Approved: ____________________
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Eugene Shore at 9:00 a.m. on February 17, 1994 in Room 423-S of the Capitol.

All members were present except: Representative Reinhardt - Excused

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

Conferees appearing before the committee: Larry Woodson, Division of Inspections
Dwight Haddock, Associated Milk Producers
Ted Barlows, Anderson Erickson Dairy Co.

Chairman Shore called the meeting to order and pointed out that committee members have been given copies of the fiscal note on **HB 2811**, attachment #1, and written testimony submitted by Ivan Wyatt, Kansas Farmers Union, in support of **HB 3012**, attachment #2.

Hearings continued on **HB 3012**: creating the dairy marketing advisory board.

PROPONENTS:

Larry Woodson, Director, Division of Inspections, attachment #3, supports this bill as it will help stabilize milk prices and slow down the attrition of dairy farms. He requested that funds needed to initiate the order be deposited into a no limit designated fee fund and recommended a penalty section for unlawful acts.

Dwight Haddock, Associated Milk Producers, attachment #4, described changes made in 1985 in how the federal market order functions and why Kansas needs a state order. In 1985 several smaller orders were combined into one larger unit which resulted in a 20% reduction in the blend price paid to Kansas producers. During the last 5 years Kansas has lost between 80 and 120 dairies per year showing the urgency of legislation that would establish a stable blend price.

Representatives Lloyd and Alldritt asked how money can be returned to Kansas producers if the consumer price does not increase. Mr. Haddock responded that roughly 20% of the value of Kansas produced milk goes to producers out-of-state. This is leveling by the federal market order. Kansas milk goes 100% to Class 1 and 2, but the price paid to producers is the lower blend price. Representative Alldritt asked for data comparing the price dairymen receive and the price consumers pay.

Discussion continued on the storage life of milk, transport capacity and methods, bargaining or bidding for the price, what happens to unsold milk and production capabilities of Kansas farmers.

OPPONENTS:

Ted Barlows, Anderson Erickson Dairy Co. (AE), attachment #5, said this bill is an effort to legislate higher prices for milk. Mr. Barlows said when costs go up they raise prices accordingly and when their costs go down they lower prices accordingly. This happens frequently. If a state order were in effect, his company would not be able to pass on any decreases. Extra profit margins are generated through increased efficiency, the same kind of things Kansas dairy farmers need to do to approach national levels of production. Mr. Barlows also questioned the legality of a state order as this issue is currently in litigation in other states and why duplicate expenses already incurred at the federal level.

Representative Rutledge asked for data to substantiate Mr. Barlow's statement that AE lowers prices when their costs go down. Mr. Barlow said he would provide the information to Representative Rutledge.

Representative Alldritt asked if this bill isn't a way to allow dairy farmers to make a profit. Mr. Barlows said it would supersede the laws of supply and demand, eventually forcing more dairy farmers out of business.

Hearings concluded on **HB 3012**.

Chairman Shore opened discussion on **HB 2686**: pesticide licensees required to carry liability insurance for drift occurrences.

Representative McClure said she had received a reply from Forrest St. Aubin concerning how many drift complaints are received each year, attachment #6.

Representative Powers moved **HB 2686** not favorable for passage. Representative Neufeld seconded the motion. Discussion followed. Representative Alldritt made a substitute motion to table the bill. Representative McClure seconded the motion. Discussion followed. Several Representatives acknowledged that drift can be a problem, but questioned whether the committee had enough information to proceed yet. Representative Powers said he is against tabling the bill. On a show of hands, the substitute motion to table the bill carried 10 to 6.

Chairman Shore opened discussion on **HB 2811**: classifying creatures of the ratite family such as ostriches, emus and rheas as livestock.

Representative Neufeld made a motion to pass **HB 2811** favorable for passage. Representative Alldritt seconded the motion. The motion carried.

The meeting adjourned at 10:00am. The next meeting is scheduled for February 21, 1994.

STATE OF KANSAS

DIVISION OF THE BUDGET

Room 152-E
State Capitol Building
Topeka, Kansas 66612-1504
(913) 296-2436
FAX (913) 296-0231

Joan Finney
Governor

Gloria M. Timmer
Director

February 15, 1994

The Honorable Eugene Shore, Chairperson
House Committee on Agriculture
Statehouse, Room 446-N
Topeka, Kansas 66612

Dear Representative Shore:

SUBJECT: Fiscal Note for HB 2811 by Representative Neufeld

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2811 is respectfully submitted to your committee.

