

Assembly Hearing Slip

(Please print plainly)

AB 702 X

Date: 2/8/94

Bill No. AB 702

Or Subject _____

(Name) Rep. Gene Hann

(Street Address or Route Number) _____

(City & Zip Code) Althen

(Representing) _____

Speaking *in favor*:

Speaking *against*:

Registering *in favor*:

Registering *against*:

Speaking for *information only*:

Neither for nor *against*:

Please return this slip to a messenger promptly.
Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2-2-98

Bill No. AB 202

Or Subject Disparagement

(Name) Press Wisconsin

(Street Address or Route Number) 2317 E. Mt. Ln #109

(City & Zip Code) Madison 53704

(Representing) WI Ag Pro - Am. Crop

Speaking *in favor*:

Speaking *against*:

Registering *in favor*:

Registering *against*:

Speaking for *information only*:

Neither for nor *against*:

Please return this slip to a messenger promptly.
Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2/8/95

Bill No. AB 707

Or Subject Perible Ford

(Name) Mel H. Sparks

(Street Address or Route Number) PO Box 256

(City & Zip Code) Blanka

(Representing) Blank Farm of WI

Speaking *in favor*:

Speaking *against*:

Registering *in favor*:

Registering *against*:

Speaking for *information only*:

Neither for nor *against*:

Please return this slip to a messenger promptly.
Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2-8-96

Bill No. Ag Disparagement

Or Subject Ag Disparagement

(Name) Joni Krumm

(Street Address or Route Number) W 644 Richards

(City & Zip Code) Doells WI

(Representing) WAAA (Ag Aviation Assoc)

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for Information only:

Neither for nor against:

Please return this slip to a messenger promptly.
Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2/8/96

Bill No. AB 702

Or Subject

(Name) Benjamin T Korten

(Street Address or Route Number) 122 State St Suite 200

(City & Zip Code) Madison, WI 53703

(Representing) Wisconsin's Environmental Decade

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for Information only:

Neither for nor against:

Please return this slip to a messenger promptly.
Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2/8/96

Bill No. 702

Or Subject FARM DISPARAGEMENT

(Name) DAVID J. ENGEL

(Street Address or Route Number) RR1 - 1198

(City & Zip Code) Soldiers Grove WI 54655

(Representing) Self / WI Chapter OCIA Organic Crop Improvement Assoc.

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for Information only:

Neither for nor against:

Please return this slip to a messenger promptly.
Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

K

Assembly Hearing Slip

(Please print plainly)

Date: 2/8/96

Bill No. AB-702

Subject _____

(Name) David Nispel

(Street Address or Route Number) 117 W. Spring Street

(City & Zip Code) Chippewa Falls 54729

(Representing) WIS. Farmers Union

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for Information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2-8-96

Bill No. AB 702

Subject PERISHABLE AG. FOOD PRODUCTS

(Name) Don Kuehn

(Street Address or Route Number) 2 E. MERRILL ST.

(City & Zip Code) MADISON WI

(Representing) WI CREAMBERRY ASSOC

WI Potato + Veg table Growers Assoc

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for Information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2-8-96

Bill No. AB 702

Subject _____

(Name) JR BERT

(Street Address or Route Number) 143 BROOKHURST WIS

(City & Zip Code) Plover WI 54467

(Representing) WIS. Ag - Alliance - Assoc

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for Information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: AB 702 - 2-8-96

Bill No. AB 702

Or Subject ↓

(Name) Guth Simpson

(Street Address or Route Number) 1157 Sherman Ave

(City & Zip Code) Madison WI 53703

(Representing) Self

Speaking *In* favor:

Speaking *against*:

Registering *In* favor:

Registering *against*:

Speaking for *Information only*:

Neither for nor *against*:

Please return this slip to a messenger promptly.
Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

must have left record as speaking

Assembly Hearing Slip

(Please print plainly)

Date: 2/8/96

Bill No. AB 702

Or Subject Ford Department

(Name) Paul Zimmerman

(Street Address or Route Number) 1212 Deming Way

(City & Zip Code) Madison WI 53705

(Representing) Wisconsin Farm Bureau

Speaking *In* favor:

Speaking *against*:

Registering *In* favor:

Registering *against*:

Speaking for *Information only*:

Neither for nor *against*:

Please return this slip to a messenger promptly.
Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2/8/96

Bill No. AB 702

Or Subject ↓

(Name) Rep. Judy Kusma

(Street Address or Route Number)

(City & Zip Code)

(Representing)

Speaking *In* favor:

Speaking *against*:

Registering *In* favor:

Registering *against*:

Speaking for *Information only*:

Neither for nor *against*:

Please return this slip to a messenger promptly.
Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2/18/96

Bill No. AB 702

Or _____

Subject _____

(Name) Brad Leyreid

8383 Greendale Blvd

(Street Address or Route Number)

Middleton WI 53562

(City & Zip Code)

(Representing) WI Dairy Products Assn.

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 210 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2/18/96

Bill No. AB 702

Or _____

Subject Ag Food

(Name) LES WAREFIELD

201 E OUE E MAIN

(Street Address or Route Number)

MADISON

(City & Zip Code)

(Representing) SEN. WELCH

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Assembly Committee on Agriculture

DATE 3-8-96

Moved by Hahn Seconded by oto

AB 702 SB _____ Clearinghouse Rule _____

AJR _____ SJR _____ Appointment _____

A _____ SR _____ Other _____

A/S Amdt 1 _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

Passage

Introduction

Adoption

Rejection

Indefinite Postponement

Tabling

Concurrence

Nonconcurrence

Confirmation

	Committee Member	Aye	No	Absent	Not Voting	
1.	Ott, Alvin (Chair)	✓				
2.	Ward, David (Vice-Chair)	✓				
3.	Ainsworth, John					
4.	Zukowski, Robert					
5.	Otte, Clifford					
6.	Skindrud, Richard					
7.	Hahn, Eugene					
8.	Olsen, Luther					
9.	Gronemus, Barbara					
10.	Baldus, Al					
11.	Reynolds, Martin					
12.	Springer, Thomas				✓	
13.	Wilder, Michael					
14.	Dueholm, Robert					
15.						
16.						
17.						
18.						
Totals			13	0	1	0

MOTION CARRIED

MOTION FAILED

Assembly Committee on Agriculture

DATE 3/8/96
 Moved by Hahn Seconded by OTG
 AB 702 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 A _____ SR _____ Other _____
 A/S Amdt 1 4113/1 _____
 A/S Amdt _____ to A/S Amdt _____
 A/S Sub Amdt _____
 A/S Amdt _____ to A/S Sub Amdt _____
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

- | | |
|--|--|
| <input type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Tabling |
| <input checked="" type="checkbox"/> Adoption | <input type="checkbox"/> Concurrence |
| <input type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrence |
| | <input type="checkbox"/> Confirmation |

	Committee Member	Aye	No	Absent	Not Voting
1.	Ott, Alvin (Chair)		✓		
2.	Ward, David (Vice-Chair)		✓		
3.	Ainsworth, John	✓			
4.	Zukowski, Robert	✓			
5.	Otte, Clifford	✓			
6.	Skindrud, Richard	✓			
7.	Hahn, Eugene	✓			
8.	Olsen, Luther		✓		
9.	Gronemus, Barbara		✓		
10.	Baldus, Al		✓		
11.	Reynolds, Martin		✓		
12.	Springer, Thomas			✓	
13.	Wilder, Michael		✓		
14.	Dueholm, Robert		✓		
15.					
16.					
17.					
18.					
Totals		5	8	1	0

MOTION CARRIED

MOTION FAILED

Assembly Committee on Agriculture

DATE 3/8/96

Moved by Hahn Seconded by olsen

AB 702 SB _____ Clearinghouse Rule _____

AJR _____ SJR _____ Appointment _____

A _____ SR _____ Other _____

A/S Amdt _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

Passage

Introduction

Adoption

Rejection

Indefinite Postponement

Tabling

Concurrence

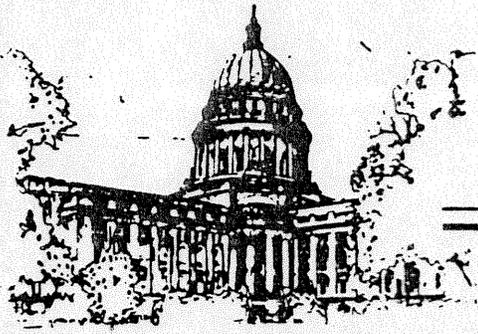
Nonconcurrence

Confirmation

	Committee Member	Aye	No	Absent	Not Voting
1.	Ott, Alvin (Chair)	✓			
2.	Ward, David (Vice-Chair)	✓			
3.	Ainsworth, John	✓			
4.	Zukowski, Robert	✓			
5.	Otte, Clifford	✓			
6.	Skindrud, Richard	✓			
7.	Hahn, Eugene	✓			
8.	Olsen, Luther	✓			
9.	Gronemus, Barbara		✓		
10.	Baldus, Al		✓		
11.	Reynolds, Martin		✓		
12.	Springer, Thomas			✓	
13.	Wilder, Michael		✓		
14.	Dueholm, Robert		✓		
15.					
16.					
17.					
18.					
Totals		8	5	1	0

MOTION CARRIED

MOTION FAILED



EUGENE HAHN

State Representative • 80th Assembly District

Kim,

THIS IS A PROPOSAL BY THE WI.

