

February 11, 1965.
Agriculture.

House File 230

By COCHRAN, MAYBERRY, BAILEY,
PATTON, STEVENSON, NIELSEN of
Emmet, BARINGER.
(Lange, O'Malley, Shaff, Coleman,
Hagie, Hansen and Elvers.)

*be amended + discuss 4/2
deferred 5/1, 5/21*

Passed House, Date 5/25
Vote: Ayes 93 Nays 16

Passed Senate, Date 6/3
Vote: Ayes 48 Nays 9

Approved.....

special order of business for 5/24, 11am.

*passed on file 5/26
motion to reconsider filed 6/3*

A BILL FOR

motion to reconsider tabled 5/25

An Act relating to the marketing of dairy products.

amended in senate amendments 6/4

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

passed house 6/4 (90-11)

This is a Companion Bill; for complete text see Senate File 212.

EXPLANATION OF HOUSE FILE 230

Over the years certain business practices have developed in the dairy industry which have reached such proportions as to seriously impede competition. Some of the practices which are involved include dairy processors and distributors subsidizing retailers through providing equipment, low interest loans, unusually long periods of credit, and payment of advertising. Other abuses involving the dairy industry appear in the discriminatory pricing of dairy products and their imitations with such pricing sometimes being obviously below the cost of producing such products. Through the use of such practices, processors and distributors with greater means are able to dominate the market place and once dealers of lesser means are crowded from the market, those remaining are able to determine dairy prices in a manner which may not necessarily be advantageous to the consumer.

Incidents of price discrimination and unfair competition in the marketing of dairy products have been brought to the attention of the Attorney General of this state. Litigation involving such incidents has been filed as in violation of chapter 551 (Unfair Discrimination) of the Code. It has been the opinion of state officials that chapter 551 is not adequate to prosecute the incidents of discrimination and that new legislation is needed before effective action can result. Federal law, namely the Robinson-Patman Act, is also inadequate for prosecuting cases of price discrimination in the milk industry in Iowa since the infractions involve "intrastate" commerce rather than interstate commerce.

Therefore, the purpose of this act is to adopt legislation patterned after the Robinson-Patman Act which will provide a procedure whereby violations due to unfair competition and price discrimination in the dairy industry can be effectively held to a minimum. The provisions of the bill relate predominantly to processors and distributors and provide restrictions on such individuals involving providing of equipment, interest rates on loans, terms of credit, advertising, and maintaining and servicing dairy equipment. Processors and distributors are in no way prohibited from meeting competition under this act and are permitted to make price differentials taking into consideration quantity sales, cost of manufacture and delivery, and price changes necessary due to deterioration of perishable goods and obsolescence of seasonable goods. This bill does not prohibit retailers from using dairy products as "loss leaders" if the retailer wishes to assume the full cost involved in using the product as a "loss leader" with no financial assistance from the processor and distributor.

The bill further provides that processors and distributors shall file price lists with the Secretary of Agriculture. The Secretary upon complaint shall have the authority to investigate actions in violation of this act and to hold hearings where it is found that the violations have actually taken place. All action taken by the Secretary involving infractions can be appealed to the courts.

1 Amend House File 230 by striking all after the enacting clause and
2 inserting in lieu thereof the following:

3 Section 1. For the purpose of this Act:

4 1. "Dairy product" means milk, skim milk, cream, sour cream,
5 ice cream, ice cream mix, ice milk except that sold in semifrozen
6 form, ice milk mix, cottage cheese, frozen desserts, reconstituted
7 milk, minimal milk fat products, and any additive variant of any
8 dairy product.

9 2. "Department" means state department of agriculture.

10 3. "Secretary" means the secretary of agriculture of the state
11 of Iowa.

12 4. "Person" means any individual, corporation, co-operative,
13 association, partnership, or other business unit.

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

16 6. "Distributor" means any person engaged in the business of
17 selling any dairy product at wholesale and any person engaged in
18 the business of selling any dairy product at retail on home delivery
19 routes.

