

MINUTES OF THE SENATE AGRICULTURE COMMITTEE.

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

All members were present except:

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

Conferees appearing before the committee:

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

Others attending: See attached list

SB 223 - Enacting the competitive livestock market act

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

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

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

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

Bill R. Fuller, Association Director, Public Policy Division, Kansas Farm Bureau (KFB), testified in opposition to **SB 223**. KFB supported legislation enacted last year which strengthened the authority of the attorney general to more aggressively enforce state antitrust laws and increased its resources. **SB 223** would not significantly add to the ability of the attorney general to investigate and take action on threats to the competitive enterprise system or violations of antitrust laws. Inasmuch as the law strengthening the attorney general's antitrust powers is new and has only been in effect for 8 months, it is

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important to give it time to work before enacting additional legislation. The KFB does support providing the attorney general with adequate resources, staff and budget, to actively enforce antitrust laws and competitive marketing violations.

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

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

There being no additional conferees, the hearing was closed.

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

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

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

The agreement formalizes the procedures Aventis CropScience established in which they pay a premium for affected harvest. Aventis was strongly encouraged by both the USDA and the EPA to create an incentive for growers and elevators to get StarLink corn out of the stream of commerce - to either feed it on farm, sell it to the CCC, or to market it to an approved destination to ensure that the corn does not enter the human food supply. The date growers must make application for relief is February 15, 2001. (Attachment 4)

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

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

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

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

Mr. King raised questions as to the Coop's liability and what are the long-term ramifications of the contaminated corn to the Cooperative, and how is Aventis providing long-term protection to the growers and elevators. (Attachment 5)

The meeting adjourned at 9:35 a.m.

The next meeting is scheduled for February 20, 2001.