

MINUTES OF THE HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Larry Powell at 3:30 p.m. on February 26, 2009, in Room 783 of the Docking State Office Building.

All members were present.

Committee staff present:

Mike Corrigan, Office of the Revisor of Statutes
Corey Carnahan, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Pat Matzek, Committee Assistant

Conferees appearing before the Committee:

Tom Bruno, Bruno & Associates, Kansas Dairy Association
Lynda Foster, Kansas Dairy Association
Mike Bodenhausen, Kansas Dairy Association
Bob Seiler, Kansas Dairy Association
Donn Teske, President, Kansas Farmers union
Norm Oeding, Private Individual
Craig Volland, on behalf of the Kansas City Food Circle and the Kansas Chapter of the Sierra Club
Robert Shatto, Dairy Farmer
Dan Nagengast, Kansas Rural Center
Devrin Fort, Topeka Natural Food Coop
Constantine Cotsoradis, Deputy Secretary of Agriculture, Department of Agriculture

Others attending:

See attached list.

Chairman Powell commenced the meeting with introduction of Tom Bruno, Bruno & Associates, appearing on behalf of the Kansas Dairy Association.

Hearing on:

HB 2295 - Milk and dairy product labeling requirements.

Proponents:

Tom Bruno, Bruno & Associates, appeared on behalf of the Kansas Dairy Association (KDA) (Attachment 1), presenting testimony in favor of **HB 2295**, documenting it is the KDA's intent, through this bill, to provide the consumer the confidence that the product they are purchasing is produced in a manner in which the label claims it is produced, as the current system does not allow the consumer to have that confidence.

Lynda Foster, Kansas Dairy Association, (Attachment 2) spoke as a proponent on **HB 2295**, requesting the Committee to consider the label resolution contained in the bill as it will help prevent confusing claims that cannot be supported by sound science or scientific testing. Ms. Foster further documented that consumers and the agricultural industry need clarification in labeling.

Mike Bodenhausen, Kansas Dairy Association, (Attachment 3) appeared as a proponent of **HB 2295**, stating KDA believes the statement "this milk is from cows not supplemented with rbST" is consistent with the Food and Drug Administration's (FDA) guidelines on labeling and provides the consumer with the information needed to make choices. Mr. Bodenhausen further commented that the KDA does not promote or discourage the use of rbST; this is a producer's choice. KDA is concerned that safe technology is being attacked and challenged by groups and organizations that have other agendas to promote, ahead of food safety. Mr. Bodenhausen also distributed research information documentation (Attachments 4, 5, and 6) to members of the Committee, relating to dairy labeling.

CONTINUATION SHEET

Minutes of the House Agriculture And Natural Resources Committee at 3:30 p.m. on February 26, 2009, in Room 783 of the Docking State Office Building.

Bob Seiler, Seiler Dairy, presented testimony as a proponent of **HB 2295**, ([Attachment 7](#)) documenting that milk from cows that are not treated with rbST is the same as milk from cows treated with rbST and no test can detect it but companies continue to exploit the consumers feelings and try to label it as being better because the cows producing that milk have not been treated with a good scientific proven hormone.

Questions were asked and comments were made.

Written testimony from proponents:

Brad Harrelson, State Director, Governmental Relations, Kansas Farm Bureau ([Attachment 8](#))
Mary Jane Stankiewicz, COO and Senior Vice President of Governmental Affairs, Kansas Grain and Feed Association, and the Kansas Agribusiness Retailers Association ([Attachment 9](#))

Opponents:

Donn Teske, President, Kansas Farmers Union, ([Attachment 10](#)) presented testimony in opposition of **HB 2295**, documenting several issues; (1) no consumer complaints, (2) very few producers use the product anymore and rbST milk has a vanishing market, and (3) the FDA and Federal Trade Commission determined in 2007 that the 1994 guidelines are adequate.

Norm Oeding, private individual, testified in opposition of **HB 2295**, ([Attachment 11](#)) stating the absence of a label stating the "presence" of milk from cows injected with injectable hormones (Posilac) is misleading and thus illegal. Mr. Oeding further commented that milk from cows injected with artificial hormones should be labeled on the container as it is an unconventional process and should be labeled as such.

Craig Volland, on behalf of the Kansas City Food Circle and the Kansas Chapter of the Sierra Club, ([Attachment 12](#)) spoke in opposition of **HB 2295**, stating the bill would ban the phrase, "rbST free"; however, Mr. Volland contends "rbST free" is a true statement because if this chemical is not used in the production of the product, it cannot be present in it. Also, Mr. Volland believes this bill is about one group of dairy industry players who want the state of Kansas to protect them against another group who is gaining a share in the market place.

Matt Shatto on behalf of Robert Shatto, dairy farmer, ([Attachment 13](#)) presented testimony in opposition of **HB 2295**, documenting their dairy cows are not treated with artificial growth hormones and that they have worked with the appropriate Federal Agency to obtain approval of their package design and content prior to ordering their first load of returnable glass bottles. Mr. Shatto further stated they followed regulations to ensure their current package design and content meet the approval of the current regulatory agency and ask that the Committee oppose any language that would be more stringent than the current Federal Regulations.

Dan Nagengast, Kansas Rural Center, ([Attachment 14](#)) testified in opposition of **HB 2295**, stating Kansas' dairy production is not insubstantial, but a very small part of national and world dairy production. Mr. Nagengast further documented that developing the strictest labeling requirements on this issue imposes additional burdens on Kansas producers, and if there are consumer premiums for milk produced without the use of rBGH, those premiums should go to dairy producers, not processors.

Devrin Fort, Manager, Topeka Natural Food Coop, ([Attachment 15](#)) spoke in opposition of **HB 2295**, stating the Coop sells natural food which means they do not carry products that contain artificial ingredients and synthetic preservatives or genetically modified ingredients. Mr. Fort further commented that 20% of their sales comes from dairy products of which a portion are ordered from catalogs, and that these products are going to have labels which says rbST free; however, as the catalog does not show a picture of the label or say exactly what is contained in the dairy products, if this law goes through it could wipe out its dairy section and possibly result in closure of the store.

Questions were asked and comments were made.

CONTINUATION SHEET

Minutes of the House Agriculture And Natural Resources Committee at 3:30 p.m. on February 26, 2009, in Room 783 of the Docking State Office Building.

Written testimony from opponents:

Walt Freese, Ben & Jerry's Homemade, Inc. (Attachment 16)

Rick North, Project Director, Campaign for Safe Food, Oregon Physicians for Social Responsibility (Attachment 17)

Neutral:

Constantine Cotsoradis, Deputy Secretary of Agriculture, Department of Agriculture, (Department) (Attachment 18) provided neutral testimony on **HB 2295**, stating this bill asks the Department to carry out some very important consumer protection functions; namely, making sure labels contain accurate and not misleading information which the Department supports. Mr. Cotsoradis further stated they are not sure it will be possible for them to conduct inspections when funding for this program is being cut from both sources - state general funds and fees; therefore, the Department requests the Committee amend **HB 2295** to include language extending the dairy fee sunset from 2010 to 2015.

The next meeting is scheduled for March 2, 2009.

The meeting was adjourned at 5:10 p.m.

AG. & NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: 2-26-09

NAME	REPRESENTING
Robert Shatto	Shatto Milk Co.
Donn Terke	Ks Farmers Union
C V Cotso radis	KDA
Mike Bodenhausen	KDA
John C. Botterly	KRAFT
Devvin Fort	Topeka Natural Food Co-op
James Reed	Kansas Dairy
Lynda Foster	Dairy Farmer + Kansas Dairy Assoc.
Curtis Steenback	KDA + Kansas Dairyman
Tom Bruvo	KS Dairy Assn.
Terry Schwartz	KDA + Kansas Dairyman
Steve Ohlde	KDC. Kansas Dairyproducer
Cindi Ohlde	Ks dairy
Wanda Kinney	Ks. Cattlemen
Eric Wisner	KDA KS Dept Ag
George Blush	" "
Craig Vollard	Kc Food Circle/Sierracub
DICK CARPER	KS DIETETIC KSSN
Tom Thompson	Sierra Club



Bruno & Associates

February 26, 2009

Mr. Chairman and members of the committee:

My name is Tom Bruno and I'm appearing today on behalf of my client, the Kansas Dairy Association. The Kansas Dairy Association strongly supports the provisions of House Bill 2295.