Per your interest

Per your request

HOL BUSINESS COUNCIL TO AMEND
HS 702. GENE, REFUSED BUT
SAID HE WOULD PASS IT ALONG
TO AI SO HE WAS AWARE OF IT,
OR MAY WISH TO DISCUSS IT IN
COMMITTEE. QUESTIONS - CALL ME

P.O. Box 8952, Madison, WI 53708 • 608 266-3404

Toll-free Legislative Hotline: 1 800 362-9696

♻️ Printed on recycled paper

APRM



Wisconsin Agribusiness Council

10P2

2317 International Lane Suite 109 • Madison, WI 53704-3129 • (608) 249-2323 Fax (608) 249-2797

January 24, 1996

State Representative Eugene Hahn
15 West, State Capitol, P.O. Box 8952
Madison, WI 53708-8952

Re: Disparagement A B 702

Dear Gene:

Enclosed is the amendment which would broaden the anti-disparagement bill to cover all agricultural products. The advantages of a broader bill are that it would bring some new support for passage. In particular the fur industry in Wisconsin would like this addition.

The possible downside of broadening the bill is that a "perishable" product points out in anyone's mind that a false statement which would delay marketing or purchasing could easily cause major economic havoc. A non-perishable product, however, might still have residual value, though its value could be diminished.

You might wish to discuss this amendment with co-authors to get their feelings. I do think the amendment should be discussed at the hearing.

I'll be in the office on Friday, but then won't be back until February 1.

Sincerely,

Russel R. Weisensel
Director, Legislative Affairs

Off (608) 249-2323
Fax (608) 249-2797
Hme (608) 837-5596

H.A.H.A. 2 of 2

AMENDMENT TO AG DISPARAGEMENT BILL (LRB-3952/3)

Representative _____ moves to amend A.B. 702 as follows:

On page 1, line 2, delete "perishable", delete "food"

On page 1, line 4, delete "perishable", delete "food"

On page 2, delete lines 1-3 and insert in lieu thereof: "Agricultural product" means a plant, animal or product of a plant or animal, grown or raised for a commercial purpose and any agricultural practices used in its production."

On page 2, line 4, delete "processes a perishable agricultural food product." and insert in lieu thereof: "raises an agricultural product or who manufactures an agricultural product for consumer use."

On page 2, line 6, delete "a perishable" and insert in lieu thereof: "an"

On page 2, line 7, delete "food"

On page 2, line 8, delete "a perishable" and insert in lieu thereof "an", delete "food"

On page 2, line 12, delete "a perishable" and insert in lieu thereof "an"

On page 2, line 13, delete "food"

On page 2, line 16, delete "a perishable" and insert in lieu thereof "an"

On page 2, line 17, delete "food"

Mel H. Blanke

ATTORNEY AT LAW

114 E. Mill Street P.O. Box 256 Plymouth, WI 53073
Phone (414) 892-4451 FAX (414) 892-4813

February 7, 1996

Assemblyman Eugene Hahn
Room 24 West
State Capitol
P. O. Box 8952
Madison, WI 53708

RE: Proposed Assembly Bill creating section 895.053
of the Wisconsin Statutes - False Claims Concerning
Perishable Agricultural Food Products

Dear Representative Hahn:

I am writing with respect to your proposed bill which creates a civil cause of action for false claims concerning perishable agricultural food products.

As an individual who grew up on a family farm and who represents several state and national milk farm groups, I, my family and my clients have a deep interest in this bill and support the action being proposed.

While I and my clients support your proposal for perishable food producers, we feel that a broad, agricultural industry bill would better reflect the concerns of all of Wisconsin agriculture.

I am transmitting herewith a model bill which goes beyond perishable food items to cover all agricultural produce including feed grains, ginseng, fur, cheese, wool, cotton, soybean, etc. The harm may be just as high for producers or processors of wheat, ginseng, wool or milk who are forced to sell at substantial price discounts because of knowingly false and malicious allegations as is the harm to fresh milk producers.

I am actually transmitting several documents. The first is model legislation with a cover letter to the Chief of Staff of the American Feed Industry Association which has served as the model for several states. I have also modified that sample to reflect your proposed legislation by deleting the reference to a criminal offense and incorporating other aspects of the legislation you have proposed. I believe that both your bill and the enclosures address the relevant freedom of speech concerns. Also enclosed is a copy of a similar statute enacted in Washington.

Assemblyman Eugene Hahn
RE: Proposed Assembly Bill
February 7, 1996
Page 2

I would have contacted you earlier but I only became aware of this situation yesterday and only saw a copy of your proposed bill and the draft of a proposed amendment to broaden your bill this morning. I believe that the enclosure better addresses the industry wide concerns and I would ask that you consider amending your bill to address the concerns of all agricultural producers. While the Senate could consider the broader bill and the matter could be resolved in committee, it might be more direct to enact the broader bill initially.

Please call at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Mel H. Blanke", written in a cursive style.

Mel H. Blanke

MHB:dm
Lt. Gov. Scott McCallum
Rep. Cliff Otte

WISCONSIN DRAFT
MODEL STATE CODE TO PROTECT AGRICULTURAL
PRODUCERS AND PRODUCTS FROM DEFAMATION

Section 1. Statement of Purpose

To protect the free flow of agricultural products and producers thereof, as well as enhancing the general public welfare by proscribing the dissemination of false and disparaging information, the following sections are hereby enacted.

Section 2. Definitions.

As used in this Act, the following terms shall have the meanings stated below:

(a) the term "agricultural product" means any plant or animal, or product thereof, grown or raised for a commercial purpose, the term shall also include any agricultural practices used in the production of such products.

(b) the term "agricultural producer" means any person engaged in growing or raising an agricultural product, or the processing of such product.

(c) the term "defamatory statement" means intentional words or conduct which reflect on the character or reputation of another or upon the quality, safety or value of another's property in a manner which tends: (i) to lower another in the estimation of the community, (ii) to deter third persons from dealing with another, or (iii) to deter third persons from buying the products of another.

(d) the term "disseminate" means to publish or otherwise convey a statement to a third party but shall not include repeating a false and defamatory statement made by another unless the person repeating such statement knew or should have known the statement was false.

(e) the term "false statement" means a statement which either expressly includes a fact or implies a fact as justification for an opinion and such fact is not correct.

(f) the term "knowing the statement to be false" means the communicator knew or should have known that the statement was

false, and

(g) the term "malice" means an intent to vex, injure or annoy another.

Section 3. Criminal Liability

Whosoever willfully or purposefully disseminates a false and defamatory statement, knowing the statement to be false, regarding another's agricultural product or an agricultural producer under circumstances in which the statement may reasonably be expected to be believed shall be fined (amount), imprisoned for not more than ___ year(s), or both.

Section 4. Civil Liability for Defamation of Agricultural Producers.

Whosoever willfully or purposefully disseminates a false and defamatory statement, knowing the statement to be false, regarding an agricultural producer under circumstances in which the statement may be reasonably expected to be believed shall be liable to the producer for actual and punitive damages.

Section 5. Civil Liability for Defamation of Agricultural Products.

