

Approved 3/23/84 Fred Kerr  
Date

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Senator Fred Kerr at \_\_\_\_\_  
Chairperson

10:00 a.m./~~p.m.~~ on Wednesday, March 21, 1984, 19   in room 423-S of the Capitol.

All members were present except: Senator Ross Doyen (E)

Committee staff present: Raney Gilliland, Research Department  
Jim Wilson, Revisor's office

Conferees appearing before the committee:

Representative Frank Buehler  
Frances Kastner, Kansas Food Dealers  
Jeff Southard, Attorney General's office  
Paul Fleener, Kansas Farm Bureau  
Mike Beam, Kansas Livestock Association  
Harland Priddle, Secretary, Board of Agriculture

Senator Warren moved the March 20, 1984 minutes be approved, seconded by Senator Montgomery. Motion carried.

HOUSE BILL 2831 - Senator Kerr called on Representative Buehler, sponsor of this bill. Representative Buehler distributed Attachment 1. He stated he has been in consumer sales some 38 years and described this bill as curtailing bait and switch practices. He had discussed the bill with the Board of Agriculture who have been trying to take care of these activities but they need some tools to accomplish their responsibilities; this would help eliminate the chance of loopholes. He pointed out the fiscal note would be \$27,000 at the most--\$16,000 for salaries from the general fund and \$11,000 from fee funds. The original draft came from the Illinois law but it has been amended extensively in the House of Representatives, passing unanimously by the committee and 123-1 on the House floor. As it now stands, he feels this bill would become a model for other states. He feels all recommendations have been addressed and taken care of. Some may want exceptions but it should apply to everybody.

Representative Buehler stated Bernie Hanson, an Alma meat plant operator, was to testify but due to power shortage he is unable to be here so Representative Buehler distributed Mr. Hanson's testimony, as noted in Attachment 2.

Frances Kastner read her testimony as contained in Attachment 3, stating they recommend the bill in its present form. Senator Kerr noted the bill was changed from meat to food, and she agrees that would take care of some concerns of Thomas Williams, of Guaranteed Foods.

Jeff Southard distributed Attachment 4 and called attention to his suggestion of two amendments, one technical and one substantive. He feels on page 5, Section 4 subsection (b) it would be simpler and cleaner to say: "in addition to or instead of the criminal penalties provided by subsection (a), a person who violates any provision of this act shall be subject to proceedings under the provisions of the Kansas Consumer Protection Act, K.S.A. 50-632 as amended" rather than incorporating the provisions of the Kansas Consumer Protection Act.

The substantive amendment would add a new subsection (d) to the list of prohibited practices found in Section 3 (pages 2-5) and read: "(d) Requiring the purchase of a food freezer or other refrigerated food storage unit from the seller or any specified supplier as a pre-condition to, or a necessary part of, any food plan."

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS,  
room 423-S, Statehouse, at 10:00 a.m./p.m. on Wednesday, March 21, 1984, 19  

As to Senator Karr's inquiry if the bill would make it easier to prosecute or administer, Mr. Southard stated it would do both.

Paul Fleener voiced the support of the Farm Bureau to the present bill. Mr. Fleener feels there should be accurate and complete labeling as to what is offered for sale. He feels the complete language under Section 3 may be beneficial.

Mike Beam stated KLA supports the bill in its present form. He feels it does a good job of outlining problems in the bait and switch dealings and they support this concept.

Secretary Priddle stated they appreciate the reference to food, the specifics in narrowing the identification of the problems and be of assistance to the Attorney General and they do not foresee any trouble with the bill as it now reads--he has not seen the amendments offered to the committee by Thomas Williams as contained in Attachment 5. (Since Mr. Williams was unable to be in Topeka for the hearing his testimony had been distributed to committee members.) Secretary Priddle stated the Meat and Poultry Act stands alone, but they will use the same people to perform the duties in connection with this bill. He stated they would not inspect all dealers but only when there is a problem. He estimated the fiscal note to be \$26,000--\$15,000 from the general fund and \$11,000 from fees; it would require a half-time clerk.

Senator Gannon inquired of Attorney Southard the specifics in a consumer complaint, to which he replied the consumer could go through a private, county, or district attorney or personally come to the Attorney General; the supplier is contacted; the Attorney General's office evaluates the information given to them; they go back to the complainant and mediate or subpoena the defendant to bring the records in and a lawsuit is filed. The actual damages would go to the consumer and any civil penalty payment would go into the general fund.

Senator Kerr stated there being a number of suggested amendments to the bill, interested parties should let him know their thoughts on the bill.

The meeting was adjourned.

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SENATE

AGRICULTURE AND SMALL BUSINESS COMMITTEE

10:00 a.m., Room 423-S

Wednesday, Mar 21, 1984  
Date

NAME

ADDRESS

ORGANIZATION

NAME	ADDRESS	ORGANIZATION
Frances KASTNER	Topeka	Ks Food Dealers
LARRY D. WOODSON	"	" Bd of Ag.
DON JACKA	TOPEKA	STATE BOARD OF Agriculture
BUD GRANT	TOPEKA	KCCI
Mary Harper	Scaly	AAM
Harland Reddick	Topeka	Ks State Bd of Ag
Jeff Southard	"	Atty. General
Mike Beam	Topeka	KLA
Brad Crooks	Topeka	INTERU Rep Bradley
Paul E. Fleener	Manhattan	Kansas Farm Bureau
Gerald Lawrence	Winfield	Kansas Farm Bureau.
SGM John SPEAKS	FT LEAVENWORTH	KS GUARD
Dave Berlin	Leavenworth K.	Frita Studio

STATE OF KANSAS

*C*  
*Attach 1, 3/21/83*

*(1)*

FRANK BUEHLER  
REPRESENTATIVE, ONE HUNDRED THIRTEENTH DISTRICT  
BARTON COUNTY  
P O BOX 317  
CLAFLIN, KANSAS 67525



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER AGRICULTURE AND LIVESTOCK  
JUDICIARY  
PUBLIC HEALTH AND WELFARE

### House Bill 2831 "Bait and Switch"

House Bill 2831 is consumer protection legislation but should be of interest to Agriculture and small business inasmuch as it involves the marketing of an Agriculture product and that in turn effects its production.

The necessity of this legislation has been impressed upon me during the 38 years I spent in the area of consumer sales, specifically in the retail meat business, but in the past several years I've noticed an increase in the number of unscrupulous dealers who are taking advantage of the unknowledgable consumer in "bait and switch" type activities. I have discussed this at length with the Board of Agriculture division that has made an effort to control this problem and they inform me that they just need some tools in order to accomplish this responsibility.

Last August while attending a meeting of The American Association of Meat Processors in Portland, Oregon, I was directed into a program of Communication with people from several other states who had knowledge and experience and had been involved in similar legislation and the implementation of it in their respective states. Because I knew of the existence of the problem in Kansas and that it was possible to address and solve it, I asked that HB 2831 be drafted.

*Attch. 1*

I would like to make a few brief statements regarding HB 2831:

- SECTION 1 Is the definition section and we have tried to be so specific that all chance of loopholes would be eliminated. experience has proven that this is necessary to keep those who would from finding a way to skirt the law for their particular interest.
- SECTION 3 Is the meat of the bill and contains all of the prohibitions
- SECTION 4 Is the penalty section and the penalty increases with repeat offenses.
- SECTION 5 Specifies the implementing agency. Whose compliance people are already on the job.
- SECTION 6 States the cooperation with the Attorney General and the consumer protection division. The Attorney Generals Consumer Protection Division finds no fault with HB 2831.

Attachments:

1. Letter from the American Association of Meat Processors to Flint Hill Foods on March 23, 1983, in regard to "bait and switch" operation in Manhattan, KS.
2. Publication; "How Illinois is fighting "Bait and Switch".
3. Investigation report in B & W Service Co.
4. Copy of ad from Wichita, KS.
5. Copy of ad from Ellinwood, KS.

I have discussed HB 2831 with the Kansas Department of Agriculture and they inform me that they feel the necessity for this kind of legislation. HB 2831 has full support of Agriculture industry. House Agriculture Committee had no votes in opposition. House of Representatives voted 123-1 in favor of HB 2831.

I have worked very closely with the American Association of Meat Processors the Kansas Meat Processors Association and The Kansas Food Dealers Association during the whole process of following HB 2831 through the system. They have produced valuable input. These industry groups feel that HB 2831 as it now stands, could very well become model legislation for the entire nation.

I thank you and respectfully request your support in favor of HB 2831 in this committee and on the floor of the Senate.

