Approved: February 20, 2001
Date

MINUTES OF THE SENATE AGRICULTURE COMMITTEE.

The meeting was called to order by Chairperson Derek Schmidt at 8:00 a.m. on February 14, 2001 in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
Jill Wolters, Revisor of Statutes
Betty Bomar, Secretary

Conferees appearing before the committee:
Don Hineman, President, Kansas Livestock Association
Mike Jensen, President, Kansas Pork Producers Council
Bill Fuller, Associate Director, Public Policy Division, Kansas Farm Bureau
Jim Grey, State Affairs Manager, Aventis CropScience
Fran Brunner, Assistant Attorney General, Consumer Protection Division
Norman Stutzman, Belvue
Tom King, Farmers Union Cooperative, St. Marys

Others attending: See attached list

SB 223 - Enacting the competitive livestock market act

Written testimony submitted by Harold Walker, Chairperson, Kansas National Farmers Organization, in support of **SB 223** was distributed to members of the Committee (Attachment 1)

Don Hineman, President, Kansas Livestock Association (KLA), testified in opposition to **SB 223**. He stated the majority of KLA members who determine policy positions are independent cattlemen, with small to moderate operations, and each member has one vote, regardless of the size of their operation. No issue over the past six years has received as much member discussion, analysis and debate as marketing. The members consensus is: they do have a degree of concern about the rapid changes taking place within the industry, they do recognize change is necessary to meet the needs of a changing consumer marketplace, but their concerns do not rise to the level of supporting more laws and regulations governing cattle marketing.

KLA believes **SB 223** is counter productive as it: 1) duplicates federal law; 2) creates a new layer of state regulation which will negatively impact the beef industry; and 3) investigations have not revealed a significant number of problems of the type contemplated by this legislation. No credible economic analysis has concluded that concentration in the packing industry or manipulation of the market place by packers are responsible for the losses and low prices experienced by cattlemen. Enactment of this legislation imposes the responsibility of enforcement on the Kansas Attorney General and would result in little more than a further distraction. If any objective evidence is found warranting further investigation or prosecution, there are currently adequate laws on the books. (Attachment 2)

Mike Jensen, President, Kansas Pork Association, testified in opposition to **SB 223**, stating that: 1) the bill mimics the language presently in the federal Packers and Stockyards Act, 2) the bill is unclear as to the responsibilities of out of state packers, and 3) the membership opposes the legislation. The pork industry has experienced challenges in the past 2 years that exceed any faced by several generations of pork producers, however, this type of legislation was never considered as a solution. (Attachment 3)

Bill R. Fuller, Association Director, Public Policy Division, Kansas Farm Bureau (KFB), testified in opposition to **SB 223**. KFB supported legislation enacted last year which strengthened the authority of the attorney general to more aggressively enforce state antitrust laws and increased its resources. **SB 223** would not significantly add to the ability of the attorney general to investigate and take action on threats to the competitive enterprise system or violations of antitrust laws. Inasmuch as the law

strengthening the attorney general's antitrust powers is new and has only been in effect for 8 months, it is important to give it time to work before enacting additional legislation. The KFB does support providing the attorney general with adequate resources, staff and budget, to actively enforce antitrust laws and competitive marketing violations.

The KFB opposes **SB 223** for the following reasons: 1) it is a duplication of a federal program, 2) it gives the attorney general no additional powers to investigate and prosecute violations than are now contained in the anti-trust legislation enacted last year, and 3) we question the potential impact the legislation would have on the producer, when marketing his product, finding a market, and the price of the product.
(Attachment 4)

The Committee was advised by a member of the Committee who serves on Ways and Means that the Attorney General's office has the means to investigate the IBP merger, but if there is to be additional investigations, there will be a need for an increase in both the budget and staff.

There being no additional conferees, the hearing was closed.

Jim Grey, State Affairs Manager, Aventis CropScience, testified that Aventis regrets its decision to market StarLink seed without first receiving approval. StarLink affected approximately 5,000 farmers in 17 states. Agreements have been reached with the attorney generals in each of the 17 states. Aventis has contacted all of the growers it could identify, established a hot line for growers to utilize in finding a buyer for their crops and transportation to an approved purchase, and agreed to pay a price $.25 per bushel above market price. The price for buffer crops, crops grown within 660 feet of StarLink corn, and co-mingled crop may vary from the $.25 per bushel to $.05 per bushel above the market price. Aventis has, at the urging of EPA, set a date definite by which growers must make application with Aventis for assistance with payments and ensuring the crop is sold only for approved purposes.

Frances R. Brunner, Assistant Attorney General, Consumer Protection Division, testified that the Attorney General's offices has worked with a group of representatives from other Attorney General offices throughout the United States, to monitor the StarLink corn situation closely. It became clear through the monitoring period that even though there was not a large amount of StarLink corn grown in Kansas, it was a serious issue for the farmers who did grow StarLink or buffer corn, and for elevators that accepted the corn. The issues of co-mingled corn and non-StarLink, no-buffer corn that contains the Cry9C protein increased the number of growers and elevators in Kansas who may be affected by the StarLink situation.

On January 22, 2001, the Kansas Attorney General joined with 16 other Attorney General's in an agreement with Aventis CropScience regarding StarLink corn. The agreement formalizes the claims procedures Aventis CropScience outlined for growers and elevators with losses related to StarLink corn, StarLink Buffer corn, and Non-StarLink corn containing Cry9C protein. The agreement does not limit the Attorneys' General's options should they choose to bring action against Aventis for violation of consumer protection or antitrust law, nor does it limit growers' or elevator's with regard to any legal recourse they choose to take.

