey

Mixing Instructions: Add contents to 1 quart of warm (at 165°) water. Shake well until dissolved. Add sufficient cold water to make 2 quarts. Chill before serving.

Ingredients: Whey, Whey Protein Concentrate (replaces non-milk solids), Partially Hydrogenated Coconut Oil (replaces milk fat), Corn Syrup Solids, Sodium Caseinate, Mono and DiGlycerides, Sodium Citrate, Salt, Guar Gum, Dipotassium Phosphate, Carageenan, Natural and Artificial Flavors, Vitamin A Palmitate and Vitamin D.

NUTRITIONAL INFORMATION PER SERVING

	Whey	Oil
Serving Size	1 cup (8 oz.)	1 cup (8 oz.)
Servings per container	8	8
Calories	98	158
Protein	3 grams	8 grams
Carbohydrate	17 grams	11 grams
Fat	3 grams	3 grams

PERCENTAGE OF U.S. RECOMMENDED DAILY ALLOWANCES (U.S. RDA)

	Whey	Oil	Whey	Oil
Protein	8	78	Vitamin B ₁	25
Vitamin B ₂	10	4	Vitamin B ₆	4
Vitamin C	4	4	Vitamin B ₁₂	15
Thiamine (B ₁)	6	6	Phosphorus	20
Niacin (B ₃)	10	25	Magnesium	6
Iron	4	4	Zinc	4
Calcium	6	20	Pantoic Acid	10
Iron	4	4		

*Contains less than 2% of U.S. RDA of these nutrients.

**A NEW AGE
PRODUCT**



**YURIKA FOODS
CORPORATION**

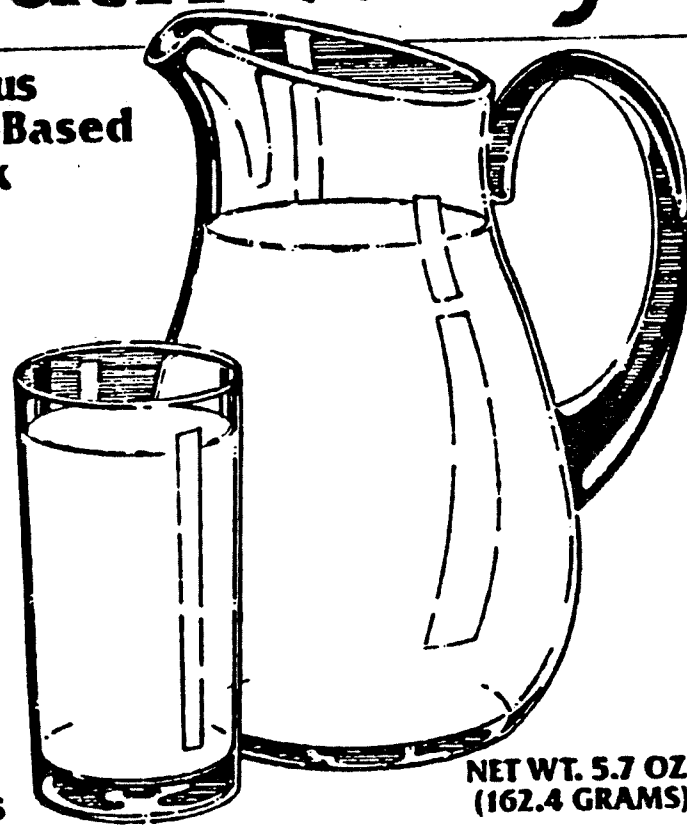
Distributed by
Yurika Foods Corporation
Suite 2985, 30800 Telegraph Rd.
Birmingham, MI 48010-3744
Processed by Plant No. 21-208

ARTIFICIAL DAIRY PRODUCT.
MADE WITH WHEY PROTEIN CONCENTRATE AND COCONUT OIL.

