

February 1, 1963.

Senate File 120

Passed on File,
Manufacturing 2/4

By COLEMAN, WILSON, LONG, DORAN, BROWN,
FROMMELT, O'MALLEY and GRIFFIN.

Passed Senate, Date.....

Passed House, Date.....*3-21-63*

*Vote on
H.F. 203*

Vote: Ayes..... Nays.....

Vote: Ayes.....*95* Nays.....*7*

Approved.....

A BILL FOR

An Act relating to the marketing of dairy products and imitations thereof.

Be It Enacted by the General Assembly of the State of Iowa:

1 Section 1. For the purpose of this Act:

2 1. "Dairy Product" means any form of milk and milk products
3 or imitation thereof, which includes but is not limited to milk,
4 skim milk, cream, sour cream, ice cream, ice cream mix, ice milk,
5 ice milk mix, cottage cheese, frozen desserts, reconstituted milk
6 minimal milk fat products, and any additive variant of any dairy
7 product or imitation thereof. An imitation of a dairy product
8 includes any product made in imitation of or used as a substitute
9 for a dairy product and which contains nonmilk fat instead of
10 milk fat, except an imitation of cheese.

11 2. "Department" means the state department of agriculture.

12 3. "Person" means any individual, corporation, cooperative,
13 association, partnership or other business unit.

14 4. "Processor" means any person engaged in the business of
15 processing or packaging dairy products.

16 3. "Distributor" means any person engaged in the business
17 of selling at wholesale any dairy products.

18 6. "Cost to the processor or distributor" as applied to
19 dairy products shall mean cost to the processor or distributor
20 thereof which shall include the price paid for raw materials used.

21 in such dairy products plus that part of the cost of doing busi-
22 ness of such processor or distributor that is attributable to
23 such dairy products, which shall include labor, salaries, rent,
24 interest, depreciation, power, supplies, maintenance of equipment
25 selling costs, advertising, transportation and delivery costs,
26 credit losses, taxes, insurance and all overheard expenses of the
27 processor or distributor.

28 7. "Cost to the retailer" means the invoice price paid by
29 the retailer plus the retailer's cost of doing business. In the
30 absence of specific evidence to the contrary, the cost of doing
31 business shall be presumed to be ten percent (10%) of the invoice
32 price, and this cost shall be calculated to the nearest half cent
33 per sales unit.

34 8. "Sale" and "sell" means and include any commercial trans-
35 fer for consideration, exchange, barter, gift, offer for sale
36 and distribution in any manner or by any means whatsoever.

37 9. "Retailer" means any person within this state engaged
38 in the business of operating any retail establishment or insti-
39 tution, including but not limited to hospitals, schools, hotels,
40 restaurants, grocery stores, drug stores and automatic vending
41 machines where dairy products are consumed or sold to customers.

42 10. "Injuring competition" shall mean lessening competition
43 tending to create a monopoly, or injuring, destroying or prevent-
44 ing competition with any person who sells or knowingly buys any
45 dairy product below cost, or who diverts trade from a competitor
46 of any person selling dairy products below cost.

1 Sec. 2. No processor, distributor, or retailer shall for
2 the purpose or with the effect of injuring competition advertise,
3 offer to sell or sell within the state of Iowa any dairy product

4 for less than the cost thereof to such processor, distributor
5 or retailer, provided, however, that the department may authorize
6 sales for less than cost of damaged goods, when the product is no
7 longer fit for human consumption, or to liquidate stocks pursuant
8 to court process or for other purposes which it deems consistent
9 with the objectives of this Act. Proof of the advertising, offer
10 to sell or sale of milk products by a processor, distributor or
11 retailer for less than cost to the processor, distributor or re-
12 tailer is prima facie evidence of a violation of this section.

1 Sec. 3. No processor, distributor, or retailer shall for
2 the purpose or with the effect of injuring competition offer to
3 sell or sell any dairy product with any other commodity or serv-
4 ice at a combined price which is less than the aggregate of the
5 cost of the dairy product plus the price at which the other com-
6 modity or service is ordinarily offered for sale. Proof of the
7 advertising, offer to sell or sale of the milk product and any
8 other commodity or service at a combined price which is less than
9 the aggregate of the price for which the milk product and the
10 other commodity or service are offered for sale is prima facie
11 evidence of a violation of this section.