The agreement formalizes the procedures Aventis CropScience established in which they pay a premium for affected harvest. Aventis was strongly encouraged by both the USDA and the EPA to create an incentive for growers and elevators to get StarLink corn out of the stream of commerce - to either feed it on farm, sell it to the CCC, or to market it to an approved destination to ensure that the corn does not enter the human food supply. The date growers must make application for relief is February 15, 2001.
(Attachment 5)

Norman Stutzman, Belvue, Kansas, stated when he purchased his corn seed, the dealer was short 6 bushels, and substituted StarLink to fill out his order for 10 bushels. Mr. Stutzman was unaware of any problem until October 5th, when he was notified by Aventis that he had a problem with the StarLink corn. He was not aware until after the corn had been harvested, stored in his bin with other non-StarLink corn. He contacted Aventis and advised them of his having StarLink corn. He is still trying to come to an amicable agreement for payment of his corn, both that co-mingled in his bin, as well as that within the

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

buffer area. At this point, Aventis has not found a market for the sale of the corn, they are willing to pay only $.10 above market price, provide no transportation, and are not willing to pay a premium on all the 4900 bushels contained in the corn bin. Mr. Stutzman raised a lot of questions as to the manner in which Aventis is actually dealing with growers and ensuring that the StarLink product does not enter the human food supply.

Mr. Tom King, Manager, Farmers Cooperative, testified that StarLink corn was first discovered in the Wamego elevator as the result of a community rumor, not as the result of notification by Aventis. An Aventis Seed Dealer advised the Belvue elevator that it was also contaminated with StarLink. A telephone call was initiated to Aventis and talked with an individual who was assigned to answer the phone and take information. Conversations resulted in what appeared to be an opportunity to move the grain to feed lots at a freight rate that would compensate for the loss of opportunity. Further, the elevator was deprived of the opportunity to sell corn to a pet food manufacturer. The company that had the contract with the manufacturer wouldn't risk its contract by delivering a contaminated product to them. Several calls later, the elevator was referred to a ConAgra employee who advised the grain could not be moved to feedlots and be compensated a transportation allowance which was being offered the producer. This position was in conflict with the position taken by the person at Aventis. In essence, the elevators we have received as many different responses and instructions as the number of persons contacted.

As a result, the elevators have a total of 646,000 bushels that is contaminated and as a result of the inefficient handling of this contamination problem it is out approximately $213,180. The cost of the contamination can further be expanded by the fact that the elevator must be cleaned prior to next years product, and we are unable to blend the 2000 harvest with the 2001 harvest, thereby suffering an additional expense.

Mr. King raised questions as to the Coop's liability and what are the long-term ramifications of the contaminated corn to the Cooperative, and how is Aventis providing long-term protection to the growers and elevators. (Attachment 6)

The meeting adjourned at 9:35 a.m.

The next meeting is scheduled for February 20, 2001.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 14, 2001

NAME	REPRESENTING
Jim Allen	Seaboard
JACK DUTRA	KFCA
Johnny Schaben	KFCA
Doug Wareham	KFCA/KGFA
JIM IGRAY	AVENTIS CROPSCIENCE
Dee Likes	
Jo Luby	Ag Co-op Council
Todd Allen	KLA
Betsy Heneman	KLA
Mike Collinge	KLA
Larry Penka	KLA
Don M Rezac	KCA
Larry Ottgen	KLA
Todd Domer	KLA
Alan Hess	KLA
Don Hineman	KLA
Lee Like	KLA
STEPHEN RUSSELL	KLA
Matt Teagarden	KLA

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: _____

NAME	REPRESENTING
Terry Holdke	KLA
Todd Johnson	KLA
Bill Fuller	Kansas Farm Bureau

Testimony for Senate Bill 223
Kansas Senate Committee on Agriculture
Senator Derek Schmidt, Chairperson

Submitted by Harold Walker, Chairperson, Kansas NFO (National Farmers Organization)
February l3, 200l

Kansas NFO strongly supports SB 223. Kansas NFO serves as a marketing agent for livestock producers and feeders. We have experienced increasing difficulty effectively and competitively marketing livestock for our members. We have several members who own independent feed lots and "feed-out" fat cattle as private and commercial operators.

These members have demonstrated a reluctance to converse openly concerning this bill as they are concerned about retaliation and the resulting declining window of opportunity for sales of their own and customer owned cattle.

Kansas NFO supports alliances and value-added opportunities. We participate in both. SB223, as written, does not and will not effect any negative impact for these types of arrangements that are beneficial to independent producers.

We feel that competition in livestock markets, with an equitable and level "playing field" for all, is necessary to maintain and grow a healthy livestock industry. This bill will help to encourage that growth and development.

In closing, we ask you to support SB 223.

Thank You.

Senate Agriculture Committee
Date 2-14-01

Attachment # 1

KANSAS LIVESTOCK ASSOCIATION

Since 1894

Testimony

presented by

Don Hineman, President
Kansas Livestock Association

regarding

Senate Bill 223

before the

SENATE COMMITTEE ON AGRICULTURE

Wednesday, February 14, 2001

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 7,300 members on legislative and regulatory issues. KLA members are involved in all segments of the livestock industry, including cow-calf, feedlot, seedstock, swine, dairy and sheep. In 1997, cash receipts from agriculture products totaled over $8.9 billion, with nearly fifty-five percent of that coming from the sale of livestock. Cattle represent the largest share of cash receipts, representing ninety percent of the livestock and poultry marketing's.

Senate Agriculture Committee
Date 2-14-01

Attachment # 2-1 thru 2-6

6031 SW 37th Street ◆ Topeka, KS 66614-5129 ◆ (785) 273-5115 ◆ Fax (785) 273-339

Mr. Chairman and members of the committee, I am Don Hineman, a cow-calf producer from Dighton, Kansas, serving this year as President of the Kansas Livestock Association. Thank you for the opportunity to present our views on Senate Bill 223.

KLA's primary function for nearly 107 years has been to protect and defend the interests of livestock producers of all sizes and all segments of beef production; cow-calf; stocker and grazing operations; farmer-feeders and custom/commercial feedlots. The vast majority of the members who determine our policy positions are independent cattlemen with small to moderate operations, and each member has one vote, regardless of size. The past six years no other issue has received as much member discussion, analysis and debate as marketing. Our members have told us very clearly that, while they do have some degree of concern about the rapid changes taking place in our industry, they recognize change is necessary in order to meet the needs of a changing consumer marketplace. They also tell us their concerns do not rise to the level of supporting more laws and regulations governing cattle marketing. The vast majority of cattlemen prefer to maintain an unrestricted freedom of choice to market as they believe will best serve their individual operations. Please remember, any laws or regulations controlling packers are also controls that will narrow cattlemen's freedom of choice which many have initiated because they believe it is in their best interests to do so.