House Bill 2295 places in statute the procedure to ensure that consumers purchasing dairy products are buying the product they expect. The bill requires a verification system of the production claim that the milk comes from cows not supplemented with rBST. It goes on to require that any label that contains such a statement include the statement "the FDA has determined that no significant difference has been shown between milk derived from rBST supplemented and non-rBST supplemented cows". The bill also sets the dates for when the statute would become effective.

This bill is a consumer protection bill. It allows the Department of Agriculture to verify the production claim that rBST is not used on cows if the product makes that claim. It does not mandate any company or processor or producer to use or not use rBST, or require a specific label. It allows the consumer to have confidence in the fact that the label is not just a marketing tool but it is also verified by an independent regulatory agency not associated with the producer, processor or the marketer of the product.

The bill specifically excludes organic products that are certified pursuant to the national organic program of the United States Department of Agriculture. Those products already go through a vigorous and substantial verification process to give consumers peace of mind when they spend their hard-earned money on those products. House Bill 2295 will set up a verification process that will allow the consumer to have confidence in the dairy product they are purchasing is produced in the manner which is claimed on the label.

This bill is not a debate about rBST. rBST is a management tool for the producer. Not every producer uses rBST. Every individual producer determines for their operation the best management practices and the best management tools for them. This bill does not require or encourage the use or nonuse of rBST. It simply states that if the production claim is the milk is from cows not supplemented with rBST that there are records to verify that claim and the FDA disclaiming language is also included.

The challenge with production claims is that many cannot be scientifically proven through tests and those claims need to be verified in some other manner. Currently the claim that the milk comes from cows not supplemented with rBST cannot be proven through any scientific laboratory tests. The only process to verify such a claim is through an inspection process similar to what certified organic products go through.

It is the Kansas Dairy Association's intent, through this bill, to provide the consumer the confidence that the product that they are purchasing is produced in a manner in which the label claims it is produced. The current system does not allow the consumer to have that confidence and that is why we ask for your support to favorably pass out House Bill 2295.

I appreciate the committee's attention and I would be happy to stand for questions at the appropriate time.

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Attachment 1

**Testimony submitted by Lynda Foster of Foster Dairy
House Agriculture & National Resources Committee**

House Bill 2295

February 26, 2009

Good morning Chairman Representative Powell and other members of the House Agriculture & Natural Resources Committee. I appreciate this opportunity to provide testimony and submit written comments for this proposed Dairy Labeling Bill. My name is Lynda Foster and I'm a dairy farmer from Southeast Kansas near Fort Scott. I farm with my husband, Gary, and son, David, and his family. Gary and I have been milking cows since our graduation from Kansas State University in December of 1977, over 31 years now. We are currently milking 130 head of Holstein cows and those cows that are eligible are supplemented with rBST.

I'm here this afternoon to tell you that I'm concerned about the changes occurring in the agricultural industry. It seems we're being caught up in a catch 22 position. America wants farmers to provide the world with a safe and secure food supply. In order to continue doing so, we must be able to make a living and provide for our families. To do this we must have the tools necessary to survive in these times of ever-increasing costs and to do so in an economic manner. However, in the last few years we have started to be bombarded by activists groups, environmental groups, concerned citizens groups, and others. All of whom have their own agenda's.

Proper labeling of agricultural products is important. In the last year or so, this issue of proper labeling has been discussed over and over. Other states have been discussing this issue as well and some have taken action either by legislation or through their departments of Agriculture. We are all concerned with the consumer's "right to know" and I support the consumer having a choice in the dairy case. But I also want the consumer to know the truth and not be misled into thinking one product is better than another. Labels such as antibiotic-free, pesticide-free, and/or hormone-free are some such labels. It's illegal to have antibiotics or pesticides in the milk and many tests are conducted to make sure this doesn't happen. As for hormone-free, all milk contains naturally occurring hormones. Vitamin D is a steroidal hormone and most people aren't aware of this.

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Attachment 2

The real issue here is the fact that recently many processors have decided to go rBST free. We need the consumer to know that BST is a hormone that is naturally produced in the cow. If the cow has been given rBST, it doesn't change the amount of BST in the milk. FDA approved the use of rBST in 1993 and nothing has changed its approval. It is safe, it is legal, and the supplementation of rBST is based on sound science. The composition of milk is not changed. The processors and retailers state that there is consumer demand for this product and that's ok with me as long as the product is labeled properly so that the consumer can make an informed decision as to which product to buy and not one based on scare tactics. There is no known test that can differentiate milk from cows that have been given rBST and those that have not. As a dairy farmer, if I give up this proven and legal technology use, it makes me less efficient. I would have to milk more cows to make up the difference. In these times where the buzz word is "sustainability" and going "green", this doesn't make sense as it would take more resources to feed and care for those extra cows.

I want you to know though, that it's not just an rBST issue that's at stake here. It's all technology and/or production practices that might be questioned down the road. In other words, what's next? If left unchecked, will we see milk labeled as "Milk from cows that don't eat silage" or "Milk from cows that are housed in a barn"? Some farmers, manufacturers and retailers will support the different types of production that may or may not include the use of rBST. Regardless of production type, it is important to understand that carton to carton, bottle to bottle, all milk is wholesome, safe and nutritious.

In closing, I want you to know that I support House Bill 2295 and that I would like for you to seriously consider this labeling resolution as it will help prevent confusing claims that cannot be supported by sound science or scientific testing. Consumers and the Agricultural industry need clarification in labeling. I believe that this needs to be done by legislation. I also support the consumer having a choice at the dairy case and that all milk contains the nutritional elements for a healthy diet. I would be happy to answer any questions or concerns that you might have. Thank You!

Lynda Foster
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House Bill 2295 Testimony

By

Mike Bodenhausen

Kansas Dairy Association

Chairman Powell and House Ag Committee members, I sincerely appreciate you allowing us time for this hearing on HB 2295. My name is Mike Bodenhausen and I am the Executive Director for the Kansas Dairy Association which represents some 400 plus dairy farms as well as many other industry related members. I am a 1974 Dairy Science graduate of Kansas State University. Upon graduation, I worked for the National Holstein Association for 5 years, working with dairymen all across the United States. I was fortunate to travel to Chile on a special 1 week mission and made two trips to Spain to do consulting work on a dairy. I then returned to the family farm in western Atchison County to manage our 75 cow dairy. In March of 2005 we sold our dairy herd which had been started by my father in 1950. So I have been involved in the dairy business for a long time. I mention this only because I wanted you to know that I have first-hand knowledge of and experience on a dairy farm and I fully understand the challenges and issues that face the dairy industry.

The Kansas Dairy Association does support HB 2295. Time will not allow me to properly cover all the issues that will surface during this debate so that is why I have shared the additional handouts with you. If you would like more, I have them! Let me make it clear, this information is based on scientific testing and results and you will find references provided with that information. Why do we support HB 2295? We believe the statement "this milk is from cows not supplemented with rbST" is consistent with FDA's guidelines on labeling and provides the consumer with the information needed to make choices. Some will ask why not use "rbST Free"? Since FDA has ruled that labels which use terms such as "hormone-free" are misleading, as all milk contains hormones and since rbST is a hormone, it will make it very hard to prove. Especially given the fact that there is NO scientific test to prove or disprove its presence. We feel that a scientific test should be required for any and all statements that claims it is "FREE" of something. This statement is also consistent with wording that is used in the affidavits which many of our producers have had to sign before they were allowed to market their milk to certain processors and milk cooperatives.

We believe by adding the disclaimer "FDA has determined that no significant difference has been shown between milk derived from rbST supplemented and non-rbST supplemented cows" tells the rest of the story" and provides more information for the consumer to use while still allowing them choice.

I want to recognize and thank the Dillon's store for agreeing with us on this issue as they are now using this on their labeling.

Let me quickly summarize:

Kansas Dairy Association does not promote or discourage the use of rbST. This is a producer's choice. We are concerned, however, that safe technology is being attacked and challenged by groups and organizations that have other agendas to promote, ahead of food safety. We strongly promote the production of SAFE and NUTRITIOUS milk.

SAFE and NUTRITIOUS milk is determined most accurately through strict testing standards. Not by a certain method or way it is produced.

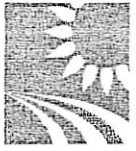
We want consumers to be PROPERLY and TRUTHFULLY informed as they make their choices and want them to have choices.

Again, I thank you for your time and want you to know that we will be here to answer any questions.

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Attachment 3



Dairy Labeling Regulation

Dairy Labeling History

Kansas lawmakers could not foretell in 1951 the many claims that milk sellers would use to appeal to consumers, but they recognized the need to ensure that claims are accurate. Therefore, the 1951 Kansas Legislature passed a bill that made it unlawful to label a milk container with words that are in any way misleading.