YURIKA

Nutri-Whey

**Delicious
Whey-Based
Drink**



**MAKES
2 QUARTS**

**NET WT. 5.7 OZ.
(162.4 GRAMS)**

0048 dietary use and predominantly so labeled; or (2) any dairy
0049 product flavored with chocolate or cocoa or enriched with vi-
0050 tamins when the nonmilk fats or oils contained in the product do
0051 not exceed the amount of cocoa fat naturally present in the
0052 chocolate or cocoa used and the food oil, not in excess of .01% of
0053 the weight of the finished product, used as a carrier of the
0054 vitamins.

0055 (e) "milk" means milk, skim milk, cream, lowfat milk, nonfat
0056 dry milk and any fluid derivative of the listed items.

0057 Sec. 3. It shall be unlawful for any person, directly or indi-
0058 rectly, to knowingly manufacture, ~~sell, exchange or possess~~ or sell an
0059 artificial imitation dairy product which does not adhere to the
0060 labeling requirements of this act. [Any person violating or failing
0061 to comply with any provision of this act or any authorized rule
0062 and regulation promulgated thereunder shall be deemed guilty
0063 of a class B misdemeanor.]

0064 Sec. 4. (a) The statement "an artificial imitation dairy prod-
0065 uct" must be indicated in the upper 30% of the principal display
0066 panel of the package or container of an artificial imitation dairy
0067 product. The statement shall not be less than $\frac{1}{2}$ of the size of the
0068 product name or $\frac{1}{4}$ of an inch or 18 point type, whichever is
0069 larger. The statement must be of similar type, style and color to
0070 the product name.

0071 (b) Artificial Imitation dairy products shall comply with the
0072 applicable federal requirements set forth in section 403 of the
0073 federal food, drug and cosmetic act and in sections 101 and 105 of
0074 title 21 of the code of federal regulations.

0075 (c) The product name of an artificial imitation dairy product
0076 must be presented in bold face type on the principal display
0077 panel and must be in lines generally parallel to the base of the
0078 container or package.

0079 (d) Every artificial imitation dairy product shall provide, on
0080 the principal display panel, a statement of the major differences
0081 between the artificial imitation dairy product and the dairy
0082 product it resembles. The information must be in a type size
0083 which is at least 25% of the name of the artificial imitation dairy
0084 product, nor less than $\frac{1}{8}$ of an inch. This information shall

Atch. B

Federal and State Affairs Committee
March 15, 1984
By Nancy E. Kantola, Exec. V.P.
Kansas Cooperative Council

My name is Nancy Kantola. I am Executive Vice President of the Kansas Cooperative Council. Our membership is made up of all types of co-ops, from grain marketing and supply, to PCAs and Federal Land Bank Associations, rural electric and telephone, and dairy. Today, I would speak on behalf of our dairy members to support HB 3055, known as the dairy products labeling bill.

I would add, the Committee of Kansas Farm Organizations voted to support this bill, but our legislative agent could not be here to testify today.

We who represent farm organizations are often told to "get our act together." We frequently hear and read that farmers and consumers are adversaries.

This proposed legislation, HB 3055, is an excellent example of farm organizations and consumers working together.

Whether farmers produce red meat, dairy products, corn or soybeans, all have an interest in having consumers know what they're getting for their money.

The argument has been raised that many artificial or imitation dairy products contain soy - therefore, it follows that this will hurt soybean sales.

Not so. In fact, some diets restrict real dairy products. Some people may have budget restrictions which cause them to decide to buy the imitation product. Just as those who raise beef accept the fact that families often serve chicken to stretch their food dollar even if they might consider the T-bone a superior product, so

N.E. Kantola

dairy farmers recognize the place in the market for non-dairy products. This question came up a few years ago when one of our members, Land O'Lakes of Minneapolis, MN began marketing margarine. Reporters called to ask the reaction of dairy farmers, especially since Land O'Lakes had started as dairy only. The answer was: their market research report had shown substantial support, and many of their dairy farmers raised soybeans and need an outlet for their product.