HB 2811 expands the current definition of "livestock" to include animals of the ratite family not indigenous to the state. Animals of the ratite family include ostriches, emus, and rheas. These birds would be subject to laws and rules and regulations governing livestock. This would include laws relating to diseased stock, quarantine orders, livestock markets, the humane slaughter of animals, meat and poultry inspections, and the theft of livestock.

The establishment of creatures of the ratite family as livestock would have minimal revenue potential to the Kansas Animal Health Department because the industry is currently small. The impact on administrative operations of the Kansas Animal Health Department would be minimal.

Sincerely,

Gloria M. Timmer

Gloria M. Timmer
Director of the Budget

cc: Ellan Spizey, Animal Health
Dick Koerth, Wildlife and Parks

HOUSE AGRICULTURE
2-17-94
Attachment #1

STATEMENT

OF

IVAN W. WYATT, PRESIDENT

KANSAS FARMERS UNION

ON

HOUSE BILL - 3012

(DAIRY MARKETING ADVISORY BOARD)

BEFORE

THE HOUSE COMMITTEE ON AGRICULTURE

ON

FEBRUARY 16, 1994

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I AM IVAN WYATT, PRESIDENT OF THE KANSAS FARMERS UNION.

THE KANSAS FARMERS UNION MEMBERS AT THEIR ANNUAL STATE CONVENTION HELD IN MCPHERSON LAST JANUARY VOTED TO SUPPORT THE FORMATION OF A DAIRY MARKETING ADVISORY BOARD.

THE NEED OF THIS LEGISLATION IS TWOFOLD. FIRST IT WILL HELP STABILIZE THE PRICE OF MILK PRODUCED IN KANSAS. A STABLE PRICE IS A MUST FOR MOST INDEPENDENT DAIRY PRODUCERS THAT HAVE TO SEEK FINANCIAL LOANS FOR THEIR OPERATIONS. I WOULD POINT OUT THAT THE INDEPENDENT PRODUCERS DON'T RECEIVE FUNDING OR ASSISTANCE THROUGH REVENUE BONDS AND SPECIAL TAX CREDITS.

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Attachment #2

SECONDLY, BECAUSE OF THE STRUCTURE OF THE FEDERAL MILK MARKETING ORDERS, THE PRICE FOR CLASS I MILK, PRODUCED TO THE SOUTHWEST OF EASTERN KANSAS, IS GRADUATED HIGHER THE FURTHER TO THE SOUTHWEST THE MILK IS PRODUCED.

THE PRICING STRUCTURE PROVIDES AN ADDED INCOME TO THOSE PRODUCERS TO PROVIDE THE ADDED COST OF TRUCKING MILK INTO THE KANSAS MILK MARKET. THIS MARKETING STRUCTURE ALLOWS THOSE PRODUCERS TO MARKET THE BULK OF THEIR PRODUCTION INTO THE LOCAL CLASS I MARKET, THEN MARKET THEIR EXCESS INTO THESE KANSAS MARKETING POOL RECEIVING AN EQUAL SHARE OF THAT CLASS I MARKET.

THIS LEGISLATION PROVIDES A 4% CONTRIBUTION TO THE "WIC" PROGRAM.

IF WE ALLOW OUR LOCAL DAIRY FARMERS TO BE FORCED OUT OF BUSINESS, THE REPLACEMENT PRODUCTION WILL GO TO WHERE THE BIGGEST TAX BREAK, THE BEST CLIMATE IS, AND THERE WON'T BE ANY CONTRIBUTION TO "WIC".

THE LOCAL DAIRY FARMER IS MUCH LIKE THAT LOCAL BUSINESSMAN THAT YOU TAKE FOR GRANTED UNTIL HE CLOSES HIS BUSINESS OR LEAVES.

WE URGE THE COMMITTEE TO SUPPORT HB-3012.

THANK YOU.