Our industry is changing rapidly to more closely align with what consumers find valuable. That means new, innovative products and that marketing and business models must also change. Some in our industry fear these business evolutions and interpret them to be unfair to those who choose to not participate. They advocate the force of law to keep others from adapting because it brings sharper competition between producers to provide value by furnishing different quality or supply volumes. In these new business models, like in virtually every other industry you can name, the old traditional lines between segments are becoming blurred or non-existent. In many cases, cowboys are becoming packers by integrating up the supply and merchandising chain and taking equity ownership in packing activities and sometimes even all the way into retail operations. Some believe these practices - like formulas; grids; contracts; and supply chain arrangements, that help cattlemen discover the true value of their product, and allow them to participate in the margins up the marketing chain - are not desirable and advocate government action to narrow the business choices available to our industry.

We realize the sponsors of this bill may be well-intentioned, but we believe it would be counter productive to enact such a measure for the following reasons:

1) It unnecessarily duplicates federal law. The Grain Inspection Packers and Stockyards Administration (GIPSA) enforces the federal law which contains almost the same prohibited acts as this particular bill. GIPSA has an annual budget of approximately $30 million (with $17 million devoted to the Packers & Stockyards Division) and is staffed with hundreds of employees, including numerous attorneys, economists and investigators to oversee the marketplace. KLA supports the enforcement of the Packers and Stockyards Act and has maintained a close working relationship with the staff of the Packers and Stockyards Division of GIPSA as well as its overall administrators to ensure that legitimate complaints are appropriately investigated. KLA met with investigators from the Government Accounting Office (GAO) when they did their study of GIPSA. We supported the bill by Senator Grassley and Senator Brownback which required GIPSA to implement the recommendations in the study. Those improvements are being accomplished to make the agency more effective.

2) Creating a new layer of state regulation will negatively impact the beef industry. In the many decades since the enactment of the federal act in 1921, there have been numerous court cases and interpretations of the law. Appellate decisions have 'settled' the law into case law precedents that guide the federal agency.

We believe it would be confusing and negative to the industry to now impose another set of regulations and laws on a state-by-state basis dealing with cattle and meat products, which are sold in interstate commerce. Conceivably, cattlemen would be subjected to audits, investigations, and unnecessary interference with their business. Creating a checkerboard of new state laws and regulations governing cattle marketing would potentially violate the uniform application of the federal law and would almost certainly confuse the case law which guides the agency and the courts. Federal law may, in fact, preempt actions of this kind because case law recognizes preemption when the federal government has pervasively entered an area of the law. Additionally, if the federal government used the Interstate Commerce Clause of the U.S. Constitution as a justification for regulating this area, the state would be precluded from regulating the same area as a violation of that clause of the Constitution. I'll leave it to our attorneys to discuss the legal points if needed.

3) Investigations have not revealed a significant number of problems of the type contemplated by this bill during the last six years of the 'down' part of the cattle cycle, when producer prices were painfully low. There have been several agency actions and a couple of them have gone to court and several have been either overturned, dismissed or found to be without sufficient merit or evidence to proceed.

There have been repeated investigations, studies and economic analyses of cattle marketing, packer concentration and packer conduct in the marketplace. Several of those investigations were conducted by GIPSA in the High Plains fed cattle marketing area and one study specifically concentrated on Kansas. In fact, KLA invited GIPSA to look closely at these issues and to enforce the law if substantive violations were found. Additionally, KLA along with its national affiliate organization, the National Cattlemen's Beef Association, requested that the antitrust division of the U.S. Department of Justice give attention to this area. I'll make a long story short by saying that neither of those federal agencies found any major issues that could withstand the level of proof required in a court of law. Additionally, no credible economic analysis has concluded that concentration in the packing industry or manipulation of the market place by packers was responsible for the losses and low prices experienced by cattlemen. On the contrary, industry analysts and economists, those individuals who make a career out of analyzing the cattle and beef business, have determined the recent tough times are the direct result of declining demand and over-production. The laws of supply and demand are still at work, and these are the issues our industry needs to focus on instead of continuing to be distracted by the concerns of a few which can not be supported by hard data.

We do realize a vocal minority in our industry cannot or will not accept the realities of these factual and objective investigations. We also recognize and appreciate that some of you may have constituents who are frustrated because they have not received the answers or the conclusions from these investigations that they expected. However, we respectfully suggest that enacting a bill of this nature and imposing the responsibility to enforce it on the Kansas Attorney General would result in little more than a further distraction. It would merely give those who are disgruntled another place to complain and provide them an opportunity to exert political pressure on the Attorney General or the county attorney to arrive at the conclusion they desire. We suggest such investigations would be an expensive and unnecessary devotion of scarce state and county resources.

KLA will continue to closely monitor the marketplace and coordinate with the Packers and Stockyards Division of GIPSA. In the event any objective evidence is found which warrants further investigation or prosecution, we believe enforcement of current laws should be both timely and vigorous.

Thank you, Mr. Chairman. We'd be pleased to stand for any questions from the committee.

Investigations of Livestock Marketing Related Issues

June 1994 - The Commodity Futures Trading Commission (CFTC) investigates allegations that meat packers manipulated the livestock futures market. CFTC reports that no evidence of manipulative trading activity was found. In addition, CFTC found that during the period of greatest price decline (April 25 to May 25) packers were net buyers of Live Cattle contracts. Also, CFTC found packers were net buyers of the Live Cattle contract on all-futures-combined basis on six of the eight days when the June futures closed $1.00 or more lower.

October 1994 - CFTC completes a second and more in-depth investigation of allegations that meat packers manipulate the Live Cattle contract through intra-day trading. CFTC reports their investigation found no manipulation of the contract.

