

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Eugene Shore at 9:00 a.m. on February 21, 1994 in Room 423-S of the Capitol.

All members were present except: Representative Lawrence - Excused  
Representative Reinhardt - Excused  
Representative Rezac - Excused  
Representative Rutledge - Excused

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

Conferees appearing before the committee: Jim Brown, Fourth & Pomeroy Associates Inc.  
Jamie Clover Adams, Kansas Grain & Feed Association and  
Kansas Fertilizer & Chemical Association  
Larry Woodson, Department of Agriculture

Chairman Shore called the meeting to order. Committee members were asked to read the letter from Donald Kullman, Prairie Farms Dairy, which is a follow-up to his testimony on HB 3012, attachment #1.

Hearings opened on HB 3024: manufacturing and distributing facilities licensed not individual product registered under the commercial feeding stuffs law.

Chairman Shore asked Raney Gilliland, Legislative Research Department, to briefly explain the bill. Mr. Gilliland said this bill makes changes to the commercial feeding stuffs law by repealing individual product licensing requirements and allowing general licensure of the manufacturer. The Department of Agriculture would impose a \$10 annual license fee. Also, this bill deletes current penalty provisions for non-payment of the inspection fee and implements new penalty provisions.

PROPOSERS:

Jim Brown, President, Fourth & Pomeroy Associates, Inc., Clay Center, KS, attachment #2, said his company is a full line feed manufacturer and supports the change from individual product registration to a firm licensing program. Their formulas are subject to frequent change and yearly registration of products is time consuming and inaccurate. Feed labels registered today will be obsolete depending upon least cost formulation, change of medication levels and the latest nutrition information.

Jamie Clover Adams, Kansas Grain & Feed Association, attachment #3, stated that this legislation recognizes changes in the feed industry over the last decade. HB 3024 enhances the ability to address problems at the firm level rather than on a product by product basis, gives the Department of Agriculture the authority to cancel or refuse to renew a license and to request labels.

Larry Woodson, Director, Division of Inspections, Kansas Department of Agriculture, attachment #4, supports this bill because it broadens enforcement to include license refusal or revocation, does not require criminal action when stop use orders or warning letters are deemed suitable and reduces red tape and bureaucracy by not registering each and every product. The Department of Agriculture may have some amendments to offer later to fine tune the bill.

Discussion followed on how individual products are licensed now, the tonnage tax, how long feed samples are maintained on file and how will medicated feed be handled.

There were no opponents. Hearings concluded on HB 3024.

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE, Room 423-S Statehouse, at 9:00 a.m. on February 21, 1994.

Hearings opened on **HB 3025**: stop use and stop sale orders for violating commercial or bulk fertilizer statutes.

### PROPOSERS:

Jamie Clover Adams, Director, Legislative and Regulatory Affairs, Kansas Fertilizer & Chemical Association (KFCA), attachment #5, supports this bill because it will protect the integrity of the industry. Currently, if a firm violates the law the only recourse the Department of Agriculture has is the County Attorney. **HB 3025** is an intermediary step that permits stop sale or stop use orders. At the time the bill was requested, civil penalties were discussed, but KFCA does not believe it is appropriate at this time.

Larry Woodson, Director, Division of Inspections, Kansas Department of Agriculture, attachment #6, reviewed regulations of the Kansas Fertilizer Containment Law and supports this bill because stop use orders will allow the Department of Agriculture to carry out the intent of the law and still retain legal action.

Responding to Representative Lloyd, Mr. Woodson said right now all the Department of Agriculture can do is report violations to the County Attorney and wait for that office to take action.

There were no opponents. Hearings concluded on **HB 3025**.

The meeting adjourned at 9:35am. The next meeting is scheduled for February 22, 1994.



PHONE: 217-854-2547

PRAIRIE FARMS DAIRY, INC  
GENERAL OFFICE  
P.O. BOX 560  
CARLINVILLE, IL 62626

February 18, 1994

Dear Chairman Shore and House Agriculture Committee Members:

Thank you for allowing me a couple minutes to make an appearance at your House Ag Committee hearing on February 16th to speak in opposition to House Bill 3012. I am sorry that I was not able to return on February 17th to expand on my time-limited testimony presented on February 16th. However, each of the committee members were given a copy of my written statement.

If I may, I would like to follow up in outline form to point out some of the shortcomings of House Bill 3012. I have been a dairy industry employee employed by dairy farmers for nearly 30 years, actively involved in the marketing of raw and packaged milk and working with many Federal Milk Orders and Over-Order Coop Premium Pools.