# KMPA KANSAS MEAT PROCESSORS ASSN.

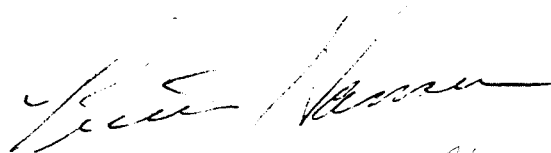
*Booky  
FRANCIS*

February 14, 1984

Testimony on House Bill No. 2831

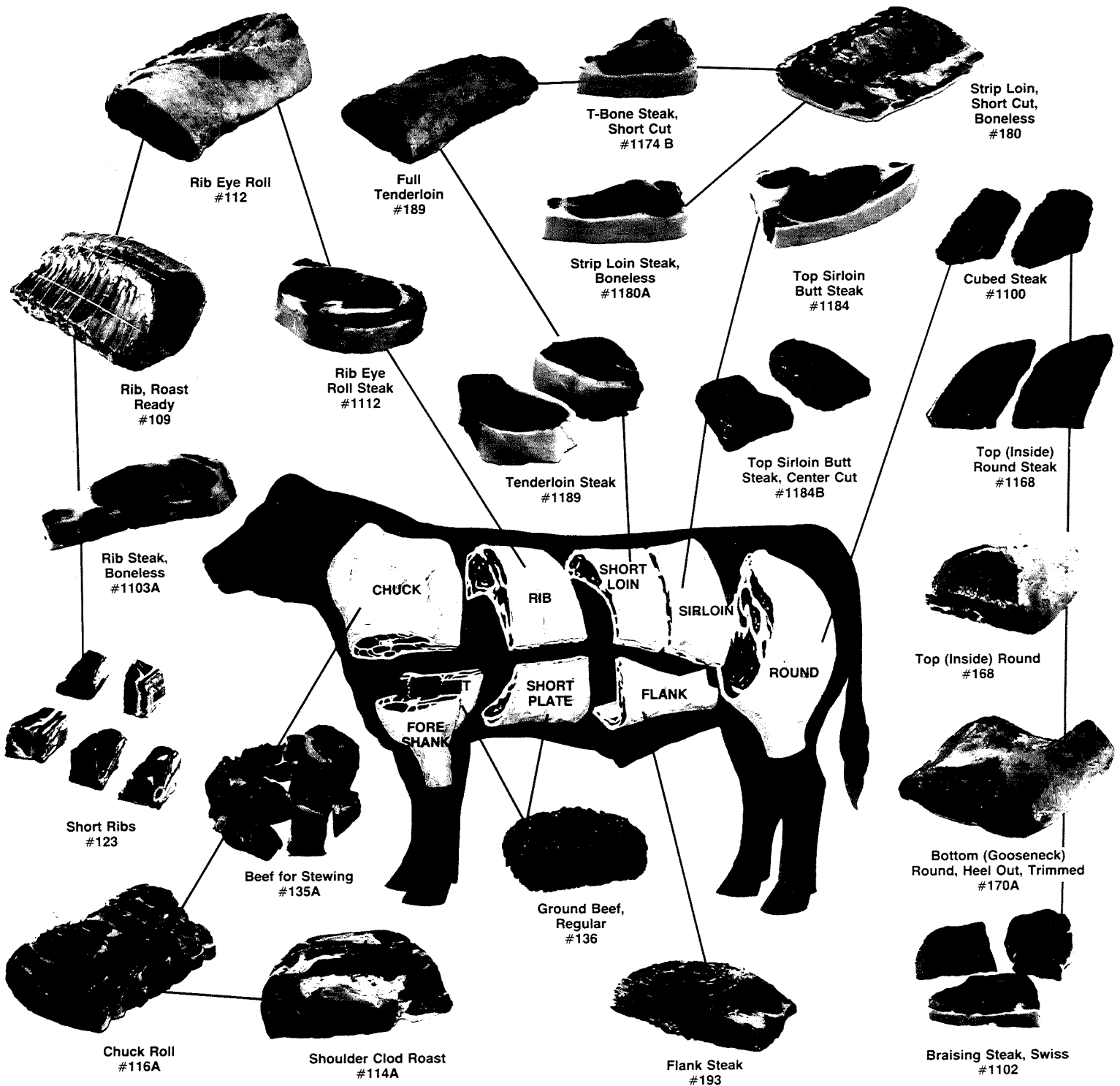
By Bernie Hansen, Kansas Meat Processors Association

- 1) KMPA supports H.B. No. 2831
  - A) Protects consumer from "Bait and Switch" operations
  - B) Supports the sound methods of marketing Kansas meat products
- 2) There is a need for H.B. No. 2831
  - A) Kansas Meat Inspection compliance people have lacked support to get convictions on "Bait and Switch" operations
  - B) Inspection people have only been able to use newspapers, television and surveillance to work against operations
  - C) States with similar legislation in force have had good results against "Bait and Switch"
  - D) Cost of enforcement should not be very large
- 3) What is "Bait and Switch"
  - A) How they operate
  - B) Size of business
  - C) Extent of damage to market - lasting effect
- 4) KMPA requests your support of H.B. 2831 and feels our members will support the legislation. We consider it a step in the correct procedure for proper marketing practices of Kansas meat products.



*Atch. 2*

# Foodservice Cuts of Beef



IMPS/NAMP Number (Institutional Meat Purchase Specification/National Association of Meat Purveyors)

## Got a question about beef?

Call or write the Foodservice Department  
of the National Live Stock and Meat Board  
444 North Michigan Avenue • Chicago, IL 60611  
(312) 467-5520



This chart is part of a coordinated beef marketing effort by the Beef Industry Council of the Meat Board and your local beef industry.



# For Your Information

224 EAST HIGH STREET  
ELIZABETHTOWN, PA 17022



March 23, 1983

Mr. Bernie Hansen  
Flint Hills Foods, Inc.  
P. O. Box 435  
Alma, Kansas 66401

Logo

Dear Bernie:

Many thanks for the copy of the article in the Manhattan Mercury on "bait and switch" meat sales. It seems such a shame that you have such a good enforcement division but that quirks in the law make it so easy for the perpetrators to sign a consent order and then set up shop down the road.

The Illinois law seems to be among the most effective. I've enclosed a copy for your consideration. I have them from other states as well. Perhaps Frank Kuehler...you know, the legislative guy...might want to introduce something on this order.

There's only one thing that I'd suggest if it can be done: that's to authorize a minimum prison sentence, without parole consideration, and a fine for any second time violators. A signer of a consent order could be considered a "second time offender" if he's convicted.

Another good wrinkle is to make anyone signing a consent order provide a customer list (at least every two weeks) to the Department of Agriculture or the attorney general's office. This would give them a way to check on future violations of consent orders.

Any thoughts or ideas you might have would be appreciated. And, as always, if there is anything that we can do to assist you, please let us know.

Cordially,



Stephen F. Krut  
Executive Director

SFK:MSM

Enclosures

cc: Morris J. Crouch, President  
Larry Woodson  
Nelson Buckles  
Frank Buehler  
James Macomber

P. S. Best wishes for a successful meeting. I'm only sorry that I won't be able to join you this year.

# How The Illinois Association of Meat Processors Is Battling Bait & Switch



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**Editors Note:** This article deals with the development and enactment of the "Bait and Switch" amendment to the Illinois Meat and Poultry Inspection Act. Bait and Switch is not only a problem on the local level, but on a national level as well. The American Association of Meat Processors is making a tremendous concentration on this "meat racketeer" business. Information on how you can join in the fight is available from AAMP: P.O. Box 269, Elizabethtown, PA 17022 [717] 367-1168.

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**The "bait and switch" operation usually remains in the community only until his or her method of selling is discovered...**

**These operations often leave the community with unpaid debts...**

Illinois Meat Processors have been concerned with "bait and switch" meat sales in the state for many years. Their concern is prompted by the unscrupulous, if not illegal, selling practices utilized by the "bait and switch" dealer. This concern prompted the Illinois Association of Meat Processors to approach the Illinois Department of agriculture, early in 1980, for assistance in curbing the unscrupulous practices of some meat dealers in Illinois. The focus of the Illinois meat processors complaint was the "bait and switch" operator who moves into an area and advertises beef at an unusually low price. Generally, extra "bonuses" are offered in the advertising of the product which makes the offer very enticing to the average consumer. The conditions for receiving the "bonus" items often are not spelled out in the advertising, and the consumer is not made aware of the conditions until the contract for the product is signed and he is obligated to pay for the product.

The selling practice of the typical "bait and switch" operation is based on the attractive advertising of the "bait" item which is generally a large, wasty prime or choice (yield #5) carcass. When consumers attempt to place an order they are discouraged from buying the "bait" carcass and are switched to purchasing a more expensive item. Another selling practice is to include "extra" cuts with the advertised product which are cheaper items such as flanks, plates and briskets, all at the same price as the higher quality cuts.

The "bait and switch" operation usually remains in the community only until his or her method of operation is discovered and sales are reduced. These operations often leave the community with unpaid debts owed to local businesses.