February 1995 - The Grain Inspection, Packers and Stockyards Administration (GIPSA) launches an investigation in Kansas into the buying practices of the four major beef packers.

April 1995 - Live Cattle contracts trade sharply lower. Commodity Funds are blamed but CFTC reports that Commodity Funds were responsible for less than 1% of contracts sold on that day.

August 1995 - GIPSA investigates and charges IBP with violating the Packers and Stockyards Act (section 202b) for giving undue preference to a small group of central Kansas feedlots. IBP uses a formula to buy fed cattle from those particular feedyards.

September 1995 - GIPSA receives complaints that some feedyards are selling "higher quality" cattle on the condition the packer buy a pen of "lower quality" cattle at the same price.

February 1996 - USDA releases the results of an investigation of concentration in the meat industry. The study began in October 1991. Six different projects were funded by congress. No illegal practices were found.

February 1996 - USDA Secretary of Agriculture Dan Glickman announces the formation of a USDA Advisory Committee on Agricultural Concentration. The committee is charged with investigating concentration in virtually every segment of the agriculture economy.

April 1996 - GIPSA releases the results of the investigation of packer procurement practices in Kansas. The time frame investigated included February, March, April and May of 1995. Data was obtained on over 15,000 transactions that included over 2 million cattle. In addition, GIPSA obtained cellular phone bills to determine if cattle buyers from the respective six plants had any communication between the buyers of the different packing plants. Over 10,000 cellular calls were analyzed. No violations were found.

June 1996 - The USDA Advisory Committee on Agricultural Concentration releases its report. Proposals to prohibit packer ownership of livestock and to limit how livestock can be sold are rejected.

June 1996 - GIPSA announces they will conduct another investigation on packer procurement, this time in Texas.

January 1997 - USDA considers and then rejects a petition that proposes to prohibit packers from forward contracting and feeding cattle.

September 1997 - An administrative law judge dismisses a complaint against IBP charging they gave undue preference to a group of Kansas feedlots.

August 1998 - A USDA judicial officer upholds a previous order that found IBP's marketing agreement with a group of Kansas feedyards was legal with one minor exception. In the agreement IBP has the first right of refusal. This one small issue remains on appeal.

January 1999 - A feedyard operator in northwest Kansas, who has filed a lawsuit against at least one meat packer, complains that packers are boycotting his feedyard. The operator complains the boycott is because he is outspoken in his criticism of meat packers. GIPSA is currently investigating the allegations.

May 1999 - A study released by the USDA's Economic Research Service found that concentration in the meatpacking industry is **not** to blame for depressed cattle prices.

May, 1999 - The Research Institute on Livestock Pricing releases a White Paper on Status, Conflicts, Issues, Opportunities and Needs in the U.S. Beef Industry. The report is written by several respected researchers from Kansas State University, Oklahoma State University and North Carolina State University. Several topics are covered including: Understanding Price Determination vs. Price Discovery; International Beef and Cattle Trade Issues and Vertical Price Transmission Issues in the Beef Sector.

June 1999 - A research paper titled "The Source of Better Prices for Cattle Producers" is published by Dr. Wayne Purcell, Director, Research Institute on Livestock Pricing. The report concludes that regulating the marketplace or controlling how packers can do business is not going to push calf prices up. According to the report higher livestock prices are obtainable if the beef industry can continue to develop and market high-quality, consistent, and convenient beef products.

July 1999 - GIPSA files a complaint against Farmland National Beef alleging the meat packer did not buy cattle from a feedyard in northwest Kansas. The government alleges Farmland National Beef stopped buying cattle from the feedyard after the feedyard manager was outspoken in his criticism of meat packers.

August 1999 – The U.S. Circuit Court of Appeals in St. Louis reverses an earlier USDA administrative ruling that stated IBP should discontinue its right of first refusal practice on buying cattle from a group of Kansas feedlots. In its decision, the court found this stipulation "has not had the actual effect of suppressing or reducing competition." This action effectively ends USDA's pursuit of a 1995 complaint against the packing firm. USDA had charged IBP with giving undue preference to a small group of Kansas feedlots known as the Beef Marketing Group. An administrative law judge initially dismissed the USDA complaint in 1997, finding no evidence IBP violated terms of the Packers & Stockyards Act. USDA appealed and the ruling was upheld, except for the provision on right of first refusal. IBP then took the case to the U.S. Circuit Court of Appeals in St. Louis.

November 1999 – The GIPSA investigation of the Texas fed cattle procurement investigation that began in 1996 is completed. The investigation studied a 16-month period and included over 37,000 purchase transactions involving 6.2 million head of cattle. GIPSA found no violations. GIPSA announces they will now fund a peer review analysis of the investigation.

December 1999 - GIPSA releases the results of the peer review analysis of the Texas fed cattle procurement investigation. The reviewers found that method of the investigation was solid and they found no evidence of behavior that would constitute a violation of the P&S Act.

December 1999 – GIPSA announces it has entered into five agreements with public researchers to cooperatively study competition and other issues in the livestock and poultry markets.

1. Texas A&M will further analyze effects of captive supply. This research will be a follow-up study to an earlier study conducted at Iowa State University and the University of Nebraska to determine if captive supply resulted in lower cash market prices. This research is expected to be completed in nine months at a cost of $13,750.
2. GIPSA also contracted ($33,423) with Utah State University to assess beef packers use of market power. This research is scheduled to be completed in October 2001.
3. GIPSA also issued a contract ($24,995) to the University of Wyoming to study the bidding behavior in auction markets to evaluate possible collusive behavior. This study is scheduled to be completed in September of 2000.
4. GIPSA issued a contract ($64,756) to North Carolina State University to analyze the economic effects of alternative compensation methods on contracts growers
5. GIPSA contracted ($67,460) with Texas A&M University to assess markets for chicken grower services and integrator use of the contracts. The project is scheduled to be completed in 2001.