Some of the facts to consider are as follows:

1. House Bill 3012 will raise milk prices to consumers because a state order floor will not allow federal order lower Class I prices to be passed onto processors who pass such prices onto wholesalers with such prices eventually being passed onto the retail customers. Much of the school milk and large grocery accounts are on a escalator pricing formula which requires the price to fluctuate with the federal order price up and down. If Kansas dairy farmers are not expecting higher prices for their milk, as testified by Mr. Binder, what is the purpose of House Bill 3012? Where are the monies coming from for the cost of board meetings, auditing, cost of administration, etc. of a very complicated state order on top of an already complicated Federal Order?

*House AGRICULTURE*  
*2-21-94*  
*Attachment #1*

2. Currently there are only two Class I bottling plants located in Kansas. A large portion of the Class I sales sold in the state are being processed by plants located outside the state. Some of the large plants with sizeable sales into Kansas located outside Kansas who are supplied by producers located outside Kansas include Wells Dairy, Lemars, Iowa; Anderson-Erickson Dairy, Des Moines, Iowa; Fairmont/Zarda Dairy, Kansas City, Missouri; Farm Fresh Dairy, Chandler, Oklahoma; and Hiland Dairy, Springfield, Missouri. House Bill 3012 Sec 59(d) states "such orders shall provide for transferring the value of Class I packaged fluid milk sales in Kansas that originate from out-of-state plants back to the raw milk suppliers of such plant." I would estimate that currently at least 50% of the monies collected by Kansas would be transferred back to other states dairy farmers, and I can easily see this percentage going to 80% if there was any real money to be distributed.
3. It would be an impossible task for the dairy marketing board to fix the level of prices if based on criteria outlined in Section 8 such as:
  - a. "Competitive price of milk from various sources" - raw or packaged?
  - b. "Cost of milk production" - every farm has a different cost.
  - c. "General economic conditions in the dairy industry" - state, federal, or world?
  - d. "General economy of the state." For whom and how measured?
  - e. "Changing marketing conditions to bring more market stability and encourage development of an adequate supply." House Bill 3012 will encourage a more than adequate supply from out-of-state sources.
4. Federal orders are already in place, they cross state lines, and they set minimum prices to assure an adequate supply of milk. Raw milk supplying cooperatives such as AMPI and Mid-Am are already charging over federal order prices to cover cost of supplying Class I plants. Milk prices are already causing large quantities of milk not needed for Class I products. The excess milk must find lower priced Class III outlets further driving down the Class I utilization percentage which lowers returns to all dairy farmers. 1-2

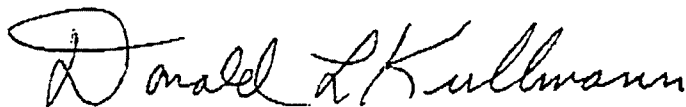
5. State orders have only worked in states where there are no federal orders and are literally islands with mountains, oceans, foreign borders etc. surrounding the state, such as California. Kansas is no island. Non-island states who have tried state orders, usually wind up in the courts. Two are in court now.
6. House Bill 3012 is a bad bill for Kansas dairy farmers. If House Bill 3012 is intended to not get more money for Kansas dairy farmers, it serves no purpose. If it intends to get more money for Kansas dairy farmers, such monies will attract even more milk from surrounding states at Kansas dairy farmers expense. I will feel sorry for Kansas dairy farmers if House Bill 3012 would become law. They do not understand the negative magnitude of this bill and have been misinformed by someone who does not know how the real world works.
7. Kansas dairy farmers must produce for a market not a price. They will have to become some of the most efficient dairy farmers in the U.S. to survive. Published statistics regarding Kansas farm milk production efficiencies demonstrates that Kansas dairymen on average need serious help - but House Bill 3012 is not the help they need - it begins on the farm and with their cooperative. Kansas Dairy farmers have a lot of problems, but passage of House Bill 3012 will only add to their problems.
8. There are many legal and administrative problem with House Bill 3012 language such as:
  - a. Sec 2(b) "This order may apply to all or portions of the state." Is this a state order or isn't it? What is a provision to create more orderly marketing conditions?
  - b. Sec 5(a) "by fixing minimum prices for each such use classification which all handlers pay" How many classes are we going to have? Sec 5(d) talks about pricing only Class I packaged fluid milk.
  - c. Sec 5(b) "The association shall not sell milk or milk products to any handler for use in any market at prices less than that fixed for handlers regulated in any market." This provision is illegal and even federal orders cannot fix such prices.