The Illinois Meat and Poultry Inspection Act provides for mandatory inspection of food plan operators. The definition of a food plan operator in the law includes the selling of meat or poultry to consumers for storage in home freezers, lockers, or other freezer units. The law also provides for truthful advertising, accurate weights and proper grade representation. The wording of the original statutes was very general in content and difficult to enforce because of the lack of specific wording relating to prohibited trade practices.

Informal discussions and meetings were arranged between Illinois Association of Meat Processors representatives and State Agriculture officials. These meetings included discussions on the methods of improving the present state law by studying other state laws which were obtained from officials in several states. The State of Wisconsin's Consumer Trades Act was used as a guide from which to develop the proposed amendment to the law.

The Board of Directors of the Illinois Association of Meat Processors and State officials decided to pursue a plan of action which included obtaining sponsorship of a bill to amend the Illinois Meat and Poultry Inspection Act in the 1980th session of the State Legislature. A committee of six processors were appointed to work with State officials in drafting the language for the amendment.

**[Continued on next page]**

INVESTIGATION REPORT

Bob Brueggemeyer  
Maurice Wolfe

B&W Service Company

Subject(s): dba Colorado Beef

Fraud Case No: 830412

Address: 201 N. W. 16th St.

Date of Investigation: Subsequent to January 1982

City Grand Prairie State Texas Zip 75051

Investigator: Kenneth Bassham

Telephone: 214-262-1531

Purpose of Investigation: PC 532, Obtaining money under false pretenses; PC 182, Conspiracy; PC 382, Adulteration of food; PC 487, Grand theft; B&P Code 17500, False and misleading statements; B&P Code 12020, Use of incorrect weight or measure; B&P Code 12021, Taking false tare; B&P Code 12024, Selling in less quantity than represented; B&P 12024.1, Misrepresenting charge for service rendered; B&P Code 12024.2, Unlawful computation of value.

Details of Report:

On March 11, 1983, this office received a consumer complaint against Colorado Beef, 2787 Don Juan Way, Rancho Cordova, CA. The complainant stated the salesperson for this firm used a razzle-dazzle, flim-flam type of sales presentation which was meant to confuse and perplex the potential customer. The advertised item was disparaged and other, higher quality and much more expensive cuts of meat were extolled, typical of "bait-and-switch" type of scam. You assigned the complaint to me for investigation.

I contacted the Sacramento County Office of the District Attorney and was informed the D.A.'s office had previously received correspondence from the B&W Service Company, Grand Prairie, Texas. This letter informed the District Attorney, as agreed to in a permanent injunction in 1981, of their intention to open the retail bulk meat sales store known as Colorado Beef in Rancho Cordova, CA.

The principles of the B&W Service Company are Robert "Bob" Brueggemeyer, President and Maurice Wolfe, Vice President. Investigation has subsequently revealed Messers. Brueggemeyer and Wolfe were named as defendants in the following court actions;

- A. An Order for Permanent Injunction in Case Number 132.839 on November 29, 1972 in Contra Costa County in an action brought by Contra Costa and Alameda Counties essentially for the bait-and-switch type of scheme;
- B. Again Messers. Brueggemeyer and Wolfe were named in a Final Judgment and Decree as defendants brought by the Attorney General on behalf of the State of Washington in Spokane County dated December 24, 1974 for "bait advertising" and other violations of the Washington Consumer Protection Act;

Investigator's recommendations:

Supervisor's comments:

Signature of Investigator: *Kenneth S. Bassham*

Signature of Supervisor: *Robert W. Thurston*

Date of review: 7/27/83

- C. The State of Texas Attorney General named Messers. Brueggemeyer and Wolfe as defendants in an action dated January 16, 1976 at Bexar County, San Antonio, Texas, in Case Number 76CI-645 in which the State of Texas was granted a Final Judgment and Permanent Injunction, again for engaging in "bait advertising" and other violations of state codes;
- D. Messers. Brueggemeyer and Wolfe were named defendants in a Final Judgment and Stipulation and was assessed total penalties of \$40,000.00 in Case Number 271254 in the Superior Court at Sacramento County, CA, on January 6, 1978 for conducting bait-and-switch operations at retail bulk meat sales stores in Sacramento, Rialto, Santa Fe, La Mesa, San Diego, Vacaville and Healdsburg, California. Brueggemeyer and Wolfe stipulated to other violations of the California codes;
- E. Brueggemeyer and Wolfe, again named as defendants in an injunction requested by the California Attorney General and ordered into effect in Case Number 245563-2 by the Superior Court in Fresno County on February 27, 1980, charging bait-and-switch tactics and six other violations of California Codes;
- F. A \$100,000 civil penalty was awarded Sacramento, Fresno and Orange Counties along with the California Attorney General in Final Judgment naming Messers. Brueggemeyer and Wolfe as defendants in Case Number 271254 at Sacramento, California, on August 20, 1981. Messers Brueggemeyer and Wolfe were again named specifically as defendants in this bait-and switch type of scheme;
- G. On October 15, 1982, Mr. Bob Brueggemeyer signed an Assurance of Voluntary Compliance filed as Case Number 8210-06444 in the Circuit Court for the County of Multnomah in the State of Oregon. This was obtained after the Oregon Attorney General filed a Notice of Unlawful Trade Practices and Proposed Relief for several unlawful trade practices and violations of Oregon law, including bait-and-switch.
- H. The State of Iowa Attorney General named Brueggemeyer and Wolfe as defendants in Case Number 18077 at Des Moines, Iowa, on December 18, 1975. The charges included the bait-and-switch scam in addition to other violations of Iowa Consumer Fraud Act. In the Order for Permanent Injunction, a \$500 penalty was assessed, court costs, and restitution to complaining parties in the amount of \$3,830.18;
- I. The Consumer Frauds and Crimes Division of the Office of Attorney General, State of Ohio at Columbus filed a Request for Permanent Injunction and Declaratory Judgment in Case Number 27551 in the Court of Common Pleas at Cuyahoga County on August 20, 1982 in which Messers. Brueggemeyer and Wolfe are again named as defendants. In This action the State of Ohio has charged the defendants of not only perpetrating the bait-and-switch sales scheme but with 16 other violations of the Ohio Revised Code;
- J. On April 26, 1983, I telephoned Mr. Henry Tenbrink, Office of the Texas Attorney General, San Antonio, Texas. He informed me the State of Texas has named Messers. Brueggemeyer and Wolfe in pending litigation for bait-and-switch and other violations of Texas codes. He said Brueggemeyer is president of 17 corporations registered in Texas.

- K. On March 28, 1973 the Solicitor General of the State of Georgia in Cases Number 11399 and Number 11400, charged two employees of a bulk meat sales firm owned by Brueggemeyer and Wolfe for defrauding an undercover customer by gross short weight. The charged individuals were convicted.

In the above noted litigations Messers. Brueggemeyer and Wolfe have been accused of engaging in the business of selling meats to consumers in a manner that violates the laws of each of the named states and which is adverse to the consumer rights of the citizens of that state in one or more of the following manner:

- A. Committing unfair or deceptive acts or practices in connection with consumer transactions;
- B. Representing that the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;
- C. Representing that a specific price advantage exists, when in fact it does not.
- D. Committing unconscionable acts or practices in connection with a consumer transaction.
- E. Knowingly taking advantage of the inability of consumers to reasonably protect their interest because of the consumer's ignorance as to how the meat advertised by Brueggemeyer and Wolfe was to be sold.
- F. Knowingly making misleading statements of opinion on which the consumer was likely to rely, to their detriment.
- G. Making offers in writing or printed advertising or promotional literature without printing clearly and conspicuously, in close proximity to the words stating the offer, any material exclusions, reservations, limitations, modifications or conditions.
- H. Offering to sell goods or services when the offer is not a bonafide offer to sell the advertised goods or services
- I. Using statements or illustrations in advertisements which create in the mind of the consumer a false impression as to the grade, quality, quantity, size, usability, or which otherwise misrepresents the goods or services in such a manner that, on subsequent disclosure or discovers of the true facts, a consumer is switched from the advertised goods or services to other goods or services.
- J. Refusing to show, demonstrate, or sell the goods or services advertised in accordance with the terms of the advertisement.
- K. Discouraging the purchase of advertised goods or services in order to sell other higher priced goods or services.

