



Since 1894

To: House Committee on Agriculture
Rep. Ken Rahjes, Chair

From: Aaron M. Popelka, V.P. of Legal and Governmental Affairs, Kansas Livestock Association

Re: **HB 2530, AN ACT concerning agriculture; relating to the labeling of certain foods; prohibiting the use of identifiable meat terms on labels of meat analogs without use of proper qualifying language.**

Date: February 15, 2022

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 5,700 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf, and stocker cattle production; cattle feeding; dairy production; swine production; grazing land management; and diversified farming operations.

Thank you, Chairman Rahjes, and members of the Committee, for the opportunity to present KLA's views on HB 2530. KLA strongly supports HB 2530 and believes that manufacturers of meat analogs, also known as fake meat, should be required to accurately label and advertise their products.

Although meat substitutes have been in existence for decades, it was not until recently that certain companies, primarily Impossible Foods and Beyond Meat, began to engage in deceptive marketing practices. Before explaining the problem and the livestock industry's solution, KLA would like to make clear that it does not oppose businesses who want to develop a novel product and sell it on the free market, even if the product is a competitor. KLA believes that real meat products, especially beef, are superior in taste, quality, experience, and nutrition, and given a level playing field, will be the choice of consumers. KLA, however, opposes companies who try to disguise the true nature of their product by deceptively labeling and advertising their products, and who do so at the expense of livestock producers' reputations.

To understand the true nature of the issue, the Committee need not look any further than the words of the executives of Impossible Foods and Beyond Meat. The Chief Executive Officer (CEO) of Beyond Meat, Ethan Brown, wants the public to believe that his company's product, which is completely comprised of plant products, is meat. He states: "It's about separating meat from animals. When you think of meat in terms of its composition, it's five things—amino acids, lipids, trace minerals, vitamins and water. None of that is exclusive to animals."¹ Similarly, the CEO of Impossible Foods, Pat Brown in an interview with Vox stated, "we've

¹ <https://time.com/5601980/beyond-meat-ceo-ethan-brown-interview/>

defined meat too narrowly.”² His company wants to redefine meat and have its product recognized as meat by consumers.

Both companies use deception to sway consumers. On numerous occasions Pat Brown called the use of animals in food production technology, “by far the most destructive technology on Earth today.”³ A graphic, attached as Exhibit 1, previously displayed on Beyond Meat’s website falsely claimed that livestock production and processing was responsible for 51 percent of global greenhouse gas emissions. According to the U.S. Environmental Protection Agency, actual emissions from livestock production in the United States is approximately 4 percent, while global livestock emissions are approximately 14.5 percent according to the Food and Agricultural Organization of the United Nations. Finally, Pat Brown makes clear why his company is engaged in deceptive labeling and advertising: “We [Impossible Foods] have zero interest really in vegetarian customers. In fact, I’m not being ironic, every time we sell a burger to a vegan or a vegetarian, it’s actually a complete waste in terms of our mission.”⁴ He has also stated, “The whole point of our product is not to be successful as a new product, but to be successful at the expense of the incumbent industry.”⁵ This paints the picture of a company who wants to mislead consumers simply to gain market share. One of the key underpinnings of state and federal label requirements is to prevent businesses from deceiving consumers simply to make sales.

Both companies, in an attempt to confuse consumers, have resorted to labels such as the one attached to this testimony as Exhibit 2. This photo was taken at a local grocery store in Topeka. Nowhere on the package does the label make clear that the product is devoid of meat. Instead, the manufacturer goes to great lengths to try and convince consumers, through its label, that the product contains meat. The label on its own is deceptive, but some retail outlets have decided to place these products in the meat case, further complicating the ability of a consumer to make an informed choice.⁶

Not only does this type of labeling confuse consumers about the actual ingredients of a product, but it also misleads the consumer as to the nutritional quality of the product. Recently, the beef checkoff completed a nutritional comparison of real beef versus meat analog products. The results are attached to this testimony as Exhibit 3. When compared to 93 percent lean ground beef, these products are inferior on a number of levels. These products have over 40 percent more calories, between 75 percent and 125 percent more fat, 20 percent less protein, and approximately five times the amount of sodium as 93 percent lean ground beef. By using deceptive labels, consumers shopping for a real meat product could not only be duped into buying an alternative product, but one that is also nutritionally inferior.