KANSAS PORK PRODUCERS COUNCIL
KPPC
Serving Since 1956

Testimony in opposition to S.B. no. 223

Presented on behalf of the Kansas Pork Association

by Mike Jensen, President

Mr. Chairman, members of the committee, I am Mike Jensen. I represent the hundreds of pork producers in this state who produce and market the overwhelming majority of the pork in this state. Our opposition to this bill comes from a variety of reasons. Highlights of these are:

- This bill appears to mimic most of the language already present in the federal Packers and Stockyards (P & S) Act. Enacting state specific legislation that has the opportunity to be enforced or interpreted differently than federal legislation has grave consequences for our industry.

- Kansas pork producers currently rely on out of state markets for nearly all their marketing. The bill is unclear as to the responsibilities of out of state packers via this legislation. Quite frankly, most packers in other states **do not need** to buy Kansas pigs. If they perceive in any way that Kansas law, interpretreted or enforced differently than the current uniform federal law can do nothing other than put our producers at a increasingly competitive disadvantage.

- Our producers have lost 2 major packers in Kansas in the past 25 years. They continue to hope that a major packer may someday soon again locate in Kansas. Any perceived inconsistencies of Kansas law would drive a nail into that coffin of hope for a new packer.

- Most importantly in our opposition to this bill is the **complete lack of support** by our members for this type of legislation. Our members have spoken clearly that they are completely fed up with continued governmental intrusion into our business. Our industry has experienced challenges in the past 2 years that exceed any faced by several generations of pork producers. While this challenge has pushed pork producers to the edge of the envelope for solutions to controlling their destiny, this proposal was not among them.

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Senate Agriculture Committee
Date 2-14-01
Attachment # 3

Kansas Farm Bureau

PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON AGRICULTURE

RE: SB 223 – Enacts the Competitive Livestock Markets Act by placing key provisions of the federal Packers and Stockyards Act in Kansas law.

February 14, 2001
Topeka, Kansas

Prepared by:
Bill R. Fuller, Associate Director
Public Policy Division
Kansas Farm Bureau

Chairman Schmidt and members of the Senate Committee on Agriculture, Kansas Farm Bureau certainly appreciates this opportunity to express our views on SB 223 that proposes to enact the Competitive Livestock Markets Act.

My name is Bill Fuller. I serve as the Associate Director of the Public Policy Division for Kansas Farm Bureau.

SB 223 proposes to take key provisions of the federal Packers and Stockyards Act and place them in state law for the Kansas Attorney General to enforce.

Kansas farmers and ranchers last month participated in the American Farm Bureau Federation Annual Meeting where the 385 voting delegates representing the 50 state and the Puerto Rico Farm Bureaus reaffirmed the organization's policy statement calling for amendments to the Packers and Stockyards Act:

1. Extend prompt pay requirements to wholesalers and retailers of livestock products;
2. Include a dealer trust provision;
3. Provide jurisdiction and enforcement over the marketing of eggs as already exists for poultry meat;

Senate Agriculture Committee
Date 2-14-01

Attachment # 1 thru 3

4. Strengthen the ability of the Grain Inspection, Packers and Stockyards Administration (GIPSA) to stop predatory practices in the meat packing industry; and
5. Provide producer restitution when a case is successfully prosecuted.

AFBF policy goes on to recommend the following actions that are now a part of the organization's national agenda:

- USDA, in conjunction with the Department of Justice, should closely investigate all mergers, ownership changes or other trends in the meat packing industry for actions that limit the availability of a competitive market for livestock producers.
- Action should be taken to oppose further concentration of the meat packers. The Departments of Agriculture and Justice should more aggressively enforce current antitrust laws pertaining to packer concentration.
- Beef packers who process more than 1,000 head per day should be monitored so they cannot manipulate the market through forward contracting. The current threshold for reporting such purchases should be lowered from two weeks to five market days.

There can be no doubt that our farm and ranch members have concerns about the enforcement of antitrust laws and the issue of packer concentration. We believe if all entities work with the U.S Congress and call for action by the U.S Department of Agriculture and the U.S. Department of Justice that it can and will make a difference. We frankly question whether enacting SB 223 that creates a state Packers and Stockyards Act will actually achieve the goals many of us agree on.

Kansas Farm Bureau was a strong supporter of HB 2855 last session. The legislation, proposed by Governor Graves and approved by the Kansas Legislature, strengthened the authority and increased the resources for Attorney General to more aggressively enforce the state's antitrust laws. The legislation that became law included these provisions:

- Modernized the Attorney General's power to conduct investigations;
- Provided administrative subpoena power;
- Provided multiple remedy options for violations;
- Allowed the Attorney General to recover investigation costs when litigation is successful;
- Enabled the courts to extend jurisdiction over non-resident violators of state statutes; and

- Included antitrust activities in the Attorney General's annual consumer protection report.

K.S.A. 2000 Supp. 50-132. Conspiring to monopolize line of business or to prevent producer or local buyer from shipping without agency of third person, the result of passage of HB 2855 last session, states:

> *"No person, servant, agent or employee of any person doing business within the state of Kansas shall conspire or combine with any other persons, within or without the state for the purpose of monopolizing any line of business, or shall conspire or combine for the purpose of preventing the producer of grain, seeds or livestock or hay, or the local buyer thereof, from shipping or marketing the same without the agency of any third person."*

With the above language in current Kansas law, we suggest the passage of SB 223 would not add significantly to the ability of the Kansas Attorney General to investigate and take action on threats to the competitive enterprise system or violations of antitrust laws. Since the law that strengthens the Attorney General's antitrust powers is new and only became effective on July 1, 2000, it is important to give it time to work. Perhaps it is more important to provide the Attorney General with adequate resources, staff and budget, to actively enforce antitrust laws and competitive marketing violations.

While we recognize the good intentions and share many of the same concerns of those supporting SB 223, we cannot support the measure. First, it appears to be duplication by creating a state program that already exists on the national level. Second, it adds little, if any to the powers of the Attorney General to investigate and prosecute following the approval of HB 2855 approved in 2000. Third, what would be the true impact and the potential outcome if SB 223 were enacted? Where would it put producers as they work to develop market alliances and new-generation cooperatives? What about producers who are a part of the increasing trend of marketing their cattle on a quality basis? Would the measure impact prices as it relates to processing efficiencies when the pipeline is kept full of cattle?

