

3/28/84

Fred Kerr

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE AND SMALL BUSINESSThe meeting was called to order by Senator Fred Kerr at
Chairperson10:00 a.m. ~~p.m.~~ on Tuesday, March 27, 1984, 19 in room 423-S of the Capitol.All members were present except: Senator Ross Doyen (E)
Senator Richard Gannon (E)
Senator Ed Reilly (E)Committee staff present: Raney Gilliland, Research Department
Jim Wilson, Revisor's office

Conferees appearing before the committee: None

Senator Karr moved the March 22 and March 23, 1984 minutes be approved, seconded by Senator Allen. Motion carried.

HOUSE BILL 2831 - Senator Kerr called attention to the balloon draft of this bill (Attachment 1), and he reviewed page-by-page the changes and suggested amendments. He particularly called attention to the two amendments on page 5 as suggested by the Attorney General's office inquiring if anyone in the room had a problem with the addition of item (d) between lines 171 and 172. Representative Buehlar and Tom Williams, of Guaranteed Foods, indicated this would be satisfactory to them, if deemed necessary. Jeff Southard of the Attorney General's office, stated they have had cases where this language would be beneficial. Since the language in lines 178-193 is repetitive of the language in the Kansas Consumer Act, deletion was suggested in the balloon draft, and page 6 contains some clarifying additions.

After further discussion, Senator Allen moved the amendments as contained in the balloon draft be adopted, seconded by Senator Montgomery. Motion carried. Senator Montgomery moved House Bill 2831 be recommended favorably as amended, seconded by Senator Norvell. Motion carried.

HOUSE BILL 3056 - Senator Kerr called on Revisor Wilson to explain the implications of this bill. He stated the brand inspectors have statutory authority to arrest but not to carry guns, which is essential for law enforcement powers. Revisor Wilson stated he feels it should be clarified as to the amount of training required for the special investigators under this bill, whether 40 hours or the entire 400 hours. Raney Gilliland pointed out KSA 31-157 authorizes the State Fire Marshal to promulgate rules and regulations outlining the law enforcement training requirements of arson investigators. It is specified 77 hours of law enforcement training, plus the firearms training of 40 hours is required under rules and regulations for arson investigators. Dr. Gurss stated he did not feel the 400 hours training would be necessary but he could go along with the requirements of the arson investigators.

After further discussion, Senator Karr moved to amend the bill to include the special investigators be required to obtain training equivalent to that required of arson investigators, seconded by Senator Arasmith. Motion carried.

Senator Karr moved House Bill 3056 be reported favorably as amended, seconded by Senator Thiessen. Motion carried.

Senator Kerr stated there would be a meeting Wednesday, March 28, to consider SCR 1665, and committee discussion of other possible interim study topics.

The meeting was adjourned.

SENATE

AGRICULTURE AND SMALL BUSINESS COMMITTEE

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

Tuesday, Mar. 27, 1984
Date

NAME	ADDRESS	ORGANIZATION
Ed Turn	Topeka	Animal Health
Ed Kenneth M. Wilke	Topeka	Bd of Ag
Larry D. Washburn	"	"
Frances Kastner	"	Ks Food Dealers
Tom Williams	Lanexa	Guaranteed Foods
Julie Steward	Lanexa	Guaranteed Foods
RUD GRAND	TOPEKA	KCCI
Jeff Southard	"	Atty General
Neville Riley	Reighton	K.A.W.C.
Don Army	Topeka	AP
Bernie Hanson	Alma	KMPA
Frank Buchler	Topeka	Leg.
Alma Grace Seaby	Sabetha	
Ken Seaby	Sabetha	
M. Howe	Topeka	Garret-Journal
Nancy Kantola	Topeka	K Co-op Council
Jan R Dannel	Hutchins	KGFA
Nike Bean	Topeka	KLA

As Amended by House Committee

Session of 1984

HOUSE BILL No. 2831

By Representative Buehler

2-2

PROPOSED AMENDMENTS
(For consideration by Senate Committee
Agriculture and Small Business)
3-27-84

ATTACHMENT 1, 3/27/84

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.

state
thereof

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~~
0044 ~~sale is procured, individual or business entity, corporation,~~

Atch. 1

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-

Nothing in this subsection (a)(1) shall be construed to prohibit the enhancement of sales of any product by the use of giveaways.

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.

leave by in

[]

or by other meaningful description

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."

gross

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

normal trim

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.

or may be

(C) the difference between advertised and sale weights does not exceed 5%;

(D)

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

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

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 or amount which must be
0166 paid purchased to entitle the buyer to the additional product or
0167 service.

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.

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.

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~~

(Amendments in lines 171 to 193 and
in line 212 are proposed by the
Attorney General.)

(d) Requiring the purchase of a food freezer
or other food storage refrigeration unit from
the seller or any specified supplies as a
prerequisite to, or a necessary part of,
any food plan.

subject to proceedings under the Kansas
consumer protection act

0193 ~~acted.~~

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.

state

the state board of

state

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and to the attorney general