Examples of consumer confusion are not just anecdotal. Recently, KLA’s national affiliate, the National Cattlemen’s Beef Association (NCBA), completed a consumer survey using the labels

² <https://www.vox.com/2017/8/18/16171336/transcript-impossible-foods-burger-pat-brown-meat-heme-too-embarrassed-to-ask>

³ <https://www.vox.com/2017/8/18/16171336/transcript-impossible-foods-burger-pat-brown-meat-heme-too-embarrassed-to-ask>

⁴ <https://www.vox.com/2017/8/18/16171336/transcript-impossible-foods-burger-pat-brown-meat-heme-too-embarrassed-to-ask>

⁵ <https://www.wsj.com/articles/americas-cattle-ranchers-are-fighting-back-against-fake-meat-11574850603>

⁶ Exhibit 5 is a photo taken by a KLA member in 2021 at a grocery store in Junction City.

of leading meat analog companies. The survey results are attached as Exhibit 4. The survey showed that 10 percent of consumers surveyed believed that Beyond Beef and the Impossible Burger were meat products; another 22 percent and 16 percent thought Beyond Beef and the Impossible Burger, respectively, were a meat/plant blend; and 27 percent and 33 percent thought Beyond Beef and the Impossible Burger, respectively, contained animal products, but not meat. Added together, 59 percent of consumers cannot readily identify the contents of these meat analog products.

To remedy this, KLA worked with various legislators, the Kansas Department of Agriculture, and industry partners to craft HB 2530. The bill begins by amending the Kansas Food, Drug, and Cosmetic Act to define “meat analog” and “identifiable meat term” and references federal regulations to define meat, meat food product, poultry, and poultry food product. The legislation then states that if a meat analog is labeled or advertised using an identifiable meat term, it must place on the label or in the advertisement, “in the same font, style and size, in close proximity to the identifiable meat term” one of the following disclaimers: “(A) This product does not contain meat, (B) meatless, (C) meat-free, (D) vegan, (E) veggie, (F) vegetarian, or (G) vegetable.” HB 2530 contains more flexibility for disclaimer placement and additional disclaimers compared to an earlier version of this legislation. These changes were made in an attempt to address industry stakeholder concerns.

As an alternative, under HB 2530, a meat analog product may use the word “Imitation” in place of the other disclaimers if the meat analog meets the federal definition of an imitation food. A food is an imitation if it is a substitute for and resembles another food, but is nutritionally inferior to that food. Inferiority includes any reduction in the content of an essential nutrient that is present in a measurable amount. A measurable amount could mean a two percent reduction in protein, potassium, or certain vitamins or minerals. Allowing use of the federal imitation label also addresses a concern of opposing parties that there be a nation-wide standard. This standard exists, but the manufacturers refuse to use it because it does not fit their false narrative.

KLA also worked to craft this bill to avoid legal challenges. Other states that have adopted fake meat legislation have tried to ban the use of meat terminology by plant-based fake meat and cell cultured meat products. This subjected these states to federal preemption challenges because cell cultured meat is regulated by the Federal Meat Inspection Act. It also subjected the state laws to First Amendment challenges because it indiscriminately banned the ability of a company to name its product. To avoid preemption challenges, HB 2530 was drafted to only regulate labels on meat analogs containing solely plant ingredients. To avoid First Amendment challenges, the bill simply requires a disclaimer on meat analog labels rather than banning the use of identifiable meat terms. A state can regulate speech on a product label if the restriction is created to reasonably prevent consumer deception or confusion.⁷

It is also important for the Committee to understand that meat labels are regulated by the U.S. Department of Agriculture. Meat labels must comply with the regulations set forth by the USDA Food Safety Inspection Service (FSIS), and as a general matter, require agency approval

⁷ See Exhibit 6, *KLA Memo to the House Committee on Agriculture*, January 31, 2020, explaining the applicable standard for First Amendment challenges to commercial speech.

before entering interstate commerce.⁸ Meat analogs, however, are under the regulatory purview of the U.S. Food and Drug Administration (FDA). Unlike USDA, FDA does not have rigid requirements in place and does not require prior label approval.