The biggest need for this bill, however, is to allow the purchaser to make the choice ... to know what he or she is buying. We might get an argument over whether T-bones are superior to drumsticks, but we would surely be unhappy if we intended to purchase the one, only to discover when we got home and read the fine print, we had indeed purchased the other. I urge your support for 3055.

Thank you.

D

STATEMENT OF JAMES L. REEVES
IN BEHALF OF MID-AMERICA DAIRYMEN

Mid-America Dairymen strongly supports the proposition that all products made in semblance of dairy products, but which are not real dairy products, be labeled as imitation. Such a proposal does not prevent the consumer from choosing an ersatz or imitation dairy product, it simply informs her of the fact that she is receiving something other than a real dairy product when she makes her choice.

Many people do not read labels closely and to some the word "substitute" may mean that a product is as good as the original. The position of dairy products in the diet of the American population is well known. It is a position that has been earned over many years. It is one that dairymen and the dairy industry feels should be guarded jealously and that American consumers should realize that they are in truth receiving something less than the real thing when they buy an imitation product. Imitation labeling would assure this.

The fact that such a label is necessary has been illustrated recently by action of the Federal Food & Drug Administration who have decreed that the word "substitute" can no longer be used for a manufactured food made in semblance of a real food even though it may ostensibly be nutritionally equivalent in all areas except fat. By the same token USDA has proposed that frozen pizzas using imitation cheese be labeled as containing imitation cheese.

We also believe that such an imitation product should contain labeling as to proven nutritional equivalency. For example, it is a widely accepted fact among nutritionists that the calcium in milk is of much greater benefit than a chemical calcium taken in a manufactured product.

There are many indications that the same thing is true with proteins and the amino acids contained in milk versus chemical counterparts added to imitation products.

Mid-America Dairymen submits that the health of the dairy industry, and indeed the health of the American people is dependent upon such laws as this we consider today that informs Mrs. Consumer of what she is feeding her family and allows her to make a free choice.

We, therefore, support passage of this bill.

Atch. D

E

LABELING OF IMITATION DAIRY PRODUCTS

Since filled milk is now allowed, Kansas consumers will be exposed all of a sudden to a deluge of imitation dairy products. These consumers have a right to know what they are buying. We need the word IMITATION on these products to alert them; then, if they want to buy them, that's their business.

As a dairy farmer, I want them to buy the real product--- as a consumer, I want the product labeled so I won't unknowingly buy a product I feel cannot possibly be as nutritious as the REAL thing.

Virginia Benton

Virginia Benton
R.R. #2, Box 169
Lebo, Ks. 66856

Atch. E

F

STATEMENT BY JIM MOORE
TO THE
COMMITTEE FOR FEDERAL AND STATE AFFAIRS
IN SUPPORT OF H.B. 3055

Thank you for the opportunity to speak for H. B. 3055 as amended.

This bill was produced as the result of a need and prepared by the most knowledgeable people we have available.

The need developed when the Filled Dairy Products Act was declared unconstitutional in 1983 and resulted in the need to repeal both the Filled Dairy Product Act and the Filled Milk Act. This is currently being done.

The Filled Milk and Filled Dairy Product Acts prohibited certain products from being manufactured or sold in Kansas.

With the repeal of these laws there is no prohibition of any of these products being produced or sold within the state.

Since this allows many new products into the state, we need a way for the consumer to identify these products to make a decision if he or she wishes to buy a real dairy product or to select an imitation of his or her choice.

This bill was developed by Chairman Fuller with help from the staff of Secretary Priddle and with a great deal of input from Dairy Commissioners from Minnesota, Wisconsin and New York; each having similar dairy product labeling laws.

We have a bill here to fill a void left when we lost the Filled Dairy Product and Filled Milk Acts, developed by our best people and amended by our representatives.

If it has not already been done, I think it would be well to consider inserting on line 58, after the word possess, the words "with the intent to sell or distribute".

This would make clear there is no intention of preventing a person from purchasing such product in another state and bringing it home for his or her own use. We are seeking only identification, not prohibition.

Thank you.