- L. Disparagement of the advertised goods or services or other aspect of the goods or services.
- M. Failing to have available at all outlets under their direct control a sufficient quantity of the advertised goods or services at the advertised price to meet reasonably anticipated demand.
- N. Failing to give rainchecks to consumers after the original quantity of goods is exhausted, or refusing to take orders for the advertised price, to be delivered within a reasonable period of time.
- O. Using a sales plan, a method of compensation for salesmen designed to prevent or discourage them from selling the advertised goods or services.
- P. Failure to present the consumer an itemized inventory of the total net weight of each of the various retail cuts sold and the total net weight of the entire purchase.
- Q. Failing to deliver to the consumer any delivery ticket containing the name and address of the defendant's business, the date delivered, and the quantity upon which the price is based, if it differs from the delivered quantity, the identify of the packaged item and the quantity delivered; and the count of individually wrapped packages as mandated by law.
- R. Placing advertisements which promote extensions of credit without complying with the disclosure requirements of the Truth-in-Lending Act, 15 USC 1601 Et Seq. and Regulation Z, 12 C.F.R. 226 and specifically the provisions of 12 C.F.R. 226.6(a) and 10(d)(2).
- S. Failing to quick freeze all meat and meat products prior to delivery to a customer as mandated by law.
- T. Defendants offered free and unconditional meat bonuses with beef purchases when, in fact, said bonuses were often conditional and often denied and not given to customers.

It was further charged that Brueggemeyer and Wolfe conspired to commit the violations wilfully in that the respondents knew or should have known that the conduct was in violation of the various state laws.

The modus operandi for the retail outlets in Northern California has been to saturate the marketing area through the U.S. Mail by forwarding 3½"X7" cards containing confusing and unclear advertisements to residences, post office boxes, etc. These cards are forwarded at intervals of approximately one week each to postal recipients in the marketing area. This means of advertising is very intensive and appears to be a very expensive type of promotion which appears out of proportion for the costs involved, especially for small, store-front types of retail firms. These advertisements used statements and illustrations to create in the mind of the consumer false impressions as to quantity, quality, size and usability of the advertised meat. It was intended to be an insincere offer meant to lure prospective purchasers to the retail stores,



thus, subjecting them to prepared sales presentations designed to discourage purchase of the advertised item and to switch customers to buy other merchandise at a higher price.

The advertisements stated a person must request an appointment, usually by telephone. When the prospective purchaser did telephone for the appointment, it has been reported by other governmental agencies that enough information would be gleaned to allow the store personnel to request a check be made on the prospective purchasers credit ratings by the finance company which purchases the contracts. The contracts in the Sacramento area were purchased by Beneficial Finance, 10695 Folsom Blvd., Rancho Cordova, CA. After receiving the credit report, an evaluation would be made as to the maximum amount of credit a prospective purchaser could or would bear. Thus, one complainant in the Northern California area was charged \$1,500 for approximately 400 lbs. of meat. Another complainant was charged \$1,134 for an alleged hanging weight of 414 lbs. of beef and an unknown amount of delivered meat. It appears as if the customer was charged whatever the "traffic would bear."

Some customers thought they were purchasing a beef side, when they were in fact given different combinations of primal cuts. These primal cuts were then further divided into individual steaks in the presence of the purchasers. It would be requested by the seller that the man and wife both be present at the transaction. The purchasers would then be requested to assist in the wrapping of the meat in the interest of expediency. One spouse would then be asked to go into the office and sign the credit contract while the other spouse wrapped meat. After signing the contract that person would return and wrap the meat and the other spouse would be asked to go to the office and sign the credit contract. Only after taking delivery of the meat and departing the premises would they confer on the amount of beef purchased and the price paid. No reasonable opportunity was made by Colorado Beef employees to allow the purchasers to consider and comprehend representations made to them.

In no case was the delivered meat frozen prior to delivery as required in Section 28710.5 of the California Health and Safety Code. The customer would be asked to sign a disclaimer statement printed on an inventory sheet. This statement says the customer requested delivery in an unfrozen condition. The purchaser certifies he has sufficient freezer capacity to adequately freeze the meat before it deteriorates or had any spoilage. Most consumers are unaware a home freezer is not designed nor has the capacity to freeze bulk meats. A lowering of quality will occur in meats when placed in a home type freezer in an unfrozen state. A home freezer is only designed to maintain foods in a frozen state after having been previously fast frozen. One consumer damaged the compressor on his freezer and expended considerable amount of money for repairs.

If a consumer requested the advertised special, in some instances they were told by store personnel that was only an advertisement and the store never intended to have the items available for sale. In other instances the advertised item was intentionally disparaged and it became obvious the advertised items were intended to entice the consumer into a transaction different from that represented by the advertisement.

In one instance where the customer demanded the advertised special item, (Reporter Brad Willis, KCRA-TV, Sacramento) 200 lbs. of meat for "as low as \$63.47 per payment for 3 payments," he was charged for 313 lbs. of meat of which he received 190.5 lbs.

net weight--a loss of more than 39%. The average cutting loss for fat and bone is 27.5%. Included in this order was 65 lbs. of plate meat. The most undesirable and cheapest primal part of a carcass. This was 34.1% of the order received. The normal amount of plate meat in a beef carcass is 8.3% of the total carcass weight. Also received in this order was 29 lbs. of "brisket roast". This portion was USDA Prime grade and had so much fat and bone as to be totally worthless for food purposes. This amount of brisket was 15.5% of this order. A normal beef carcass contains 3.8% of the total carcass weight. The 34.1% plate meat and 15.5% brisket received in the total order amounts to 49.6% or almost half of the order which would be virtually useless if purchased by a family. After being charged for 313 lbs. of beef and receiving only 95 lbs. of edible meat, it is apparent defrauding was accomplished by design and purpose.

Another consumer, Judy Parks, 8276 Streng, Citrus Heights, CA, a welfare recipient received a total of 62 packages in an order. She received 26 packages of plate meat and seven packages of brisket for a total of 33 packages, more than 53% of the order. No weights were available since she was not given an inventory sheet of the meat received nor were the individual packages labeled with anything other than name of item contained. This consumer was physically crying because she had three children and no way could she utilize the plate and brisket for the purpose intended.

Another consumer, Ted Novak, 15 West Stewart Road, Lathrop, CA 95330, stated he purchased 380 lbs. of meat from Colorado Beef in Hayward, CA, for \$510. He received 192 lbs. at time of delivery, a loss of 50%, supposedly a cutting loss for bone, fat and waste. He returned the meat bought to the retail store and requested a refund of his money. He was told it would be forwarded to him by mail. He has not received his refund to date.

Another customer intended to purchase the advertised special for \$1.09 per lb. and was instead convinced by the salesperson, a Jim Butler, to purchase a "trimmed side of beef," for \$2.34 per lb., and, also the consumer stated in his declaration, "by fast talk and keeping us confused." The salesman explained a trimmed side of beef was a beef side with all excess fat removed and less the flank, plate, brisket and foreshank. I later inventoried his order and found it contained short ribs, flank and soup meat from the foreshank--all items from that area which was to be excluded. The complainant stated the salesperson attempted to sell him the remaining portion of excluded cuts at the reduced price of 0.89¢ per lb. According to the advertisement the consumer alleged he was to receive an 80 pound bonus pack of chickens, pork chops, steaks, all meat hot dogs and bacon. When the consumer requested the bonus, he was informed it would cost him .89¢ per lb. for those items. Several other consumers have complained this firm's stores have refused to provide the advertised bonus when the stated provisions have been met. This consumer was informed he had received ten pounds of New York and tenderloin steaks as a bonus, however, when his order was inventoried it was found that his order contained only one small package of tenderloin steaks containing two pieces. It did not contain any New York steaks or club steaks.

Some consumers were given a sales presentation in which the excessively fatter plate meat and brisket was disparaged by the salesperson by informing the consumer they were only good for the making of soap from the fat, the bones were only good in soup and the only the brisket could be used was if it was corned and since no one makes

soap or knows how to prepare corned beef, it would cost less if the consumer purchased a more expensive side of beef. When this scam was successful on the consumer, the order was then prepared from boxed meat containing primal cuts from different animals. These salespersons rely on the ignorance of the consuming public in that the public does rely on and believed these sales personnel to be trained meat specialists when in fact the salespeople were trained to knowingly take advantage of the inability of consumers to reasonably protect their own interest by virtue of the confusing advertising.

The advertisements by Brueggemeyer and Wolfe states, "90 days same as cash," however, some complainants said they received notices from a finance company a payment was due and payable after 30 days from purchase after the consumer had agreed to pay the account in full within 90 days.

When a customer did complain to the local retail store of dissatisfaction with their purchase, the local manager refused initially to take any action to satisfy the purchaser. When it was made known to the manager of the retail store the consumer had notified government authorities, it was at this time the manager made every effort to satisfy the consumer and granted all bonuses requested. Some consumers that had initially complained of having been cheated refused to give declarations or formal documented statements after receiving restitution. It can be inferred from the long established history of cheating, swindling and defrauding practices by retail bulk meat sales outlets owned and controlled by Brueggemeyer and Wolfe, that these actions are by design. It is apparent the policies and techniques used to defraud consumers emanate from a central location.