In 2001, additional legislation was passed assigning responsibility to the secretary of agriculture to prohibit the production and sale of misbranded milk, milk products, or dairy products. Misbranded means it bears a label that is misleading in a particular manner.

Senate Bill 595

Senate Bill 595 was introduced in 2008, and it would have made it unlawful to label any agricultural product with a claim that cannot be confirmed through laboratory analysis, or is supported solely by sworn statements, affidavits or testimonials. The impact of the proposed legislation would have been far-reaching and could have prohibited using a production-related label claim like organic.

Senate Bill 595 signaled the need for the Kansas Department of Agriculture to provide more detailed guidance on what are truthful, accurate label claims for milk and milk products.

What is in the proposed regulation?

The proposed regulation identifies which label claims are prohibited because they are misleading. It also requires additional language, based on guidance from the U.S. Food and Drug Administration, for certain label claims that may not be understood by all consumers. And, it establishes a time line for entities to abide by the terms of the regulation.

The regulation states that milk, milk products and dairy product labels must contain accurate information. Products will be deemed mislabeled if the label contains false or misleading statements.

If a label contains a statement indicating the milk or dairy product is free of something already prohibited by the U.S. Food and Drug Administration, like antibiotics and pesticides, the label will be considered false and misleading. These statements will not be permitted.

The following statements are considered false and misleading in all circumstances, and they will not be permitted:

- ◇ no hormone
- ◇ hormone free
- ◇ rbST free
- ◇ rbGH free
- ◇ BST free

Products that contain a production claim that "this milk is from cows not supplemented with rbST," or an equivalent statement, will be considered misleading unless:

- ◇ The dairy manufacturing plant owner or operator verifies the claim is accurate, that it has in its possession a milk producer's affidavit that the milk is from cows not supplemented with rbST, and it possesses any other written records that support the claim;
- ◇ The label contains, on the same label panel, immediately after the production claim, and in the same font, style, case, size and color, the qualifying statement "the FDA has determined that no significant difference has been shown between milk derived from rbST-supplemented and non-rbST supplemented cows."

The regulation will take effect Jan. 1, 2010, for all one-time use containers for milk and dairy products.

Milk bottling operations that re-use containers and also use the production claim that "this milk is from cows not supplemented with rbST," or an equivalent statement, may affix to the container the statement "the FDA has determined that no significant difference has been shown between milk derived from rbST-supplemented and non-rbST supplemented cows." This applies to all reusable containers purchased on or before Jan. 1, 2011. The

qualifying statement does not have to be in the same font, style, case, size and color as used in the production claim. The regulation will be in full force and effect on all reusable containers purchased after Jan. 1, 2011.

Clear Labeling is Good for Consumers and Milk Producers

Consumers are showing more interest in the origin of their food, and they need to be able to make educated decisions about buying food. Clear labeling regulations will ensure that consumers are not misled by label claims and that milk producers will be operating on a level playing field when it comes to labeling choices.

Who determines what is misleading?

The Kansas Department of Agriculture decides whether a label claim is misleading. It's a factual determination based on the label statement in the context of the entire label. We also look at guidance provided by FDA.

What is rbST?

bST is an abbreviation for bovine somatotropin, or bovine growth hormone, which all cows produce. The term rbST refers to recombinant bST, which is produced using fermentation technology. rbST can be injected into a cow to boost milk production.

The Food and Drug Administration approved rbST use in 1993, stating there are no significant differences in milk from cows that receive rbST and those that do not.

In addition, studies on the safety of meat and milk from cows that received rbST and those that did not have been reviewed and the conclusions supported by:

- ◇ National Institutes of Health
- ◇ World Health Organization
- ◇ Department of Health and Human Services
- ◇ Journal of the American Medical Association
- ◇ Journal of the American Dietetic Association

Why add hormones?

All milk contains the bST hormone because all cows produce it naturally. rbST is a synthetic hormone given

to cows to boost milk production. It is not added to milk. Vitamin D, however, is a hormone that has been safely used to fortify milk since the 1930s.

Where can I learn more?

To learn more about rbST, we recommend the following reports:

"Cornell University -- rbST Fact Sheet," U. S. Food and Drug Administration, Center for Food Safety and Applied Nutrition
www.cfsan.fda.gov/~ear/CORBST.html

"Report on the Food and Drug Administration's review of the safety of recombinant bovine somatotropin," U.S. Food and Drug Administration
www.fda.gov/cvm/RBRPTFNL.htm

"Dairy product consumption and the risk of breast cancer," Journal of the American College of Nutrition
www.jacn.org/cgi/content/full/24/suppl_6/556S

"Survey of retail milk composition as affected by label claims regarding farm-management practices," Journal of the American Dietetic Association (for purchase or free for members)
[www.adajournal.org/article/S0002-8223\(08\)00513-0/abstract](http://www.adajournal.org/article/S0002-8223(08)00513-0/abstract)

Where can I get more information about the proposed regulation?

The proposed regulation, an economic impact statement and a notice of hearing are on the Kansas Department of Agriculture website at www.ksda.gov/includes/statute_regulations/dairy/website.pdf.

What if I want to comment on the regulation?

Comments may be made online at www.ksda.gov/dairy/statutes/id/160, in writing to the Kansas Department of Agriculture, ATTN: Leslie Garner, 109 SW 9th Street, 4th Floor, Topeka, KS 66612, or in person at a public hearing at 10 a.m. Tuesday, Dec. 2, 2008, in the fourth floor training room of the Kansas Department of Agriculture, 109 SW 9th Street, in Topeka.



KANSAS
DEPARTMENT OF
AGRICULTURE

**KANSAS DEPARTMENT OF AGRICULTURE
ECONOMIC IMPACT STATEMENT
DAIRY REGULATION**

**Proposed regulation:
4-7-723**

I. Summary of the proposed regulation and what is to be accomplished by its adoption:

K.A.R. 4-7-723 - The proposed regulation is intended to provide clarification on what is false or misleading labeling as it pertains to milk and dairy products. Specifically, this proposed regulation provides guidance to the dairy industry with respect to label claims concerning the use of recombinant bovine somatotropin commonly known as "rBST".

II. Financial impact of the adoption of the proposed amendments for the Kansas Department of Agriculture.

The proposed regulation would require that the dairy inspection program of the Kansas Department of Agriculture verify rBST use labeling claims by examining records and other documents maintained by the dairy manufacturing plants. Many of the required records are already reviewed during routine inspections currently being done by inspectors. The additional record / document review in the proposed regulation would have a very minimal impact on the time required to do an inspection. It is estimated that thirty minutes of inspection time would be required at each dairy manufacturing plant during their quarterly inspections. Financial impact to the department is estimated to be an additional twenty hours per year at an average cost of \$23.32 per hour or approximately \$466.40.

III. Financial impact of the adoption of the proposed amendments for other governmental agencies or units, regulated entities, private citizens including consumers of the products or services that are subject to the regulations or their enforcement.

The proposed regulation will significantly impact dairy manufacturing plants which choose to make production claims concerning rBST on their labels. Existing milk and dairy product labels that do not comply will need to be brought into compliance within the time frames specified in the regulation. The cost of new labels or new containers will vary.

- There are no direct or indirect costs for those dairy manufacturing plants whose labels are in compliance or who do not make any claims relative to rBST use.
- The cost to dairy manufacturing plants of maintaining required verification documents is minimal.
- Plants which use adhesive labels that must be changed can expect an estimated one-time cost of approximately \$3800 per product label for a typical three-color printing plate and artwork change. This can be a significant cost for a major manufacturing plant with as

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many as 80 to 120 different labels. Any existing label inventory remaining after the specified date in the regulation must be disposed of.

- Plants utilizing re-useable glass bottles will need to replace their entire inventory within timeframes established in the proposed regulation since label information is permanently printed on each glass container. Cost to replace glass bottles is approximately \$2.50 each.
- The regulation applies to any dairy manufacturing plant offering product for sale in Kansas. The regulation applies to both in-state and out of state plants.
- Two in-state plants utilizing glass bottles will need to make changes in their bottles. One, known out-of-state glass bottling plant will need to make changes in their bottles. The regulation will allow existing inventories of glass bottles to be used. Any new glass bottles ordered after the effective date of the regulation will need to comply.

IV. Less costly or less intrusive methods considered by the Kansas Department of Agriculture.

Realizing the potential for the significant financial impact this regulation could have on dairy manufacturing plants selling milk and dairy products in Kansas, the Department held a stakeholders' meeting on April 22, 2008 to hear comments and concerns. As a result of the stakeholders' meeting and because of the possible financial impact of this regulation, allowances as described above were written into this proposed regulation. Compliance dates given in the proposed regulation were set with the purpose of allowing existing inventories of labels and containers to be utilized.