KLA is aware that some groups may seek to dilute the disclaimer in HB 2530. KLA opposes such amendments. First, it is clear from their own admission that fake meat companies cannot be trusted to develop their own disclaimer. These companies are likely to develop confusing and deceptive disclaimers and hide the disclaimers using inconvenient locations and tiny font, as shown in Exhibit 2. Disclaimers like “plant-based” are insufficient to allow consumers to identify the ingredients of the product. Such terms suggest the product still contains meat, as indicated by NCBA’s consumer survey in Exhibit 5.

Finally, while it is not directly related to transparent labels, KLA would like to dispel some myths espoused by fake meat companies. For instance, the Chief Financial Officer of Impossible Foods, during a CBS Money segment, claimed: “[A]nimal farming may contribute more to greenhouse gases than all forms of transportation combined.”⁹ This is demonstrably false. The U.S. Environmental Protection Agency (EPA) website disputes this claim in clear terms. In 2019, the transportation sector accounted for 29 percent of greenhouse gases, while the whole of agriculture accounted for only 10 percent of greenhouse gases, and the livestock industry (enteric fermentation plus manure management) was approximately 4 percent of greenhouse gas emissions in the United States.¹⁰ The beef industry has also made progress in becoming more sustainable. For instance, ranchers produce the same amount of beef as in 1975, but with 36 percent fewer cattle.¹¹ In addition, the beef industry reduced carbon emission per pound of beef by 40.33 percent from 1961 to 2019.¹²

Thank you for the opportunity to submit KLA’s views to the Committee. KLA asks the Committee to approve HB 2530 favorable for passage.

⁸ See <https://www.fsis.usda.gov/inspection/compliance-guidance/labeling/basics-labeling>

⁹ <https://www.cbsnews.com/video/impossible-foods-and-the-growth-of-the-meatless-market/>

¹⁰ <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>

¹¹ https://www.beefresearch.org/Media/BeefResearch/Docs/us-cattle-production-sustainability-overview_11-28-2020-101.pdf

¹² <https://www.beefresearch.org/programs/beef-sustainability/sustainability-quick-stats/statistics-on-us-improvements-in-beef-production-and-emission-in>

Exhibit 1



**51% OF GLOBAL
GREENHOUSE GAS
EMISSIONS DRIVEN BY
LIVESTOCK REARING AND
PROCESSING**

12G OF PLANT PROTEIN PER SERVING



SOY FREE
GLUTEN FREE

BEYOND MEAT

BEYOND BEEF® CRUMBLES
BEEFY

SERVING SUGGESTION



NET WT 10 OZ (283g)

KEEP FROZEN

PLANT-BASED CRUMBLES



Ground Beef and Meat Substitutes

When it comes to Ground Beef and newer meat substitutes, it's good to know the facts. Did you know that 93% lean ground beef is lower in calories, fat, sat fat and sodium and higher in high-quality protein than meat substitutes? Beef is an authentic source of high-quality protein and 10 essential nutrients, including Protein, Iron, Zinc, and B-Vitamins that are essential to good health.

Nutrient	Ground Beef 80% Lean, 4 oz, raw ¹	Ground Beef 93% Lean, 4 oz, raw ²	Ground Beef 96% Lean, 4 oz, raw ³	Soy-Based Burger, 4 oz, raw ⁴	Pea-Based Burger, 4 oz, raw ⁵
Calories (kcal)	290	170	150	240	250
Total Fat (g)	23	8	4.5	14	18
Saturated Fat (g)	9	3.5	2	8	6
Cholesterol (mg)	80	75	75	0	0
Sodium (mg)	75	75	75	370	390
Total Carbohydrate (g)	0	0	0	9	3
Protein (g)	19	24	25	19	20

LOOK AT THE LABEL

Beef has the taste and the simple ingredients that consumers crave.