Whosoever willfully or purposefully disseminates a false and defamatory statement, knowing the statement to be false, regarding another's agricultural product under circumstances in which the statement may be reasonably expected to be believed shall be liable to a producer or owner of such product for actual damages, provided that if the statement was made with malice, the producer or owner shall be entitled to punitive damages in an amount equal to at least three times the actual damages.

Section 6. Persons Entitled to Maintain a Cause of Action Under Sections 4 and 5 of this Act.

If a false and defamatory statement is disseminated with reference to an entire group or class of agricultural producers or products, a cause of action arises in favor of each producer of

about the agricultural producer or its agricultural products in the future.

Section 7. Attorneys' Fees.

In any suit brought under sections 4 and 5 of this Act, the prevailing party is entitled to an award of attorneys' fees in connection with the costs of the litigation.

Section 8. Effective Date.

This Act shall be effective the first day of the month following enactment and shall apply to any false and defamatory statement published or otherwise communicated after that date.

ORIGINAL DRAFT
MODEL STATE CODE TO PROTECT AGRICULTURAL
PRODUCERS AND PRODUCTS FROM DEFAMATION

Section 1. Statement of Purpose

To protect the free flow of agricultural products and producers thereof, as well as enhancing the general public welfare by proscribing the dissemination of false and disparaging information, the following sections are hereby enacted.

Section 2. Definitions.

As used in this Act, the following terms shall have the meanings stated below:

(a) the term "agricultural product" means any plant or animal, or product thereof, grown or raised for a commercial purpose, the term shall also include any agricultural practices used in the production of such products.

(b) the term "agricultural producer" means any person engaged in growing or raising an agricultural product, or manufacturing such product for consumer use.

(c) the term "defamatory statement" means intentional words or conduct which reflect on the character or reputation of another or upon the quality, safety or value of another's property in a manner which tends: (i) to lower another in the estimation of the community, (ii) to deter third persons from dealing with another, or (iii) to deter third persons from buying the products of another.

(d) the term "disseminate" means to publish or otherwise convey a statement to a third party but shall not include repeating a false and defamatory statement made by another unless the person repeating such statement knew or should have known the statement was false.

(e) the term "false statement" means a statement which either expressly includes a fact or implies a fact as justification for an opinion and such fact is not correct.

(f) the term "knowing the statement to be false" means the communicator knew or should have known that the statement was

false, and

(g) the term "malice" means an intent to vex, injure or annoy another.

Section 3. Civil Liability for Defamation of Agricultural Producers.

Whosoever willfully or purposefully disseminates a false and defamatory statement, knowing the statement to be false, regarding an agricultural producer under circumstances in which the statement may be reasonably expected to be believed shall be liable to the producer for actual and punitive damages.

Section 4. Civil Liability for Defamation of Agricultural Products.

Whosoever willfully or purposefully disseminates a false and defamatory statement, knowing the statement to be false, regarding another's agricultural product under circumstances in which the statement may be reasonably expected to be believed shall be liable to a producer or owner of such product for actual damages, provided that if the statement was made with malice, the producer or owner shall be entitled to punitive damages in an amount equal to at least three times the actual damages.

Section 5. Persons Entitled to Maintain a Cause of Action Under Sections 3 and 4 of this Act.

If a false and defamatory statement is disseminated with reference to an entire group or class of agricultural producers or products, a cause of action arises in favor of each producer of the group or class, regardless of the size, provided, however, that each member's cause of action is limited to actual damages of such member, provided further, that punitive damages are not so limited.

Section 6. Injunction.

In any suit filed under sections 3 or 4 of this Act, complainant may also request an appropriate court order prohibiting the defendant from disseminating false and defamatory statements

the group or class, regardless of the size, provided, however, that each member's cause of action is limited to actual damages of such member, provided further, that punitive damages are not so limited.

Section 7. Injunction.

In any suit filed under sections 4 or 5 of this Act, complainant may also request an appropriate court order prohibiting the defendant from disseminating false and defamatory statements about the agricultural producer or its agricultural products in the future.

Section 8. Attorneys' Fees.

In any suit brought under sections 4 and 5 of this Act, the prevailing party is entitled to an award of attorneys' fees in connection with the costs of the litigation.

Section 9. Effective Date.

This Act shall be effective upon date of enactment and shall apply to any false and defamatory statement published or otherwise communicated after that date.

OLSSON, FRANK AND WEEDA, P. C.

PHILIP C. OLSSON
RICHARD L. FRANK
DAVID F. WEEDA
DENNIS R. JOHNSON
ARTHUR Y. TSIEN
JOHN W. BODE*
STEPHEN D. TERMAN
MARSHALL L. MATZ
MICHAEL J. O'FLAHERTY
JOHN R. FLEDER
DAVID L. DURKIN
NEIL F. O'FLAHERTY
CHRISTINA M. MARKUS

ATTORNEYS AT LAW
SUITE 400
1400 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20036-2220
(202) 789-1212

OF COUNSEL
MICHELE F. CROWN
JAMES V. DELONG
JOHN J. BEATTY III

FAX
(202) 234-3537

MEMORANDUM

*ADMITTED IN OKLAHOMA ONLY

November 12, 1993

BY TELECOPY

TO: Steven L. Kopperud
Senior Vice President
American Feed Industry Association

FROM: Dennis R. Johnson

RE: State Anti-Disparagement Statute

Pursuant to your request, attached is a model state anti-disparagement statute. There are a few points which I would like to emphasize:

First, as a state statute, there is no requirement of a federal nexus, or any other restrictions attributable to federalism. Hence, this bill is far broader than the federal version.

Second, at times it may seem more technical and legalistic than other bills I have worked on. However, I tried to limit the legalese to the bare minimum. (Remember, from a purely legal perspective, Vernie's version of the Break-In bill was the best.)

Third, the bill, as drafted, only applies to agricultural products, not biomedical products, though they can be easily added. I did redraft the definition to include fur farms.

Fourth, as perhaps an overly defensive insert, the definitional section dealing with dissemination is worded to ~~exclude~~ media liability, provided the media did not know or should not have known the statement was false.

OLSSON, FRANK AND WEEDA, P. C.

Memorandum to Steven L. Kopperud
November 12, 1993
Page 2

Fifth, to help support myself and colleagues, I have included a section on attorneys' fees; but note, attorneys' fees are available to the winning party, which may or may not be the producer.

Sixth, the bill includes both criminal and civil remedies and calls for punitive damages.

Hopefully, this model statute is what you had in mind. If you have any questions, or desire revisions, please let me know.

DRJ:jdm
Attachment



MEMORANDUM

To: The Committee on Agriculture
From: Benjamin T. Kurten
Wisconsin's Environmental Decade
Date: February 8, 1996
Re: Assembly Bill 702
False Statements Concerning Perishable Agricultural Food Products

608.251.7020

FAX 608.251.1655

122 STATE STREET

SUITE 200

MADISON

WISCONSIN

53703.2500

MILWAUKEE OFFICE

414.964.6081

1001 E. KEEFE AVE.

MILWAUKEE

WISCONSIN

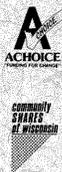
53212.1710

Dear Members of the Committee on Agriculture:

Wisconsin's Environmental Decade ("the Decade") opposes Assembly Bill 702 ("the Bill"). The Decade opposes the Bill because it will have a "chilling" effect on legitimate public debate and discussion on matters of serious public health and welfare concern. The Decade also opposes the Bill because the Bill has the possible effect of preventing the discovery and further scientific study of dangerous chemicals used in either the propagation, protection, or preservation of perishable agricultural food products. Moreover, it is unseen what possible public benefit could be achieved by the passage of the Bill.

The Bill will nearly silence any discussion by concerned persons about possible adverse health effects that perishable agricultural food products or the chemicals in or applied to the products may pose because of (1) the broad ranging possible civil liability that the Bill will create; and (2) the ambiguous poorly constructed language of the Bill fails to specify what criteria must be met for a person to be held liable under the law the Bill proposes. Several factors are illustrative of these contentions. First, the Bill fails to state

Member of





608.251.7020

FAX 608.251.1655

122 STATE STREET

SUITE 200

MADISON

WISCONSIN

53703.2500

MILWAUKEE OFFICE

414.964.6081

1001 E. KEEFE AVE.

MILWAUKEE

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whether a public statement about the agricultural food product itself or about some chemical substance found on or in an agricultural product would cause liability to attach. Under the language of the Bill a person could face possible civil liability for making a statement that the DDT found in a fruit poses serious human health risks when that person was actually stating that the DDT and not the fruit posed the health risk.