- d. Sec 5(d) "Transferring funds to producers supplying the milk for the products sold and Class I distributed in Kansas will be an impossible administrative nightmare. For example, A Kansas City, Missouri plant receiving producer milk from three states and having sales in three states - which producers get the proceeds from the Kansas sales?
  - e. Sec 10(a)(b)(c) If Mr. Binder's statement is correct that House Bill 3012 will not increase prices to consumers, there will be no new money and no need for Sec 10.
9. We strongly request that the Ag Committee not pass House Bill 3012. House Bill 3012 if made law as currently structured will prompt legal challenges, will cause undue hardships on the Kansas dairy industry and create financial inequities between producer groups and processors. It will also be a costly administrative legal nightmare.

I thank the committee for graciously allowing me the opportunity to state some of my observations of the shortcomings of House Bill 3012. There are others.

Respectfully Submitted,

PRAIRIE FARMS DAIRY, INC.  
STEFFENS DAIRY, WICHITA, KANSAS  
FAIRMONT/ZARDA DAIRY, KANSAS CITY, MISSOURI



Donald L. Kullmann  
Vice President, Marketing,  
Procurement, and Planning

DLK:sb



STATEMENT OF  
JIM BROWN, PRESIDENT

FOURTH & POMEROY

CLAY CENTER, KANSAS

TO THE  
HOUSE AGRICULTURE COMMITTEE  
REP. EUGENE SHORE, CHAIRMAN

REGARDING H.B. 3024

FEBRUARY 21, 1994

Mr. Chairman and Members of the Committee, I am Jim Brown. I am president of Fourth & Pomeroy Associates, Inc. of Clay Center, Kansas. We are a full line feed manufacturer serving livestock producers within a 100 mile radius of Clay Center. Key Feeds, as we are known to our customers, has a history of serving livestock producers since 1947. I am here to support the change from individual product registration to a firm licensing program.

Our firm, as of last Friday (February 18), has 451 active formulas in our computer system. This represents not only our branded "KEY FEEDS" but includes 169 private label formulas for our customers. Since we do a large percentage of our business as private label, our formulas are subject to frequent changes. We find the yearly registration of products to be a time consuming and inaccurate system at best. The feed label registered today will be obsolete depending upon least cost formulation, change of medication levels, and latest nutrition information. Just last week (February 15) Kansas State University released the latest feeding trial work indicating major changes in the swine nutrition program. Within the next month, all swine products and labels will change.

Our feed formulation system is computer generated including the labeling. This insures current updated labels to match reformulated rations. We just recently reviewed our product registration and I

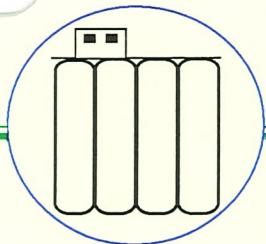
HOUSE AGRICULTURE  
2-21-94  
Attachment #2

would say that nearly 50% of the registrations were outdated, obsolete, or inaccurate. With company licensing the Division of Inspections of the Department of Agriculture has the ability to review any label compared to formulation at the plant site when making routine visits for sample collection. This review puts the accuracy of labeling at the current point in time and lets the inspectors be in the field instead of in the office reviewing soon to be outdated and inaccurate information. The time saved in preparation of labels to be submitted for registration at our firm would save our staff a minimum of 32 manhours– no I should say person hours– as we have a very capable young lady do the preparation. The cost of mailing and or transporting the product labels to Topeka is another cost item saved.

The Division of Inspections have been a great help to our firm in helping us control a problem we have had with ingredient suppliers. By working together in a cooperative effort, both the Division of Inspections and manufacturers can provide the livestock producer with quality products properly labeled.

I thank you for the opportunity to appear today in support of the changes from product registration to firm licensing.





## KANSAS GRAIN AND FEED ASSOCIATION

STATEMENT OF THE  
KANSAS GRAIN AND FEED ASSOCIATION  
TO THE  
HOUSE AGRICULTURE COMMITTEE  
REP. EUGENE SHORE, CHAIRMAN  
REGARDING H.B. 3024  
FEBRUARY 21, 1994

Mr. Chairman and members of the committee, I am Jamie Clover Adams, Director of Legislative and Regulatory Affairs for the Kansas Grain and Feed Association (KGFA). Our more than 1200 members are involved in the transportation, warehousing and merchandising of grain, as well as feed manufacturing. Feed manufacturers and ingredient suppliers are an integral link in the food chain in Kansas, representing 70% of the cost of meat, milk and eggs. KGFA strongly supports H.B. 3024.