20 7. "Retailer" means any person within this state engaged in
21 the business of operating any retail establishment or institution,
22 including but not limited to hotels, restaurants, grocery stores,
23 drug stores, and automatic vending machines where dairy products
24 are consumed or sold to customers. This subsection shall not apply
25 to schools, churches or other charitable institutions not operated
26 for profit.

27 8. "Broker" means any person engaged in negotiating sales or
28 purchases of selected dairy products for or on behalf of a
29 processor, distributor, or retailer.

30 9. "Sale" or "sell" means and includes any commercial
31 transfer for consideration, exchange, barter, gift, or offer for
32 sale and distribution in any manner or by any means.

33 10. Cost of a dairy product to a distributor or to a retailer
34 means that portion of all of the expenses of such distributor or
35 such retailer which, under any system of cost accounting which is
36 in accordance with sound accounting principles and reasonably adapted

37 to the business of such distributor or such retailer, is fairly
38 allocable to such dairy product or the sale thereof to its customers
39 or to a particular class thereof. Such cost shall include, but not
40 be limited to, expenses for labor, salaries, administration, rent,
41 interest, depreciation, power, raw and processed ingredients,
42 materials, supplies, maintenance of equipment, selling, local and
43 national advertising, transportation, delivery, credit losses,
44 licenses and other fees, taxes other than income taxes, and in-
45 surance. There shall be a presumption in the case of dairy
46 products which are not sold under the manufacturer's label and
47 which are not advertised, that the cost thereof to a distributor,
48 in the absence of evidence to the contrary, shall be not more than
49 two and one-half (2½) percent, computed to the nearest one (1) cent,
50 less than the cost for otherwise identical dairy products. There
51 shall be a further presumption that, in the absence of specific
52 evidence to the contrary, the cost to a retailer is not less than
53 the next price paid by the retailer for a unit or package of a
54 dairy product, (or, in the case of a retailer which processes
55 its own dairy products, its cost thereof at its plant dock plus
56 all costs incurred in transporting the same to its retail point
57 of sale), plus an amount representing such retailer's "cost of
58 doing business", computed as sixteen (16) percent of such net
59 price. In the case of any person engaged in the business of sell-
60 ing any dairy products at retail on home delivery routes, there
61 shall be presumption that in the absence of specific evidence to
62 the contrary the cost to such person is not less than the net
63 cost to or price paid by such person for a unit or package of a
64 dairy product plus an amount representing such person's "retail
65 cost of doing business", computed as thirty-two (32) percent of
66 such cost or net price.

67 Any subsidiary or affiliate corporation, co-operative, officer,
68 director, or partner of a corporation, co-operative, or partnership
69 which is a processor or distributor of dairy products is deemed
70 to be a processor or distributor of dairy products.

71 Sec. 2. The secretary of agriculture is hereby entrusted with
72 the administration and enforcement of this Act. There is hereby
73 created in the department of agriculture a division to be known
74 as the "Division of Dairy Trade Practices". The head of the
75 division shall be the "Chief of the Division of Dairy Trade
76 Practices". All powers of the secretary under this Act may be
77 exercised by and through the chief of the division of dairy trade
78 practices. The secretary shall employ such professional and other
79 personnel as, in his judgment, shall be necessary to the proper
80 performance of his duties hereunder.

81 Sec. 3. It shall be unlawful for any person engaged in busi-
82 ness within the state of Iowa, either directly or indirectly, to
83 discriminate in price between different purchasers of dairy products
84 of like grade and quality where the effect of such discrimination
85 may be substantially to lessen competition or tend to create a
86 monopoly, or to injure, destroy, or prevent competition with any
87 person who either grants or knowingly receives the benefit of
88 such discrimination or with customers of either the grantor or
89 receiver. Nothing herein shall prevent:

90 1. Differentials which make only due allowance for differences
91 in the cost of manufacturer, sale, or delivery resulting from the
92 differing methods or quantities in which dairy products are sold
93 or delivered to purchasers or differentials otherwise permitted
94 in this Act.