Second, the language of the Bill fails to clearly state whether a person would be liable for (1) making the public statement itself; (2) making the public statement when the statement was not based on "reliable scientific facts or data"; (3) making the public statement when it was known or should have been known to the declarant that the statement was false; or (4) making the public statement when it was not based on "reliable scientific facts or data" and the declarant knew or should have known that the statement was false.

And third, the use of the language "reliable scientific facts or data" will prevent early warnings and discussion about possible dangerous chemicals used in connection with perishable agricultural food products. Under this standard people will be afraid to warn the public of possible health risks of chemicals associated with perishable agricultural products. People will be afraid to make such warnings because the degree of scientific certainty that will be required to make such a statement will be unknown until a trier of fact in a trial determines exactly what constitutes "reliable scientific facts or data."

The health risks associated with DDT may have gone unnoticed if someone

Member of





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had been afraid to warn society early and allow the facilitation of further study on the risks of DDT if that person had been afraid of possible significant civil liability based on some unsettled standard.

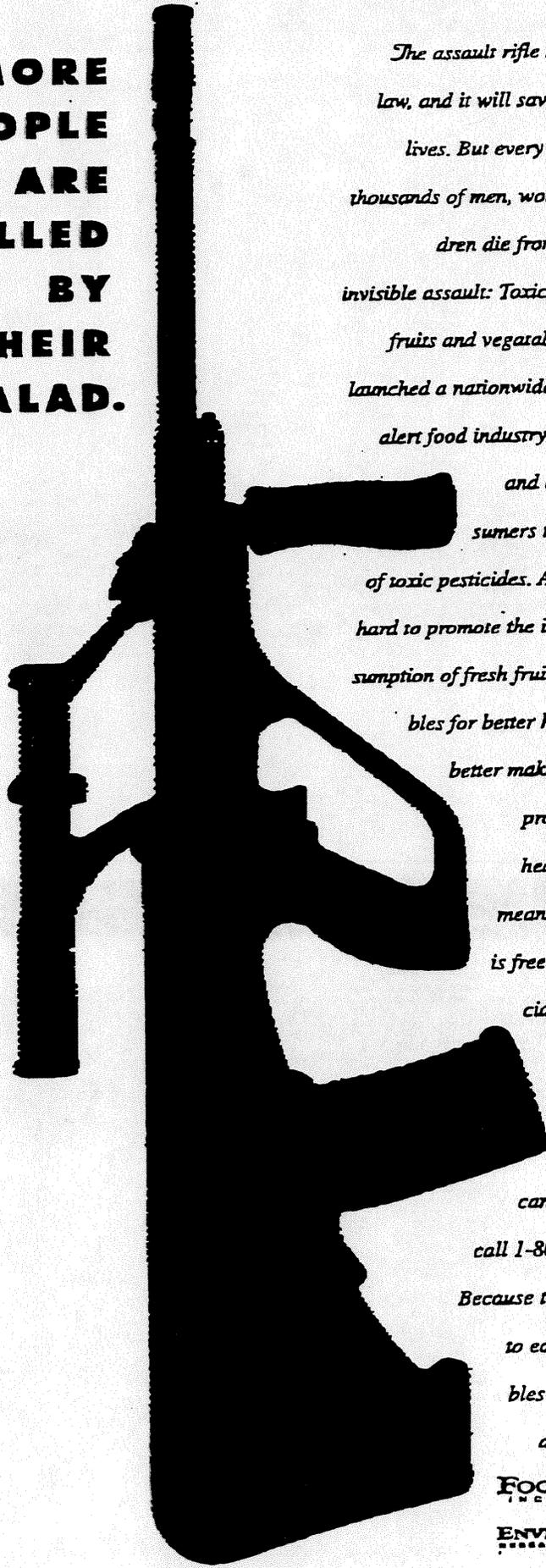
The language of the Bill also has the preposterous possibility of making someone, such as a physician, subject to civil liability for issuing a warning based on early studies to high risk heart attack patients and others about the health risks associated with the high levels of cholesterol found in some perishable agricultural product such as eggs. Because of such absurd possible results and the possibility of enormous financial ramifications if found liable, the Bill would nearly silence any socially beneficial discussions and debates on possible health risks associated with the consumption of a perishable agricultural food product that may be dangerous itself or may contain dangerous additives. Such a risk outweighs any possible benefits that the Bill could provide. Additionally, if the Bill was passed the amount of litigation that it would create, because of its ambiguity, would also prevent all but the largest agricultural organizations from gaining any benefits from the enactment of the Bill into law.

In the interest of protecting free speech and protecting public health and welfare, Wisconsin's Environmental Decade opposes the passage of Assembly Bill 702.

Member of



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PEOPLE
ARE
KILLED
BY
THEIR
SALAD.**

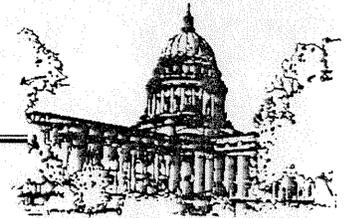


The assault rifle ban is a good law, and it will save hundreds of lives. But every year, literally thousands of men, women and children die from a silent and invisible assault: Toxic pesticides on fruits and vegetables. So we've launched a nationwide campaign to alert food industry professionals and everyday consumers to the dangers of toxic pesticides. As we all work hard to promote the increased consumption of fresh fruits and vegetables for better health, we had better make sure that the produce is really healthy. And that means produce that is free of toxic pesticides. To join us, or for more information on what you can do right now, call 1-800-EAT-SAFE. Because telling children to eat their vegetables shouldn't be a death sentence.

**FOOD & WATER
INCORPORATED**
**ENVIRONMENTAL
RESEARCH FOUNDATION**

EUGENE HAHN

State Representative • 47th Assembly District



February 8, 1996

Honorable Al Ott
318 North
State Capitol

Chairman:
Assembly Committee on
Tourism & Recreation

Dear Chairman Ott;

Thank you for scheduling Assembly Bill (AB) 702 for a public hearing. I appreciate the opportunity to speak on behalf of a proactive measure that will benefit the farming industry in Wisconsin.

Legislation regarding agricultural disparagement has been circulating for many years, and until recently, few states have been able to enact laws protecting the American farmer from false accusations. However, this has changed dramatically in the last 4 years, as 9 states have enacted legislation allowing for legal action against disparagement of agricultural products.

Agricultural disparagement, put simply, is the willful or malicious dissemination to the public of false information that a perishable food product or commodity is not safe for human consumption. The information is deemed false if it is not based on information obtained or based on reliable scientific data.

In response, I have introduced Assembly Bill (AB) 702, which is designed to be a proactive protection measure against the disparagement of agricultural products. The measure would allow producers and shippers legal recourse against false statements if they have suffered economic damages as a result of misinformation.

False reports and information distributed by individuals, organizations occurs frequently, and sometimes with devastating results.

An example of agricultural disparagement is the 1989 alar scare. A "60 Minutes" program, along with USA Today and the Natural Resources Defense Council, had identified alar, a preserving agent used in apples, as a possible carcinogen. As a result of this report, the nation's apple industry suffered losses estimated at \$150 million.

One month after the report, three federal agencies reported the chemical did not pose a health risk, but the damage had already been done. Pennsylvania taxpayers spent upwards of a quarter of a million dollars in a public relations campaign to restore the image of Pennsylvania grown apples.



The alar scare was not a singular incident. False reports in 1991 of salmonella contaminated cantaloupe cost Texas cantaloupe growers \$12 million in damages. Wisconsin has not escaped unharmed from false reports as well. Many years ago the cranberry industry was hit hard by reports that a widely used herbicide was a cancer-causing agent, resulting in extremely low cranberry consumption that year. Examples such as these clearly indicate Wisconsin needs proactive legislation to protect the state's number one industry. AB 702 will give Wisconsin that protection.

Wisconsin producers are the pillar of the state's economy, having invested \$15 billion in their livelihood and economic well-being. That investment created a \$20 billion per year agricultural industry that employs 22% of the state's work force. AB 702 will provide the industry and Wisconsin farmers with protection against false claims that could destroy the family farms these hardworking individuals have dedicated their lives to.