Brueggemeyer and Wolfe exhibit a lack of respect for and a contemptuous attitude towards the many court injunctions imposed on their illicit activities, especially in California. These two individuals have flaunted California laws for more than 10 years that this investigator is aware of--having investigated their activities since the early 1970's.

It is the opinion of governmental agencies, both federal and state, better business bureaus and many local district attorneys that the B&W Service Company owned by Brueggemeyer and Wolfe is only one of a coalition of businesses owned by a small group of persons. These persons have opened retail bulk meat sales outlets in many states with the intent purpose of defrauding the consumer by plying upon his total lack of knowledge of meat. These persons, aside from Brueggemeyer and Wolfe, are Wesley Green and Lewis Chadwick of C&C Service Company and C&C Service Company, Phoenix Arizona. Green is reported to have been associated with Brueggemeyer in businesses in Florida, Oregon, Arizona, Kansas and Colorado. Also Frank Clark and Jim Clark, believed to be presently in Denver, Colorado. Jim Clark is the son of Frank Clark and believed to be the son-in-law of Brueggemeyer.

It has been reported that Brueggemeyer, Green, Chadwick and Fred Welborn were partners at one time in a firm known as Cattlemen's Meat Company, Denver, CO. Wellborn was reported to be connected with Frank and Jim Clark at one time in Clark's Meats, Albuquerque and Farmington, NM; Phoenix, Arizona; Las Vegas, NV; and Monroe, LA. It has been reported by the Federal Trade Commission, Denver, Colorado, that employees interchange jobs from one company to another on a regular basis. The individual retail sales firms interchange names among the companies. For instance, retail sales stores in Washington State owned by Green and Chadwick was named Black Angus Meats while a retail store owned by Brueggemeyer and Wolfe in Fresno, CA was named Black Angus Meats. Green used the name Colorado Beef in Salt Lake City, Utah, in 1982

while B&W Service Co. has six known retail outlets in California presently using the name Colorado Beef.

There does appear, on the surface, to be collusion among the above named individuals to promote nefarious sales techniques throughout the whole of the United States. It has been reported by the Federal Trade Commission that due to the sophistication of sales techniques and the gross ignorance of the consumer of meat products and the lack of investigators experienced in this field that illicit sales in the retail bulk meat outlets is estimated to be one billion dollars per year. An informal survey of long established retail bulk meat sales firms in California reveals a drastic drop in business as compared to previous years. This is believed due to the loss of confidence by the general public in the integrity of the retail bulk meat industry caused by the negative impact created by the unscrupulous actions of firms under the control of Brueggemeyer, Wolfe and others. It will be many years before the bulk meat retail sales industry recovers from the damage inflicted by Brueggemeyer and Wolfe.

It is recommended this case be forwarded to the California Attorney General for possible civil and criminal prosecution.



# 7-DAY SALE!



Call TODAY! 942-1469 WE WANT TO SELL

PLEASE CALL FOR APPOINTMENT FOR ONE TRIP SERVICE

Prices and specials good for 7 Days Only!

**FREE**  
10 Filet Mignons  
To Anyone Making An Appointment Before Wednesday

**HELLO!**  
To sell the **50 tons** we'll give you...

**All Beef USDA Choice Yield 2**

# 50 TONS of BEEF

During Our 7-DAY SALE

**CHARGE IT!**  
90 DAYS SAME AS CASH

- NO MONEY DOWN + NO PAYMENT FOR 30 DAYS
- NO INTEREST OR CARRYING CHARGES
- WITH APPROVD CREDIT

**U.S.D.A. CHOICE HIND QUARTERS**  
Plus Extra Plates & Flanks

**\$1.09** / Lb.

- T-BONE STEAK
- ROUND STEAK
- PORTERHOUSE STEAK
- GROUND BEEF
- SIRLOIN TIP ROAST
- MINUTE STEAKS
- RUMP ROAST
- EYE ROAST
- ROUND ROAST
- And More

Approx. Wt. 120-300 Lb.

**U.S.D.A. CHOICE BEEF SIDES** **\$1.05** / Lb.

Plus Extra Plates & Flanks

- LOIN STEAKS
- SIRLOIN
- PORTERHOUSE
- T-BONE
- CLUB
- FLANK STEAK
- ROUND BEEF
- RIBONEY
- GROUND BEEF
- SIRLOIN TIPS
- ROUND RUMP
- ROUND ROAST
- ROUND STEAK
- STEAK
- FLANK STEAK
- ROUND BEEF
- RIBONEY
- GROUND BEEF
- SIRLOIN TIPS
- RIB STEAK
- SHORT RIB
- RIB ROAST
- LENGTH
- ARM ROAST
- NECK
- BLADE
- CHUCK
- ROASTS
- BRISKET & SHANK
- SWISS STEAK
- POT ROAST
- SOUP BONE
- STEW MEAT
- PLATE
- SOUP BONE
- SOILING BEEF
- BAR-B-BQ
- ARM ROAST

- 50 PORK CHOPS FREE
  - 50 GROUND BEEF PATTIES FREE
  - 100 HOT DOGS FREE
- YOUR CHOICE OF ONE WITH PURCHASE OF QUARTER OR BUNDLE

**FREE**  
10 RIB EYE STEAKS or LEG OF LAMB TO anyone opening a 3-Month Account during Sale

**FREE FREE FREE**  
**100 FREE!**  
PATTIES, CHOPS OR STEAKS

- 50 Ground Beef Patties and
- 50 Pork Chops or
- 50 Chicken Fried Steaks

with purchase of side or more

**Beef Chart**

**Section A**  
Round Steaks  
Rump Roasts  
Sirloin Tip Roast  
Eye Roast  
Minute Steak  
Round Roast  
Bottom Roast  
Ground Beef  
Soup Bone

**Section B**  
Sirloin  
Porterhouse  
T-Bone

**Section C**  
Rib Steak  
Rib Roast  
Delmonico  
Ribeyes, Beef Ribs  
Ground Beef

**Section D**  
Chuck Steak  
Chuck Roast  
Pot Roast  
Neck Bone

**Section E**  
Flank Steak  
Ground Beef

**Section F**  
Plate Beef  
Ground Beef  
Sizzling Beef  
Soup Bone

**Section G**  
Shank  
Brisket  
Ground Beef  
Soup Bone

All orders include extra plates & flanks for ground beef & soup cuts. Types & amounts of cuts obtained depend on customer's cutting preference & size of beef. All beef sold hanging weight subject to weight loss. % of trim loss will depend on customer's cutting and processing instructions. All free items with purchase.

**FREE**  
10 T-BONE STEAKS to the FIRST 10 Customers CALLING IN TODAY 942-1469  
If lines are busy...keep trying

**U.S.D.A. CHOICE PACKER TRIMMED BEEF**  
**229** / Lb. to **459** / Lb.  
PRICED ACCORDING TO THE CUT DESIRED AND THE VOLUME PURCHASE

**WE WELCOME FOOD STAMP SHOPPERS**

**CALL**  
942-1469

M-F 10-8  
Sat 9-4  
Sun Closed

VISA  
MasterCard

**U.S.D.A. CHOICE, Bundle No. 1**  
**LOIN & RIB**  
140 Lbs. \$55.53 / 3 Payments

- Sirloin Steaks
- Porterhouse
- Club Steaks
- T-Bone Steaks
- Rib Steaks
- Filets
- Sirloin Tip Steaks
- Standing Rib Roast
- Rib Eye
- English Cut Roast
- Rib Steaks
- Sirloin Tip Steaks
- Porterhouse
- Club Steaks
- T-Bone Steaks

**U.S.D.A. CHOICE, Bundle No. 2**  
**ROUND & RIB**  
130 Lbs. \$49.83 / 3 Payments

- Club Steaks
- Round Steaks
- Rib Steaks
- Small Steaks
- Amount of Ground Steak
- Sirloin Tip Steaks
- Beef Cubes
- Minute Steaks
- Rump Roasts
- Sizzling Beef
- Beef Cubes
- Minute Steaks
- Rump Roasts
- Plate Meat

**U.S.D.A. CHOICE, Bundle No. 3**  
**RIB & CHUCK**  
125 Lbs. \$41.25 / 3 Payments

- Club Steaks
- Rib Eye Steaks
- Rib Roast
- Short Ribs
- Blade Roast
- Shoulder Roast
- Ground Chuck
- 7-Bone Steak
- Chuck Steaks
- Shoulder Steaks
- Boneless

Example 140 lbs. USDA Choice, Bundle No. 1 at \$1.10 would be \$154.00. Cut From Sections B, C, E, F.

Example 130 lbs. USDA Choice, Bundle No. 2 at \$1.10 would be \$149.80. Cut From Sections A, C, E, F.