The proposal recognizes changes in the feed industry over the last decade. Manufacturers strive to provide producers with products to meet their specific needs rather than promoting a one-size-fits-all line of feed. Further, H.B. 3024 acknowledges the increased scrutiny of the industry by consumers in their pursuit of food safety by establishing an appropriate regulatory scheme that can move with the industry and the public into the next century.

*HOUSE AGRICULTURE  
2-21-94  
Attachment #3*

KGFA believes H.B. 3024 makes favorable changes for several reasons. These include: (1) enhanced ability to address problems at the firm level rather than on a product by product basis; (2) recognition of market diversification which requires a different regulatory approach to quality and safety; (3) refocusing Department resources to outreach and education, as well as increased emphasis on quality control and compliance; and, (4) increased cost-effectiveness for both industry and the Department without sacrificing food safety.

KGFA worked closely with the Inspection Division to ensure this proposal not only met the needs of the industry, but also addressed the enforcement concerns of the Department. H.B. 3024 does several things. First, the heart of the proposed changes is Section 1 which establishes a firm license requirement for all entities selling feed in Kansas. It recognizes the dealer role in the distribution process and exempts them from the license requirement as long as they distribute products of a licensed entity. It establishes a \$10 annual fee which is comparable to those in the 15 other states with some type of license scheme. This section also gives the Secretary authority to cancel or refuse to renew a license and permits the Department to request labels, both pursuant to rules and regulations. H.B. 3024 gives the Department a fine system for late or inaccurate tonnage reports and allows room for judgment when dealing with violations.

KGFA believes firm licensing will enhance overall product quality and food safety by allowing the Department to deal with problems at the firm level rather than on a product by product basis. Under current law, the same firm could continually have problems with a variety of products but the Department can only address each product and not deal with the overall problem at the site. Firm licensing gives the Department the tools to deal with the problem instead of the symptoms.

Firm licensing also recognizes the realities of market diversification within the industry which has generated a proliferation of feed products. Under the current system, feed manufacturers are spending increasing amounts of time and money preparing labels to

go to Topeka as the number of products explode. These are resources taken away from activities that directly impact quality and in turn food safety. Please note that except for meat and poultry products, labels on food for human consumption are not reviewed by any government body. Further, KGFA believes labels taken at the time of sampling better represent the product currently on the market than a review not connected with the product.

KGFA believes that the firm license program will allow the Department to refocus its resources on outreach and education, as well as an increased emphasis on quality control and compliance that will benefit the entire industry. Firm licensing will also increase resources available at the mills that could, if necessary, be used to increase efforts to continue to ensure a safe, high quality product.

KGFA supports the license program established in H.B. 3024 because it is more cost-effective and will enhance overall product quality and food safety within the industry. This is a case where regulation has not kept up with the pace of the industry and changes are necessary to ensure not only the integrity of the Department and the industry, but the food chain as a whole.

We urge the Committee to approve H.B. 3024. I would be glad to respond to any questions you may have.

HOUSE AGRICULTURE COMMITTEE

House Bill 3024

February 21, 1994

Mr. Chairman, Members of the House Agriculture Committee, my name is Larry D. Woodson, Director, Division of Inspections, Kansas Department of Agriculture and I am here this morning to testify in support of House Bill 3024.

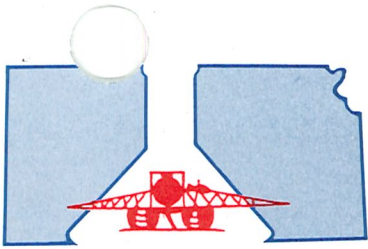
Our support of this bill is based on the following:

- It maintains language that allows us the authority to refuse any manufacturer to lower the guaranteed analysis.
- It requires each manufacturer, importer, jobber, firm, association, corporation or person selling or distributing commercial feedings stuffs to be licensed. At the present time there are already 16 states that have firm licensing and several other states are introducing similar legislation (Missouri for one). House Bill 3024 broadens our enforcement to include license refusal or revocation.
- It does not require the agency to initiate criminal action when stop use orders or letters of warning are deemed suitable to accomplish our mission.
- It relieves the industry of the burden of registering each and every product with each and every state thus reducing red tape and bureaucracy!
- The Department may request copies of labels if necessary to obtain compliance.
- There is no change in the registration of small packages and collection of tonnage fees for funding the inspection program.
- The amendments clarifies penalties for late fees and inaccurate reports. We believe that additional fine tuning of the bill will be advantageous to assure collection of tonnage fees from the manufacturer or first party distributing products into Kansas.