Product	Ingredients
80% Lean ¹	Beef
93% Lean ²	Beef
96% Lean ³	Beef
Soy-Based Burger ⁴	Water, Soy Protein Concentrate*, Coconut Oil, Sunflower Oil, Natural Flavors, 2% or less of: Potato Protein, Methylcellulose, Yeast Extract, Cultured Dextrose, Food Starch Modified, Soy Leghemoglobin, Salt, Soy Protein Isolate, Mixed Tocopherols (Vitamin E), Zinc Gluconate, Thiamine Hydrochloride (Vitamin B ₁), Sodium Ascorbate (Vitamin C), Niacin, Pyridoxine Hydrochloride (Vitamin B ₆), Riboflavin (Vitamin B ₂), Vitamin B ₁₂ *Contains: Soy

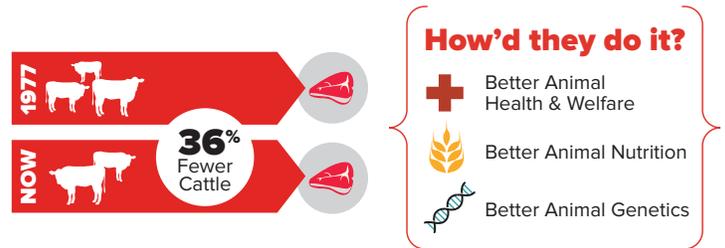
Pea-Based Burger ⁵	Water, Pea Protein Isolate**, Expeller-Pressed Canola Oil, Refined Coconut Oil, Rice Protein, Natural Flavors, Cocoa Butter, Mung Bean Protein, Methylcellulose, Potato Starch, Apple Extract, Salt, Potassium Chloride, Vinegar, Lemon Juice Concentrate, Sunflower Lecithin, Pomegranate Fruit Powder, Beet Juice Extract (for color) ⁵
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**Peas are legumes. People with severe allergies to legumes like peanuts should be cautious when introducing pea protein into their diet because of the possibility of a pea allergy. Contains no peanuts or tree nuts.

MORE HIGH-QUALITY BEEF, MORE SUSTAINABLY

Beef farmers and ranchers are continuously improving the way beef is raised to ensure a sustainable supply of delicious and nutritious beef.

Today's beef farmers and ranchers produce the same amount of beef with 36% fewer cattle.⁶



¹ USDA National Nutrient Database for Standard Reference for beef. NDB# 23572 <https://ndb.nal.usda.gov/ndb/search/list>

² USDA National Nutrient Database for Standard Reference for beef. NDB# 23472 <https://ndb.nal.usda.gov/ndb/search/list>

³ USDA Ground Beef Calculator: <https://ndb.nal.usda.gov/ndb/beef/show>

⁴ www.impossiblefoods.com/burger/

⁵ www.beyondmeat.com/products/the-beyond-burger/

⁶ USDA NASS Quickstats Data calculated using data as of January 1, 2018.

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Funded by Beef Farmers and Ranchers

Exhibit 4

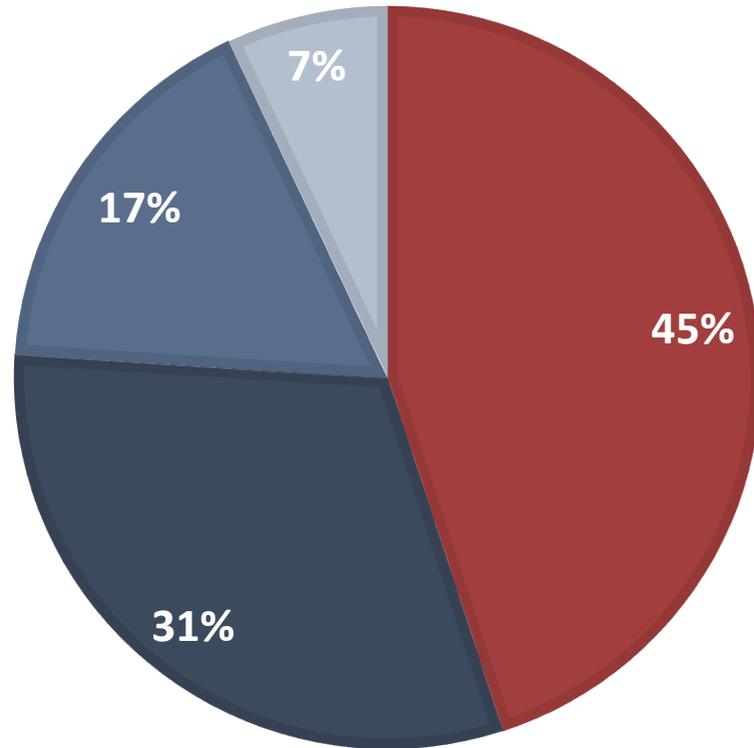
In September of 2019, the National Cattlemen's Beef Association commissioned a survey to better understand consumer confusion relative to plant-based imitation meat.