Thank you again for scheduling AB 702 for a public hearing. I would encourage Assembly Agriculture members to vote in favor of AB 702 and give Wisconsin farmers the protection they need and deserve.

Sincerely,

Eugene Hahn
State Representative
47th Assembly District

EHH:des

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■ OHIO

Legislature approves 'veggie libel' law

COLUMBUS — Former President Bush and other broccoli haters beware: Misspoken slights of Ohio's farm products could land you in court under a bill passed Wednesday.

The Senate on a 27-5 vote joined the House in passing a bill allowing farmers to sue critics who make false claims about their products. Gov. George Voinovich is expected to sign the measure, making Ohio the 12th state with an agricultural disparagement, or "veggie libel" law.

Supporters say farmers need the law to protect Ohio's largest industry. Critics claim such veggie libel laws are intended to squash reports of unsafe food.

WST 1/11/96

FTC.



ANTI-DISPARAGEMENT

1. **What is Disparagement?**

Disparagement, as used in the proposed law, means the dissemination to the public in any manner of any false information that the disseminator knows or should have known to be false, and which directly states that a perishable agricultural or aquacultural food product is not safe for human consumption.

2. **How do you define "false information?"**

False information is defined in the bill as that information which is not based upon reasonable and reliable scientific inquiry, facts or data.

3. **Who will determine what is "reasonable and reliable scientific inquiry?"**

If a court action occurs, the court or jury will determine the scientific validity of the data, based on testimony of expert witnesses.

4. **What does the Anti-Disparagement Law say?**

The Anti-Disparagement Law provides that a producer, or an association representing such producer, may bring an action for damages and for any other appropriate relief a court of competent jurisdiction deems appropriate against a disparaging person. The damages include, but are not limited to, compensatory and punitive damages, reasonable attorney's fees, and court costs for the action. Only in the extreme cases where a person intentionally disparages perishable agricultural or aquacultural food products for the purpose of harming those producers can damages of up to three times the amount of compensatory damages be awarded.

5. **Why is an Anti-Disparagement Law needed?**

A. An Anti-Disparagement Law is needed because of incidents such as the ALAR scare several years ago. Apple producers suffered substantial financial losses when people stopped eating apples because reports that ALAR, a pesticide which can lawfully be used on apples, would cause serious health problems. These reports were later proven to be false, but the damage had been done. The apple industry had no course of action to recoup any of the financial losses from the group making the false claims because a court held that the producers did not have "standing" to sue. The proposed legislation would provide that "standing."

B. Agriculture is the largest industry in Ohio, contributing more than \$57 billion to the state's economy in 1994. An inaccurate attack on Ohio's farm products would not just affect agriculture but could impact the state's economy.

6. **Can't this be done under current law similar to slander or libel?**
No. Slander and libel are disparaging actions against a person. Name-brand products and companies are protected by "trade libel" laws. Since the disparagement is against a generic product, and not the person producing the product or a brand-name product, slander and libel would not apply.
7. **What type of products would be covered by this law?**
Any perishable agricultural or aquacultural food or commodity that is grown, produced, raised, sold, or distributed within the state of Ohio and that may perish or decay beyond marketability within a period of time.
8. **Why are only agricultural products covered by this law?**
Unlike many other products which are packaged for consumption at a much later date, perishable agricultural products can not be stored in a warehouse while the courts debate whether the product is safe. In the case of the Alar scare, many apples rotted before the chemical's name was cleared. Agricultural products are also unique in that they rarely have an accompanying brand name. Most disparaging comments about non-agricultural products give a brand name and, therefore, standing is established.
9. **Does this law infringe on the freedom of speech, First Amendment to the constitution?**
No. The First Amendment does not protect false speech. This law merely makes it actionable if one communicates false information that the person knew or should have known was false. This is far outside of First Amendment protection. It does not prohibit someone from stating an opinion, nor does it prohibit the dissemination of accurate information.
10. **Do other states have similar legislation?**
There are several other states that either have an anti-disparagement law or are currently working to pass one in the legislature. Included in those states that already have a law are Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Louisiana, Mississippi, South Dakota, Oklahoma, and Texas.
11. **In promoting their own product, could a producer unintentionally disparage a competitor?**
No. Under this law, the false information must directly state that the food product is unsafe for consumption. Implying that one method of production or type of product is better than another is not disparagement unless the accusation is said to be based upon scientific fact when in reality it is not.



Agricultural Product Disparagement

What is Agricultural Product Disparagement?

LB 367 would establish a state statute allowing Nebraska farmers, commodity groups, and food marketers to sue for damages if false or disparaging information is willfully disseminated to the public by activist groups leading to the loss of revenue.

Background:

- Agriculture in Nebraska is the state's basic industry and the foundation of Nebraska's expanding economy.
- Today's consumer is bombarded with many different attacks about agriculture, our environment, and food safety.
- Once the words have been printed or spoken, the damage is often irrevocable. The highly-publicized 1989 "Alar apple scare" cost Washington state's apple industry over \$130 million and bankrupted many family businesses.
- Unfounded, unscrupulous attacks can cost Nebraska's agricultural economy millions of dollars and jobs by disparaging our agricultural products.

Why Support Agricultural Product Disparagement?

- Establishes a state statute as basis for civil action in the event of lost revenue from the willfull dissemination of false information about Nebraska's agricultural products.
- Serves notice to activist groups that they are **responsible for their actions** and must make a reasonable effort to **base their stories on "reasonable and scientific inquiry, facts, or data."**

In a Nutshell . . .

Nebraska agriculture generates over \$9 billion through revenues and production run-offs. It is simply too vital to our citizens and economy to be endangered by outlandish, undocumented allegations not based in sound science. LB 367 protects the interests of Nebraska farmers and agricultural marketers.

Because the gaps in understanding are so great and resources are so limited, research should be prioritized carefully to include the following:

- Improved methods to determine human exposure, susceptibility, and cellular damage need to be developed and incorporated into epidemiologic studies. In particular, methods are needed to identify high-risk and low-risk populations.
- The concentrations of naturally occurring and synthetic chemicals in foods, and human exposures to these chemicals, should be better quantified.
- Better animal tests to screen for carcinogens and anticarcinogens should be developed, and new methods are needed to test complex mixtures of chemicals such as those found in food.
- Naturally occurring chemicals in the food supply need to be tested on a prioritized basis. Especially important are chemicals that occur at relatively high, measurable concentrations in commonly consumed foods and are suspected of being carcinogenic, and chemicals whose consumption is associated with unhealthy diets or lifestyles.
- New short-term tests using human genes, enzymes, cells, and tissues are needed that can screen chemicals quickly.
- The mechanisms by which excess calories and fatty foods contribute to causing cancer need to be identified. Also, the specific chemicals that provide the protective effects of vegetables and fruits should be identified and their protective mechanisms explained.

Though the scientific challenge is daunting, rapid advances in a number of fields offer great promise. As more becomes known, it will be possible to develop dietary guidelines based on a clear understanding of how diet affects health. Breeding methods, genetic engineering, and other advances in biotechnology might result in foods optimized to promote health. Continued research eventually will answer many of the difficult questions about the link between diet and cancer.

The study was funded by the National Institute for Environmental Health Sciences, the U.S. Environmental Protection Agency, the National Cancer Institute, the U.S. Food and Drug Administration, the American Industrial Health Council, and Nabisco Foods Group.

CARCINOGENS AND ANTICARCINOGENS IN THE HUMAN DIET: A COMPARISON OF NATURALLY OCCURRING AND SYNTHETIC SUBSTANCES

National Research Council, 1996

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1/96

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2-16-96 3:55pm p. 2 of 3

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REPORT in Brief

Toxic chemicals that occur naturally in foods may pose a greater risk of causing cancer than the residues of synthetic pesticides that people consume in their diets. But the danger of either group of chemicals causing cancer is much smaller than the risk associated with diets containing too much fat, too many calories, or an excess of alcohol. In fact, the great majority of individual

toxic chemicals found in food, whether naturally occurring or synthetic, occur at levels far too low to have any adverse effects on health.