Atch. F

Statement Presented To
House Federal and State Affairs Committee
Topeka, Kansas
March 15, 1984

Thank you for the opportunity to speak before your committee today. My name is Michael Seck and I am an attorney with Fisher, Patterson, Saylor and Smith in Topeka. I am appearing today on behalf of two interested parties: Kraft, Inc. and General Foods Corporation who oppose Kansas House Bill No. 3055. These firms are manufacturers of a variety of food products distributed throughout Kansas and the nation. Each of these companies would like to express its concern with respect to H.B. 3055 and the potentially devastating impact that this bill could have, both to industry and to consumers within the state of Kansas. I would like to speak briefly about some of the issues that concern Kraft and General Foods.

1. The Nature of Products Affected
And Advantages to Consumers

Kansas H.B. 3055 proposes to regulate the labeling of foods that either resemble or imitate dairy products. In recent years there have been vast strides in the development of wholesome and nutritious food products that are alternatives to some of the more traditional and well known dairy products. These new and innovative products include a variety of dairy, part-dairy and non-dairy foods, many of which are either nutritionally equivalent or nutritionally superior to traditional dairy products, for which standards of identity have been established. Each of these alter-

native products is labeled in full compliance with federal requirements including complete and accurate names and ingredient information. Many also bear nutrition labeling.

Many of these alternative products provide dietary advantages such as lower cholesterol, lower sodium and reduced calories, as well as desirable functional properties such as longer shelf life and favorable melting properties. Such products are often preferable to consumers for dietary, religious or economic reasons. Consequently, many of these new alternative products have received enthusiastic acceptance and demand by consumers.

However, the wide use and acceptance of alternative products clearly does not justify an attempt to limit competition with real dairy products. The effect of the Kansas H.B. 3055 would be to impose labeling burdens so oppressive that consumers will be discouraged from buying and manufacturers will be discouraged from selling certain products that compete with products supported by the Kansas dairy industry. Numerous cases have held that the state may not use its powers as a basis to suppress competition or to protect a particular industry within the state. Such attempts at economic protectionism not only deny equality in the marketplace, but they also stifle innovation and deprive consumers of many desirable and nutritious products.

2. The Need For Uniformity and The Burden on Interstate Commerce

Our country's economic well-being and the abundance of products available to the consumer are derived largely from the absence of trade barriers between the states. Products move freely within the United States in reliance upon the constitutional protection against unreasonable burdens on interstate commerce. Kansas House Bill 3055 clearly would result in trade barriers unreasonably burdening interstate commerce.

Uniformity of laws is absolutely essential in the area of food labeling. This need for uniformity is critical to industry as well as consumers. The labeling requirements proposed in H.B. 3055 are different from federal laws and the laws of other states.

For industry to comply with the special labeling requirements proposed by H.B. 3055, companies would be required to establish and implement separate labeling and product inventories, separate distribution channels, special recordkeeping systems, and special advertising programs for the state of Kansas. In many instances distributors will not or cannot maintain separate inventories to comply with different state laws. Ultimately, these special requirements may force manufacturers to raise the prices of products sold in Kansas or to discontinue the sale of these products in the state of Kansas. Kansas consumers will thus be faced with increased costs or the inability to purchase many wholesome and desirable food products.

In addition, uniformity in food labeling is essential for consumers to make informed choices in the marketplace. If imitation dairy products are labeled in a manner different from other imitation foods, consumers will receive a negative impression of inferiority that does not accurately reflect the true character of the food. Numerous alternative or substitute foods now found in the marketplace would not be governed by this proposal. The effect of the proposed labeling requirements would be to confuse and mislead the consumer with negative and disparaging qualities and to discourage manufacturers from selling nutritionally equivalent alternative products within the state of Kansas.