1 Sec. 4. No processor or distributor shall for the purpose
2 or with the effect of injuring competition give or offer to give
3 any retailer and no retailer shall accept any rebate, discount,
4 free services, advertising allowances, pay for advertising space
5 used jointly, donation, free merchandise, rent on space used by
6 the retailer for storing or displaying the processor's or dis-
7 tributor's merchandise, financial aid, free equipment, or any
8 other thing of value. This shall not prevent bona fide sales of
9 equipment, furniture or fixtures to a retailer for not less than

10 ten (10) percent above seller's cost or invoice price for cash
11 or on the unconditional written promise of such retailer to pay
12 for the same in a period not to exceed thirty-six (36) months
13 and at an interest rate of not less than six (6) percent.

1 Sec. 5. No processor, distributor or retailer shall, for
2 the purpose or with the effect of injuring competition, discrim-
3 inate in price in the sale of any dairy product between sections,
4 localities, communities, cities, or towns of this state: Pro-
5 vided that nothing herein contained shall prevent a difference
6 in price which reflects only the difference in the cost of raw
7 materials, delivery costs, or the actual cost of transportation,
8 or sales made in good faith to meet an equally low lawful price
9 of a competitor in order to keep a customer. When different prices
10 are charged because of a difference in raw material or deliv-
11 ery costs, or because of transportation costs, a report, on a
12 form obtainable from the department, shall be filed with the de-
13 partment showing the different prices by section, locality, com-
14 munity, city, or town, and the reasons for the difference in spe-
15 cific statistics of different raw material prices or in actual
16 transportation costs computed according to sound accounting prac-
17 tices. When different prices are charged in good faith in order
18 to meet the equally low lawful price of a competitor in order to
19 keep a customer, written notice shall be sent the same day by
20 registered or certified mail to the department stating the name
21 and address of the favored customer, the price given him, the
22 price met, and the name and address of the competitor offering
23 the price met.

1 Sec. 6. In any case in which a complaint is made in writing
2 to the department by a person claiming to be injured because of a

3 violation of the provisions of this Act, the department shall
4 forthwith cause an investigation to be made of the complaint.
5 If in the judgment of the department investigation reveals that
6 there is probable cause for the complaint, the department may
7 call upon the attorney general or the county attorney of the coun-
8 ty in which the violation occurs who shall institute an injunc-
9 tion action to enjoin violations of this act, in which case it is
10 the duty of the attorney general or county attorney to institute
11 and prosecute such injunctive action, or the department may take
12 further action as provided in Section 8 hereof.

1 Sec. 7. The department is authorized and directed to pro-
2 mulgate rules and regulations to carry out the purposes of this
3 Act, including rules of notice and procedure for proceedings be-
4 fore the department under this Act. The department is authorized
5 and empowered to hold hearings, administer oaths and to issue
6 subpoenas for persons and pertinent records. In case of failure
7 or refusal to obey a subpoena issued to any person, any court,
8 upon application by the department, may issue an order requiring
9 the person to appear before the department, there to produce evi-
10 dence, or give testimony touching the matter under investigation.

1 Sec. 8. Whenever the department has reason to believe that
2 any person required to obtain a license under section one hundred
3 seventy point two (170.2) of the Code of Iowa has violated any
4 of the provisions of this Act or any rules or regulations adopted
5 thereunder, or whenever proper evidence has been presented to the
6 department that any person is violating such provisions, and it
7 appears to the department that a proceeding should be had to de-
8 termine whether his license should be refused, suspended or re-
9 voked, the department shall serve notice on such prson in writ-

10 ing by certified mail of the charges and grounds upon which a
11 license is sought to be refused, suspended, or revoked and of
12 the time and place, not less than ten days hence, at which a hear-
13 ing will be held to determine whether to refuse, suspend or re-
14 voke his license. Any person whose license is sought to be re-
15 fused, suspended or revoked shall have full rights to counsel,
16 and to produce witnesses in his behalf at the hearing. The de-
17 partment shall after full investigation and hearing refuse said
18 license or suspend said license for a period not to exceed six
19 (6) months.