House Agriculture Committee
House Bill 3012
February 16, 1994

Mr. Chairman, members of the House Agriculture Committee, my name is Larry D. Woodson, Director, Division of Inspections, Kansas State Department of Agriculture and I am here this morning to testify in support of House Bill No. 3012.

We support the State Milk Marketing Order because we believe that it will help stabilize milk prices received by our Kansas Dairy farmers and thus slow down the attrition of dairy farms that we have seen in recent years.

We must consider the fact that milk is a perishable product and thus must be marketed in a timely and orderly manner. We must remember that milk and dairy products play an essential role in our diet.

In supporting this bill, we would respectfully request that the Committee address two areas of concern:

1. We would respectfully request that funds needed to initiate the State Milk Marketing Order be deposited into a no limit designated fee fund.

   We are of the opinion that a significant portion of the cost of initiating the State Milk Marketing Order will occur within the first six to eight months of the program. It is during this time that a large portion of the administrative, clerical, and other related duties will occur while establishing necessary rules and regulations.

2. The second issue that we would raise for your consideration is our recommendation for an unlawful acts and appropriate penalty section. This would address violations of the act such as non compliance, non payment, or tardy payment of fees.

Mr. Chairman, members of the House Agriculture Committee, that concludes our testimony. If the committee has any questions, I or staff members of the Department will attempt to answer them.

HOUSE AGRICULTURE
2-17-94
Attachment #3

TESTIMONY of

DWIGHT HADDOCK

on

~~**SENATE BILL 72**~~
HB 3012

Represenative Shore and members of the House Agriculture Committee:

I would like to explain to you the need for a Dairy Marketing Bill in the State of Kansas. At the present, the Kansas Dairy Producers are controlled by Federal Market Orders. Until 1985, the Federal Market Orders served the Kansas Dairymen very well. However, in 1985 the Department of Agriculture made some fundamental changes in how the Market Order functioned.

In the name of efficiency the Department of Agriculture combined several smaller orders into one larger unit. In the process, the Kansas Farmers were placed in a unit called the Southwest Plains Market Order consisting of the Southern 2/3 of Kansas, all of Oklahoma, the Southwest corner of Missouri and the Northwest corner of Arkansas.

In the Missouri and Arkansas portions of this Market Order, there exists five large processing plants manufacturing Class 3 products only. By combining these areas into one Market Order, the type of utilization of these plants resulted in reducing the blend price paid the Kansas producers by a significate twenty (20) percent.

Establishing a Kansas Market Order would effectively help the family farms in Kansas to exist by increasing the blend price. This action will enable Kansas Producers to receive the actual value of milk produced within the State of Kansas. At the present time Kansas has a healthy balance in the utilization of all three classes of milk which would result in a stable blend price. With the present rate of decline, Kansas is losing from 5 to 10 percent of its dairy family farms on an annual basis. This last year we reduced not only the number of farms, but also the pounds of milk produced in Kansas and are currently at a critical decline in serving the total population of this State. Continued deterioration of Kansas production that is triggered by the low blend price paid for dairy production will not only injure the dairy industry comprised of the family units as we know them today, but eventually lead to consumer dissatisfaction over quality caused by time delays and delivery of imported raw milk to the Kansas processing plants. At the present time, there is already insufficient quantity of milk produced to supply the needs of the current handlers in Kansas.

There are several states that have State Orders and have been working to both the consumer and producers advantage for several years. By establishing a Kansas Order the

HB 3012
Senate ~~Bill 72~~
Dwight Haddock

Kansas Dairy Farmer will no longer be subsidizing producers from other states by receiving a lower blend price. The consumers price will not increase since money paid for Kansas milk from Kansas milk handlers, will be returned to Kansas producers.

The present bill gives the industry the tools it needs to help support rural development throughout our State. The Dairy Industry is a labor intense type of agriculture enterprise which helps support many satellite businesses throughout the small communities which are struggling to exist.

The Governor has been looking for ways to help flourish the rural areas of Kansas making them a viable part of our Kansas economy. With your help, we feel that this can be done through the development of the Kansas Marketing Order as the result would be a WIN-WIN situation for ALL Kansans.

During the past five years we have lost between eighty (80) and one-hundred and twenty (120) dairies per year within Kansas. This in itself, should show the urgency of this legislation that would establish a stable blend price and assist the family dairy farm unit to continue to contribute quality products for consumption in this state.