3. Federal Preemption

The federal scheme of regulation for food labeling and the federal requirements for the labeling of "imitation" foods are comprehensive and pervasive. The labeling of food products is governed by the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, and the Federal Code of Regulations, administered by the United States Food and Drug Administration (FDA). The FDA regulations specifically define imitation foods and provide requirements for the labeling of imitation foods. The proposed definition of "imitation dairy product" and the labeling requirements contained in House Bill 3055 create a potential conflict with federal requirements. For certain products, it appears that compliance with both the federal law and the Kansas proposal would be impossible. Thus the proposed legislation, if enacted,

would be subject to a judicial challenge on the grounds of federal preemption. Therefore, we strongly urge that Kansas conform to the federal regulations with the defeat of H.B. 3055.

4. Judicial Precedents

Statutes similar to the Kansas proposal have been successfully challenged in various states. In Kansas, the Filled Dairy Products Act was held to be unconstitutional as a violation of the equal protection and due process clauses of the U.S. Constitution. The state of Kansas was permanently enjoined from enforcing that statute. General Foods v. Priddle, No. 82-4111 (D. Kan., August 9, 1983). Also in that case, you may be interested to know that attorneys fees in the amount of \$45,000.00 were awarded against the state of Kansas and Kansas taxpayers were ultimately required to bear this cost.

Most recently, the New York imitation cheese labeling statute and implementing regulations were held to be unconstitutional and a permanent injunction was entered prohibiting their enforcement by the state of New York. GMA v. Gerace, 83 Civ. 8629 (S.D.N.Y., March 8, 1984). There, the state imitation labeling law was invalidated because it was preempted by federal law and because it created an unreasonable burden on interstate commerce.

5. Conclusion

For the foregoing reasons we urge that Kansas House Bill 3055, and similar special interest legislation be defeated.

H

Testimony of the
National Frozen Pizza Institute
Before The
Federal/State Affairs Committee of
The Kansas House

On
House Bill No. 3055

Mr. Chairman, Members of the Committee; I am Michael Ziebell and I am today representing the National Frozen Pizza Institute to express our opposition to House Bill 3055. The National Frozen Pizza Institute is a national non-profit trade group representing the nation's major frozen pizza manufacturers and many of their suppliers. The NFPI opposes House Bill 3055 because it would require labeling of food products in a manner different than currently required by the Federal government and the vast majority of other state governments. Non-uniform labeling requirements needlessly create costs for producers and consumers and serve to confuse consumers.

Federal Labeling Requirements

The Federal government already extensively regulates the labeling of all "imitation" products, including imitation dairy products. The Federal Food and Drug Administration, which has jurisdiction over all non-meat and poultry food products, requires all products which resemble and can substitute for standardized products (including dairy products) to bear the term "imitation" if these substitutes are nutritionally inferior to the standardized

Atch. H

product. 21 C.F.R. Section 101.3(e). Where the substitute is nutritionally equivalent or superior to the standardized product, it need not bear the term "imitation", but must be descriptively labeled in a manner so as it is not confused with the standardized product, (e.g., margarine, mellorine, cheese substitute). The U.S. Department of Agriculture, which has jurisdiction over all meat and poultry products, including meat-topped pizza, similarly has adopted a definition of "imitation" which is identical to the FDA definition.

House Bill 3055 defines "imitation" in a manner inconsistent with Federal rules. Section 2(d) of House Bill 3055 defines all substitute dairy products as "imitations" irrespective of their nutritional profile. Thus, nutritionally equivalent or superior dairy substitutes, which under Federal law could be labeled as e.g., non-dairy coffee whitener or cheese substitute, must be identified as "imitation milk" or "imitation cheese" under the Kansas law.

Similarly, Section 4(e) would require comparative nutrition labeling on all products subject to the law. Federal law does not require comparative nutrition labeling for "imitation" or "substitute" products.

Finally, it will be impossible for a food processor to comply with both the Kansas law and Federal law. Section 4(b) of House Bill 3055 requires compliance with Federal law; because the Kansas definition of "imitation" would differ from the Federal definition, compliance with both laws is impossible.

It is critically important to food manufacturers who distribute their products nationwide to have uniform labeling laws. For years, the Association of Food and Drug Officials, a group including Kansas representatives, has urged the adoption of uniform labeling laws. Compliance with a variety of labeling laws imposed by different states makes doing business difficult if not impossible and imposes unnecessary trade barriers.