Thank you!

State of Kansas
Office of the Attorney General
CONSUMER PROTECTION/ANTITRUST DIVISION
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CARLA J. STOVALL
ATTORNEY GENERAL

CONSUMER HOTLINE
1-800-432-2310

Testimony of
Frances R. Brunner, Assistant Attorney General
Consumer Protection Division
Office of Attorney General Carla J. Stovall
Before the Senate Agricultural Committee
February 14, 2001

Chairperson Schmidt, and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of Attorney General Carla J. Stovall to provide information about the our office's involvement in the Aventis CropScience and StarLink corn issue. My name is Fran Brunner and I am an Assistant Attorney General for the Consumer Protection Division.

Since October, 2000, our office has worked with a group of representatives from several states' Attorney General's offices working on the issues involved in the introduction of StarLink corn into the market. We have monitored the "StarLink corn situation" closely. As part of the National Association of Attorneys General, we benefit from multistate groups' efforts in many areas, including this one.

As time progressed, it became clear to us that while there was not necessarily a large amount of StarLink corn grown in Kansas, it is a serious issue for the farmers who grew StarLink corn or buffer corn, and for elevators that accepted the corn. Additionally, the issues of commingled corn and non-StarLink, non-buffer corn that contains the Cry9C protein increased the number of growers and elevators in Kansas who may be affected by the StarLink situation. After more information became available, we evaluated the issues, received more information from the Kansas Department of Agriculture, and decided on a course of action.

Therefore, on January 22, 2001, Attorney General Carla J. Stovall joined with 16 other States' Attorneys General in an agreement with Aventis CropScience regarding StarLink corn. This agreement formalizes the claims procedures Aventis CropScience has outlined for growers of

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StarLink corn, StarLink Buffer corn, and Non-StarLink Corn containing Cry9C protein. The company has also established a claim procedure for elevators with losses related to StarLink corn.

The agreement with the Attorneys General does not limit the Attorneys' General's options if they choose to bring action against Aventis for violation of consumer protection or antitrust laws. Similarly, it does not limit growers' or elevators' options with regard to any legal recourse they choose to take. In fact, an individual grower or elevator who chooses to take advantage of the claims process outlined by Aventis does not waive any legal rights they may have to sue the company for breach of contract, or for other losses sustained due to StarLink corn being introduced into the market. However, any recovery in such an action could potentially be offset by the amount Aventis had already paid to the plaintiff through the claims procedure.

The Attorneys General formalizes the procedures Aventis CropScience has established in which it will pay a premium - up to 25 cents per bushel - for affected harvests. There are, however, very specific instances in which the company will pay these premiums. Aventis has been strongly encouraged by both the U.S. Department of Agriculture and the Environmental Protection Agency to create an incentive for growers and elevators to get their StarLink corn out of the stream of commerce - to either feed it on farm, sell it to the CCC, or to market it to an approved destination to ensure that the corn does not enter the human food supply. Aventis agreed that it has sufficient assets to cover the claims. Additionally, the agreement required Aventis to mail copies of the claims procedures to all the growers and elevators that Aventis identified as having StarLink, buffer, or commingled corn.

Thank you again for the opportunity to talk to you about this situation. I will gladly respond to any questions you may have on the Attorney Generals' agreement.

FROM: FARMERS UNION COOPERATIVE BUSINESS ASSOCIATION
BY: TOM KING GRAIN DEPARTMENT MANAGER

Re: Starlink corn

We have Starlink corn in two of our grain facilities

We first discovered Starlink corn in our Wamego KS elevator by rumor in our area, not by notification from Aventis, but by rumors in the community. We also found the second elevator was also contaminated with Starlink. This time it was an Aventis Seed Dealer who delivered the contaminated corn to our Belvue elevator. Again we initiated phone calls to Aventis, where an inordinate amount of calls were busy signals. Aventis acknowledged that to we were correct and did have Starlink in our elevator. A significant amount of my time was invested just completing phone calls.

The initial calls were to an individual assigned to just answer the phone and take information. After two or three calls to this individual I was referred to Mark Parrish..

Phone calls that I initiated resulted in what appeared to me to be an opportunity to move the grain to feed lots at a freight rate that would compensate for the loss of opportunity. Opportunity is what grain merchandising is. Taking away the alternatives or opportunities is in itself lost income

We were deprived of an opportunity to sell corn to a pet food manufacturer. The company that had the contract with the manufacturer wouldn't risk its contract by delivering the contaminated product to them. This could have been a 200,000 bushel sale and was at a price level that was 7 c per bushel higher than the next best bid.

After several calls to Mark Parrish, he referred me to a ConAgra employee named Mark Jorgenson who quickly told me that I could not move the grain to feedlots and be compensated for the transportation allowance that they were offering the producer. This is an opposite position to that taken by Mark Parrish. After two or three conversations with Mr. Jorgenson one of our Branch Managers gave me the name of Mike Levy, as Mr. Levy from Aventis had apparently called him. A highlight of my conversation with Mr. Levy was my describing the missed sale to the pet food manufacturer and having Mr. Levy respond that the pet food manufacturer can't turn down this corn since it was going to animal feed. Does anyone here view that as a ridiculous statement? I do. It would be my guess that the buyer in this situation can do anything he damn well pleases and he did that by refusing to purchase this grain.

We have on hand at our elevator very dry corn approximately 9.5% moisture. The industry standard for 2 yellow corn is 15.5 moisture. The futures market carrying charges allow us to carry this dry moisture corn into the next crop year and blend it with wet corn that will come in next harvest. Our drying charge would be 18c per bushel and the shrink on the wet corn would be 15 c per bushel. That is .33 c per bushel. The amount of grain in question at our Belvue and Wamego facilities was 646,000 bushels. This contaminated corn and the cobbled handling of this contamination problem has removed a $213,180 opportunity from our play book. This is an opportunity that I will not be able to take advantage of, an option removed from the table by their callous disregard for federal regulations.