V. Anticipated impact on cities, counties or school districts.

This change will not increase or decrease revenues of cities, counties or school districts. It does not impose functions or responsibilities on cities, counties or school districts.

ENVIRONMENTAL BENEFITS STATEMENT

An environmental benefits statement is not required since the proposed regulation, while proposed for adoption by the secretary of agriculture, deals with false or misleading information displayed on milk and dairy product labels and does not have as its primary purpose the protection of the environment.

K.A.R. 4-7-723. Accurate labeling of milk, milk products, and dairy products. (a) As used in this regulation, the following terms shall have the meanings specified in this subsection:

- (1) The term "rBST" means recombinant bovine somatotropin.
- (2) The term "rBGH" means recombinant bovine growth hormone.
- (3) The term "BST" means bovine somatotropin.

(b) "Milk," "milk products," and "dairy products" shall be deemed "misbranded," as defined in K.S.A. 65-771 and amendments thereto, if the labels on the containers in which the products are sold or offered for sale contain any false or misleading statements as specified in this regulation.

(c) Each milk, milk product, or dairy product label that contains a production claim that "this milk is from cows not supplemented with rBST," or a substantially equivalent statement, shall be deemed misleading unless both of the following conditions are met:

(1) The owner or operator of each "dairy manufacturing plant," as defined in K.S.A. 65-771 and amendments thereto, verifies that the claim is accurate and has in its possession a milk producer's affidavit that the milk is from cows not supplemented with rBST and any other written records deemed necessary by the dairy manufacturing plant owner or operator to support the claim, and these documents are made readily available to the department for inspection.

(2) The label contains, in the same label panel immediately after the production claim and in exactly the same font, style, case, size, and color as used in the production claim, the following qualifying statement: "the FDA has determined that no significant difference has been shown between milk derived from rBST-supplemented and non-rBST-supplemented cows." The

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color of the qualifying statement shall be of sufficient contrast to the background color to be easily read.

(d) Each milk, milk product, or dairy product label that has a statement regarding the composition of milk with respect to hormones, including "No Hormone," "Hormone Free," "rBST Free," "rBGH Free," and "BST Free," shall be deemed false and misleading. The statement shall not be permitted.

(e) If a milk, milk product, or dairy product label contains a statement indicating the absence of a compound that is not permitted by the United States food and drug administration to be present in the product, including antibiotics and pesticides, the label shall be deemed false and misleading. The statement shall not be permitted on milk, milk product, and dairy product labels.

(f) The provisions of this regulation shall not be construed to prohibit any seals or marks authorized by a federal law or Kansas statute.

(g)(1) On and after January 1, 2010, this regulation shall apply to the labels on all nonreusable containers of milk, milk products, and dairy products.

(2) Each reusable container for milk, a milk product, or a dairy product purchased by the owner or operator of a dairy manufacturing plant before January 1, 2011 that includes on the label the production claim that "this milk is from cows not supplemented with rBST," or a substantially equivalent statement, shall include the qualifying statement specified in paragraph (c)(2) affixed to the container. The qualifying statement shall not be required to be on the same label, immediately after the production claim on the label, or in exactly the same font, style, case, size, and color as used in the production claim.

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(3) On and after January 1, 2011, this regulation shall apply to the labels on all reusable containers of milk, milk products, and dairy products purchased by the owner or operator of a dairy processing plant on or after that date. (Authorized by K.S.A. 2007 Supp. 65-772; implementing K.S.A. 65-665 and K.S.A. 65-789; effective P-_____.)

ATTORNEY GENERAL

AUG 15 2008

APPROVED BY 

DEPT. OF ADMINISTRATION

AUG 15 2008

APPROVED

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Comments from Kansas Dairy Association
House Agriculture Committee
Proposed Dairy Labeling Regulation

Kansas Dairy Association appreciates the opportunity to provide comments for the House Agriculture Committee hearing on Proposed Dairy Labeling Regulation.

This is additional information on bSt and rbST and is intended to supplement the oral testimony given by Mike Bodenhausen-Kansas Dairy Association Ex. Director

Bovine Somatotropin

Bovine somatotropin (bST) is a naturally occurring protein hormone in cows. bST helps young cattle grow and adult cows produce milk. It is not a steroid, but rather a protein hormone. A small amount of this hormone is naturally present in all milk, including organic products. When you drink milk, bST is completely broken down by digestion like any other protein.

The Use of Recombinant Bovine Somatotropin

Some dairy farmers choose to give their cows a synthetic version of bST, known as recombinant bovine somatotropin (or rbST), to increase milk production. This can help ensure a plentiful milk supply.¹

This use of rbST was approved by the Food and Drug Administration (FDA) in 1993 based on an exhaustive review of scientific studies.² And, the safety of milk from rbST-supplemented cows has been reaffirmed over the past 20 years by such organizations as the National Institutes of Health,³ United Nations Food and Agriculture Organization (FAO),⁴ Cornell University,⁵ and the Royal College of Physicians and Surgeons of Canada⁶.

It is important to reiterate that rbST is not added to the milk itself. About 15 percent of U.S. dairy farmers choose to use rbST, and then on only carefully selected cows. rbST is used in about 20 to 25 percent of cows nation-wide.⁷ Because rbST helps cows make more milk, this increased efficiency results in reducing environmental impact, according to a Cornell University study published in the *Proceedings of the National Academy of Science*. For every one million cows receiving rbST, the reduction in the carbon footprint is equivalent to removing approximately 400,000 family cars from the road or planting 300 million trees.⁸

Safety and Nutritional Value of Milk

Regulatory agencies in 50 countries, including Canada and the European Union, also affirm the safety of milk and meat from cows supplemented with rbST, and that there is no difference in the milk. In 2008, the *Journal of the American Dietetic Association* published findings from research that tested whole milk samples obtained from retail

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stores across the U.S. with three label claims related to farm practices: 1) conventional, 2) from cows not treated with rbST, and 3) USDA-certified organic. The research concluded that all three types of milk are virtually identical in terms of quality, safety and nutritional composition. None of the samples had detectable levels of antibiotics. Concentrations of bST in milk were the same regardless of milk label.⁹

Giving cows rbST has no effect on hormone levels in the milk itself. An NIH expert panel has made this conclusion,¹⁰ as have others.^{11, 12, 13, 14, 15}. Also, there is no research to support the claim that consumption of milk from cows treated with rBST leads to early puberty.

Summation

In closing, it should be emphasized that the dairy industry supports choices in the dairy case, and some farmers, manufacturers and retailers will support different types of production that may or may not include the use of rbST. Regardless of production type, it is important to understand that carton to carton, bottle to bottle, all milk is wholesome, safe and nutritious. In fact, all milk contains the same combination of nutrients that makes dairy products an important part of a healthy diet.

Respectfully submitted,

Mike Bodenhausen
Kansas Dairy Association

¹The Scientist. "Dairy economics: Milking blood from a stone". February, 2007. Vol. 21, No. 2.

² Report on the Food and Drug Administration's Review of the Safety of Recombinant Bovine Somatotropin, <http://www.fda.gov/cvm/RBRPTFNL.htm>

³ Bovine somatotropin. NIH Technol Assess Statement Online 1990 Dec 5-7; (7):16. <http://www.ncbi.nlm.nih.gov/books/bv.fcgi?rid=hstat4.chapter.24138>

⁴ Milk and Meat From bST Treated Cows Presents No Danger To Humans Says Committee Report Released By The UN Food And Agriculture Organization. 1998. http://www.fao.org/waicent/ois/press_ne/presseng/1998/pren9817.htm

⁵ Cornell University - bST Fact Sheet, 1995. <http://www.cfsan.fda.gov/~ear/CORBST.html>

⁶ Report of the Royal College of Physicians and Surgeons of Canada Expert Panel on Human safety of rbST. Prepared for Health Canada, January 1999. http://www.hc-sc.gc.ca/dhp-mpps/vet/issues-enjeux/rbst-stbr/rep_rcpsc-rap_crmcc-eng.php

⁷ APHIS Veterinary Services. Bovine somatotropin information sheet. May 2003. <http://www.aphis.usda.gov/vs/ceah/ncahs/nahms/dairy/dairy02/Dairy02BST.pdf>

⁸ Capper J.L. et al. (2008) The environmental impact of recombinant bovine somatotropin (rbST) use in dairy production. Proceedings of the National Academy of Science 105:28. www.pnas.org/cgi/doi/10.1073/pnas.0802446105

⁹ Vicini, J et al. Survey of Retail Milk Composition as Affected by Label Claims Regarding Farm-Management Practices J Am Diet Assoc. 2008;108:1198-1203

¹⁰ National Institute of Health (NIH). NIH Technology Assessment Conference statement on bovine somatotropin. Journal of the American Medical Association. 1991 265:1423-1425. <http://consensus.nih.gov/1990/1990BovineSomatotropinta007html.htm>

¹¹ Blayney, D.P. Milk and biotechnology; maintaining safe, adequate milk supplies. Food Rev. 17(2): 27-31, 1994.