Example 125 lbs. USDA Choice, Bundle No. 3 at \$1.10 would be \$137.50. Cut From Sections C, D, E, F, G.

**HOPPING BLOCK**  
We Charge Beef Prices  
1425 W. Central  
942-1469

son said. ...  
m. Monday through Friday.

# E.P.P. SPECIAL REPORT

## BEEF

A Nutritional  
Value  
Serve it often.

### 30 Lb. Economy Beef Bundle

Meals For A

Family Of Four

Includes

Boneless Round Steak (4 Pkg.) ?	4
Short Cut Steak (2 Pkg.) ?	1
Beef Roasts (4) ?	4
Lean Ground Beef Five (2 Lb. Pkgs.) <sup>10<sup>lb</sup></sup>	10
<b>Total Meals</b>	<b>19</b>

Price \$52.95  
 Tax 2.12  
 \$55.07

Cost Per Meal \$2.90

(Bonus Special) One Frying Chicken FREE  
 with Purchase of 30 lb. Economy Beef Bundle.  
 While 25 last. Offer Good Jan. 30 through Feb. 4.

1984

### TIMED TO FIT YOUR SCHEDULE

Open 8 a.m. to 5 p.m.  
Monday - Saturday

### OLD FASHIONED MARKET

Ellinwood Packing Plant, Inc.  
West Santa Fe

## 316-564-3156





# Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205

PHONE: (913) 384-3838

March 21, 1984

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GOVERNMENTAL AFFAIRS**

FRANCES KASTNER

**SENATE AGRICULTURE & SMALL BUSINESS COMM.**  
SUPPORTING HB 2831

**EXECUTIVE DIRECTOR**  
JIM SHEEHAN  
SHAWNEE MISSION

Mr. Chairman, and members of the committee, we appreciate the opportunity to appear before you today. I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association and our membership includes retailers, distributors and manufacturers throughout the State of Kansas.

Last summer it was called to our attention that several "bait and switch" operations were doing business in Kansas. Because of the alertness of our Department of Agriculture Meat and Poultry Inspectors, they soon closed their doors and moved on to other states.

We felt it would be good consumer legislation to have a specific law which would prohibit such unconscionable and illegal operations. Perhaps some of you saw the ABC 20-20 program last fall depicting how those bait and switch meat operations work.

Kansas retailers are honest people. When they tell their customer what they will receive in a bundle of meat that is all ready to take home and put in their home freezer, that is just what the customer gets. The number of steaks, sirloin, T-bones, etc are weighed and listed as so many pounds of each of those products. The customer knows what he is getting for his money.

The details of this bill have been thoroughly studied by our members and it is the consensus of our Association that this type of bill will prevent the "bait and switch operations" that are illegal from coming back to Kansas. This has been our objective from the very start last summer.

We ask that you recommend the passage of HB 2831. I will be happy to answer any questions you might have.

*Attch. 3*

STATEMENT OF ASSISTANT ATTORNEY GENERAL  
JEFFREY S. SOUTHARD

RE: House Bill No. 2831

DATE: March 21, 1984

The Consumer Protection Division of the Attorney General's Office is appearing in support of House Bill No. 2831, as amended. We feel that it provides additional protection to consumers in an area in which clear abuses have occurred in the past. In that this bill is one in which the industry has been consulted and supports (with modifications), the measure represents a reasonable compromise which deserves the committee's serious consideration.

We would suggest two amendments, one technical and one substantive. The technical amendment goes to Section 4 (page 5), subsection (b). In that this subsection incorporates the provisions of the Kansas Consumer Protection Act, K.S.A. 50-623 et seq., it would be simpler and cleaner to say:

"In addition to or instead of the criminal penalties provided by subsection (a), a person who violates any provision of this act shall be subject to proceedings under the provisions of the Kansas Consumer Protection Act, K.S.A. 50-623 as amended."

The rest of the subsection could be eliminated.

The substantive amendment would add a new subsection (d) to the list of prohibited practices found in Section 3 (pages 2-5). The subsection would deal with the problem of sellers tying the membership in the food plan with the purchase of a freezer or locker from the supplier. This provides an opportunity for hidden charges and large mark-ups on the equipment, which is only secondary to the subject of the transaction (i.e. food). The new language could state:

"(d) Requiring the purchase of a food freezer or other refrigerated food storage unit from the seller or any specified supplier as a pre-condition to, or a necessary part of, any food plan."

As worded, the subsection would also prohibit a seller from "steering" a consumer to any particular dealer, from whom the seller may receive a kick-back or other consideration.

*Att. 4*



**guaranteed** inc.  
**foods.**

ATTACHMENT 5, 3/21/84

"the OTHER way to shop".

8901 Rosehill Road Lenexa, Kansas 66215 (913) 888-5000

Office of the President  
Thomas G. Williams

March 13, 1984

*Hearings on H. B. 2831  
3/21 - Wed.*

Senator Fred A. Kerr  
State Senate  
State Capitol  
Topeka, KS 66612

Dear Senator Kerr:

At the suggestion of several legislators, I am writing you regarding House Bill No. 2831 ("bait and switch" legislation) which was introduced by Representative Frank Buehler and which - in its amended form - has passed the House and is now in your Senate Committee on Agriculture & Small Business.

While I certainly support the intent of this bill, I am concerned about some language within it - as are a number of others in the meat industry.

So you'll understand our concerns, I am enclosing a copy of my testimony given Tuesday morning, February 14th, before the House Agriculture Committee. I am also enclosing a letter and some recommendations to Rep. Buehler from Mr. Steve Krut, Executive Director of the American Association of Meat Processors. I hope you'll take a few minutes to read them.

For your convenience, I have also enclosed a copy of the amended bill (as you now have it) and typed-in proposed changes which AAMP, others and myself still feel need to be made to make the bill truly meaningful.

If you have any questions concerning this bill or the rationale behind the proposed changes, please don't hesitate

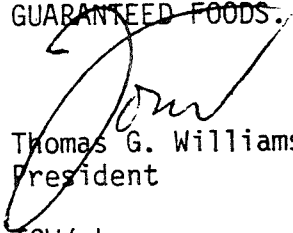
*Attch. 5*

Senator Fred A. Kerr  
March 13, 1984  
Page 2

to contact me at your earliest convenience. Thanks in  
advance for your help.

Sincerely,

~~GUARANTEED FOODS, INC.~~



Thomas G. Williams  
President

TGW/nk

Enclosure

P.S. For your background reference, I am also enclosing a  
copy of an article recently published about our company  
by a national meat industry publication.

THE FOLLOWING IS A SYNOPSIS OF THE REMARKS OF  
MR. TOM WILLIAMS, PRESIDENT OF GUARANTEED FOODS, INC.,  
AS THEY WERE PRESENTED TO THE KANSAS HOUSE  
AGRICULTURE COMMITTEE HEARINGS RELATIVE TO  
HOUSE BILL 2831 DURING THE COMMITTEE'S HEARINGS  
ON FEBRUARY 14, 1984.

Good morning. My name is Tom Williams. I live in Olathe, Kansas. I am the president of Guaranteed Foods, Inc., with which I have been affiliated 20 years and which has been in the business of home delivery of meats and groceries in Kansas since our founding here in 1958. Some of you may be familiar with our company. For those of you who are not, I have enclosed with the transcript of my remarks a reprint of a feature article on our company which recently appeared in a national food industry publication - Meat Plant Magazine. (It is included not as a solicitation of your business, but to familiarize you with our type of business - which is a part of a \$300,000,000/year industry - and which has been opposing the "bait and switch" meat companies and their practices in the United States since the "bait and switch" companies first came into existence in the mid-1960's.)

I am also the president of one of the home food service industry's trade associations - the International Frozen Food Council, a member of the American Association of Meat Processors and the Vice-Chairman of the Board of Directors of the Greater Kansas City Better Business Bureau. (I say this so you'll have some idea of where I'm coming from.)



I am here today to speak in complete agreement with the intent of my friend Representative Frank Buehler's house Bill 2831, and with the objectives of maintaining both high ethical standards for bulk meat dealers and the protection of all of us as consumers.

Frankly, in Kansas, today, we are lucky - because, either brought about by increased consumer awareness, promoted by local media - or organizations such as the Chamber of Commerce, Better Business Bureaus, The Kansas Association of Commerce and Industry and others, or by the heightened enforcement procedures by the Department of Agriculture and Attorney General's office (or for both of these reasons), we in Kansas, fortunately no longer have any of the "bait and switch" dealers at which this legislation is aimed. Neighboring states are not so fortunate. On the Missouri side of the metropolitan Kansas City area, there is a flourishing "bait and switch" meat store whose ads appear regularly in the Sunday comic sections and TV listings of The Kansas City Star.

