

COMMENTS OF DAVID G. COX TO HB 6312 AND 6313
ENVIRONMENT COMMITTEE HEARING
FEBRUARY 9, 2009

Co-chairs Roy and Meyer, members of the Committee, thank you for the opportunity to provide written comments to HBs 6312 and 6313.

Introduction

My name is David G. Cox. I am an attorney in Columbus, Ohio and am also General Counsel for the non-profit organization Farm-to-Consumer Legal Defense Fund. The Fund's mission statement and purpose includes defending and protecting the rights of farmers and consumers to engage in direct transactions to enjoy the benefits of nutrient dense, local agricultural products that are produced in a sustainable manner. The Legal Defense Fund has over 2,000 members nationwide, including farmers and consumers, and has 14 members in the State of Connecticut. The Legal Defense Fund has an interest in seeing that HB 6312 and 6313 are defeated because they would essentially put small dairy farmers in Connecticut out of business. Let's call a spade a spade; the obvious purpose of HB 6312 and 6313 is to put the raw milk dairy industry out of business in the State of Connecticut.

Statement of the problem

Dairy farmers all over the United States are having a tough time making a living. The dairy industry is pervasively regulated not only by the United States Department of Agriculture but also by the Food and Drug Administration and the several states and local governments. There are regulations for how big their milking parlor can be, how clean their milking equipment can be, how they can apply for and obtain permits/licenses, how clean their farm buildings must be, testing standards for their milk and dairy products, packaging requirements, temperature requirements, what can and cannot be in their products before the products are considered adulterated, and what their labels must say to avoid being deemed "mislabelled."

In addition, they are not being paid a fair price for their product. Dairy cooperatives have a monopoly on the market and pay farmers less than \$2 per gallon of milk while grocery stores sell that same milk for close to \$4 per half gallon or \$8 per gallon. The dairy farmer is not paid the fair market value for the product he/she produces because there are so many middle men involved in getting milk from the farm to the grocery shelf: testers, samplers, milk haulers, milk processors, packagers, delivery services, warehouses, distributions centers, grocery stores, etc. Consequently, the dairy farmer is at the bottom of the totem pole when it comes to receiving a fair share of the cost of producing milk and dairy products.

However, there is a movement underway in this country that involves the production and distribution of raw milk and raw dairy products. By raw I mean unprocessed or unpasteurized. This movement is gaining momentum across the country for several reasons: (1) consumers wish to support their local farmer rather than corporate conglomerates, (2) consumers wish to keep their dollars circulating within their local economy, (3) consumers wish to support sustainable agricultural practices, (4) consumers wish to enjoy the health benefits of fresh, unprocessed milk and dairy products that have not been cooked to death via pasteurization, and (5) consumers wish to exercise their inalienable and fundamental right to consume the foods of their choice. Dairy producers who supply the demand for these fresh, unprocessed dairy products are reaping the benefits of this movement.

Whereas the typical dairy farmer who sells their milk to a cooperative or processing facility in the course of the industrial scale model of dairy production receives at the present less than \$2 per gallon milk they sell, those catering to the fresh, unprocessed dairy market are enjoying anywhere from \$12 to \$18 per gallon, depending on where they are located in the country. In addition, the small dairy producer that is supplying the demand for raw milk and raw dairy products is directly interacting with his/her consumers, getting to know them on an intimate level and becoming their friend. In essence, this relationship “puts a face on the food” of the consumer and is similar to the Community Supported Agriculture model now enjoying great success across the country.

Therefore, it is important for this august body of enlightened legislators to recognize that these small dairy producers must be supported in their efforts, not stymied or hampered or burdened. Because HB 6312 and 6313 would put small dairy farmers out business in Connecticut, they must not pass.

Raw Milk is safer and healthier than pasteurized milk

According to the U.S. Department of Health and Human Services, its National Institutes of Health, and its National Center for Complementary and Alternative Medicine, probiotics are “live microorganisms (in most cases, bacteria) that are similar to beneficial microorganisms found in the human gut.” Probiotics have been defined by the World Health Organization and the Food and Agriculture Organization of the United Nations as “live microorganism, which, when administered in adequate amounts, confer a health benefit on the host.” Raw milk and raw dairy products are filled with probiotics. Milk that has been pasteurized is dead, with all of these beneficial probiotics cooked out of existence.

Recent studies have shown that probiotics may improve the gut health of premature babies, may protect against autoimmune disease, may protect against bacterial infection and may lower risks of eczema. Probiotics have also recently been introduced in infant cereals in order to, in part, “aid early infant brain and eye

development while potentially protecting against the development of future allergies, including those leading to asthma, and eczema. Raw dairy products contain probiotics. Pasteurized, cooked, dead milk does not convey these benefits.