95 2. Persons engaged in selling dairy products from selecting
96 their own customers in bona fide transactions and not in restraint
97 of trade.

98 3. Price changes from time to time in response to changing
99 conditions affecting the market for or the marketability of dairy
100 products such as, but not limited to, actual or imminent deteriora-
101 tion of perishable goods, obsolescence of seasonal goods, distress
102 sales under court processes, or sales in good faith in discontinuance
103 of business in dairy products.

104 4. Price differentials made in good faith to meet an equally
105 low price of a competitor.

106 Sec. 4. It shall be unlawful for any person to discriminate
107 in price by selling or offering to sell any dairy product to any
108 purchaser in the state of Iowa at prices lower than those exacted
109 by such persons elsewhere in the state of Iowa for the purpose or with
110 the effect of injuring competition or tending to create a monopoly;
111 provided however, that nothing herein contained shall prevent price
112 differentials which make only due allowance for differences in the
113 cost of sale or transportation resulting from differing methods
114 or quantities in which such dairy products are sold or transported
115 to such purchasers; and provided further, that nothing herein
116 contained shall prevent sales made in good faith to meet an
117 equally low price of a competitor. Proof of advertisement, giving,
118 offering for sale, or sale of any dairy products in any city, town,
119 or county at prices less than advertised, given, offered for sale,
120 or sold in any other city, town, or county by such person which
121 cannot be accounted for as necessary to meet competition or
122 which cannot be accounted for by the difference in such cost of
123 sale or transportation cost shall be prima-facie evidence of
124 violation of this section.

125 Sec. 5. It shall be unlawful for any processor, distributor,
126 or retailer to engage in the following practice:

127 1. To enter into any agreement or contract with any other
128 person for the establishment or maintenance of minimum prices
129 of dairy products in restraint of trade and for the purpose of
130 eliminating free and open competition in the sale of dairy prod-
131 ucts. It is the purpose of this paragraph to make applicable
132 to sales of dairy products in this state, legal restrictions
133 similar to those imposed by section 1 of the Sherman Anti-trust Act
134 (15 U.S.C., Sec. 1), and this paragraph shall be given a
135 construction similar to that from time to time given to that Act.

136 2. To sell or offer to sell within the state any dairy prod-
137 uct for less than the cost to the processor, distributor, or
138 retailer where the effect may be substantially to lessen
139 competition or to injure, destroy, or prevent competition with
140 the person buying or the person selling such product; provided
141 that this shall not prevent sales made in good faith to meet
142 competition.

143 Sec. 6. It shall be unlawful for any processor or distributor
144 to sell or contract to sell dairy products in this state or any
145 part of it at unreasonably low prices for the purpose of destroy-
146 ing competition or eliminating a competitor. It is the purpose
147 of this paragraph to make applicable to the sales of dairy prod-
148 ucts in this state legal restrictions similar to those proposed
149 by section 3 of the Robinson Patman Act (15 U.S.C., Sec. 13 A) and
150 this paragraph shall be given a construction similar to that from
151 time to time given to that Act.

152 Sec. 7. No processor or distributor shall give or extend
153 discounts or rebates, directly or indirectly, to retailers or
154 other processors or distributors, on dairy products or give or
155 extend to such purchasers any services connected with the
156 delivery, handling, or stocking of such products except as
157 provided in this Act. A processor or distributor may provide
158 services to a particular processor, distributor, or retailer or
159 may sell dairy products at a price necessary to meet a bona fide offer
160 by a competitor. The service or discount shall not be given
161 until the processor or distributor first files with the depart-
162 ment a written record of the date and terms of the competitive
163 offer, the name of the processor, distributor, or retailer to
164 whom the offer was made, and the name of the competitor who made
165 the offer. Any such record filed with the department shall be
166 used only for determining or verifying proof of violations of
167 this Act.