¹² Juskevich, J.C., et al. Bovine growth hormone: human food safety evaluation. Science 249: 875-884, 1990.

¹³ Doughaday, W.H., et al. Bovine somatotropin supplementation of dairy cows. Is milk safe? Journal of the American Medical Association 264: 1003-1005, 1990.

¹⁴ U.S. Congress. Office of Technology Assessment, U.S. Dairy Industry at a Crossroad: Biotechnology and Policy Choices special report. OTA-F-470. Washington DC, Superintendent of Documents, U.S. Government Printing Office, May 1991.

¹⁵ Etherton, T.D., et al. Recombinant bovine and porcine somatotropin: safety and benefits of these biotechnologies. Journal of the American Dietetic Assn. 93: 177-180, 1993.

Seiler Dairy
Bob and Marcella Seiler
Valley Center, Ks

Testimony for Kansas House Agriculture Committee

February 26, 2008

Good Afternoon Chairmen Powell and members of the House Ag Committee

I am Bob Seiler. My family and I milk 120 cows in Sedgwick County. Our goal on our farm is to produce the most high quality milk from each and every cow. That means we have to have healthy cows. Rbst is just one of the tools we use to achieve this. We do not use products that are not legal and proven safe for both the cow and the consumer or would impact the quality of our milk negatively. False or misleading labels have become an increasing way for processors and retailers to help their products stand out from their competitors in the marketplace. I would like to discuss the issues we are facing in the dairy industry as it relates to milk and good, safe, and scientific technologies that we use in our business.

15 years ago we began to use a new technology called recombinant bovine somatotropin (rbst) to help our cows be more efficient and produce more milk while using less natural resources. About 10 years ago I became aware of movement on the east coast to not allow the use of rbst on cows that the milk was being sold to some companies such as Ben and Jerry's ice cream. I thought that was just there problem back east on the coast and we had more sense in Kansas and understood good science. In October 2006 that all changed for the dairyman of south central Kansas. The cooperative that purchases our milk decided to pay a premium for milk that was produced without rbst. This was very disappointing to me and I decided to go ahead and use rbst because the science was very well proven. Since that time it has cost us about 30,000 dollars to our farm in 2 and 1/2 years for milk that was exactly same as milk as that being sold for a premium.

Milk from cows that are not treated with rbst is the same as milk from cows treated with rbst and no test can detect it but companies continue to exploit the consumers feelings and try to label it as being better because the cows producing that milk have not been treated with a good scientifically proven hormone. Igf-1 is the protein that bst influences the production of. This seems to be one of the concerns of the opponents of rbst use, even though we produce in our own saliva enough Igf-1 daily to equate to 24 gallons of milk. What sense does that make.

We milk about 9 million cows in the United States. About a third have been treated with rbst before this wave of misleading labels. These cows that are treated will give about 1 gallon more milk per cow per day. This efficiency saves several natural resources including almost 20 billion gallons of water per year which is enough to supply over 75,000 homes. We will need almost 1250 square miles of land to produce enough

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feedstuffs to feed the extra cows that it will take to produce the same amount of milk without this technology. By using rbst in the USA we also save 16.5 million gallons of gasoline and diesel fuel which is enough for over 25,000 homes. Greenhouse gas emissions are lowered by 90,000 tons and more than 10 million tons of manure will not be produced. All these benefits for the environment and we would still be able to produce enough milk to feed the world and keep it affordable for all families.

Quality is job one for all dairy farmers and consumers need accurate information. Labels are just a part of educating America's consumers on efficient and safe food production with use of new biotechnologies. In order to be self sufficient in food production and truly sustainable in agriculture we need these safe production tools and the consumers need them to have an abundant quality food supply. This new way of looking at labels is just part of the education.

Thank you for your time and please help lead our state to be a healthy ag environment. You are the leaders that I look to that can keep ag sustainable in Kansas and America.

PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

RE: HB 2295 – an act concerning milk and dairy products; relating to labels of such products.

February 27, 2009
Topeka, Kansas

Testimony provided by:
Brad Harrelson
State Policy Director
KFB Governmental Relations

Chairman Powell, and members of the House Committee on Agriculture and Natural Resources, thank you for the opportunity to appear before you today. I am Brad Harrelson, State Policy Director—Governmental Relations for Kansas Farm Bureau. KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

Kansas Farm Bureau appreciates the Kansas Dairy Associations effort to ensure that consumers get complete and accurate information on which to base their purchasing decisions. We know that there are numerous examples where consumers are misled by slick advertising, unscrupulous marketers and/or less than full disclosure – intended or not. This is especially concerning in today's economy with the rising price of food.

Kansas Farm Bureau member adopted policy supports the Department's actions on truthful labeling of all milk products. Milk labels should ensure that consumers have accurate information about the dairy products they buy. Current absence claims, such as rbST-free, antibiotic-free and hormone-free create undue concern about the safety of conventionally produced milk driving them to spend more for the product with the claim. Technology use in Dairy needs to be preserved because it ensures that producers can provide safe and wholesome milk to consumers at an affordable price. Milk from cows

supplemented with rbST is the same as all other milk. For these reasons we appear today in support of HB 2295.

The fact is that milk from cows supplemented with rbST is indistinguishable from milk from cows not supplemented. All milk sold in accordance with the applicable laws is safe and nutritious. People certainly have choices about what products to purchase and they are bombarded with information about those choices today more than ever before.

Furthermore, dairies contribute significantly to the state's rural economy by generating revenue and creating jobs. The use of technology is critical in order to allow dairies to remain viable with the pressures of rising feed and fuel costs.

The proposed legislation regarding dairy labeling is consistent with U.S. laws and regulations such as the Food Drug and Cosmetic Act (FDCA) and the Federal Trade Act. All promote honesty and principles of fair play and increase the flow of accurate information in the marketplace. Most importantly, the proposed regulation applies the concept embodied in FDCA Section 201(n) that both the presence and the absence of information are relevant to whether labeling is misleading – in other words: Tell the whole truth.

Some have raised a concern that the bill may violate the U.S. Commerce Clause and cause problems due to inconsistent state rules. State laws or regulations that advance truthful and non-misleading food labeling do not violate the Commerce Clause of the U.S. Constitution. There is no discriminatory purpose and the bill supports a legitimate local public interest. Truthful and non-misleading food labeling is the ultimate goal of the food labeling provisions of the FDCA. It follows that labeling consistent with that goal and those provisions cannot reasonably be viewed as burdening, even slightly, interstate commerce.

Moreover, FDA's guidance on bST labeling indicates that the document is primarily guidance to the States as they consider the proper regulation of rbST labeling claims, clearly contemplating State action in this area. The FDA clearly did not mean for its guidance to be the only authority in this area. The State of Kansas is well within its rights to promulgate a law in this area that addresses the State's interests.

This proposed dairy labeling legislation introduces some much needed clarity into this arena and Kansas Farm Bureau encourages the State to also look at measures to address the other avenues through which these dairy claims are made.

Fundamentally, the proposed dairy labeling legislation is about providing consumers with complete, accurate and substantiated information and Kansas Farm Bureau adds its voice to those of the dairy producers and others who support this bill. Thank you for your consideration.



KANSAS AGRIBUSINESS RETAILERS ASSOCIATION

SAFE AND ABUNDANT FOOD THROUGH SOUND SCIENCE

House Agriculture Committee

February 26, 2009

HB 2295

Thank you Chairman Powell and members of the Committee for the opportunity to submit testimony in support of HB 2295, regarding dairy and milk labeling. My name is Mary Jane Stankiewicz, I am the COO and Senior Vice President of the Kansas Agribusiness Retailers Association (KARA). KARA is a voluntary state association made up of over 700 business locations across the state. Our members are primarily ag retail facilities but they include agronomy services, chemical, fertilizer and seed sales and manufacturing companies, and equipment manufacturing, distribution and sales companies.