In the letter attached, that I faxed to two different Aventis representatives. I had a category titled "billing for my labor," this involved gathering data, correspondence, running down the rumor of Starlink in our elevator and preparing for this opportunity today. These functions are not something that I volunteered to do. I am going to bill for my time in performing those functions and bill for the time that was lost to the Coop as a result of time diverted from my daily functions. I am an employee of Farmers Union Coop and not an Aventis employee.

I have read in material from Aventis that I can submit a bill for clean up of the elevator to rid it of the Starlink contamination. If this is accepted by the Attorney General's office, it would appear to me that any future problems of contamination at our facility would be for our account. An obvious out for Aventis,

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"they didn't clean it properly." I don't have a labor force who I can divert to labor for someone other than Farmers Union Coop. The clean up liability is clearly the job of Aventis.

Apparently from what I read in the latest letter from Aventis, I can now send bills for approval to still another person at Aventis. In each contact with Aventis, I have expressed the desire of my employer to avoid legal action. As each day passes and I get bounced like a basketball from one person to another the thought occurs that they are not making the effort they are talking.

I would guess that this same group sat in a meeting in this town recently to discuss the failure of FCA Coop and the discussion centered on how the farmer has been hurt. This violation of federal regulations by Aventis has cost the U.S.farmer thousands of times more than that issue.

Some questions that have gone through my mind.
Does Farmers Union Coop have a lawsuit waiting in the wings from someone to whom we sent corn?
What could the size of that suit be?
What are the long-term ramifications of this contaminated corn to our local Cooperative?
Most importantly, how is Aventis providing long-term protection us from this potential event, after all, they caused it?

I have enclosed the letter sent to Aventis to describe my feelings of the avenues that they closed for us and a estimate of potential losses. I submit it to you not as an indicator of what our Cooperative is owed by Aventis but as summary of the concerns that I had as the manager of the grain department and the potential losses. This is exactly the way I described the issues to the Aventis representative prior to faxing this enclosure.

Thank You,

Farmers Union Cooperative Business Association

Tom King
Grain Department Manager

Farmers Union Cooperative Business Association
P.O. Box 218, 717 West Bertrand Avenue, St. Marys, KS 66536
Phone: (785) 437-2984 FAX: (785) 437-6088

January 15, 2001

MARK JORGENSON
% CONAGRA
1 CONAGRA PLAZA
OMAHA, NE

ECONOMIC IMPACT OF STARLINK CORN ON THE FARMERS UNION COOPERATIVE

THE BUSINESS OF GRAIN MERCHANDISING IS A BUSINESS OF MARKET OPPORTUNITY. IT IS A BUSINESS OF RECOGNITION OF OPPORTUNITY AND BEING ABLE TO PUT YOURSELF IN A POSITION TO HAVE AS MANY OPPORTUNITIES AVAILABLE AS POSSIBLE AND CHOOSING THE BEST OPPORTUNITY AT THE BEST TIME. WE FELT THAT WE HAD DONE JUST THAT THIS YEAR. THE PRESENCE OF STARLINK CORN IN TWO OR THREE OF OUR ELEVATORS HAS REMOVED MANY OPTIONS FROM OUR PLATE.

THE FACT THAT IN OUR CASE WE HAD TO DISCOVER THE GRAIN IN OUR ELEVATORS. YOUR NOTIFICATION CAME ONLY AFTER WE POSED THE QUESTION TO YOU. THIS HAS EXPOSED US TO THE FINANCIAL RISK OF A BUYER OF OUR GRAIN COMING BACK TO US AT ANY TIME AND SUING US FOR NOT DISCLOSING THAT WE HAD STARLINK. THIS COULD OCCUR ANY DAY ON THE BUSHELS THAT WE HAD PREVIOUSLY SOLD. AVENTIS HAS LEFT US IN A POSITION OF POTENTIALLY FACING A MONUMENTAL LAWSUIT BY NOT NOTIFYING US EARLIER AND GIVING US THE OPTION OF HANDLING OR NOT HANDLING STARLINK CORN. ADDED INSULT TO THIS SITUATION IS THE FACT THAT ONE OF YOUR SEED DEALERS DELIVERED STARLINK WITHOUT NOTIFYING US.

SHORTLY AFTER OUR HARVEST, WHICH IS MUCH EARLIER THAT THE CENTRAL CORN BELT, OUR BASIS MOVED UP AND MERCHANDISERS AND BIDS WERE AS HIGH AS FIVE UNDER RESPECTIVE OPTIONS. THAT WAS ONE OF SEVERAL OPPORTUNITIES THAT WE WERE UNABLE TO CAPTURE THE PREMIUM. AS YOU WILL RECALL THE STARLINK STORY AND ITS RAMIFICATIONS WERE BEING SPOON FED AT THE TIME AND WERE NOT FULLY ADDRESSED. THE FIRST LETTERS WE RECEIVED FROM AVENTIS STILL DID NOT FULLY ADDRESS THE SITUATION. THE MARKET HAD TO UNCOVER THE DETAILS, THAT LEFT US IN A POSITION OF SELLING WHAT WE KNEW TO BE CONTAMINATED AND OPENING OUR SELVES TO FINANCIALLY DEVASTATING LAW SUITS OR NOT SELLING THE OPPORTUNITY PRESENTED.

IF, AS YOU STATED, WE WILL ONLY BE REIMBURSED FOR ACTUAL LOSSES AND NOT LOST OPPORTUNITY. THIS PUTS US IN THE POSITION OF RECONSTRUCTING POSITIONS AND ACCEPTING WHAT WOULD APPEAR TO BE A VERY NOMINAL SETTLEMENT OR UTILIZING THE OBVIOUS COURSE OF ACTION. PLEASE REMEMBER THAT WE ARE NOT THE CAUSE OF THE STARLINK PROBLEM.