And, quite frankly, legitimate companies - including our own - do lose some business to them. However, in our own case, we find that usually after a customer buys one order from a "bait and switch" meat company, they return as our customer and we seldom ever lose them again. That I think typifies the philosophy of the "bait and switch" companies - to get everybody once and get 'em good. (As a matter of fact, I will today leave you a reprint of a consumer awareness article which was published in our Guaranteed Foods magazine, The Good Life, several years ago, which exposed the methods of operation of the "bait and switch" meat companies and warned against what can happen.) Hopefully, at Guaranteed Foods, then, we have played a role also in diminishing these companies' existence in Kansas.

However, as much as I agree in principle with the objectives of the proposed legislation, I have some real reservations and concerns about the present form

of this bill for several reasons. I won't go into all of the detailed concerns now -- I'll leave you a copy of those to look over -- but let me just touch on some of the general areas of my concern.

First, I feel the bill attempts to focus on the negative -- in other words, it attempts - and I believe unsuccessfully - to cover all the possibilities of what a meat operator can't do, rather than spelling out the specifics of what must be done. I believe, as do some others - and I hope you share my belief - that the strength of a bill lies in its precise wording, and all of the administrative or legal or legislative interpretations cannot make a bill an effective piece of legislation if its language allows loop holes, vagueness, ambiguities or contradictions within it that run contrary to, or confuse the intent of the legislation.

I am also concerned that, despite the intent of the bill to eradicate the "bait and switch" meat companies, there is inadvertently some language included that could present legitimate, ethical Kansas retailers and meat processors from saleably, descriptively and meaningfully advertising to the consumer the products which they actually do sell . . . even though such advertising would be consistent with good business and in compliance with Kansas Department of Agriculture laws.

On the positive side, to strengthen the bill, I believe it would be more meaningful and enforceable if it included within it the definitions of many terms which are used in it, but which, without definitions, could become the subject for interpretation, and thus cloud the enforcement of the bill. In some instances, though, the definitions in the bill just plain miss the mark.

I am concerned also because in H.B. 2831, it appears that the real issue surrounding "bait and switch" meat companies - namely the relationship of the "bait" advertising to the sales "switch" once the prospect comes in the door, is really not clearly addressed in the legislation. The language focuses on what can't be advertised

rather than spelling out meaningful advertising guidelines from which it would be impossible for unethical dealers to "switch" the prospect. Unfortunately, though, in at least one instance, the language of the bill in its present form would "throw out the baby with the bath water", by creating a potential problem for every legitimate meat processor in the State of Kansas.

And while in some areas the language of the bill seems to go overboard, as I have just mentioned, there are other areas - and I have discussed these with, and received agreement from, both my peers in the industry and meat association officials - in which the bill could specifically be tougher on that small percentage of "unethical" elements of the bulk meat industry without harming the legitimate, ethical overwhelming majority. (Specific suggestions along these lines are included in the material I am handing out and I hope you'll take time to look them over.)

Finally, because Kansas is fortunate to have strong and effective consumer protection legislation in its statutes already (as demonstrated by the fact that these "bait and switch" companies no longer exist in Kansas) I and some others in the meat industry are concerned that, without a number of changes in it, this bill might present some conflicts (or at least redundancies to existing laws) which might hurt, rather than strengthen, enforcement.

In summary, then, while I applaud the objectives and intent of this legislation and Representative Buehler's courage and foresight in introducing it, I strongly urge that there be included in it a number of carefully thought-out, well-drafted modifications and amendments, such as have been proposed by the American Association of Meat Processors and others, so that enforcement of the law would be easier, compliance by legitimate meat dealers acceptable and readily "do-able" and the language of the bill strengthened to provide both protection for Kansas consumers and model legislation for the future.

As Amended by House Committee

Session of 1984

HOUSE BILL No. 2831

By Representative Buehler

2-2

0016 AN ACT relating to meat, food; concerning the advertising and  
0017 selling thereof; prohibiting certain practices in connection  
0018 with certain sales; placing certain duties upon the board of  
0019 agriculture and the secretary of agriculture; providing civil  
0020 and criminal penalties for violations.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. As used in this act:

0023 (a) "Buyer" means both actual and prospective purchasers  
0024 but does not include persons purchasing for resale.

0025 (b) "Carcass" means any carcass of cattle, sheep, swine, do-  
0026 mestic rabbits or goats.

0027 (c) "Food plan" means any plan under which a person pur-  
0028 chases a food freezer or other refrigerated food storage unit and  
0029 receives food at no cost or at reduced prices at the time of  
0030 purchase or at a later date or dates offering meat, poultry or  
0031 seafood for sale or the offering of such product in combination  
0032 with each other or with any other food or non-food product or  
0033 service for a single price.

0034 (d) "Misrepresent" means use any untrue, misleading or  
0035 deceptive oral or written statement, advertisement, label, dis-  
0036 play, picture, illustration or sample.

0037 (e) "Person" means individual, partnership, firm, corpora-  
0038 tion, association or other entity.

0039 (f) "Represent" means use any form of oral or written state-  
0040 ment, advertisement, label, display, picture, illustration or sam-  
0041 ple.

0042 (g) "Seller" means any person soliciting or making a sale and  
0043 includes the person's principal or any other person for whom the

0045 league, franchise, franchisee, franchisor or any authorized rep-  
0046 resentative or agent thereof who offers meat, poultry, seafood, or  
0047 combinations of such items, for retail purchase to the public.

0048 Sec. 2. No person shall advertise for sale, solicit, offer to sell  
0049 or sell ~~meats or frozen foods intended for storage in locker boxes,~~  
0050 ~~home freezers or freezer units~~ by newspapers, handbills, pla-  
0051 cards, radio, television or other medium unless the advertising is  
0052 truthful and accurate. Such advertising shall not be misleading or  
0053 deceiving in respect to grade, quality, quantity or price per  
0054 pound or piece or in any other manner.

0055 Sec. 3. No person advertising, offering for sale or selling all  
0056 or part of a carcass or food plan shall engage in any misleading or  
0057 deceptive practices, including, but not limited to, any one or  
0058 more of the following:

0059 (a) *Bait Selling.* (1) Disparaging or degrading any product  
0060 advertised or offered for sale by the seller, displaying any prod-  
0061 uct or depiction of a product to any buyer in order to induce the  
0062 purchase of another product or representing that a product is for  
0063 sale when the representation is used primarily to sell another  
0064 product.

0065 (2) Substituting any product for that ordered by the buyer  
0066 without the buyer's written consent.

0067 (3) Failing to have available a sufficient quantity of the  
0068 product represented as being for sale to meet reasonable antici-  
0069 pated demands, unless the available amount is disclosed fully  
0070 and conspicuously.

0071 (b) *Price Representation.* (1) Using any price list related to  
0072 the seller's food plan which contains prices other than the  
0073 seller's current billing prices or advertisement subject to  
0074 changes without notice unless so stated, and which contains  
0075 prices other than the seller's current billing prices, unless  
0076 changes are subject to consumer's advance acceptance or rejec-  
0077 tion at or before the time of order or delivery.

0078 (2) Misrepresenting the amount of money that the buyer will  
0079 save on purchases of any products which are not of the same  
0080 grade or quality.

0081 (3) Failing to disclose fully and conspicuously in advertise-

(See list of additional definitions (h), (i), (j), (k) and (l))

with the intent of encouraging the purchase of another.

(See my attached rationale.)

0082 ment and invoice in at least ten-point type any charge for cutting,  
 0083 wrapping, freezing, delivery or other services.

0084 (4) [Representing the price of any product to be offered for  
 0085 sale in units larger than one pound in terms other than price per  
 0086 single pound. Nothing in paragraph (4) of this subsection (b)  
 0087 shall be construed to prevent the price of such units from also  
 0088 being represented by individual serving or by fluid measure.]

0089 (c) *Product Representation.* (1) Misrepresenting the cut,  
 0090 grade, brand or trade name, or weight or measure of any product.

0091 (2) Using the abbreviation "U.S." in describing a product not  
 0092 graded by the United States department of agriculture, except  
 0093 that a product may be described as "U.S. Inspected" when true.

0094 (3) Referring to a quality grade other than the United States  
 0095 department of agriculture quality grade, unless the grade name is  
 0096 preceded by the seller's name in type at least as large and  
 0097 conspicuous as the grade name.

0098 (4) Misrepresenting a product through the use of any term  
 0099 similar to a government grade.

0100 (5) Failing to disclose in uniform ten-point type, when a  
 0101 yield grade is advertised, a definition of the yield grade in the  
 0102 following terms:

0103 Yield Grade 1 - Extra lean

0104 Yield Grade 2 - Lean

0105 Yield Grade 3 - Average waste

0106 Yield Grade 4 - Wasty

0107 Yield Grade 5 - Exceptionally wasty

0108 (6) Comparing quality to a United States department of agri-  
 0109 culture yield grade, unless it is fully and conspicuously disclosed  
 0110 that the quality is not a U.S.D.A. yield grade but only an opinion.