On behalf of the members of KARA, I am submitting this testimony in support of HB 2295. The Kansas Agribusiness Retailers Association (KARA) supports this legislation to ensure that consumers get complete and accurate information on which to base their purchasing decisions. KARA supports the bills intent to clarify the need for sound science with regard to milk and dairy labeling.

Unfortunately, consumers are often misled through false labeling claims or dishonest marketing campaigns-both purposely and mistakenly. Examples of these false claims can be found in many industries-credit cards, weight loss, get rich quick schemes and now – food. This bill is consistent with U.S. laws and regulations such as the Food Drug and Cosmetic Act (FDCA) and the Federal Trade Act. All promote honesty and principles of fair play and increase the flow of accurate information in the marketplace. Most importantly, this bill applies the concept embodied in FDCA Section 201(n) that both the presence and the absence of information are relevant

to...ner labeling is misleading. This rule will ensure consumers receive accurate information when selecting/purchasing dairy products produced and distributed in Kansas.

Milk from cows supplemented with rbST is indistinguishable from milk from cows not supplemented, however misconceptions about what is healthier has led to false or mislabeling of milk. The bottom line is that all milk sold in accordance with the applicable laws is safe and nutritious. Consumers certainly have choices about what products to purchase and they are bombarded with information about those choices today more than ever before. HB 2295 introduces some much needed clarity to the plethora of information consumers hear, read and see about agricultural products. The bottom line is that Kansas law provides consumers with complete, accurate information and thus KARA supports this bill.



Donn Teske
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2-26-2008

HB 2295

Thank you Chairman Powell and distinguished members of the House Agriculture Committee for this opportunity to express the concerns of Kansas Farmers Union in regards to HB 2295

Kansas Farmers Union stands opposed to HB 2295 on the grounds that we believe that;

- The statement "rBST free" would make a truthful statement unlawful. As we all know by now the "r" in rBST stands for recombinant, or in other words, artificial. If a producer is not using rBST and states his product is "rBST free" he is making a true statement and should have the right to do so.
- Font size on the disclaimer. This goes beyond FDA guidelines and seriously threatens interstate shipment of dairy products.

As we all know the state of Ohio is defending 2 lawsuits against their newly created regulations and action on HB 2295 before the Ohio lawsuits are settled threatens the state of Kansas with possible fiscal responsibility in regards to defending the state against litigation. (We really don't need this right now).

I am not aware of a single consumer complaint against the current FDA guidelines that have been working fine since 1994, are you?

Very few dairy farms in Kansas use rBST any longer. It is my understanding that there isn't a dairy processing facility in Kansas that accepts rBST milk. More and more companies are demanding rBST-free milk for the products their customers buy.

We seem to be fighting this never-ending war against a product that is already a dinosaur and will in all likelihood fade away completely from American dairy farms in the very near future.

To sum it up;

- No consumer complaints
- Very few producers use the product anymore and rBST milk has a vanishing market
- FDA and the Federal Trade Commission determined in 2007 that the 1994 guidelines are adequate. (See attachments)
- Kansas produces 1.3% of the nations milk supply yet we are looking at enacting regulations that would dictate interstate shipment of dairy products for the whole nation?

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- Moving forward with HB 2295 will in all likelihood place the state of Kansas in defense of legal litigation
- These guidelines would infringe on free speech and make telling the truth illegal!
- There is already an oversupply of milk in the country; do we really need this product?

Thank you for your time,

A handwritten signature in cursive script that reads "Donn Beale".

Donn

2-26-9

Norm Oeding
Janzen Family Farms
15076 NW 180th st
Newton KS 67114
316-799-2670

I am a consumer, and citizen of the great state of Kansas. When I go to the grocery store to purchase milk, I believe it is my right to know how that milk is produced. I appreciate the efforts of dairies that are truthfully labeling their milk product as being from a dairy herd that abstains from using artificial hormones.

One small family dairy in the Topeka area bottles their own milk, and is more than happy to print on the glass bottle the many benefits of their product. Including the fact that they never use "injectable hormones (BGH)" and their milk is "completely free of antibiotics". When I make a purchase decision, these labeled facts of "absence" are what I require.

There have been many baseless, derogatory, negative charges about these "absence" labels that have only caused discontent to the dairy industry. I, as a consumer, very much approve of these labels. Many dairies are already freely, and truthfully using these labels.

When I am offered a choice of milk labeled 'hormone-free' and milk that has no label, there is an additional dilemma. Which unlabeled milk is from cows that do use artificial hormones? How is a consumer (parent, teen, child,,,,,) to know? When I desire to acquire milk products from dairy herds that do use this unique process / product (Posilac), I believe there should be a label of 'presence' stating the milk product is from such a herd. How do I know which is which? Having no label at all is misleading.

From my research, it is my understanding that the injectable hormones (Posilac) help increase the cows appetite, thus creating more consumption of feed (costs) and thus produces more milk (supply).

Maybe the dairies using this concept of injecting cows with hormones should try promoting the product qualities and benefits of their endeavors by informing the consumers just how unique and wonderful their milk product from hormone injected cows is. Maybe they should bottle their milk and label it truthfully.

They have carved out a niche market, but I see no practical marketing and promotion efforts on their part, except to complain about other niche market concepts that are working. The only marketing effort I see on their part, is making this issue a 'political football' in an attempt to legislate marketing.

In conclusion, the absence of a label stating the 'presence' of milk from cows injected with injectable hormones (Posilac) is "misleading" and thus illegal. I request that all milk should be labeled accurately and fairly. Milk, from cows injected with artificial hormones, should be labeled, on the container. It is an unconventional process and should be labeled as such.

Thank You

Norm Oeding

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Testimony on HB2295 by Craig S. Volland representing the Sierra Club and the Kansas City Food Circle, Feb. 26, 2009 hearing before the House Agriculture Committee

This is the third attempt by proponents to institute rBST language similar to this bill. In the last session it failed to pass out of the Senate Ag committee. After hearings in December, the Kansas Dept of Agriculture declined to proceed on proposed rules on this subject. There are good reasons why no action was taken.

The Food & Drug Administration has stated that labeling with regard to rBST is voluntary. That's because the FDA concluded they do not have the statutory authority to require it¹. No consumers are clamoring for this bill, so why are we dealing with this now, some 14 years after rBST was introduced?

There are many products on the market that have labels functionally equivalent to the "rBST free" statement that would be deemed false and misleading by this bill. For example I have in my cupboard baking soda that says "aluminum free," chicken broth that says "gluten free" & "fat free," and a container of canola oil that says it is not genetically engineered. Absolutely no claims are made elsewhere on the containers about the health implications of these statements. It is up to the consumer to decide what that means to her or him based on information they have obtained elsewhere.

The KDA found that language as in this bill would significantly impact affected dairy manufacturing plants. The KDA also found that affected dairy plants using glass bottles would have to replace their entire inventory. This is ironic since the whole purpose of reusable glass bottles is to keep milk containers out of the landfill! This bill would apply to out-of-state dairy processing plants and thus would inhibit interstate commerce.

This bill would ban the phrase, "rBST free." But "rBST free" is a true statement, because if this chemical is not used in the production of the product, it cannot be present in it. Thus this bill is, at least in part, nonsensical.

In the final analysis this bill is about one group of dairy industry players who wants the state of Kansas to protect them against another group who is gaining share in the market place. You have better things to do. I urge you to vote against his bill.

Craig S. Volland
609 N. 72nd St
Kansas City, Ks. 66112
913-334-0556
hartwood2@kc.rr.com

¹ Letter dated July 27, 1994 from Jerold Mande, Executive Assistant to the Commissioner of FDA, to Harold Rudnick, Director, Division of Milk Control, New York Department of Agriculture and Markets

TESTIMONY IN OPPOSITION TO HB 2295

(Written Only)

To: Chairman Powell
Members of the Agriculture and Natural Resources Committee

From: Robert Shatto, dairy farmer

Date: 2-25-2009

Thank you for the opportunity to present testimony regarding this proposed legislation. I am a dairy farmer and have been farming for more than 25 years here north of the Kansas City area. In 2003, we began bottling the milk from our small herd of cows on our local family farm with the hope of saving it from bankruptcy. Today, we sell our milk in glass bottles in the Kansas City area to people in both Kansas and Missouri.

We do not treat our cows with artificial growth hormones and worked diligently with the appropriate Federal Agency to obtain approval of our package design and content prior to ordering our first load of returnable glass bottles. Our bottles include a statement of no growth hormones used as well as the appropriate disclaimer on the back of the bottle as required by the Federal Government. We believe this requirement is not only fair, but reasonable and would suggest that anything further would keep us from providing our customers with the information that they often proactively seek.

