



KANSAS JUSTICE INSTITUTE

Testimony to the Senate Committee on Agriculture and Natural Resources

SB 346: “AN ACT concerning agriculture; relating to milk and dairy products; allowing on-farm retail sale of milk and milk products; extending certain milk and dairy license fees; authorizing the secretary of agriculture to declare an imminent health hazard; authorizing civil penalties for certain dairy law violations; amending K.S.A. 65-771, 65-778, 65-781, 65-786 and 65-788 and repealing the existing sections.”

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Chairman Kerschen and Members of the Committee:

Kansas Justice Institute (KJI) is a non-profit, public-interest litigation firm committed to defending against government overreach and abuse. KJI’s particular interest in this topic stems from our 2019 lawsuit which successfully ended the government’s unconstitutional regulation of speech involving raw milk.¹ As written, KJI opposes SB 346. This testimony raises three issues for the Committee’s consideration.

Issue 1: New Labeling Requirement Mandates Unnecessary Language

SB 346 mandates the following label or its equivalent: “This product contains raw milk that is not pasteurized *and could contain bacteria that may cause foodborne illness.*”

The italicized language is unnecessary. Kansas *already* requires raw milk labeling. Alternatively, this Committee should consider—respectfully—simply adopting the labeling language proposed in two previous raw milk bills, SB 308 (2020) as amended,² and HB 2156 (2021),³ both of which said, in pertinent part:

“The on-farm retail sale of milk or milk products shall be lawful, so long as each container of unpasteurized raw milk sold or offered for sale bears a label that is clearly visible and states the following or its equivalent in a clearly visible font size: ‘This product contains raw milk that is not pasteurized.’”

¹ *Bunner, et al., v. Beam*, 2019-cv-000785 (Shawnee County).

² Available here: http://www.kslegislature.org/li_2020/b2019_20/measures/documents/sb308_01_0000.pdf

³ Available here: http://kslegislature.org/li/b2021_22/measures/documents/hb2156_00_0000.pdf

Since 2019, the facts and circumstances have not changed in any significant or meaningful way justifying any additional labeling at all, let alone “*and could contain bacteria that may cause foodborne illness.*” Quite simply, there is no good reason to foist additional administrative burdens on raw milk producers.

Issue 2: Advertising Restrictions and the Power to Enforce Advertising Restrictions

Consumers alleging false or misleading advertisements already have recourse—there is simply no good reason to impose additional advertising restrictions, let alone include: “In addition to any other remedies available under this act, the secretary may impose a civil penalty pursuant to K.S.A. 65-788, and amendments thereto, against any person who violates this section.”

Issue 3: Power to Declare Imminent Health Hazard

KSA § 65-786(b) already permits the secretary to issue a cease and desist order for a situation involving an “immediate danger to the public health[.]”

SB 346 appears to delegate even more authority to the secretary: the power to declare an “imminent health hazard at any point in a chain of events that ultimately may result in harm or danger to the public health. The occurrence of the final anticipated injury or other disease-related condition shall not be a prerequisite for the establishment of the existence of an imminent health hazard and the use of any authority granted pursuant to this act, including any action taken pursuant to subsection (a) or (b) or K.S.A. 65-780a or 65-785, and amendments thereto.”

It is unclear why this additional delegation of power is either necessary or warranted. At first blush, this strikes us as an incredibly broad, practically limitless delegation of power to an unelected official to declare *anything* an imminent health hazard, at any point, for practically any reason, or no reason at all. This raises serious constitutional issues.

Initially, we were concerned this section was an attempt to bestow upon the secretary the power to declare *all* raw milk products an imminent health hazard and immediately ban them. Perhaps this is not the bill’s intent, but we would be remiss if we did not raise this issue for the Committee’s careful consideration and deliberation. We would, of course, vehemently oppose the prohibition of raw milk either legislatively or executively.

Thank you for the opportunity to submit this testimony.