THE COST OF WRITING THIS LETTER IS A COST THAT WOULD NOT HAVE OCCURRED WITHOUT THE STARLINK PROBLEM. WHO SHOULD PAY FOR OUR TIME SPENT RECONSTRUCTING THIS INFORMATION. FORTY TO EIGHTY HOURS AT $66 PER HOUR-

$5280.

WE HAD THE OPPORTUNITY TO SELL A PET FOOD MANUFACTURER AT EIGHT UNDER RESPECTIVE OPTIONS FOR JANUARY THRU JULY. THE BROKER WITH THE PET FOOD BUSINESS WOULD NOT TAKE THE CHANCE OF LOSING HIS CONTRACT BY DELIVERING THIS GRAIN. OUR CURRENT BEST BID IS APPROXIMATELY FIFTEEN UNDER RESPECTIVE OPTIONS. THIS IS AN OPPORTUNITY LOST. 140,000 BUSHELS AT A CURRENT VALUE OF NINE CENTS PER BUSHEL- **$12,600.**

I HAVE MADE SEVERAL ATTEMPTS TO SETTLE THE ISSUE BY UTILIZING THE FREIGHT AND THE PREMIUM THAT YOU HAVE OFFERED OUR PRODUCER AS A SETTLEMENT. YOU APPARENTLY DON'T VIEW THAT AS A VIABLE ANSWER. IT IS MY JUDGEMENT THAT CHOOSING ONE ALTERNATIVE FOR PRODUCERS AND ONE FOR COMMERCIAL WOULD NOT BE LOOKED UPON VERY FAVORABLY IF VIEWED BY OUTSIDE PARTIES. THAT ACTION ALSO TAKES GRAIN THAT WE WOULD NORMALLY HANDLE AWAY FROM US. LOST BUSHELS ESTIMATED 25000 BUSHELS AT THIRTY FIVE CENTS MARGIN AND BASIS APPRECIATION **$8750**.
FREIGHT LOST ON THOSE BUSHELS .45C- **$11250.**

WE ARE UNABLE TO CARRY VERY DRY 2000 CORN TO 2001 CROP YEAR. THE CURRENT CARRYING CHARGE IN THE MARKET PRESENTS THIS PROFIT OPPORTUNITY. IT HAS BEEN LOST DUE TO THE NECESSITY OF EMPTYING THE ELEVATOR PRIOR TO HARVEST TO CLEANSE THE FACILITY OF STARLINK CONTAMINATION.

646,000 BUSHELS AT .32C BU BLEND LOSS FOR 20 MST CORN OUR AVERAGE HARVEST INTAKE-**$206,720**.

WE ARE MISSING THE OPPORTUNITY TO MARKET TO OUR NORMAL MARKETS, TOPEKA, SALINA, AND ABILENE. THESE FACILITIES ARE EXPORT ORIENTED AND STARLINK PREVENTS US FROM DELIVERING TO THEM. OUR MARKETING PROGRAM HAS LOST ONE VALUABLE OPTION THAT IS OPEN EACH YEAR. REDUCED MARKET OPTIONS MEANS LESS COMPETITION FOR OUR BUSHELS THUS LESS OPPORTUNITY TO NEGOTIATE. PRICES AND BASIS VALUES.640,000 AT .09C BU.-**$57,600.**

DUE TO THE UNCERTAINTY OF THE SITUATION IN OUR ELEVATORS. WE MISSED SALES OFFERS AT FIVE TO EIGHT UNDER THE MARCH OPTION. THE MARKET IS CURRENTLY FIFTEEN UNDER. WE MISSED THIS OPPORTUNITY ON 45,000 BUSHELS-**$15000.**

DUE TO THE UNCERTAINTY OF AVENTIS' DIRECTION REGARDING THE MOVEMENT OF STARLINK CORN, WE WERE UNABLE TO OFFER DECEMBER THRU SEPTEMBER PACKAGES WITHOUT DISCLOSING THE STARLINK PROBLEM. WE WERE PREVENTED FROM TAKING ADVANTAGE OF A POTENTIALLY PROFITABLE SITUATION. NORMAL PRICES WOULD BE -13 THE MARCH TO OPTION THE JULY. THE BEST BID IS NOW 10 C UNDER THE JULY. 646,000 BUSHELS AT .A 10 C MARKET DISCOUNT **$64,600**

THE MARKET BEING AWARE OF OUR PROBLEM LOWERS THE BID BY .10C ON 640,000-**$64,000.**

I BELIEVE THAT YOUR POSTURE OF NEEDING ACTUAL PROVEN ECONOMIC LOSS IS AS PRACTICAL AS SETTLING ON "ONLY THE BUSHELS OF STARLINK ACTUALLY DELIVERED TO OUR ELEVATOR." IT IS A GOOD FIT FOR AVENTIS BUT IN NO WAY DESCRIBES OR COVERS OUR FINANCIAL LOSS AND REDUCED MERCHANDISING OPPORTUNITIES.

I HAVE NO INTENTIONS OF SPENDING MANY HOURS OF OUR EMPLOYEES TIME RECONSTRUCTING AND JUSTIFYING THE COST OF STARLINK CREATED PROBLEMS WITH

THE COST BEING ABSORBED BY THIS COOPERATIVE. YOU MUST REMEMBER WHO CAUSED THE PROBLEM AND WHO SUFFERED FROM IT.

THESE PROBLEMS AND REDUCED MERCHANDISING OPPORTUNITIES CAN BE WORKED OUT BY A REASONABLE APPROACH OR THROUGH THE LEGAL SYSTEM. IT IS THE PREFERENCE OF THIS COOPERATIVE TO MAKE AS MUCH EFFORT AS POSSIBLE TO SETTLE THIS ISSUE WITHOUT RESORTING TO THE LEGAL SYSTEM

RESPECTFULLY,

/ Thomas King

THOMAS M. KING
GRAIN DEPARTMENT MANAGER
FARMERS UNION COOPERATIVE BUSINESS ASSOCIATION

CC : TERRY BERTHOLF ATTY.