Recent studies have shown that there is an inverse relationship between the consumption of raw milk products and contracting asthma and allergies. In other words, the more raw dairy products a person consumes the less likely they are of getting either asthma or allergies. In addition, recent research has shown that conjugated linoleic acid (CLA) may have “anti-carcinogenic, anti-atherosclerotic, anti-diabetic and immune-modulating effects, as well as a favorable influence on body fat composition.” This same study also suggests that the consumption of organic dairy and meat products increases the amount of CLA in breast milk of mothers. Increased amounts of CLA are found in raw whole milk. Pasteurized or dead milk does not enjoy these benefits.

It has been demonstrated that the greater the presence of antimicrobial proteins, the less likely it is for pathogenic bacteria to form. Raw dairy products are filled with antimicrobial proteins. Also, a recent study suggests that contamination of milk by enterococci, lactobacilli and coliforms of bovine fecal origin is “extremely low” and that when raw milk “is implicated in food infection, other factors in addition to faecal contamination must be involved.” Another study suggests that when raw milk is inoculated with the pathogen *Listeria monocytogenes*, the raw milk kills all of the *L. mono.* within 36 to 52 hours. Anywhere from 4% to 6% of pasteurized milk, on the other hand, have pathogens in it.

The U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, compiles statistics on the number of foodborne outbreaks that occur each year in the United States. These statistics are kept by food type and bacteria type. For example, from 1973 to 2005, there were 19,968 outbreaks of foodborne illness associated with pasteurized milk and pasteurized dairy products. The largest single outbreak was in 1985 with 16,659 outbreaks associated with pasteurized milk. On the other hand, from 1980 to 2005 there were only 1,821 outbreaks associated with unpasteurized milk and dairy products, with the largest outbreak of 202 occurring in 2001 from improperly processed cheese.

More outbreaks occur in the industrialized conventional dairy and food industry than in the smaller, raw milk industry because there are more pathogens present in the packaging, processing, and distribution plants. The U.S. Food and Drug Administration is a broken administrative agency whose mission and science is “at risk.” The FDA cannot fulfill its mission because “its scientific base has eroded,” it “does not have the capacity to ensure the safety of food” for the nation, and its “scientific workforce does not have sufficient capacity and capability.” The chaos within the FDA and the industrialized food system it monitors and regulates was manifested in the recent largest recall of hamburger in the nation’s history, 143 million pounds. Finally, raw cows’ milk and raw

dairy products are nutritious and healthy whereas pasteurized milk can cause and has caused death. Thus, FDA's reliance on "pasteurization" is misguided.

HB 6312 and 6313 are out of line with surrounding states

In the State of New York, it is legal to sell raw milk only at the farm where it is produced as long as the producer is licensed. Other raw dairy products such as raw yogurt, raw cheese, raw kefir, etc. cannot be sold at the farm. In addition, there is no requirement in New York law that the feces from all cows must be tested.

In the State of Massachusetts, it is legal to sell raw milk at the farm where it is produced but the law allows local Health Departments to override state law and the local Health Department can prohibit the sale of raw milk if there is a reason to do so. In addition, there is no requirement in Massachusetts law that the feces from all cows must be tested.

In the State of Rhode Island, it is illegal in the state to sell raw milk anywhere.

No other state in the country requires dairy farmers, raw or pasteurized, to sample the feces of every one of their cows.

Thus, because HB 6312 and 6313 are so onerous for small farmers they are not in line with the laws of other states. Consequently, HB 6312 and 6313 will eventually put Connecticut dairy farmers out of business, thereby forcing Connecticut citizens who desire raw dairy products to go to New York or Massachusetts to get their products.

HB 6312 and 6313 are not rationally related to the public's health, safety or welfare

A. Section 2(d)(1) of HB 6313 provides, in part, that the presence of "any human pathogen" in raw milk means that the raw milk is "adulterated." This language is problematic for two reasons.

First, HB 6312, Section 1 (1) defines "adulteration" as the presence of any "poisonous or deleterious substance which may render it injurious to health." Consequently, there must be either a "poisonous" or a "deleterious" substance present that is "injurious to health" before the product can be adulterated. If the substance is not either poisonous or deleterious, or if the poisonous or deleterious substance is not present in sufficient quantities to render it injurious, it does not meet the definition of adulteration.

Notwithstanding, HB 6313 at Section 2(d)(1) changes the definition of adulteration entirely and causes an inconsistency and conflict of what constitutes "adulteration." Under HB 6313, the presence of "any human pathogen" renders the substance adulterated. However, there are many human pathogens that do not even cause illness. *Listeria innocua* is one type of pathogen that does not cause illness in humans. There are others as well. Consequently, the presence of a pathogen that *does not cause illness* should not make the product "adulterated."