0111 (7) Advertising or offering for sale any combinations of parts  
 0112 of carcasses with one unit price, except when the advertisement  
 0113 or offer for sale pertains to combinations consisting only of  
 0114 poultry or poultry products carcasses, sides or primal cuts as  
 0115 such, while including disproportionate numbers or amounts of  
 0116 less expensive components of those cuts, or offering them in  
 0117 tandem with less expensive components from other carcasses,  
 0118 sides or primal cut parts.

*Good*

The price of any product sold in units larger than one pound must be stated in price per pound.



0119 (8) [Failing to disclose fully and conspicuously the correct  
0120 government grade for any product if the product is represented  
0121 as having been graded.]

0122 (9) Failing to disclose fully and conspicuously that the yield  
0123 of consumable meat from any carcass or part of a carcass will be  
0124 less than the weight of the carcass or part of the carcass. The  
0125 seller shall, for each carcass or part of carcass advertised, use  
0126 separately and distinctly, in at least ten-point type, [the following  
0127 disclosure: "Sold hanging weight subject to cutting loss."]

0128 (10) Misrepresenting the amount or proportion of retail cuts  
0129 that a carcass or part of carcass will yield.

0130 (11) Failing to disclose fully and conspicuously whether a  
0131 quarter of a carcass is the front or hind quarter, and quarters,  
0132 sides or halves must consist of only anatomically natural propor-  
0133 tions of cuts from front or hind quarters.

0134 (12) Representing any part of a carcass as a "half" or "side"  
0135 unless it consists exclusively of a front and hind quarter. Both  
0136 quarters must be from the same side of the same animal unless  
0137 the seller discloses fully and conspicuously that they are [from  
0138 different sides or different animals, as the case may be. Any  
0139 section advertised and offered for sale either as an individual  
0140 unit or as an inclusion with the purchase of a quarter, side or half  
0141 must be described and called by its commonly known name.  
0142 Each quarter shall be of the same grade or quality as the other  
0143 quarter comprising the half or side and the seller shall advise the  
0144 buyer of the weight of each quarter prior to sale. In selling  
0145 quarters individually or as part of a half or side, if actual weights  
0146 are not known or cannot be determined prior to sale, approx-  
0147 imate weights may be used if: (A) The buyer is informed that the  
0148 weights are approximate; (B) ~~the weights are so identified on any~~  
0149 ~~purchase order or contract~~ the advertised weight ranges do not  
0150 cover a spread of more than 10%; and (C) [the seller agrees with  
0151 the buyer, in writing, to make a cash refund or grant a credit on  
0152 delivery for the difference between actual weight and the ap-  
0153 proximate weight on which the sale was made.]

0154 (13) Using the words "bundle," "sample order," "split side"  
0155 or words of similar import to describe a quantity of meat or

If the product is represented as having a grade, any grade name specified or advertised which is other than a U.S. Department of Agriculture grade must be shown with the words "Not a USDA grade".

*page problem*  
a disclosure such as; "Sold hanging weight subject to cutting loss" or "Sold gross weight subject to normal trim loss".

or may be

*Should go with word adapted in (B)*  
That such estimates can not differ from the actual billing weight by more than 10% from advertised estimates, e.g. a side advertised at 300-325 lbs. avg. could not have a billing weight of more than 340 lbs.

*impossible to cut.*

0156 poultry unless the seller itemizes each cut and the weight of each  
0157 cut which the buyer will receive.

the approximate quantity of such cut or approximate weight of each type of cut

0158 (14) Advertising or offering a free, bonus or extra product or  
0159 service combined with or conditioned on the purchase of any  
0160 other product or service unless the additional product or service  
0161 is accurately described, including, whenever applicable, grade,  
0162 net weight or measure, type and brand or trade name. The words  
0163 "free," "bonus" or other words of similar import shall not be  
0164 used in any advertisement unless the advertisement clearly and  
0165 conspicuously sets forth the total price for amount which must be  
~~0166 paid~~ purchased to entitle the buyer to the additional product or  
0167 service.

weight

of other products

*Makes more workable*

0168 (15) Misrepresenting the breed, origin or diet of slaughtered  
0169 animals or parts of slaughtered animals offered for sale. Sellers  
0170 making claims as to breed, origin or diet shall have written  
0171 records available to substantiate the claims.

(16) (See attached list of suggestions for "tightening up" the bill.)

0172 Sec. 4. (a) Any person who violates any provision of this act  
0173 is guilty of a class C misdemeanor for the first conviction, a class  
0174 B misdemeanor for the second conviction and a class A mis-  
0175 demeanor for a third or subsequent conviction.

*See list*

0176 (b) In addition to or instead of the criminal penalties pro-  
0177 vided by subsection (a), a person who violates any provision of  
0178 this act shall be liable to the aggrieved buyer, or the state or a  
0179 county as provided in this subsection, for the payment of a civil  
0180 penalty, recoverable in an individual action, including an action  
0181 brought by the attorney general or county or district attorney, in a  
0182 sum set by the court at not more than \$2,000 for each violation.

0183 An aggrieved buyer is not a required party in actions brought  
0184 by the attorney general or a county or district attorney pursuant  
0185 to this subsection. In administering and pursuing actions under  
0186 this subsection, the attorney general or the county or district  
0187 attorney is authorized to sue for and collect reasonable expenses  
0188 and investigation fees as determined by the court. Civil penalties  
0189 sued for and recovered by the attorney general shall be paid into  
0190 the general fund of the state. Civil penalties sued for and re-  
0191 covered by the county or district attorney shall be paid into the  
0192 general fund of the county where the proceedings were insti-

0193 gated.

0194 (c) An individual who violates any provision of this act while  
0195 acting in the name of or on behalf of any person is liable to the  
0196 same extent as if the individual were acting in the individual's  
0197 own name or own behalf.

0198 Sec. 5. (a) The board of agriculture and the secretary of  
0199 agriculture shall provide, in conjunction with and in addition to  
0200 the inspection program established under K.S.A. 65-6a30 and  
0201 amendments thereto, for inspection of places of business of  
0202 sellers who are subject to this act.

0203 (b) Personnel of the ~~department~~ board of agriculture desig-  
0204 nated by the secretary of agriculture shall have access to those  
0205 places of business during regular business hours for the purpose  
0206 of inspecting carcasses or parts of carcasses sold by the seller and  
0207 observing the sales practices of the seller to determine whether  
0208 there is compliance with the provisions of this act.

0209 (c) The secretary of agriculture, or personnel designated by  
0210 the secretary, shall report any suspected violations of this act to  
0211 the county or district attorney of the county where the alleged  
0212 violation occurred.

0213 Sec. 6. The remedies provided in this act are in addition to  
0214 and not in substitution for any other remedies provided by law.

0215 Sec. 6 7. This act shall take effect and be in force from and  
0216 after its publication in the statute book.

SPECIFIC RECOMMENDATIONS ON HOUSE BILL 2831

SECTION I

- (h) "Gross weight" or "hanging weight" means the weight of any carcass, side, quarter or primal cut of meat or combination thereof when weighed prior to cutting or trimming such meat into its constituent parts.
- (i) "Cutting loss" or "trim loss" is the weight of meat, fat and bone removed from the carcass, side, quarter or primal cuts during its processing into retail cuts.
- (j) "Net weight" is the total weight of the remaining constituent parts of the meat after it has been processed into retail cuts from a carcass, side, quarter or primal cut or cuts.
- (k) "Primal cuts" means the following cuts:
- 1) Beef: the chuck, rib, loin, round, flank, plate, brisket and shank
  - 2) For veal, lamb or mutton: Primal cuts are the leg, flank, loin, rack (rib) and shoulder
  - 3) For pork: Primal cuts are the belly, loin, ham, spareribs, shoulder and jowl
- (l) "Individual items" or "retail cuts" means the commonly-accepted generic terms for individual steaks, roasts, chops, etc., such as T-Bone Steak, Chuck Roast, Flank Steak, Round Steak, Soup Bones, Short Ribs, Rib Roasts, etc.

SECTION III

(a) Bait Selling

- (1) I have no problem with the intent of the paragraph - but taken literally, the phrase, ". . . displaying any product or depiction of a product to any buyer in order to induce the purchase of another product," means to me that, under this legislation, no seller could ever offer any bonus or free merchandise of any kind to gain a sale. For example, a meat processor, locker plant, retail grocer, home food service, etc.

-- U.S. quality grade of primal cut or package sold

-- 72-hour right of recission by the customer, whereby they could cancel the sale and return the product to the seller for a full refund of the purchase price less the proportionate price for any meats which the customer received but did not return to the dealer.