168 Sec. 8. Price list to be filed. All distributors offering
169 dairy products for sale within the state shall file with the
170 department on a form provided by said department a complete price
171 list showing the invoice price of such distributor of all items
172 of dairy products sold or offered for sale by them. Distributors
173 who offer dairy products for sale both at their respective places
174 of business and deliver to retailer or retail outlets, shall
175 include on such price lists filed with the department the different
176 prices established for dairy products offered for sale at their
177 respective places of business and for dairy products delivered to
178 the retailer or retail outlet. Distributors who offer dairy prod-
179 ucts for sale to consumers on home delivery routes shall include
180 on such price lists filed with the department, the different prices
181 established for dairy products offered for sale to such consumers.
182 Within thirty (30) days after the effective date of this Act,
183 every distributor shall file with the department its initial
184 price schedules and schedules of discounts and rebates and there-
185 after, every distributor shall charge its price in accordance
186 with its schedule on file with the department until such price
187 schedule is changed as hereinafter provided. Before any distri-
188 butor may make any change in its price schedule and prices charged,
189 it shall give notice by certified mail to the department setting
190 forth its new schedule of prices or new schedule of discounts
191 and rebates ten (10) days prior to the effective date of any
192 change in such schedule on file with the department (except that
193 where prices are changed in good faith to meet an equally low
194 price of a competitor, notice to the department of the new
195 schedule of prices shall be given within two (2) business days
196 after such change). The initial filing of schedules or any new
197 schedules shall be filed with the department either in person or
198 by certified mail. Price lists filed with the department shall
199 be used only for determining and proving violations of this Act.
200 Failure or refusal to file current price lists with the department
201 shall be a violation of this Act.

202 Sec. 9. No processor or distributor shall furnish, give, lend,
203 sell, or rent any advertising signs of a permanent nature except
204 signs advertising the processor's or distributor's own products.
205 Not more than one-third ($\frac{1}{3}$) of the space or cost of advertising
206 signs permitted under this section may be used to identify the
207 retailer.

208 Sec. 10. No processor or distributor shall make payments of
209 money, credit, gifts, or loans to retailers as rental for the
210 storage or display of dairy products on the premises where offered
211 for sale by the retailer.

212 Sec. 11. No processor or distributor shall make or underwrite
213 loans to a retailer or become bound in any manner for the financial
214 obligation of any retailer except that a processor or distributor
215 may lend money to retailer for the purchase of equipment for
216 the storage, transportation, and display of dairy products. Such
217 loans may be made to the retailer provided the loan is for not
218 more than ninety (90) percent of the purchase price with at least
219 six (6) percent annual interest on the principal amount and on
220 the unconditional written promise of the retailer that the loan
221 shall be paid within a period not to exceed thirty-six (36)
222 months.

223 Sec. 12. No processor or distributor shall furnish, sell,
224 give, lend, or rent any equipment to a retailer except:

225 1. Processors and distributors, under a bill of sale or
226 conditional sales contract describing the property sold and
227 specifying the price and terms of sale, may sell equipment for
228 the storage, transportation, and display of dairy products to the
229 retailer. The selling price of such equipment shall be not less
230 than the cost to the wholesaler less ten (10) percent per year
231 depreciation plus transportation and installation costs plus at
232 least six (6) percent, but in no event shall the price be less
233 than ten (10) dollars per unit. If the processor or distributor
234 makes the sale under a security agreement or conditional sales
235 contract, the terms of sale shall be no more favorable to the

236 retailer than those provided in section eleven (11) of this Act.

237 2. Processors and distributors may provide without restriction
238 coin-vending machines from which the product vended is intended by
239 such processor or distributor to be consumed on the premises.