Cancer is the second leading cause of death in the United States, with a toll of more than 500,000 people annually. The food we eat may contribute substantially to about one-third of these cancers as a result of imbalances in the major nutritive components of

foods - fats, carbohydrates, and protein. But a committee of the National Research Council says that data are too sparse to draw definitive conclusions about the role that the minor constituents of food - like flavor molecules, trace amounts of pesticides, or the complex mixture of compounds formed during cooking - play in causing or preventing cancer in humans. In addition, some foods are rich in other chemicals, known as anticarcinogens, that animal experiments have shown to reduce the risk of cancer. For this reason, the committee notes in its report, *Carcinogens and Anticarcinogens in the Human Diet: A Comparison of Naturally Occurring and Synthetic Substances*, the best way to reduce the risk of cancer is to eat the varied and balanced diet needed for good nutrition.

The challenge Over the past 50 years, researchers have made great progress in understanding human nutrition, which has added considerably to the safety

Post-It [®] Fax Note	7671	Date	2-16	# of pages	2
To	TO: Kim	From	Russ		
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Fax #	ag comm.	Fax #			

Re: AB702 - From Russ Weisensel
WI Agri-Business Assoc.

and value of the food supply. But unraveling the relationship between food and health remains a complex problem. The constituents of food are water, carbohydrate, fat, protein, non-nutrient chemicals, and micronutrients like minerals and vitamins. Together, these may represent more than a million different chemicals, some of which may be metabolized in the body to a form that can cause cellular damage and cancers.

Some foods contain small amounts of naturally occurring chemicals that, when fed to rats in high doses, induce tumors. And epidemiologic studies have shown that some of these naturally occurring chemicals, such as the mycotoxins generated by fungi that often contaminate grains and nuts, are associated with elevated levels of cancer in humans. However, the overall portion of cancers caused by minor food chemicals remains unknown and probably is very small.

Research results are more definite for some of the major constituents of food. For example, animal studies clearly show that eating more calories than the body needs can contribute to the formation and growth of tumors. But foods also can protect against cancer; for example, diets rich in fruits, vegetables, and fiber are associated with reduced rates of the disease. It is not yet known which constituents of these foods are responsible for their protective effects or how these substances might act on the body.

Naturally occurring and synthetic chemicals seem to cause cancer in animals in the same way. The committee analyzed data on more than 200 chemicals that are classified as animal carcinogens - including 65 that occur naturally - and concluded that naturally occurring and synthetic chemicals have no clear difference in their range of potency in causing cancer in animals. Furthermore, given the greater abundance of natural substances in the diet, humans are exposed to many more naturally occurring chemicals that might be carcinogens than they are to synthetic carcinogens.

Toward greater knowledge To gain a better understanding of how diet may contribute to cancer, the committee recommends improved testing methods, expanded epidemiologic studies, and more data on dietary components and on what people eat.

Existing measures of carcinogenicity are based largely on rodent bioassays, in which rats are fed large amounts of a single chemical. Human diets, in contrast, consist of small amounts of a very large number of chemicals. These differences inevitably raise great uncertainties about whether data derived from animal tests can be applied directly to humans.



Please Block the Food Disparagement Law

Dear Wisconsin Legislators

Rec'd
4-22-96

April 8, 1996

The **Food Disparagement Law**, which is being pushed by agri-businesses, would make it a crime to criticize perishable food items without having "sound scientific backing." It is a dangerous proposal, for several reasons:

1. **The law would promote litigation.** Any person who raised questions about the safety of certain foods would be open to lawsuits and persecution.
2. **The law would silence public debate.** People with legitimate concerns will be silenced, because of the threat of expensive lawsuits and the need to hire expert witnesses, which they usually can't afford. It won't be enough for citizens to quote scientific papers, because they could still be harrassed with a lawsuit and citizens without credentials can't argue technical points in court. So much for public debate and freedom of speech.
3. **The definition of "sound scientific backing" is highly debatable.** Scientists frequently disagree, and agri-businesses will be able to buy experts willing to argue any point. The tobacco industry is a prime example --- they still refuse to admit that tobacco harms people. Every day, new and sometimes conflicting reports of food health effects are publicized. This is not surprising given the fact that some 64,000 chemicals are in common industrial use, thousands of food additives are used each year, and health research explores dietary issues continuously.
4. **The law discriminates against common sense.** If a citizen has personal experience or knowledge that a food is unhealthy or contaminated, based on their own experience, will they be considered "scientific?" Will high-paid experts with PhD credentials be the only ones allowed to discuss something as basic as the safety of food? Citizens will lose control over an important factor in their lives.
5. **Where will citizens find experts to defend them?** Experts are usually controlled by industry or government, and are not free to represent the public interest. Even university professors are frequently beholden to the corporations who fund their research, or at best, they are afraid to taint their academic reputations by getting involved in "political matters."
6. **The law is promoted with false information.** Agri-business lobbyists cite the "Alar pesticide scare" and the "Sodium nitrite scare" as examples of their industries losing billions of dollars because of citizens spreading inaccurate stories. But the exact opposite is true. The lobbyists are misinforming the public about these two important issues:
 - a. **Sodium nitrite** --- This food additive is a legitimate cancer concern, according to my standard Toxicology textbook. (See excerpt pages attached.) Rep. Jim Buchy, a Republican who sponsored Ohio's food disparagement law, claimed that the sodium nitrite dangers were "disproved" after the first reports, but this is not true. Sodium nitrates are converted into nitrosamines, which are "potent carcinogens" according to my text.
 - b. **Alar Pesticide** --- A U.S. Court of Appeals recently dismissed a lawsuit brought against CBS by apple growers claiming that a 1989 television broadcast

warning of potential health risks from Alar was false. The court decided that the apple industry failed to prove the 1989 "60 Minutes" segment false.

Furthermore, the U.S. EPA, which is responsible for regulating pesticides, classified daminozide (Alar's chemical name) as a probable human carcinogen in 1987, cancelled the chemical's use on food in late 1989, again classified daminozide and UDMH (a byproduct of Alar) as probable human carcinogens in 1991, and in 1992 reconfirmed its decision that dietary exposure to Alar posed an unacceptable risk.

If the apple industry suffered economic losses, it was because they continued to use a cancer-causing pesticide and to knowingly risk public health. If businesses hope to avoid similar costly situations, they must regulate themselves and prevent such problems.

- 7. The burden of proof is misplaced.** Pet food manufacturers are required to prove the nutritional adequacy of pet foods, but **human** food manufacturers are not. All kinds of junk foods are produced in this country, with a focus on taste, texture and marketability --- not on the health of the consumer. Not surprisingly, we Americans are notable for our obesity, cancer, heart disease, crime rate and other problems which can be linked with our so-called "food." It's time for agri-businesses to be held accountable for the damage and suffering they cause. The Wisconsin legislature should pass a law requiring agri-businesses to prove their products are "healthy" and "safe." That would open the door to some worthwhile litigation, and a real improvement in food quality for Wisconsin citizens.

Please, vote against the Food Disparagement Law.

Sincerely,

Rebecca Leighton Katers

Rebecca Leighton Katers
2220 Deckner Avenue
Green Bay, WI 54302

Phone: 414-468-4243

Sodium Nitrite in Food --- Should Consumers be Concerned?

The following are clips from a standard textbook, "Casarett and Doull's Toxicology, The Basic Science of Poisons," Fifth Edition, 1996, Edited by Curtis D. Kaasen, Ph.D. Published by McGraw-Hill, Health Professions Division.

page 203 -

There is substantial epidemiological evidence for a role of nitroso compounds in the induction of human cancer. The nitrosamine NNK (Fig. 8-2) is produced in tobacco smoke from nicotine, a tobacco alkaloid (Hecht, 1985). This is an extremely potent carcinogen that may play a role in the induction of tobacco-related cancers in humans. Methapyriline was developed as an antihistamine but is a potent carcinogen in the rat (Mirsalis, 1987). Several investigators (Lijinsky, 1977; Magee and Swann, 1969; Mirvish et al., 1983) have shown that certain dietary components, especially in the presence of high levels of nitrite, may give rise to low levels of nitrosamines or nitrosamides and induce neoplasia of the gastrointestinal tract in experimental animals. The action of bacterial flora in the intestine may enhance the formation of these compounds. There is increasing evidence of an etiologic role for endogenously formed *N*-nitroso compounds in the development of certain human cancers (Bartsch et al., 1990).

