

JOURNAL OF THE ASSEMBLY [August 17, 1971]

STATE OF WISCONSIN

Assembly Journal

Eightieth Regular Session

TUESDAY, August 17, 1971.

9:30 A.M.

The assembly met.

The speaker in the chair.

The roll call was dispensed with.

AMENDMENTS OFFERED

Assembly amendment 1 to assembly substitute amendment 2 to **Senate Bill 31** offered by Representative R. M. Thompson.

Assembly amendment 2 to **Assembly Bill 1095** offered by Representative Anderson, by request of Department of Industry, Labor and Human Relations.

Assembly amendment 1 to **Assembly Bill 1094** offered by Representative Anderson.

Assembly amendment 4 to **Assembly Bill 871** offered by Representative Lynn.

Assembly amendment 2 to **Assembly Bill 1094** offered by Representative Sicula.

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INTRODUCTION AND REFERENCE OF BILLS

Read first time and referred:

Assembly Bill 1232

Relating to abandoned motor vehicles, imposing a special tax, making an appropriation and providing a penalty.

By Representatives Conradt, Giese, Quinn, Bradley, Vanderperren, Byers and O'Malley.

To committee on Highways.

Assembly Bill 1233

Relating to junk motor vehicles, prevention of abandonment of motor vehicles, and providing penalties.

By Representatives Conradt, Giese, Quinn, Bradley, Vanderperren, Byers and O'Malley.

To committee on Highways.

Assembly Bill 1234

Relating to city school district employees on the city council.

By Representatives Schneider, Brown, Earl and Mittness.

To committee on Education.

Assembly Bill 1235

Relating to prohibiting refusal to pay passenger fare, and creating a penalty.

By Representatives Sensenbrenner, Orlich, Jones, Atkinson, Pabst, Tobiasz and McCormick.

To committee on Judiciary.

Assembly Bill 1236

Relating to election of 5-member town boards.

By Representative Stalbaum.

To committee on Elections.

Assembly Bill 1237

Relating to drainage district maintenance and repair assessments.

By Representative Stalbaum.

To committee on State Affairs.

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Assembly Bill 1238

Relating to refund of special motor fuel tax on liquefied and compressed natural gas and liquefied petroleum gas.

By Representatives Helgeson, Schowalter, Giese and Gaulke; co-sponsored by Senator Roseleip.

To joint Survey committee on Tax Exemptions.

Assembly Bill 1239

Relating to the establishment of an educational facility and youth conservation camp located at Poynette as an authorized building project, and making an appropriation.

By Representative R. M. Thompson.

To committee on Natural Resources.

Assembly Bill 1240

Relating to educational television equipment at Appleton-Green Bay as an authorized building project and making an appropriation.

By Representatives Vanderperren, Baldus, Bolle, Swo-boda, Kafka, Quinn, Bradley, Conradt, Rogers, Grover, McDougal and Byers; co-sponsored by Senators LaFave, Lotto, Lorge and Martin.

To joint committee on Finance.

COMMUNICATION

**The State of Wisconsin
Department of Justice
Madison**

**The Honorable, the Assembly
State Capitol
Madison, Wisconsin 53702**

Gentlemen: By **Assembly Resolution 19**, you have requested my opinion as to the validity of **Assembly Bill 234** which would amend sec. 100.22 (1), Wis. Stats., as follows:

"100.22 (1) Any person, firm or corporation, foreign or domestic, engaged in the business of buying milk, cream or butter fat for the purpose of manufacture, that discriminates between different sections, communities, towns, vil-

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lages or cities of this state, or between persons, firms or corporations in any locality of this state, by paying for such commodity at a higher price or rate in one section, community, town, village or city, or to any person, firm or corporation in any locality of this state, than is paid for the same commodity by said person, firm or corporation, foreign or domestic, in another section, community, town, village or city, or to another person, firm or corporation in any locality of this state, where the effect may be to lessen substantially competition or to tend to create a monopoly or to injure, destroy or prevent competition, shall be guilty of unfair discrimination, which is hereby prohibited and declared unlawful, ~~providing, that it except:~~

“(a) It shall be a justification for such a discrimination in price if the difference is merely commensurate with an actual difference in the quality or quantity of the commodity purchased or in transportation charges or other expense of marketing involved in said purchase, ~~provided, further, that it.~~

“(b) It shall be a justification for such a discrimination in price if it is done in good faith to meet competition.

“(c) Dairymen may combine their production for purposes of collective bargaining for price, and buyers who purchase such production through such bargaining process shall not be in violation of this section.”

I note that some proponents of the bill have argued that sec. 100.22, Wis. Stats., is unconstitutional. Section 100.22, Wis. Stats., was created by ch. 395, Laws of 1909, as sec. 1791n-1. Section 1791n-1, reads as follows:

“Any person, firm or corporation, foreign or domestic, engaged in the business of buying milk, cream or butter-fat for the purpose of manufacture, that shall intentionally, for the purpose of creating a monopoly or of destroying the business of a competitor in any locality, discriminate between different sections, communities, towns, villages or cities of this state, by buying such commodity at a higher price or rate in one section, community, town, village or city, than is paid for the same commodity by said person, firm or corporation in another section, community, town, village or city, after making due allowance for the difference, if any, in the actual cost of transportation from the

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point of purchase to the locality of manufacture, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful."