We would sincerely appreciate your thoughtful consideration and positive vote on the crucially needed piece of Legislation.

GLOSSARY OF TERMS

Federal Market Order - The Federal Market order was established in 1937 with the primary function of protecting the small dairy farmers throughout the United States from unethical companies taking advantage in net prices paid for fluid milk.

Southwest Plains Market Order - This is the Order that approximately 2/3 of the Kansas Producers sell their milk under. This Market Order consists of an area comprised of the Southern 2/3 of Kansas, all of Oklahoma, the Southwest corner of Missouri and Northwest Corner of Arkansas.

Class 1 Milk - Milk which is used in the "bottle". (Consumed in it's liquid state)

Class 2 Milk - Milk that is processed into products such as ice cream, cottage cheese and yogurt. (A product that is normally eaten with a spoon.)

Class 3 Milk - Milk that is further processed into products that can be stored for future utilization. Example: hard cheeses, powder milk, and butter.

Handlers - The term used in Senate Bill 72 referring to any plant which purchases fluid milk for further processing regardless as to class or combination of classes they manufacturer.

Blend Prices - The net price paid to dairy producers by various marketing organizations within the Southwest Plains Market Order region. Blend price is established by determining the percent used in each of the three Classes of milk (given above). Class 1 receives the highest price with net receipts lowering in descending order through Class 3. The average of all utilization, determines the Blend Price.

Producer - Those farmers that are actively engaged in the daily production of raw (unprocessed) milk.

ANDERSON ERICKSON DAIRY CO.

Testimony on Behalf of Anderson Erickson Dairy

Regarding House Bill Number 3012

This testimony is presented on behalf of Anderson Erickson Dairy Company (A-E) in opposition to House Bill No. 3012.

This Bill is an effort to legislate higher prices of milk. For the past two years, the industry was forced through series of state legislative hearings on similar revenue enhancing schemes hatched by Mid-America Dairymen, Inc. Those bills would have been unmanageable and would have caused severe economic dislocations for anyone involved in the dairy industry in Kansas. Fortunately those bills were defeated or withdrawn. Unfortunately we are back again today with more unmanageable and uncompetitive ideas. If implemented as we suspect, the bill most likely would violate the United States Constitutional protections for interstate commerce.

A-E is a family-owned dairy located in Des Moines, Iowa, which has engaged in the business of distributing packaged milk for 64 years. A-E regularly distributes milk into Kansas.

One thing is abundantly clear, A-E and others routinely sell packaged fluid milk into a number of different states. I also know that others from outside Kansas sell milk into Kansas. Similarly,

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Attachment #5

Kansas processors can and do routinely sell significant quantities of milk into other states such as Iowa, Oklahoma and Missouri.

These facts are important because we already have a federal milk order system that sets minimum prices for dairy farmers' milk. These prices for fluid milk are, however, based upon an unregulated price for raw milk used to produce surplus dairy products such as cheese and butter. Fluid milk then has an add-on price, significantly above the surplus milk price. This federal minimum price can be, and usually is, only a starting point for the actual prices charged to processors by cooperatives and independent dairy farmers who are able to extract premiums for their milk, making the final price for raw milk used for fluid consumption higher than the minimum federal price. However, we deem the current system to be based upon market conditions, including supply and demand conditions. We also pay an administrative assessment to fund the federal program.

If House Bill 3012 passes, we would be subject to yet another regulatory program including additional administrative assessments. Why? There is no reason to believe that federal orders are in jeopardy. In June of 1993, the United States Department of Agriculture issued a lengthy final regulatory decision reviewing the entire federal milk order system and reaffirming the validity, purpose and operation of the federal orders. That decision followed 43 days of regulatory hearings, including 10,000 pages of transcript, over 200 voluminous exhibits, and thousands of pages of officially noticed documentation. There is no reason to believe that that decision can or will be reversed anytime soon.

We ask whether the purpose of this proposal, like those for the past two years, is to extract more money from fluid milk consumers in Kansas. If so, we believe that the law of supply and demand ought to govern. Higher prices to consumers can result in less consumption and even lower prices to producers.