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Table 30-26 Sources of Dietary NOCs

The use of nitrate and/or nitrite as intentional food additives, both of which are added to fix the color of meats, inhibit oxidation, and prevent toxigenesis

Drying processes in which the drying air is heated by an open flame source. NO_x is generated in small amounts through the oxidation of N₂, which nitrosates amines in the foods. This is the mechanism for contamination of malted barley products

NOCs can migrate from food contact materials such as rubber bottle nipples

NOCs can inhabit spices which may be added to food

Cooking over open flames (e.g., natural gas flame) can result in NOC formation in foods by the same mechanism as drying

SOURCE: Hotchkiss et al (1992). Used with permission.

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More than 25 mutagens have been studied in transgenic mouse assays, including direct-acting alkylating agents, nitrosamines, cyclophosphamide, procarbazine, and PAHs. Mutant frequencies have been analyzed for diverse tissues, including liver, skin, spleen, kidney, bladder, small intestine, bone marrow, and testis (Morrison and Ashby, 1994).

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Pathophysiology of Methemoglobinemias. As an experimental tool for the study of the effects of peripheral hypoxia, methemoglobinemia is much less satisfactory than simulated altitude, oxygen replacement, or even exposure to carbon monoxide. Unless the methemoglobin-generating chemical is infused continuously, it is impossible to maintain stable circulating levels of the pigment for long periods. A variety of intraerythrocytic mechanisms can reduce methemoglobin back to hemoglobin. After a single dose of the agent, methemoglobin levels rise abruptly and then decline toward normal at rates that vary widely with the species (Table 11-1) and result in wide variations in peripheral tissue oxygen tensions.

Moreover, chemicals that produce acquired methemoglobinemias have additional effects that can make important contributions to the toxic syndrome. Nitrite, hydroxylamine, aliphatic esters of nitrous and nitric acid, and nitroprusside are all vasodilators by virtue of their conversion to NO in vivo (Kruszyna et al., 1988). These compounds may produce orthostatic hypotension, reflex tachycardia, circulatory inadequacy, and cardiovascular collapse so that the anemic hypoxia is compounded by a stagnant or hypokinetic hypoxia. The aromatic amino and nitro compounds seem to have complex central and cardiac effects that may be the proximal cause of death in humans and some animal species. Intravascular hemolysis is induced by chlorate salts, arsine, large doses of hydroxylamine (Cranston and Smith, 1971), and even PAPP. The "methemoglobinemia" may be largely extracellular and may be confounded by sulfhemoglobinemia and Heinz bodies (see below). The methemoglobinemia induced by paraquat (Ng et al., 1982) is almost trivial in comparison with the devastating effects of this compound on the lungs and other organ systems.

page 347 -

Newborns are also said to be unusually sensitive to methemoglobin-generating chemicals both because of a transient deficiency in methemoglobin reductase and because of a high concentration of fetal hemoglobin in their erythrocytes.

page 96 -

Ingestion of well water with a high nitrate content produces methemoglobinemia much more frequently in infants than in adults. This is due to the higher pH of the GI tract in newborns, with the consequence of greater abundance of certain bacteria, especially *Escherichia coli* (*E. coli*), which convert nitrate to nitrite. Nitrite formed by bacterial action produces methemoglobinemia (Rosenfield and Huston, 1950). Nitrite also is used as a food additive in meats and smoked fish. Some fish, vegetables, and fruit juices contain secondary amines. The acidic environment of the stomach facilitates a chemical reaction between nitrite and secondary amines, leading to the formation of carcinogenic nitrosamines (Chap. 8). Also, the intestinal flora can reduce aromatic nitro groups to aromatic amines that may be goitrogenic or carcinogenic (Thompson et al., 1954).

Nitrosamines, Nitrosamides, and N-Nitroso Substances.

Nitrogenous compounds such as amines, amides, guanidines, and ureas can react with oxides of nitrogen (NO_x) to form N-nitroso compounds (NOCs) (Hotchkiss et al., 1992). The NOCs may be divided into two classes: the nitrosamines, which are N-nitroso derivatives of secondary amines, and nitrosamides, which are N-nitroso derivatives of substituted ureas, amides, carbamates, guanidines, and similar compounds (Mirvish, 1975).

Nitrosamines are stable compounds, while many nitrosamides have half-lives on the order of minutes, particularly at $\text{pH} > 6.5$. Both classes are potent carcinogens, but by different mechanisms. In general, the biological activity of an NOC is thought to be related to alkylation of genetic macromolecules. N-nitrosamines are metabolically activated by hydroxylation at an α -carbon. The resulting hydroxyalkyl moiety is eliminated as an aldehyde, and an unstable primary nitrosamine is formed. The nitrosamine tautomerizes to a diazonium hydroxide and ultimately to a carbonium ion. Nitrosamides spontaneously decompose to a carbonium ion at physiological pH by a similar mechanism (Hotchkiss et al., 1992). This is consistent with *in vitro* laboratory findings because nitrosamines require S9 for activity and nitrosamides are mutagenic *de novo*.

NOCs originate from two sources: environmental formation and endogenous formation (Table 30-26). Environmental sources have declined over the last several years but still include foods (e.g., nitrate-cured meats) and beverages (e.g., malt beverages), cosmetics, occupational exposure, and rubber products (Hotchkiss, 1989). NOCs formed *in vivo* may actually constitute the greatest exposure and are formed from nitrosation of amines and amides in several areas, including the stomach, where the most favorable conditions exist ($\text{pH} 2$ to 4), although consumption of H_2 -receptor blockers or antacids decreases the formation of NOCs.

Environmentally, nitrite is formed from nitrate or ammonium ions by certain microorganisms in soil, water, and sewage. *In vivo*, nitrite is formed from nitrate by microorganisms in the mouth and stomach, followed by nitrosation of secondary amines and amides in the diet. Sources of nitrate and nitrite in the diet are given in Table 30-27. Many sources of nitrate are also sources of vitamin C. Another possibly significant source of nitrate is well water; although the levels are generally in the range of $21 \mu\text{M}$, average levels of $1600 \mu\text{M}$ (100 mg/liter) have been reported (Hotchkiss et al., 1992). However, on the average, western diets contain 1 to 2 mmol nitrate/person/day (Hotchkiss et al., 1992).

Nitrosation reactions can be inhibited by preferential, competitive neutralization of nitrite with naturally occurring and synthetic materials such as vitamin C, vitamin E, sulfamate, and antioxidants such as BHT, BHA, gallic acid, and various amino acids or proteins (Hotchkiss, 1989; Hotchkiss et al., 1992).

In addition, free radical intermediates sometimes are formed during the metabolism of chemical carcinogens (Guengerich, 1992), and the metabolic reactions of a number of chemical carcinogens may proceed through free radical intermediates. Chemical carcinogens, including nitrosamines (Bartsch et al., 1989), nitro compounds (Conaway et al., 1991), and diethylstilbestrol (Wang and Liehr, 1994), may possess ultimate forms that are free radicals in nature. The formation of free radicals plays an important role in the carcinogenic effects of ionizing radiation (Biaglow, 1981). Furthermore, free radicals are important in the process of cancer development (see below).