In recognition of the need for national labeling uniformity, the U.S. Congress amended the Federal Meat Inspection Act in 1967 to prohibit state and local governments from imposing labeling requirements which are "in addition to or different than" USDA requirements. See 21 U.S.C. Section 678. The provision has been upheld by various Federal courts, including the U.S. Supreme Court (Jones v. Rath Packing Co., 430 U.S. 519 (1977)) and has also been applied to labeling of non-meat/poultry products under the Federal Food, Drug and Cosmetic Act. See Cosmetic Toiletries and Fragrance Association v. Minnesota, 575 F.2d 1256 (8th Cir. 1978); Grocery Manufacturers of America v. Gerace, No. 83 Civ. 8629 (S.D.N.Y. March 9, 1984).

Other State Laws

Kansas is not the first state to consider "imitation" dairy labeling laws. Just recently, the State of New York adopted an "imitation cheese" labeling law which was inconsistent with Federal law. On March 9, 1984, a Federal District Court in New York struck down the New York law on the ground that it is preempted by Federal law.

Similarly, the States of Wisconsin and Minnesota have considered and adopted "artificial" dairy labeling laws. Both states are currently drafting regulations to further define the statutes and provide for exemptions. In fact, recognizing Federal preemption and the difficulty of applying these labeling laws to multi-component products, of which the dairy substitute is only one part, both Wisconsin and Minnesota have exempted (1) multi-component products; and (2) meat food products from their law's coverage.

Conclusion

It is critically important to all interstate food processors and distributors to have a uniform set of labeling laws. The National Frozen Pizza Institute strongly urges this Committee to either disapprove this Bill or amend it to make it consistent with Federal law. The sponsor's intent, as reflected in Section 4(b), appears to be consistency with Federal law. If this is the case, the Committee should take the following actions:

- 1) Amend the definition of "imitation" to be consistent with 21 C.F.R. Section 101.3(e).
- 2) Delete the nutritional labeling comparison requirement.
- 3) Exempt meat food products and poultry products which are subject to the exclusive jurisdiction of the U.S. Department of Agriculture and subject to explicit preemption provisions.
21 U.S.C. Section 678.
- 4) Exempt all multi-component products of which the dairy substitute or imitation dairy product is only one component.

Thank you for providing me the opportunity to present our views.



SCHREIBER FOODS, INC.

425 PINE STREET • P.O. BOX 610 • GREEN BAY, WISCONSIN 54305-5610

TESTIMONY BEFORE THE HOUSE COMMITTEE ON FEDERAL STATE RELATIONS - STATE LEGISLATION - STATE OF KANSAS - TOPEKA, KANSAS - MARCH 15, 1984

I am Gary Dilweg, Director of Government Affairs for Schreiber Foods, Inc. Schreiber Foods is a national private label packager and processor of dairy cheese with plants in Wisconsin, Utah, and Missouri. Although we are primarily engaged in the sale of dairy cheese, we also manufacture and sell cheese analogs.

We are concerned about House Bill No. 3055 because it will make it more difficult for us to do business in Kansas. We sell our products nation-wide. We are concerned that we will have to make special (different) labels for cheese analogs sold in Kansas. In staging our inventories to meet the demands of customers of separate states adjacent to Kansas, the logistical problems of delivery will be increased.

Two Federal regulatory issues have reached the court or administrative arena. Recently a U.S. Federal Court in New York determined that that state's law on imitation dairy products was unconstitutional. The court found the statute placed an undue burden on interstate commerce and that the state law preempted federal law.

There is presently before the U.S. Department of Agriculture a rule affecting frozen meat pizzas calling for changes in the labeling of pizzas containing cheese analogs. The Department will be receiving comments on the proposed rule until April 2, 1984. A decision on the ultimate disposition of the rule is not expected before the Fall elections. To pass new legislation affecting the labeling of imitation dairy products appears to be a very precarious business with the rules changing daily. We should let the dust settle on these issues before creating new statutes that will face an uncertain future.

