

**Testimony in Support of Senate Bill 346
to the Senate Committee on Agriculture and Natural Resources
by Kenneth Titus, Chief Counsel
Kansas Department of Agriculture
January 20, 2022**

Good morning, Chairman Kerschen and members of the committee. I am Kenneth Titus and I serve as the Chief Counsel for the Kansas Department of Agriculture (KDA). Thank you for the opportunity to provide testimony in support of Senate Bill 346.

Senate Bill 346 would amend the laws regulating milk, cream and dairy products (the “Dairy Law”) so that the retail sale of raw milk and milk products on the farm may be done if the product contains the prescribed warning label stating, “This product contains raw milk that is not pasteurized and could contain bacteria that may cause foodborne illness.” Further, any advertisement of such milk or milk products must state that the products are either “raw” or “unpasteurized,” and the advertisement shall not be false or misleading. The bill would also expand KDA’s civil penalty authority to raw milk producers for the enforcement of these new provisions rather than rely exclusive on enforcement by county attorneys or the attorney general.

This bill was introduced because, pursuant to K.S.A 65-771(cc), Kansas law previously prohibited the off-farm advertisement of raw milk and milk products. However, as a result of *Mark Bunner, et al. v. Mike Beam – Secretary of the Kansas Dept. of Ag.*, filed in 2019 in Shawnee County District Court, the portion of the law limiting the advertisement of raw milk was struck down as unconstitutional. Therefore, KDA supports this bill because changes to the law regarding raw milk sales are necessary to remove the unconstitutional portions of the Dairy Law.

In addition to addressing the sale and advertisement of raw milk, this bill also contains several other amendments to the Dairy Law. These amendments include a reorganization of the definitions section, which resulted in moving several sections, but no new language was added. One example includes moving the term “imminent health hazard” from the definitions section to K.S.A. 65-786, dealing with emergency cease and desist orders. This move takes existing authority that had been granted and makes it clear that any action to protect the public health under this section would be subject to the emergency procedure provisions of the Kansas Administrative Procedure Act. This change would not impact raw milk producers and this tool is primarily used by inspectors when they are conducting inspections of licensed Grade A producers. The amendments also include an extension of sunseting fees from 2023 to 2028. The amendments do not contain any increase in existing fees, which have been in effect since 2010.

Finally, due to an error in drafting, the bill as introduced did not contain KDA's proposed amendments to K.S.A 65-781(c), regarding inspection fees on milk. In order to adequately fund the inspection of new milk processors in Kansas and to better reflect current industry practice, KDA would request the committee include the following amendment:

(c) A fee of ~~\$.007504~~, or commencing July 1, 2002, and ending June 30, 2028 ~~2023~~, a fee of \$.02 per 100 pounds or fraction thereof of grade A raw milk for pasteurization delivered to a milk processor within the state of Kansas which is processed into grade A milk, ~~or grade A milk products, or other dairy products~~ shall be paid. Each milk processor is hereby charged with such fee which shall be remitted to the secretary. This fee shall not be paid if the milk is processed or manufactured at the dairy where such milk is produced and less than 7,000,000 pounds of milk are processed annually.

The existing inspection fee structure does not account for Grade A milk that is imported into Kansas and then processed into Grade B or ungraded products, such as cheese. For processors that choose to import milk, the addition of "other dairy products" would make them subject to the same fees that other in-state processors pay subject to K.S.A. 65-781(e) for "other Kansas produced milk." Currently there are no Grade B producers in Kansas, so all processors use Grade A milk, regardless of their intended end product.

In addition to allowing KDA to adequately cover inspection costs, the potential expansion of at least one new processor may lead to the lowering of inspection fees for all processors in the state when that facility is built and processing at the projected levels.

KDA believes that this bill will provide needed updates to the Dairy Law by allowing the sale of raw milk in an unrestrictive manner, ensure the KDA can adequately conduct important inspections for the protection of the public health, and provide the opportunity for lower fees for all processors in the future. Thank you for your consideration.