HOUSE AGRICULTURE  
2-21-94  
Attachment # 4

Mr. Chairman, members of the House Agriculture Committee, that concludes our testimony, may I attempt to address any questions that you may have?





# KANSAS FERTILIZER AND CHEMICAL ASSOCIATION, INC.

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STATEMENT OF THE  
KANSAS FERTILIZER AND CHEMICAL ASSOCIATION  
TO THE  
HOUSE AGRICULTURE COMMITTEE  
REP. EUGENE SHORE, CHAIRMAN  
REGARDING H.B. 3025  
FEBRUARY 21, 1994

Mr. Chairman and members of the Committee, I am Jamie Clover Adams, Director of Legislative and Regulatory Affairs for the Kansas Fertilizer and Chemical Association (KFCA). KFCA is the professional trade association of our state's fertilizer and agrichemical industry. Our 600 members include primarily retailers, but also distribution firms and manufacturer representatives and others which serve the industry. KFCA requested this legislation which gives the Department of Agriculture stop sale and stop use authority under the fertilizer law similar to that under the anhydrous ammonia law.

KFCA supports H.B. 3025 because it will level the playing field and protect the integrity of the industry by putting teeth into the fertilizer law. Currently, if a firm violates the law the only recourse the Department has is the county attorney. H.B. 3025 is an intermediary step that permits the Department to issue a stop sale or stop use order if they believe the law is being violated. This includes product, handling, transportation and facilities. The order prohibits further sale or use of the facility except as ordered by the Department.

HOUSE AGRICULTURE  
2-21-94  
Attachment #5

As many of you are aware, KFCA worked with the Inspection Divisions several years ago to establish fertilizer containment regulations. These regulations are the first line of defense against environmental contamination from chronic spills or catastrophic events. KFCA member firms have spent thousands of dollars complying with these regulations. Stop use authority will keep the playing field level and not allow some to ignore their legal obligations at the expense of their competitor because the Department has no real enforcement authority. More importantly, however is harm to the integrity of the industry and the Department if a catastrophic event occurred at a facility not complying with the law. The ensuing publicity would put the entire industry in a bad light and question the Departments commitment to enforcing the law.

In discussion with the Inspection Division on this legislation civil penalty authority was also requested. KFCA does not believe this is appropriate at this time. The containment regulations are not yet in full force and the Association believes we should wait to see if problems arise before taking the step to civil penalties. Examples abound of agencies with civil penalty authority who are then expected to bring in revenue to run their program by budget personnel. They end up like the traffic cop at the end of the month fulfilling a quota and leading to an ever increasing adversarial role with industry. KFCA believes that stop sale and stop use authority is a good intermediary measure.

KFCA fully supports H.B. 3025 because it levels the playing field and will protect the integrity of the industry. We urge the Committee to favorably report the bill. I would be glad to respond to any questions you may have.



HOUSE AGRICULTURE COMMITTEE  
House Bill 3025  
February 21, 1994

Mr. Chairman, Members of the House Agriculture Committee, my name is Larry D. Woodson, Director, Division of Inspections, Kansas Department of Agriculture and I appear before you this morning in support of House Bill 3025.

In 1989, the legislature passed the Kansas Fertilizer Containment Law (K.S.A. 2-1226 et. seq.) providing for the safe handling and storage of commercial fertilizers. Regulations (K.A.R. 4-4-900 et. seq.) were passed in 1991 and amended in 1993. These regulations required facility owners to submit plans for review and approval and provided up to two years for the completion of the loading pads and up to three years for the completion of the containment structure. The first completion date for loading pads came due in January. Six hundred seventy-seven plans have been reviewed and approved to date.

While most of the construction is in progress, there have been some justifiable delays due to weather. There will be a few that will delay until the department takes action.

The thrust of this amendment is to allow the department to issue Stop Sale/Stop Use orders rather than proceed directly to the County Attorney and seek injunction or seek criminal action.

We believe that stop use orders will allow the department to carry out the intent of the law and still retain legal action for the egregious situations.

Mr. Chairman, members of the House Agriculture Committee, that concludes our testimony. May I or staff present this morning attempt to answer any questions that you may have.

HOUSE AGRICULTURE  
2-21-94  
Attachment #6