Your legislation is inconsistent with itself. Para. (b) Sec. 4 says your statute shall comply with applicable Federal requirements set forth in Section 403 of the the Federal Food, Drug and Cosmetic Act and in Sections 101 and 105 of Title 21 of the code of federal regulations while parts of your legislation calling for the use of the word imitation places you in conflict with the federal regulations you refer to in Sec. 4 para. (b) of House Bill 3055.

Substitute cheese is a healthy, nutritional food with a place in the American diet. Many consumers either because of diet restrictions calling for lower cholesterol or because of economic considerations have found substitute cheese satisfactory to their needs. We hope you will take into consideration the concerns of these consumer constituents when Kansas finally determines its legislative position on this issue.

Atch. I

199 7 J

Chairman and members of the Committee on Federal and
State Affairs

Re: House Bill No. 3055
1:30 p.m., March 15, 1984

My name is Marjorie Warta and I am here today to express my concerns as a consumer regarding the House Bill No. 3055. As a consumer I feel that I have the right to know all the facts needed to make an informed choice of products in the market place. I should be able to make these choices without spending hours reading the fine print and running all over the store to make intelligent comparisons of similarly named products.

Being a consumer in today's marketplace is not an easy role as new ideas in food processing and marketing have tumbled one upon the other in rapid order--in fact, there are over 100,000 products in the local supermarket today, with as many as 8,000-10,000 being added each year. At times, when I am shopping for groceries, attempting to get the most nutritional value for the dollar, I wonder if there were advantages to being a pioneer woman. Milking the cow and gathering the eggs may have well been simpler tasks than reading labels in today's supermarket. New frozen foods, prepackaged foods, ready-to-eat foods, food mixes, whole meal combinations were unheard of when my grandmothers began housekeeping.

I have real concerns as I purchase dairy products in today's market. First, I am not always sure whether I am

Atch. J

getting real dairy products or imitation products. I would appreciate some quickly visible method of identification on the product which would visually identify imitation and/or the real thing. Products that are sold to look like, appear like, and perhaps even taste like the genuine product should be labeled as synthetic, imitation, fabricated or dairy substitute. Secondly, I don't always wear my glasses to the store, so I would appreciate being able to read the identification of the dairy product in at least 1/8 inch letters. Thirdly, I am concerned about the nutritional value of imitation dairy products. I know what nutrients a person can obtain from cheddar cheese and how this food contributes to my calcium, protein, vitamin and mineral needs--or at least I am able to obtain the information from a nutritional listing of foods and their nutrients. To really know the nutrients in an imitation cheese product would be more of a challenge. Therefore, I would value the disclosure and comparison of the imitation and non-imitation dairy products in reference to the nutrient content of the products. Calcium intake is a real concern in the U. S. at the present time and we need to be able to read and compare labels and evaluate the calcium and other nutrient benefits of a product.

Also coconut oil or hydrogenated fats, as substitute for the milk fat, may be unhealthy for certain groups of people such as people on low cholesterol diets, and therefore the fat type and amount in a product is important. The quality of protein used in the imitation dairy products

is another of the concern which I have relative to nutrient value of the product, realizing there is a difference between animal and plant protein quality. Lastly, we have been educated to evaluate our daily dietary intake by such methods as the Basic Four. We consider dairy products as one of these groups---so nutritionally does an imitation meet the needs of this group of foods. It would greatly help consumers if it were marked imitation or a dairy substitute so consumers would be alerted to the nutritional content.

In conclusion I support any help which can be given consumers in Kansas. We have the right to be informed and the right to choose in our selection of dairy products. Hopefully, usable nutrition information will be included on food labels which will help us as consumers select nutritious foods for a balanced diet. May we be given the option to select either traditional dairy products and/or imitation dairy products depending on our individual nutritional needs.

Thank you for allowing me to share with you my concerns as a consumer.