240 3. Processors and distributors may furnish equipment for the
241 storage, transportation, or display of dairy products for one
242 period of not longer than ten (10) consecutive days a year to
243 any one retailer for use at a fair, exhibition, exposition, or
244 other promotional event for agricultural, industrial, charitable,
245 educational, religious, or recreational purposes.

246 Sec. 13. No processor or distributor shall maintain or make
247 repairs of any equipment owned by a retailer except equipment
248 used exclusively for dairy products. On such maintenance or
249 repairs, the processor or distributor shall make charges for the
250 service and parts at the same prices as are charged by third persons
251 rendering such service in the community where the retailer is
252 located. In no event shall the charges be less than the cost to
253 the processor or distributor plus a reasonable margin of profit.

254 Sec. 14. No processor or distributor shall give, offer to give,
255 furnish, finance, or otherwise make available any free goods to
256 any person, directly or indirectly, in connection with the sale
257 of dairy products or to any other person doing business with such
258 person, or give, offer to give, furnish, finance, or otherwise
259 make available any payments, gifts, or grants of anything of value
260 to any retailer. Nothing in this section shall prevent transac-
261 tions with retailers of any of the following:

262 1. The furnishing of point of sale advertising material made
263 of paper, cardboard, or other material not of a permanent nature
264 for the use in the promotion of the products of such processor or
265 distributor which remain inside retailer locations.

266 2. The furnishing of hostesses or demonstrators at any re-
267 tailer's location to promote the products of the processor or
268 distributor.

269 3. The advertising by a processor or distributor of products
270 through any advertising media the processor or distributor selects
271 which does not involve allowances, payments, or the furnishing of
272 other property to persons purchasing such products in a manner
273 prohibited by this section.

274 4. Advertising allowances which do no more than reimburse a
275 retailer for costs in advertising dairy products of the processor
276 or distributor.

277 Sec. 15. No processor or distributor shall be prohibited from
278 operating a retail outlet for retail sales or prohibited from
279 using in the retail outlet any equipment or advertising or
280 miscellaneous matter owned by the processor or distributor pro-
281 vided the retail outlet is under direct control and management of
282 the processor or distributor.

283 Sec. 16. No processor or distributor shall be prohibited from
284 giving away dairy products to be consumed on the sale premises.

285 Sec. 17. It shall be unlawful for any retailer to receive,
286 directly or indirectly, from or through a processor, distributor,
287 or broker, any discount, rebate, allowance, service, price
288 discrimination, advertising material, loan, equipment, payment,
289 or any other thing of value all as prohibited by this Act.

290 Sec. 18. It shall be unlawful for a broker or any officer or
291 agent of any brokerage firm to participate, directly or indirectly,
292 in any practice prohibited by this Act. It shall be unlawful for
293 any processor, distributor, or retailer to engage or offer to
294 engage, directly or indirectly, through a broker in any practice
295 prohibited by this Act.

296 Sec. 19. Any person claiming to be injured by another person
297 through the violation of any of the provisions of this Act may file
298 in writing a statement of such violation with the department. Upon
299 receipt of the written statement, the department shall immediately
300 cause an investigation to be made of the alleged violation. When-
301 ever it shall appear that any person is violating or threatening to
302 violate any of the provisions of this Act or the violations or orders
303 of the secretary, then the department may call upon the county
304 attorney of any county in which such violation occurred to bring
305 suit against such person in the district court to restrain such
306 person from continuing or from carrying out the acts or practices
307 alleged. In such suit he may obtain such injunction prohibitory
308 and mandatory including temporary restraining orders and temporary
309 injunctions as the facts may warrant without being required to prove
310 that an adequate remedy at law does not exist and without being

311 required to give bond.