I say all of this to suggest that we have done all we can to ensure that our current package design and content meets the approval of the current regulatory agency and respectfully ask that you oppose any language that would be more stringent than the current Federal Regulations.

If this bill moves forward, I would ask that the language related to the grandfathering of existing glass bottles remain. Based upon conversations with the chair as well as the Secretary of Agriculture's Office, it is our understanding that all of our existing bottles will be grandfathered and it is reiterated by the following lines in the proposed legislation, which have been noted below.

(2) Each reusable container for milk, a milk product or a dairy product purchased by the owner or operator of a dairy manufacturing plant before January 1, 2011, that includes on the label the production claim that "this milk is from cows not supplemented with rBST" or a substantially equivalent statement, shall include the qualifying statement specified in paragraph (c)(2) of this section affixed to the container. The qualifying statement shall not be required to be on the same label, immediately after the production claim on the label or in exactly the same font, style, case, size and color as used in the production claim. (3) On and after January 1, 2011, this section shall apply to the labels on all reusable containers of milk, milk products and dairy products purchased by the owner or operator of a dairy processing plant on or after that date.

As noted, this regulation would allow us to continue to reuse our existing bottles and keep them in circulation until they are extinct. This provision is necessary for us to be able to stay in business.

We use glass bottles, a package that is environmentally friendly and returnable. We pick up empty bottles and have them returned to the farm where they are washed and reused. These

Robert Shatto
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bottles have to be used over and over for years if they are not broken or kept by our customers as they are very expensive to purchase. If we had to dispose of all of our old bottles (that have been okay by the FDA) and replace them it would likely put us in a very unhealthy financial situation as many of those bottles cost more than \$1.50 each.

We appreciate your time on this effort and your willingness to work with our small family farm. We would simply ask that any new legislation only affect labels or bottles ordered after passage vs. all existing bottles.

I would be happy to work with anyone on this issue if it is studied further to ensure that the outcome is best for the people of Kansas and for those of us that serve them.

Robert Shatto
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Leroy@shattomilk.com

Kansas Rural Center

www.kansasruralcenter.org

Testimony before the House Committee on Agriculture and Natural Resources February 26, 2009, Concerning HB 2295

Chairperson Powell and Honorable Members of the Committee. My name is Dan Nagengast and I am here representing the Kansas Rural Center concerning HB 2295, relating to the Milk and Dairy Products Labeling.

There was a hearing in the Senate Ag. Committee last session, and this summer there was a hearing hosted by the Kansas Department of Agriculture to determine if what the proponents wish to happen could be done through regulations. I urge you to seek the dockets from both those prior efforts. Particularly at the KDA, many national dairy interests showed up in opposition. Consumers and the processors who serve them are clearly going in another direction.

Only a minority of dairy producers are treating their cows also. I think it would be an interesting exercise to ask dairy producers who treated some of their cattle at one point, but who voluntarily ceased to use it, why they did so. One comment you'll hear often is to the effect that they did not like what it was doing to their cows.

I believe you'll hear testimony about the use of recombinant Bovine Growth Hormone as providing somewhat of a free lunch - more milk, less land. I believe you'll hear, from people who otherwise don't accept the concept of human-induced global warming, that rBGH offers a partial solution to global warming. But there are health effects on cattle. There are contraindications on the label. There are farmers who won't use it for that reason. And there are plenty of consumers who don't like it for that reason and refuse to drink it. There isn't really a free lunch.

Others have lost faith in the FDA's ability to keep their food safe. I am old enough to remember when milk marketing stressed wholesomeness and contented cows. Now the labels stress the milk was produced without genetically modified recombinant Bovine Growth Hormone, but an agency that many people mistrust says that that is okay. Is this any way to sell milk? Is this good for the industry? Is the industry responding to consumer demand or to a minority of farmers who want to continue using a particular pharmaceutical.

I would be interested in knowing of other incidents where the onus of labeling is placed on producers who are not using a pharmaceutical. Generally, the users are the ones who are regulated this closely.

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There is a tail-wagging-the-dog aspect to this proposed legislation. Kansas' dairy production is not insubstantial, but a very small part of national and world dairy production. Developing the strictest labeling requirements on this issue imposes additional burdens on Kansas producers. Their product labels may be unacceptable to consumers outside the state, who knows. Entities like Walmart, Kraft and others which are moving rapidly away from the use of any milk at all that was produced with recombinant Bovine Growth Hormone will need to package with labels acceptable within Kansas. Foreign products will have to also develop separate labels for Kansas. You can go to both conventional and natural foods stores in Topeka right now and find dairy products that will be come contraband under this proposed legislation.

For that reason, I encourage you to await the outcome of the lawsuit in Ohio. Though the proposal here attempts to cleave off the organic industry, which is doing the suing in Ohio, you haven't cleaved off the Krafts, Dannons, Walmarts, Yoplait, Dean Foods, Land O'Lakes, DFAs, Krogers, etc., all of which will have to develop labels specifically for Kansas, a very small part of their market, with a small piece of the dairy industry. For that reason, I urge you to think about adding a fiscal note to defend against restriction of Interstate Commerce lawsuits.

Milk Industry Production by State

http://www.statemaster.com/red/pie/ind_mil_pro-industry-milk-production&b_printable=1

California	21.3%
Wisconsin	12.9%
New York	6.8%
Pennsylvania	5.9%
Idaho	5.3%
Minnesota	4.7%
New Mexico	3.9%
Michigan	3.7%
Texas	3.5%
Washington	3.2%
Ohio	2.7%
Iowa	2.2%
Arizona	2.1%
Indiana	1.7%
Vermont	1.5%
Oregon	1.3%
Florida	1.3%
Kansas	1.3%
Colorado	1.3%
Illinois	1.2%

We do have empathy for dairy farmers. Prices are headed towards \$10 a hundred weight, and many point to \$25 a hundred weight as a ball park break even point. Producing more milk doesn't seem like it will turn that around, if it isn't indeed, the cause. However, if there are consumer premiums for milk produced without the use of rBGH, those premiums should go to dairy producers, not processors. Insuring that producers are rewarded is where the state should intervene.

Thank you for your attention.

Dan Nagengast

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establish that their products are produced in accordance with the Organic Foods Production Act which, among other things, forbids the use of rbST on all dairy cows. Thus, as to certified organic dairy processors, a claim that the milk from that processor is not treated with rbST or contains no rbST is demonstrably true and verifiable. True and verifiable claims regarding the non-use of rbST cannot possibly be misleading or deceptive, as they do no more than describe the processes which lead to a product being declared certified organic.

Where the particular form of advertising is not false, deceptive or misleading, such as rbST non-use labels, a state may only regulate that speech if it can demonstrate that the restriction on commercial speech achieves a substantial government interest that is no more extensive than necessary to serve that interest.⁹

i. **The Restrictions on Dairy Product Labeling Contained in the Proposed Regulation Do Not Achieve a Substantial Government Interest**

The "Fact Sheet" issued by the Kansas Department of Agriculture regarding the proposed regulation states that the labeling regulation is warranted because "[c]lear labeling regulations will ensure that consumers are not misled by label claims and that milk producers will be operating on a level playing field when it comes to labeling choices." Kansas has thus put forth two justifications for its regulation, (1) to ensure that consumers are not misled; and (2) to create a "level playing field" for milk producers.

As to the first justification, there can be no dispute that Kansas has a substantial interest in preventing consumers from being misled regarding the products they consume. However, where, as here, there is no evidence that consumers have actually been misled there can be no claim that the proposed regulation "achieves a substantial government interest." The United States Supreme Court has been clear that "rote invocation" of the words "potentially misleading" does not supplant the State's burden to demonstrate that the harms it cites, in this case the potential for consumers to be misled, are real and that the regulation will in fact alleviate those harms to a material degree.¹⁰ Here, Kansas has done no more than assert that the dairy product labels containing rbST non-use labels are potentially misleading, that is simply insufficient to pass constitutional scrutiny.

The second justification, to create a "level playing field" is insufficient to justify the severe restrictions on commercial free speech contained in the proposed regulation. While assisting business in a given state is a laudable goal to be sure, it simply does not rise to the level of a "substantial government interest" which is, important enough to supplant the right to free speech afforded by the Constitution. Even if promoting a "level playing field" could be viewed as a substantial government interest, the proposed regulation is more extensive than necessary to achieve that interest, as discussed more fully below.

ii. **The Proposed Regulation Is More Extensive Than Necessary**

Because Kansas cannot demonstrate that it has a substantial governmental interest that the proposed regulation is designed to advance, the inquiry ends there, and the regulation is unconstitutional. However, even if Kansas could demonstrate that the dairy product labels at issue were potentially misleading and thus could be

⁹ Central Hudson, 447 U.S. at 566.