The online, quantitative survey of over 1800 respondents was balanced to census (age, region and gender among 18-65 year olds) and included a variety of attitude, awareness, usage and self-defining exercises regarding plant-based substitutes. These questions were asked of all 1800+ respondents.



Exhibit 4

Less than half of consumers understand “plant-based beef” is entirely vegan.

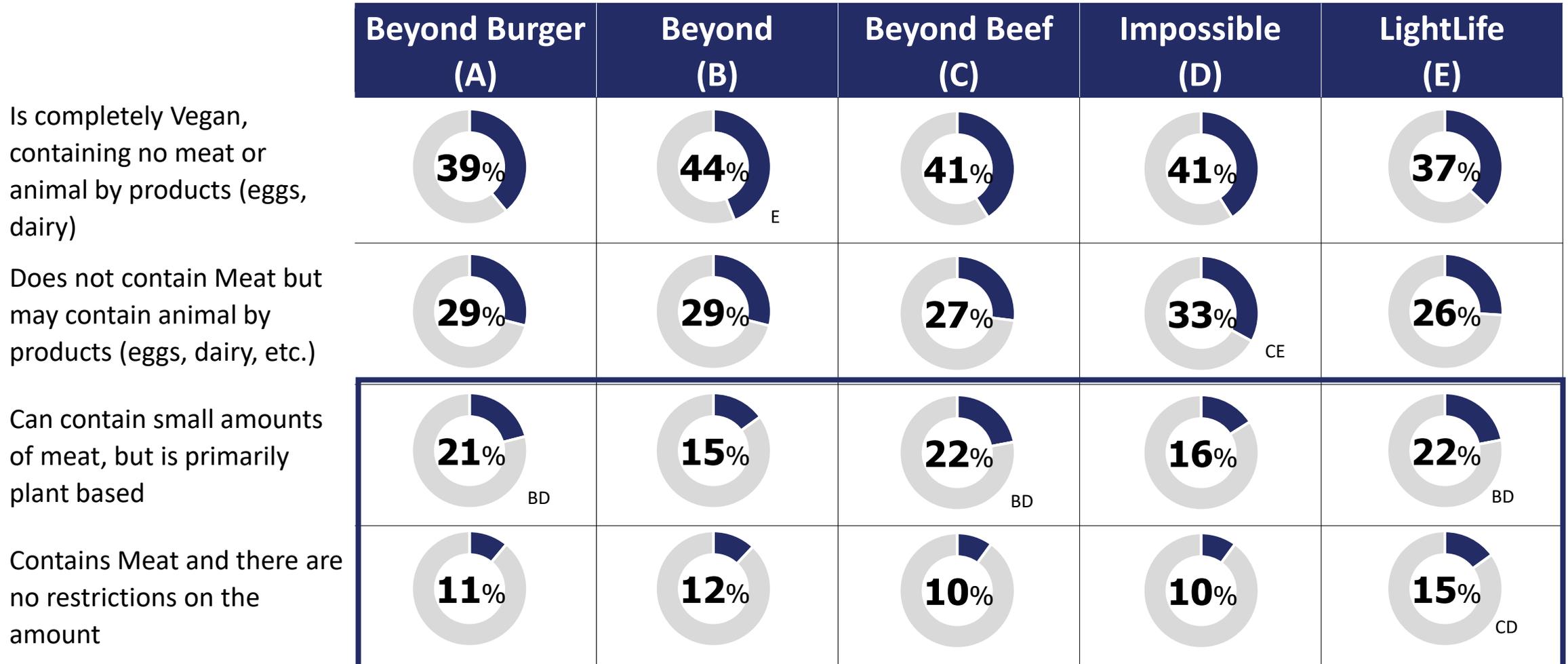


- Is completely vegan, containing no meat or animal byproducts (eggs, dairy)
- Does not contain meat but may contain animal byproducts
- Can contain small amounts of meat, but is primarily plant-based
- Contains meat and there are no restrictions on the amount

Exhibit 4

Product Definition Perception

Even more consumers feel various plant-based meat products contain some amount of meat



Statistical testing done at the 90% confidence interval—Letters indicate higher significance than that particular brand
Thinking of the image above, please select which statement best matches your perception of the product.