Table 19-13
Agents Reported to Affect Female Reproductive Capacity

Steroids
Natural and synthetic androgens (antiandrogens), estrogen (antiestrogens), and progestins
Antineoplastic Agents
Alkylating agents—cyclophosphamide, busulfan
Antimetabolites—folic acid antagonists (methotrexate)
Other Therapeutic Agents
Anesthetic gases and vapors—enflurane, halothane, methoxyflurane
Antiparkinsonism drugs—levodopa
Antiparasitic drugs—quinacrine
Appetite suppressants
Narcotic and nonnarcotic analgesics—opioids
Neuroleptics—phenothiazines, imipramine, and amitriptyline
Serotonin
Sympathomimetic amines—epinephrine, norepinephrine, amphetamines
Tranquilizers—phenothiazines, reserpine, monoamine oxidase inhibitors
Metals and Trace Elements
Arsenic, lead, lithium, mercury and methylmercury, molybdenum, nickel, selenium, thallium
Insecticides
Benzene hexachlorides—lindane
Carbamates—carbaryl
Chlorobenzene derivatives—chlorophenothane (DDT), methoxychlor
Indane derivatives—aldrin, chlordane, dieldrin
Phosphate esters (cholinesterase inhibitors)—parathion
Miscellaneous—chlordecone (kepone), mirex, hexachlorobenzene, ethylene oxide
Herbicides
Chlorinated phenoxyacetic acids—(2,4-D), (2,4,5-T)
Food Additives and Contaminants
Cyclohexylamine, diethylstilbestrol (DES), dimethylnitrosamines, monosodium glutamate, nitrofurantoin (AF ₂), nitrosamines, sodium nitrite
Industrial Chemicals
Building materials—formaldehyde
Chlorinated hydrocarbons—chlorinated biphenyls (PCBs), chloroform, trichloroethylene
Paints and dyes—aniline
Plastic monomers—caprolactam, styrene, vinyl chloride
Polycyclic aromatic hydrocarbons (PAHs)—benzo[a]pyrene
Rubber manufacturing—chloroprene
Solvents—benzene, carbon disulfide, chloroform, ethanol, glycol ethers, hexane, toluene, trichloroethylene, xylene
Miscellaneous—cyanoketone, hydrazines
Consumer Products
Flame retardants—TRIS, polybrominated biphenyls (PBBs)
Plasticizers—phthalic acid ester (DEHP)
Miscellaneous
Ethanol, nicotine, marijuana, cocaine, heroin

Good Morning

I want to thank you for this opportunity to testify concerning the Assembly Bill 702, the so-called Farm Disparagement Act.

My name is David Engel. Our family milks cows in rural Crawford County, about 9 miles west of Soldiers Grove on CTH C. We have 391 acres with approximately 200 tillable acres. We milk about 40 cows and raise our own young stock and ship our milk with the Coulee Region Organic Produce Pool. My wife is also a veterinarian, and I am currently serving as the Program Director for the WI Chapter Organic Crop Improvement Association (OCIA.) OCIA is an international organization that provides certification services and educational opportunities for farmers world-wide. I am attaching a brief brochure which explains this.

It is in, then, the capacity of both a farmer involved in marketing my milk in a specialty market - the organic market - as well as an administrator representing approximately 250 farmers in the state of WI also involved in marketing their produce in this specialty market that I am here today to share with you some thoughts.

First, though, I remember quite well an occurrence of seven and one half years ago when I showed up at a meeting scheduled for 1 pm. I waited for about 35-40 minutes and finally two of the people who were to be at the meeting wandered in. They had just returned from lunch and the rest were coming shortly. I was extremely irate over the fact they had all left for lunch just about the time the meeting was to have begun. And I had had to sit and wait for them. They could see I was mad, and one of them -- and I'll never forget this -- just said, "Well, gee, Dave, sorry you feel that way, we won't hold it against you."

In a similar vein, I want to start out saying that I am sorry that someone feels as they do that this type of legislation has to even be proposed, and I hope I do not sound like I am "holding it against you" as I make my comments concerning this unnecessary legislation.

Basically, then, I question the necessity of this legislation. I also question the potential ramifications of the legislation. And, I question its intent. Let's briefly look at each of these.

Necessity

There are laws on the books today which provide for legal recourse for what are generally known as defamation cases, including aspects such as libel, slander and tort cases. These avenues of recourse are longstanding, fair, have a long history of case law and provide both plaintiffs and defendants with the necessary protections that we accept as being our right as American citizens.

The current proposed AB 702 takes these mutual protections and significantly lowers the burden of proof necessary to render judgment and makes a mockery of an individual's right to freedom of speech. More on this under both Ramifications and Intent.

①

Ramifications

As stated above, one of the ramifications of this proposed legislations will be a potential curtailment of an individual's freedom of speech. Example: Any farmer at his/her or another farmer's field day making statements about the quality and superiority of his/her crops, milk, meat, health of livestock, etc. as compared to "the neighbor" or any other farmer who farms with chemical fertilizers, pesticides and anhydrous ammonia ^{then name brands} (even without mentioning names) resulting in less soil life and tilth, poorly mineralized soils and thus poorer quality feeds and livestock health: where will they stand if quoted in the press and someone wants to sue?

Example: This poster (read): where will this fall with the proposed legislation?

Example: These packages and the information printed on them (read): where will they fall with the proposed legislation?

Example: Any discussion or argument between two people (public) over the potential dangers of the agriculturally related biotech products being promulgated of late; what if I state that my opinion is that due to the use of herbicide resistant seeds there will probably be more herbicides used which will further deteriorate the quality of ground water and all farmers who are using these products are taking a share of the responsibility for poor ground water?

In general, the ramifications of this type of legislation are legion. Again, why take and make legitimate concerns of the consuming public subject to such spurious, simplistic and, I could envision, possibly silly (read: nuisance) situations that could arise?

Intent

Finally, as I state above, I sincerely do not mean to hold this against, for example, Farm Bureau or Representative Hahn or the other co-sponsors of this Act. I am simply questioning here the intent of this type of legislation. As we know, approximately 10 other states have enacted such legislation. However, to my knowledge, Illinois, California and Washington state defeated such legislation.

I talked with my father last night, a lawyer in North Dakota, and he had not even heard of such a type of legislation. He was familiar with the standard defamation laws in North Dakota, and in reading them briefly to me over the phone, it was apparent that legal recourse was available there in ND now without this so-called disparagement approach. I would assume it is similar in WI. His superficial assessment of disparagement legislation: not necessary and potentially a can of worms.

What, then, is the intent of this legislation? I must admit an initial concern when I read Representative Hahn's reference to alar and the problems that the WA state apple growers had in legal recourse over the report published by the Natural Resources Defense Council, I believe. What is being forgotten or ignored here is that alar is still classified as a carcinogen by the EPA.

Am I perhaps assuming too much to infer that it appears that such like legislation is aimed directly at those who are attempting to farm more ecologically, more sensibly, more in sync with Mother Nature? Aimed directly at those who reject the hard chemistry of companies such as Monsanto, American Cyanamid, Dupont and Cieby Geigy, who have ag chemical input products whose track record is dismal in terms of the eventual acknowledged acceptance of toxicity of the product, products which contribute to both point- (at the place of manufacture) and non-point (when the farmer uses them) pollution? Aimed directly at those who are saying no to drugs in their livestock or on their land, because they do not want to suffer very real and documented effects of using such-like products when there are widespread and legitimate concerns over the safety of these products and who freely share these opinions and experiences with others in various private and public forums?

I am not trying to intimidate you with my language. But neither am I willing to be intimidated by this proposed legislation. The December, 1995, issue of National Geographic, to me, is a sign of the times in the right direction. You will remember the excellent (in my opinion) account given of those agricultural producers nationwide who are turning to raising food with no chemicals and the benefits they are experiencing and -- most significantly -- the markets they are developing. Meaning, of course, all things being equal and given the information of the larger picture..... the consumer apparently is more and more wanting their food to be produced without the use of chemicals. They - rightly or wrongly - perceive this type of produce to be safer for them and their children. This legislation is a sign in the opposite and wrong direction, as it seems to try to intimidate those not using and speaking about not using chemicals in their farming operations.

Is the intent of this legislation to delay the dissemination of the knowledge and thus the right of the consumer to know? Is the intent of this legislation to stifle the discussion of both the consumer and the producer of the potential and actual health concerns that have been growing steadily for the 45+ years of use of toxic chemicals, first chronicled in Rachel Carson's legendary Silent Spring book in the early 1960's? Is the intent of this legislation to try to insure a continuation of both what I would call the status quo in the industry of agriculture and the corporate/monied interests who stand to gain significantly if they can just maintain a system of agriculture that is dependent upon hard chemical inputs - as in the past 40 years - and/or the upcoming potential bottom-line bonanza of the biotech industry? It would appear that the intent is a curtailment of freedom of speech. What do you think?

I am concerned that this legislation will impinge me as a farmer in my efforts to produce and market a safer product than another farmer who uses rBGH and antibiotics, who has had shipments of hot milk, and whose cultural practices are contributing to the creation of atrazine prohibition areas in WI.

I am also concerned as a representative of many other farmers and of an industry that do not want to slander or libel or defame kindred community with our choices and exposition of these choices. We do, however, want to be free to discuss and share our experiences and market and legally label our products based on these experiences and meet a kindred consumer demand for safer food. A lot of words, I realize. Thank you for listening to my concerns.

(3)