

Murdo, Patricia

Subject: FW: 12-Day Sell By Rule

From: Ken Bryan
Sent: Friday, March 28, 2014 3:33 PM
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Chairman Tutvedt & members of the Economic Affairs Interim Committee,

Yesterday I had the privilege of addressing the subcommittee on behalf of my employer, Cargill, in support of the current 12-day Sell-by rule. Due to time constraints, I did not have an opportunity to make personal comments as a long-time resident of Montana and as a milk consumer. I would now like to take the opportunity to do so.

To begin, I personally support the rule as it currently exists, for many of the reasons suggested by other supporters that were present. After listening to the entire discussion yesterday, there were a few comments made that I believe are really at the heart of this issue.

Senator Facey asked Tom Bears of Core Mark International the question, “is the system broken now?” As representatives of voters throughout the state of Montana, I am sure you are keenly aware of the issues your constituents feel are “broken” in our government, and I would hazard a guess that none of you have received complaints from the general public that they don’t understand what a “sell by” date means, aside from those prompted by Core Mark’s litigation. The very thought that the milk consuming public is paralyzed by a lack of understanding the date code on the top of a milk carton that has been in place for 34 years is ludicrous. Without government intervention, people can figure these things out and determine how to transport and store perishable foods to meet their needs. And I don’t think I have ever met a person who would automatically throw away an edible product simple because the sell by, use by, or best by date has passed...the average person will look at, smell and/or taste the product to make their own determination of its suitability for consumption.

Some comments were also made around determining what milk dating rules are in effect in neighboring states, and concerns about meeting reciprocity agreements. From what I have read in the record of this long battle, both Judge Sullivan and the court agree that Montana’s 12-day rule is not in violation of interstate commerce regulations. Further, no neighboring states have challenged Montana based upon not living up to reciprocity agreements. I think this line of questioning is really a veiled scare tactic to make people believe something is wrong, when that is not the case. And what impact should the rules of neighboring states have on the rules that Montana decides to implement? Idaho has close to 600,000 dairy cows and Washington has about 260,000 cows, while Montana has around 12,000 cows. There are two Idaho residents for every dairy cow in that state, 26.5 Washingtonians for every dairy cow there, and 83.3 Montanans for each dairy cow in our state. Looking at this from a geographical distribution standpoint is even more telling, with one cow per 0.14 square miles in Idaho, one cow per 0.27 square miles of Washington, and one cow per 12.25 square miles in Montana. With such vast differences, a cookie-cutter approach to rule making is not logical.

If you cut through all the rhetoric and innuendo of this battle, the 12-day Sell-by rule is all about ensuring consumers that they are spending their hard earned money on a fresh and wholesome product. Milk producers, processors and retailers are held to high standards regarding the temperature

and conditions in which dairy products are stored and transported, and under these “controlled” conditions milk will not rapidly spoil. Once milk is purchased, the shelf life of a carton of milk becomes less predictable because different people transport, handle and store their milk differently. In his concluding remarks at the subcommittee hearing, Representative Greg Hertz stated that “the retailer never wants to sell a bad product to a consumer.” I absolutely agree with this, and then the challenge becomes how can we best ensure that this happens. Let’s compare two different scenarios; 1) using our current 12- day rule, and 2) implementation of a 21-day use by rule. Under scenario #1, a retailer will never take delivery of that has been pasteurized and bottled for more than 11 days. With scenario #2, the retailer could take delivery of milk that has been in the bottle for 20 days. So which product will have the longest shelf life in the consumer’s refrigerator every time it is purchased? The answer is obvious that the 12-day rule does more to provide that assurance of freshness to the end-user.

Finally, mention was made by several people that consumers need to be educated on the shelf life of the milk they purchase. While I personally do not agree that there is a very big educational gap, I wouldn’t oppose such an effort. However I do not think it is the responsibility of the legislature or the Board of Livestock to initiate such a program, because there is not a one-size-fits-all answer. As we have learned from this debate, different processors have differently methodologies for testing and determining the shelf life of the products they produce. Retailers in Montana are purchasing milk that has been bottled by a number of different processors across a number of states. If a retailer believes that his or her customers need to be educated on the expected shelf life of the milk they are selling, they should demand that information from the distributor providing the product. Doing so allows both the retailer and the bottler/distributor to truly become a partner of choice with the end-user, and the retailer can then provide a level of customer service that is not common in today’s big box store culture.

In the few minutes this issue was addressed in the full committee meeting, Senator Arntzen commented that the legislature doesn’t want to be picking winners and losers in this debate. I agree, however any decisions or changes need to focus on how Montana business and consumers win. That is the job of the legislature and the duty of our citizens. If the solutions which yield the best “win” for Montanans also happen to benefit an out-of-state entity, that is great. But, kowtowing to an out-of-state business that does not have the best interest of Montana’s citizenry in mind would be paramount to dereliction of duty. They have tried to make the argument that Montanans’ will pay less for milk if we strike the 12-day rule, yet the pricing information shared in Ms. Angel’s testimony prove that this is a false argument. Core Mark International has been in business since 1888, and is a publically traded entity. They have a solid business model, and very good growth in profits over the last ten years. As it should be, a primary obligation of Core Mark is to provide a return to stockholders. It may be wise to invest in this company, but I doubt anyone can find anything in their company strategy or vision that makes providing cheap milk to Montana residents a business priority. They want more products to fill space in their trucks so their distribution model is more efficient. As they become more efficient, they can either sell products at a lower price, or increase their profits. Assuming they can be competitive in the market, I don’t think there is much doubt which direction they would take in making that decision.

The 12-day Sell-by rule is not broken. It has worked for milk consumers in Montana for 34 years and does not need to be changed.

Thank you.

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