312 Sec. 20. Whenever the department has reason to believe that
313 any distributor or retailer or processor may be in possession of
314 information relevant to an investigation by it of suspected
315 violations of the provisions of this Act, the secretary may require
316 such person to file with him in such form as he may prescribe
317 special reports or answers in writing to specific questions
318 furnishing such information. Such reports and answers shall be
319 made under oath or otherwise as the secretary may prescribe and
320 shall be filed with him within such reasonable period as he may
321 prescribe. Any person who fails without lawful cause to file such
322 reports or answers in writing within the period prescribed or
323 shall wilfully make or cause to be made any false statement in any
324 such report or answer in writing shall be guilty of a misdemeanor
325 and upon conviction thereof fined not less than five hundred (500)
326 dollars nor more than one thousand (1,000) dollars.

327 Sec. 21. Whenever the secretary has reason to believe that any
328 person has violated any of the provisions of this Act or any
329 rules or regulations adopted thereunder, he may enter an order
330 requiring such person to appear before him and show cause why
331 an order should not be entered requiring such person to cease and
332 desist from the violations charged. Such orders shall set forth
333 the alleged violations, fix the time and place of the hearing, and
334 provide for notice thereof which shall be given not less than
335 twenty (20) days before the date of such hearing. After hearing
336 by the secretary, or if the person charged with such violation
337 fails to appear at the time of said hearing, if he finds such person
338 to be in violation he shall enter an order requiring such person
339 to cease and desist from the specific acts, practices, or omissions
340 so found to be in violation and from related acts, practices or
341 omissions. Any such order shall become final upon the expiration
342 of thirty (30) days after its entry if no appeal is taken there-
343 from.

344 Any person aggrieved by any order entered by the secretary
345 or other action of the secretary may take an appeal therefrom
346 to the district court as provided elsewhere herein for license
347 denial, suspension or revocation.

348 Any person violating any order of the secretary under the
349 first paragraph of this section after the same has become final
350 or on the termination of any review proceedings shall be subject
351 to a civil penalty to be levied by the district court in a
352 proceeding instituted for that purpose in an amount of not less
353 than five hundred (500) dollars and not more than ten thousand
354 (10,000) dollars provided that in the case of continuing violations
355 the minimum amount of such penalty shall be either five hundred
356 (500) dollars or twenty-five (25) dollars for each day of violation,
357 whichever is the larger.

358 Sec. 22. The department is authorized and empowered to
359 administer oaths and to issue subpoenas for persons and pertinent
360 operating records in making investigations provided in section
361 nineteen (19) of this Act. If a person fails or refuses to obey
362 a subpoena issued under this Act, the department may apply to
363 the district court to issue an order requiring the person to appear
364 before the department to produce evidence or to give testimony
365 concerning the matter under investigation. The application for
366 the order shall be filed with the district court within the county
367 in which the investigation is conducted or in which the person
368 guilty of failure or refusal to obey is found or resides or
369 transacts business or has his principal place of business. Any
370 person wilfully failing to obey an order of the court is guilty
371 of contempt of court and shall be proceeded against as provided
372 by law.

373 Sec. 23. Any person who is injured in business or property
374 by reason of another person's violation of any provisions of this
375 Act may intervene in the suit for injunction instituted against
376 the other person. The injured party may bring a separate action
377 and recover three (3) times the actual damages sustained as a
378 result of the violation together with the costs of the suit or
379 may sue to enjoin the violation of any provision of this Act.

380 Sec. 24. Whenever the department has reason to believe that
381 any processor or distributor required to obtain a license under
382 section one hundred ninety-two point one (192.1) of the Code has
383 wilfully violated any cease and desist order issued under the
384 provisions of this Act after the same has become final and
385 continued in such violation after the expiration of a ten-day
386 notice from the department of intention to commence proceedings
387 for the denial, suspension or revocation of such license, and
388 it appears to the department that a proceeding should be had
389 to determine whether his license should be denied, suspended,
390 or revoked, the department shall serve notice on such person
391 in writing by certified mail of the charges and grounds upon
392 which a license is sought to be denied, suspended, or revoked.
393 The notice shall include the time and place, not less than ten
394 (10) days after the mailing of the notice, at which a hearing shall
395 be held to determine whether to deny, suspend, or revoke the
396 license.