Subsection (1) of sec. 1791n-1, was amended by ch. 406, sec. 3, Laws of 1923, to read as follows:

"* * * Any person, firm or corporation, foreign or domestic, engaged in the business of buying milk, cream or butter fat for the purpose of manufacture, that shall * * * discriminate between different sections, communities, towns, villages or cities of this state, *or between persons, firms or corporations in any locality of this state*, by * * * *paying* for such commodity at a higher price or rate in one section, community, town, village or city, *or to any person, firm or corporation in any locality of this state*, than is paid for the same commodity by said person, firm or corporation, *foreign or domestic*, in another section, community, town, village or city, *or to another person, firm or corporation in any locality of this state*, * * * shall be * * * guilty of unfair discrimination, which is hereby prohibited and declared unlawful; *provided, that it shall be a justification for such a discrimination in price if the difference is merely commensurate with an actual difference in the quality or quantity of the commodity purchased or in transportation charges or other expense of marketing involved in said purchase.*"

Section 1791n-1 was renumbered 133.09 by sec. 50, ch. 449, Laws of 1923. Subsequently, sec. 133.09, Stats., was renumbered 100.22 by sec. 358, ch. 550, Laws of 1935.

The constitutionality of sec. 100.22, Wis. Stats., was challenged in *White House Milk Co. v. Reynolds* (1960), 12 Wis. 2d 143, 106 N.W. 2d 441. The New York corporation purchased milk at the same price from farmers at six different plants located at various parts in the state. The corporation alleged that the statute denied it freedom to contract and equal protection of the laws. The lower court declared the statute unconstitutional. The Wisconsin Supreme Court, however, stated that a statute is presumed to be constitutional and the burden of establishing the unconstitutionality thereof rests upon the person attacking it.

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The Court reversed the judgment and remanded same to the lower court for further proceedings. The Court stated at p. 150:

"We conclude that the facts pertaining to the marketing of milk in Wisconsin, the evils which may reasonably be thought to result if buyers are legally free to offer different prices to different persons or in different localities, and the results which may reasonably be thought to flow from the existence and enforcement of sec. 100.22, Stats., should be re-examined, and the questioned validity of sec. 100.22, freshly resolved upon a record which presents the pertinent facts."

However, no further proceedings were held.

Section 100.22 (1), Stats., was amended by ch. 386, Laws of 1961, to read as follows:

"100.22 (1) Any person, firm or corporation, foreign or domestic, engaged in the business of buying milk, cream or butter fat for the purpose of manufacture, that * * * *discriminates* between different sections, communities, towns, villages or cities of this state, or between persons, firms or corporations in any locality of this state, by paying for such commodity at a higher price or rate in one section, community, town, village or city, or to any person, firm or corporation in any locality of this state, than is paid for the same commodity by said person, firm or corporation, foreign or domestic, in another section, community, town, village or city, or to another person, firm or corporation in any locality of this state, *where the effect may be to lessen substantially competition or to tend to create a monopoly or to injure, destroy or prevent competition*, shall be guilty of unfair discrimination, which is hereby prohibited and declared unlawful; provided, that it shall be a justification for such a discrimination in price if the difference is merely commensurate with an actual difference in the quality or quantity of the commodity purchased or in transportation charges or other expense of marketing involved in said purchase; *provided, further, that it shall be a justification for such a discrimination in price if it is done in good faith to meet competition.*"

You have requested my opinion as to the validity of the bill. I assume you are concerned as to its constitutionality.

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The general rule as to the constitutionality of such trade regulations is set forth at 16 Am. Jur. 2d, *Constitutional Law*, §517, pp. 903-904 as follows:

"Since the establishment of regulations of a particular trade or business essential to the public health and safety is within the legislative capacity of the state in the exercise of its police power, the classification of the subjects of such legislation, so long as it has a reasonable basis and is not merely an arbitrary selection without real difference between the subjects included and those omitted from the law, does not deny to any person the equal protection of the laws. Legislation affecting alike all persons pursuing the same business under the same conditions is not class legislation. But if some persons engaged in a calling or business are subjected to special burdens or favored by special privileges while other persons engaged in the same calling or business are not so treated, the legislation is based upon unconstitutional discrimination."

It could be argued that the bill, if enacted into law, would permit discrimination against individual dairymen who decide not to joint an association or group for purposes of collective bargaining for price, and thus, deny them of equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution and Sec. 1, art. I of the Wisconsin Constitution.

If the general purpose of the law is regulation, and not the suppression of lawful business, the fact that some persons on whom it operates may have to reconstruct their methods of doing business does not render the law void. *MacLoren v. State* (1910), 141 Wis. 577, 124 N.W. 667. In view of the fact that the bill would permit any dairyman to combine with others for purposes of collective bargaining for price, it is my opinion that the courts would find Assembly Bill 234 constitutional if enacted into law.

Sincerely yours,

ROBERT W. WARREN,
Attorney General.

CAPTION: Assembly Bill 234 would be constitutional if enacted into law.

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COMMITTEE REPORTS

The committee on Highways reports for introduction:

Assembly Joint Resolution —

Relating to a study by the legislative advisory committee of vehicle licensing and registration.

Introduction; Ayes, 12; Noes, 1.

JOSEPH E. JONES,
Chairman.

The committee on Environmental Quality reports and recommends:

Senate Bill 31

Relating to county waste disposal.

Adoption of assembly substitute amendment 2; Ayes, 7; Noes, 0 and concurrence recommended; Ayes, 5; Noes, 2.

Assembly Bill 1117

Relating to research and compilation of data by the department of natural resources regarding recycling solid waste.

Passage; Ayes, 7; Noes, 0.

JAMES J. LYNN,
Chairman.

Representative W. A. Johnson moved that the assembly adjourn until 9:30 A.M., Friday, August 20, 1971.

The question was: Adjournment?

The motion carried.

The assembly stood adjourned.

9:35 A.M.