Exhibit 5

100% All Beef



Exhibit 6



Since 1894

January 31, 2020

Members of the House Committee on Agriculture,

The Kansas Livestock Association would like to clear up an issue raised during the hearing on HB 2437 in regard to the constitutionality of the bill on a First Amendment basis. The Kansas Justice Institute and Good Foods Institute claimed HB 2437 would be subject to strict scrutiny because it is a content-based restriction. This is not an accurate assessment. The government has a long history of regulating speech on food labels. For decades, both the state and federal government have established definitions of products and required food labels to adhere to these standards of identity. Other examples of the government regulating speech on labels appear in the “imitation” label requirement of the federal government, which is referenced in this bill and compels certain foods to use the word “imitation” on the label. There is a vast number of other disclaimers that are required to be on different product labels.

The question is, why can the government do this? It is because commercial speech is held to a lesser standard than individual speech. *See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 562 (1980). *Central Hudson* helps establish that false, deceptive, or misleading commercial speech can be restricted. *Id* at 563. “The government may ban forms of communication more likely to deceive the public than to inform it.” *Id*. The government may also require that a commercial message appear in a certain form, or include additional information, warnings, and disclaimers, as are necessary to prevent deception. *See Bates v. State Bar of Arizona*, 433 U.S. 350, 383–84 (1977). The court in *Bates* suggests a requirement of a disclaimer is preferable to a complete prohibition of speech. *See also In re R. M. J.*, 455 U.S. 191, 203 (1982). In *Zauderer*, the court upheld the requirement of a disclaimer if the required disclaimer was purely factual and uncontroversial information. *Zauderer v. Office of Disciplinary Counsel of Supreme Court*, 471 U.S. 626, 651, (1985). *Zauderer* indicates first amendment rights are “**adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers.**” *Id* (emphasis added).

KLA provided data to indicate consumers are confused about whether meat is contained in meat analog products that utilize identifiable meat terms. By their own admission, some companies selling meat analogs want consumers to believe their plant products are a form of meat. Therefore, the state has an interest in preventing the deception of consumers. HB 2437 relies on a disclaimer that is purely factual, and the disclaimer is reasonably related to Kansas’ interest to prevent consumer deception.

KLA also believes the bill would withstand a higher form of scrutiny applied to non-deceptive commercial speech. If commercial speech is not misleading or deceptive, the test is typically not strict scrutiny, but rather intermediate scrutiny. *Central Hudson*, 447 U.S. at 564. The state must assert a substantial government interest and the regulatory technique restricting speech must be

Exhibit 6

in proportion to that interest. *Id. See also United States v. Wenger*, 427 F.3d 840, 849 (10th Cir. 2005).

The state has a substantial government interest to ensure that consumers understand, clearly, they are purchasing a product different than meat when plant products are trying to emulate meat and consumers associate meat terms with animal products. *Central Hudson* requires “[t]he limitation on expression must be designed carefully to achieve the State's goal.” The 10th Circuit in *Wegner* states, “[A]lthough the regulation need not be the least restrictive measure available, it must be narrowly tailored not to restrict more speech than necessary.” This bill should meet those standards.

First, the definition of “meat analog” in HB 2437 is to ensure only meat analogs are subject to a disclaimer and that the bill does not broadly impact other foods or other speech. For instance, beef-flavored ramen noodles may continue to utilize the term “beef” without a disclaimer because ramen noodles are not a meat analog. Second, this bill does not limit the expression of meat analog companies. Companies may call their product whatever they like. This bill simply requires a concise disclaimer for consumer clarity and protection. We know from the court in *Bates* the law prefers a disclaimer over a prohibition. Finally, if the label conforms to the federal “imitation” label standard, the meat analog disclaimer is not required.

HB 2437 is carefully designed and narrowly constructed to achieve the state’s goal of ensuring that truthful and accurate information is provided to consumers on meat analog labels without restricting speech. Instead, the state would only compel speech to the extent necessary to inform the consumer meat analogs do not contain meat.

Thank you for the opportunity to follow up on concerns in regard to the First Amendment. Please let Aaron, Dean, or I know if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "TAS", enclosed within a large, stylized oval flourish.

Tucker A. Stewart
Associate Counsel