1 Sec. 9. The license of any processor, distributor or re-
2 tailer licensed under section One Hundred Seventy point two (170.2)
3 of the Code may be suspended or revoked by the district court
4 upon proof of violation of any provision of this Act. Upon proof
5 of the second violation such license shall be suspended for not
6 to exceed six (6) months, upon proof of the third violation shall
7 be suspended for one (1) year. The clerk of court upon entry of
8 judgment of suspension or revocation shall immediately forward
9 to the department a certified copy thereof.

1 Sec. 10. Any person who suffers pecuniary loss because of
2 a violation of this Act may recover in the district court of this
3 state from the violator treble damages for loss caused by such
4 violation, together with his costs and reasonable attorney fees.

1 Sec. 11. It is hereby declared to be the legislative intent
2 that if this Act cannot take effect in its entirety because of
3 the decision of any court holding unconstitutional any part, sen-
4 tence or clause thereof, the remaining provisions of the Act shall
5 be given full force and effect as completely as if the part held
6 unconstitutional had not been included herein.

EXPLANATION OF SENATE FILE 120

Over the years certain business practices have developed in the dairy industry which have now reached such proportions that they seriously injure competition. Some of these practices concern themselves with the subsidizing of retailers by dairy processors and distributors with equipment, advertising, low interest loans, unusually long periods of credit, etc. Other abuses appear in the discriminatory prices of dairy products and their imitations at retail, sometimes at prices obviously below the cost of producing and delivering such products. Through the use of such practices, processors and distributors with greater means are enabled to dominate in the market place, and once dealers of lesser means are crowded from it, to determine dairy prices in a manner not necessarily advantageous to the consumer. This bill is designed to inhibit such practice by prohibiting sales of dairy products at the wholesale or retail level for less than the cost thereof to the seller and by restricting subsidies which may be given to retailers by dairy processors and distributors.

The bill provides the secretary of agriculture with investigative and hearing powers to enforce these trade ethic requirements.

HOUSE FILE 203

*S.F. 120
filed 3/13
by DEN Herder
adopted 3/21*

- 1 Amend House File 203 as follows:
- 2 1. Amend section 1, by striking from lines two (2) and
- 3 three (3) the words "any form of milk and milk products or
- 4 imitation thereof, which includes but is not limited to".
- 5 Further amend section 1, by placing a period after the
- 6 word "product" where it first appears in line seven (7)
- 7 thereof and striking all language thereafter in lines seven
- 8 (7), eight (8), nine (9) and ten (10).
- 9 2. Amend section 8, line seventeen (17), by deleting
- 10 therefrom the word "shall" and inserting in lieu thereof
- 11 the word "may".

Filed
March 13, 1963.

adopted 3/21

DEN HERDER of Sioux.

HOUSE FILE 203

S.F. 120

- 1 Amend House File 203 as follows:
- 2 1. Amend Section 2, line two (2), by
- 3 striking the word "advertise,".
- 4 2. Amend Section 2, line nine (9), by
- 5 striking the word "advertising,".
- 6 3. Amend Section 3, line seven (7), by
- 7 striking the word "advertising,".

Filed and adopted
March 21, 1963.

SOKOL of Osceola.

HOUSE FILE 203

S.F. 120

- 1 Amend the title to House File 203 by striking therefrom the
- 2 words "and imitations thereof".

Filed and adopted
March 21, 1963.

SOKOL of Osceola.

HOUSE FILE 203

S.F. 120

- 1 Amend House File 203 as follows:
- 2 1. Amend section 2 as follows:
- 3 a. By striking from line 1 the words "processor, distributor,
- 4 or retailer" and inserting in lieu thereof the words "processor
- 5 or distributor".
- 6 b. By striking from lines 4 and 5 the words "processor,
- 7 distributor or retailer" and inserting in lieu thereof the words
- 8 "processor or distributor".
- 9 c. By striking from lines 10 and 11 the words "processor,
- 10 distributor or retailer" and inserting in lieu thereof the words
- 11 "processor or distributor".
- 12 2. Amend section 3 by striking from line 1 the words "pro-
- 13 cessor, distributor, or retailer" and inserting in lieu thereof
- 14 the words "processor or distributor".
- 15 3. Amend section 5 by striking from line 1 the words "pro-
- 16 cessor, distributor or retailer" and inserting in lieu thereof
- 17 the words "processor or distributor".

*filed 3/21
by Scherle*

Filed and lost
March 21, 1963.

SCHERLE of Mills.