¹⁰ Ibanez v. Florida Dep't of Bus. & Prof'l Reg., 512 U.S. 136, 146 (1994).

Untitled

opportunity to purchase natural and organic foods in their state and the producers have lost the business commerce in that state as well. Everyone loses with such labeling restrictions.

We are confident that Rick North will represent us thoroughly and well and we appreciate your time and efforts in doing the same.

Thank you for contacting us and we will continue to follow the developments in Kansas- we hope they end up with a sensible, positive result.

With thanks,

Sheryl Kesey Thompson
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Springfield Creamery, Inc
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February 25, 2009

Representative Larry Powell
Chair, Agriculture and Natural Resources Committee
Kansas House of Representatives
Kansas State Capitol
Room 142-W
300 SW 10th Street
Topeka, Kansas 66612

Dear Representative Powell,

On behalf of Ben & Jerry's Homemade, Inc., I am writing to express our company's strong opposition to HB 2295 which would restrict or prohibit the use of certain kinds of labels on agricultural products. Ben & Jerry's sells ice cream and frozen yogurt products in Kansas through numerous retail channels. We also have franchised Ben & Jerry's scoop shops in Kansas that are locally owned and operated. We believe we would be adversely affected by the proposed legislation.

Ben & Jerry's believes manufacturers should have the right to label dairy products with respect to the use or non-use of rBGH. We certainly applaud any effort to ensure that all agricultural products sold in Kansas are truthfully labeled and that they do not confuse or mislead consumers. To that end, however, we believe the FDA guidance issued on February 10, 1994 has provided a reasonable and satisfactory national framework for rBGH labeling that respects commercial free speech rights, consumers' right-to-know, and the commercial interests of farmers, dairy processors and manufacturers. We do not believe changes to dairy labeling regulations in Kansas are necessary at this time.

Without recognizing the right of manufacturers to make rBGH claims and the FDA guidelines on such claims, any new laws or regulations restricting truthful rBGH statements on packaging such as HB 2295 would not benefit consumers, but they would impose an unnecessary burden on dairy manufacturers who sell products within the state.

Ben & Jerry's uses the following label on dairy products sold in Kansas and elsewhere in the United States:

We oppose Recombinant Bovine Growth Hormone. The family farmers who supply our milk and cream pledge not to treat their cows with rBGH. The FDA has said no significant difference has been shown & no test can now distinguish between milk from rBGH treated & untreated cows. Not all the suppliers of our other ingredients can promise that the milk they use comes from untreated cows.

We believe that this message is truthful, is relevant to consumers, and provides reasonable context. The proposed Kansas rule would apparently deem it to be 'misleading' because the contextual statement it contains is in a smaller font size than the

30 Community Drive/So. Burlington, VT 05403-6828 tel: 802/846-1500 online: www.benjerry.com



Ag & Natural Resources Committee

Date 2-26-09

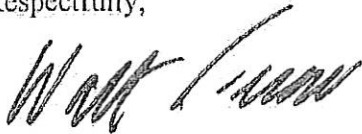
Attachment 16

rBGH claim. Yet the same label meets FDA guidelines, is currently acceptable in every other state in the country, and has been acceptable in Kansas and elsewhere since we introduced it in 1997.

Furthermore, the additional cost to Ben & Jerry's to produce and distribute uniquely labeled products for the Kansas market would be very significant and possibly prohibitive.

Ben & Jerry's urges the Agriculture and Natural Resources Committee to recognize the right of manufacturers to make truthful rBGH claims and to accept the FDA guidelines as the appropriate standard for evaluating such claims. Toward this end, we urge you to oppose HB 2295.

Respectfully,



Walt Freese
Chief Euphoria Officer
Ben & Jerry's Homemade, Inc.



CONSUMER DEMAND FOR RBGH- (RBST-) FREE DAIRY PRODUCTS PROFESSIONAL SURVEY RESULTS

- 80% of consumers felt dairy products originating from cows that have not been treated with rBGH should be allowed to be labeled as such – **Lake Research Partners for Food and Water Watch** - 2007
- 53% of primary grocery shoppers said they were looking for dairy products free of artificial hormones – **Natural Marketing Institute's Health & Wellness Trends Database survey, San Francisco Chronicle**, March 25, 2007
- 57% of respondents would pay more for milk/milk products produced without artificial growth hormones; 70% of respondents are concerned about cows given artificial growth hormones; 93% said that dairies that produce milk/milk products without artificial growth hormones should be allowed to label their products as being free of these hormones – **Consumer Reports National Research Center Food Labeling Poll**, November 11, 2008
<http://www.greenerchoices.org/pdf/foodpoll2008.pdf>
- 58% of 3,000 survey respondents in Ohio disagreed or strongly disagreed with the statement: "I'm not concerned about consuming milk from cows given growth hormone." Less than 17% agreed or strongly agreed. – **Ohio State U. Survey of Food, Farming & the Environment** - 2007
- In a 2006 survey in Washington State, 64% of respondents were aware of rBGH; of those, 31% altered their dairy consumption habits as a result. Both figures are the highest since the survey was launched in 1998. Consumers also reported worrying about the safety of dairy products (21%) and about the production methods used in the dairy industry (28%) in greater numbers than in prior years.

The use of hormones topped the list of concerns in both cases. Switching to organic or non-rBGH milk was the most common reaction among respondents. – **Washington Dairy Products Commission survey, Capital Press**, March 2, 2007
- Consumers were willing to pay a dollar a gallon more for milk that didn't come from cows treated with rBGH – **University of Wisconsin 2003 survey, Palm Beach Post**, June 3, 2007.
- 58% knew that a large percentage of dairy cows were given synthetic hormones. Assuming little, if any price difference, 81% would prefer to buy dairy products from cows not treated with synthetic hormones. – **Caravan Research Opinion Research Corporation 2007 survey for Chipotle Restaurants**
- 61% of consumers said their main reason for buying organic foods was to avoid products that relied on antibiotics or growth hormones – **Hartman Group survey (2006), San Francisco Chronicle**, March 25, 2007.
- Organic milk sales have grown by approximately 20% each year for the past decade – **Organic Trade Association Survey, Chicago Tribune**, Jan. 10, 2005

Compiled by Rick North, Project Director – Campaign For Safe Food, Oregon Physicians for Social Responsibility, 503-968-1520, hrrnorth@hevanet.com.

Ag & Natural Resources Committee
Date 2-26-09
Attachment 17

Testimony on HB 2295
To
the House Agriculture and Natural Resource Committee

by Constantine V. Cotsoradis
Deputy Secretary
Kansas Department of Agriculture

February 26, 2009

Good afternoon, Chairman Powell and members of the committee. I am Constantine Cotsoradis, deputy secretary of agriculture, and I am here to provide neutral testimony on House Bill 2295.

The Kansas Department of Agriculture recently considered a regulation to address false and misleading dairy labels. We held a public hearing on the regulation, after which the decision was made to allow the Legislature to address the issue.

When we considered our regulation, we were prepared to verify that label claims made on milk products were accurate. We are still prepared to do that should this bill become law, but we need to alert you to recent developments regarding funding for our dairy inspection program that could impact our ability to fulfill the intent of this legislation.

We came before this committee to request that a sunset on fees paid to this program be revoked and to also ask for a reasonable fee increase. Despite some opposition, this committee passed an amended bill extending the sunset by a year and providing the funding needed to sustain the program. That action would have given us time to work with industry to restructure this program's fees and to look for efficiencies without compromising public health or jeopardizing our milk producers' ability to ship product across state lines. Unfortunately, when the bill reached the full House, it didn't make it above the line before turnaround. It is now dead for the session.

The revenue losses this program will experience due to the fee sunset will force us to cut two to three inspector positions. Couple the loss of fees with state general fund reductions in fiscal years 2009 and 2010, and it's possible we will enter fiscal year 2011 with half the staff we have now. That will be at the same time this bill's provisions are to go into effect.

This bill asks that our agency carry out some very important consumer protection functions. We will do our best to conduct inspections to protect public health, ensure compliance with the interstate milk shippers' agreement, and to conduct the verification and enforcement functions contained in this bill. However, we are not sure it will be possible when funding for this program is being cut from both sources—state general funds and fees.

Thank you for the opportunity to testify today. I will answer questions at the appropriate time.