In addition, the federal program that the proposal is designed to emulate employs hundreds of employees in Washington, D.C., Kansas, Iowa and elsewhere. The regulatory program is frequently subject to administrative review and court challenge -- all of which costs the industry and taxpayers substantial sums of money. Another expensive layer of administrative personnel is unnecessary.

The proposed legislation also requires the consideration of Kansas costs of production data in establishing the price for fluid milk. The issue of costs of production was extensively aired during the 43 day federal order hearing which I mentioned earlier -- all available cost of production data was made a part of that record. However, cost of production data currently collected is unreliable for considering milk price levels because the methods of collecting the data and reporting the data vary greatly. Indeed in that 43 day hearing A-E challenged the validity of such data in setting the price for fluid milk. The United States Department of Agriculture formally agreed with A-E's position in its recently published final decision:

> The AE [A-E], et al., exception urged that costs of production evidence should be declared unsuitable for use as a milk pricing factor. We agree, but only to the extent that the data provided in this record could not appropriately have been used to establish milk prices under the Federal order program.

One of the major problems identified with costs of production data is the existing interrelationship between costs and prices. Unchallenged studies show that higher costs of production follow higher prices and that lower costs follow lower prices.

Since the Kansas program would emulate the federal program and since the federal authorities could not, after extensive hearings, use costs of production data for pricing milk, Kansas should not second guess the federal authorities on this issue.

The proposed Bill also contains an inherent inconsistency in that lines 32-34 of page 2 permit prices to processors to vary based upon the plant location, but lines 16-18 of page 3 specifically prevent that adjustment which is inherent in the federal system.

The last problem that I want to discuss is also the biggest problem with state orders in general and the proposed Kansas statute. Unlike federal orders, state orders have major difficulty in regulating the price of milk in interstate commerce. It is not clear that Kansas would attempt to regulate such prices, but if you do not attempt to regulate interstate shipments, Kansas processors will lose business to other states. **However, if Kansas does attempt to regulate the price of milk from Iowa or elsewhere, I am**

convinced that those efforts are unconstitutional.

Federal courts in New York and Minnesota have in 1992 and 1993 held that such efforts to regulate interstate milk shipments are simply and clearly violative of the interstate commerce clause of the United States Constitution. Higher milk charges were also challenged where assessed by the state of Louisiana against instate and out of state processors of milk. The extra fee charged on out of state wholesalers bringing in packaged milk violated the interstate commerce clause. Louisiana Dairy Stabilization Board v. Dairy Fresh Corp., et al., 631 F.2d 67 (5th Cir. 1980), aff'd without opinion 454 U.S. 884 (1981). An important case from Massachusetts on similar issues is now pending before the United States Supreme Court and will be heard on March 2 with a decision expected by July. Why act now before the Supreme Court rules?

Since the proposed law cannot work in the absence of an unconstitutional restriction on the movement of fluid milk, it should not be enacted at all. We need constructive and thoughtful solutions to issues affecting the entire dairy industry, not proposals which merely promise results to producers and then fail to deliver because of obvious legal deficiencies.

Thank you for your time and consideration.

KANSAS AGRICULTURE

Joan Finney, Governor of Kansas
Phillip A. Fishburn, Acting Secretary of Agriculture
Donald L. Jacka, Assistant Secretary of Agriculture

901 S. Kansas Ave.,
Topeka, KS 66612

MEMORANDUM

TO: Forrest St. Aubin

FROM: Daniel Tuggle

DATE: February 10, 1994

In answer to your query about how many drift complaints are received by the agency each year, I have developed the following information from the database. Some of the information had to be correlated by hand and some judgement used to come up with valid numbers. (Such as we still have 20 drift cases from 1993 still awaiting final disposition). It appears that we average around 75 alleged aerial drift cases a year. Approximately 20% to 25% of the complaints are dealt with by either warning letters, referrals to other agencies or more stringent regulatory action. We average about 52 alleged ground drift complaints a year, and again 20% to 25% of the cases end up with warning letters, administrative actions or referrals on to other regulatory agencies for action.

We track drift complaints for lawn care operators separately. We average 5 complaints a year. Regulatory action is initiated in 25% of the cases.

c: Rep. McClure

House Agriculture
2-17-94
Attachment #6