Second, even if pathogens were present in a food, a person would have to ingest several units of pathogens to cause illness. The level of ingestion that causes sickness is called the “infective dose.” For example, the Food and Drug Administration states that the infective dose for *E. coli* O157:H7 is 10 organisms, the infective dose for *Salmonella* is at least 15 organisms, and the infective dose for *L. mono.* is about 1,000 organisms. Consequently, ingesting anything less than the infective dose would not cause illness and would not render the substance “injurious to health.”

Thus, HB 6313’s language that a raw dairy product is “adulterated” when it (1) does not even contain a pathogen that causes illness, or (2) does not contain enough pathogens that constitute an infective dose, does nothing more than impose an unreasonable and onerous burden on raw dairy producers.

B. HB 6313 Section 2(a)(1) requires the farmer to test, each month, a “comingled sample of retail raw milk representing all the retail raw milk” produced by that farmer. This is technically impossible and economically unreasonable. To comply with this standard would require the farmer to sample and hold each bit of milk that is produced each day, to collect a sample of milk from the bulk tank every time a cow is milked, and to save each and every one of those samples for a whole month in order to “comingle” the milk for sampling purposes. Not only would this result in inaccurate sampling results (the milk would be held way beyond its appropriate holding time) but it would be meaningless.

C. HB 6313 Section 2 (a)(2) requires the farmer to test the feces of every single animal they own for the presence of pathogens. However, pathogens can reside anywhere in the environment; on milking equipment, on the hands of workers, on clothing, on bottles or bottling equipment or in processing equipment. Thus, testing for feces will not eliminate the source of pathogens. Instead, it will impose an unreasonable economic burden on small dairy producers that will force them out of business.

D. HB 6313 Section 2 (e) requires the farmer to quarantine every single animal that “tests positive for the presence of a human pathogen.” Again, and for the same reasons articulated above in paragraph A, not all human pathogens cause illness and even if a pathogen is present it may not be in enough amount to rise to the level of an infective dose to cause illness. Therefore, this “quarantine” restriction does not protect the public’s health, safety or welfare but instead is merely an overly burdensome and oppressive requirement that will do nothing but force the farmer out of business.

E. HB 6313 Section 3 (a) deals with sampling for “inhibitory substances.” If such substances are found in retail raw milk then the producer of the milk needs to sample that milk again for the presence of the inhibitory substance. However, inhibitory substance is not defined anywhere. It would be an abuse of discretion for

the Department of Agriculture to construe a pathogen as an inhibitory substance. The term needs to be defined.

HB 6312 exceeds the state's police powers

Every citizen of the State of Connecticut has the inalienable right to purchase, use and enjoy property. Every citizen of the State of Connecticut has the inalienable right to engage in a private contract. Every citizen of the State of Connecticut has the inalienable right to consume the foods of their choice.

For instance, if a city dweller wishes to purchase a cow, they can do that. Further, if the city dweller wishes to keep the cow at a farmer's farm, the city dweller can enter into a contract (a boarding agreement) whereby the farmer agrees to provide a service for the city dweller, i.e., the farmer tends to, takes care of and manages the cow for the city dweller. This has historically been known as an "Agistment" agreement. The city dweller, therefore, can enjoy fresh, unprocessed milk from their cow anytime. Further, the city dweller can enter into another contract with the farmer whereby the farmer converts the city dweller's milk into other dairy products, such as cheese, kefir, yogurt, etc. This relationship is a purely private matter that does not involve the public's health, safety or welfare.

However, HB 6312 Section 2 (b)(1), (3) and (4) prohibits the "sale, offering for sale or offering for barter or exchange any milk, milk product or cheese" that is adulterated (b)(1), that is from a facility that is not licensed (b)(3) or that is from a dairy farm that is not registered (b)(4). Therefore, a liberal reading of this prohibition would defeat any Agistment agreement entered into between a city dweller and a farmer.

For example, if the milk from a city dweller's cow had two units of *Listeria innocua* in it, the State Department of Agriculture would argue that the milk is "adulterated" and that the milk had been "bartered or exchanged." Or, if the farmer and his farm are not licensed or registered they would not be able to enter into the Agistment agreement so that the city dweller could enjoy his raw dairy products. Thus, the State would be intruding into a purely private matter that did not involve the public. Consequently, HB 6312 exceeds the police power of the State.

In addition, HB 6312 Section 4 subjects anyone who is involved in "selling or offering for sale, barter or exchange any milk, milk product or cheese" to all of the sanitation requirements of the agricultural code. For the same reasons explained above on Section 2 (b), this language exceeds the police power of the State because Agistment agreements are purely private matters that do not involve the public's health, safety or welfare.