

Food Law

The newsletter of the Illinois State Bar Association's Section on Food Law

Letter From the Chair

BY CLAIRE A. MANNING

As chair of ISBA's relatively new Food Law Section Council, I provide this update of the varied issues we have been addressing since our inception in 2019. Despite having conducted most of our meetings via Zoom, I believe we have moved the ball forward on many of the below goals we established for ourselves at our very first meeting. Those goals are:

- To educate ISBA members on food law and policy;

- To monitor developments of the practice area;
- To provide timely analysis of local, national, and global food laws and policies;
- To train and enhance the professional skills of practitioners in this area through continuing legal education programs;
- To review, monitor, and propose

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Farm and Food Law: Is Climate Change Calling for a New National Perspective?

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Elsewhere in this newsletter I have written a Letter From the Chair explaining what the relatively new Food Law Section Council has been able to achieve in CLE programming since its inception in 2019. As explained, a highlight of this ISBA year has been jointly sponsoring a CLE with the University of Illinois' College of Agriculture and Consumer Economics (ACES) and the University of Illinois College of Law in Champaign, September 2022. Historically known as the Bock Agricultural Law & Policy Program Symposium, the Food Law

Section Council was a willing and valuable co-sponsor – and intends to do so again in 2023.

While I highlighted some of the topics we covered in the 2022 Bock Symposium, the keynote speaker was so dynamic she bears more substantial treatment. Professor Susan Schneider, Director of the L.L.M. Program in Agricultural & Food Law, University of Arkansas School of Law addressed the participants, via zoom, on the topic: "*Climate Change Disruptions:*

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legislation impacting food law, consumers, producers, and regulators;

- To discuss emerging technologies related to food production, harvest, and distribution;
- To provide resources for Illinois businesses and industry.

As with all section councils, we perform our work through continuing legal education programs (“CLE”), newsletter articles, and input on legislative bills related to legal issues of interest to the food industry. As many of the issues related to food law cross other issue areas (environment, agriculture, public health, administrative law), many of our section council members, including myself, have served in a variety of capacities on those related ISBA section councils. However, at our inception, we deemed it wise to further delineate various issue areas related to laws regulating or governing food. Those issue areas involve:

- The beverage and food delivery system;
- Innovation, labelling and technology;
- Regulation and litigation issues;
- Environment, sustainability, agriculture and farm to table;
- Food law education.

Members of the section council have signed up to lead discussions and assist in formulating CLEs in those areas. To date, we have had six CLEs, all of which were well attended with participants indicating value received in the program. Our first program addressed food waste and was entitled, “*Getting to Zero – Regulatory and Legal Programs to Reduce Food Waste in the Environment.*” Addressing this issue were James M. Jennings, Illinois IEPA, and Shantanu Pai, Assistant Sustainability Researcher at the University of Illinois’ Sustainable Technology Center of the Prairie Research Institute. The two speakers were both involved in an Illinois task force researching issues of food waste in the environment and offering proposed

solutions. (You will note in another area of this newsletter, that a bill is currently pending before the Illinois General Assembly related to reducing food waste in the environment.)

The next CLE program we conducted was entitled “*Hot Topics in Food Labelling: Plant Based Products and the Federal Regulation of Cell Based Meats.*” Again, this is a very hot topic in Illinois and nationally (and internationally) and was welcomed by those attending. On a more practical side, we next produced a CLE entitled, “*From Farm to Market: Legal Help for the Farmer.*” Also on the practical side, Rob Anderson of Anderson Law, a member of our section council who specializes in liquor licensing, organized and led a CLE entitled, “*Illinois Liquor Licensing Overview.*” We also addressed pesticide use in the production of food with the program, “*Illinois Foods: Pesticides Used, Exposure and Worker Protection.*”

Our most interesting and varied CLE, however, was one the Food Law Section Council co-sponsored with the University of Illinois College of Law. As part of the *Bock Agricultural Law and Policy Symposium* through the University of Illinois Department of Agriculture and Consumer Economics (“ACES”). It was a day long program held in Champaign, Illinois and provided 7.75 hours of MCLE credit. The keynote address was given by Susan Schneider, Director of the LLM Program on Food and Agriculture Law at the University of Arkansas. Her topic, “*Food Law: A National Perspective,*” was timely, thought provoking and engaging. See a summary of that presentation elsewhere in this newsletter.

Various other speakers at the Bock Symposium provided valuable instruction and insight into national and Illinois food law and policy. Tom Redick from the Global Environmental Ethics Council addressed “*Product Liability Prevention & the PFAS Problem.*” Jessica Guarino, a research post-doctorate at the University of Illinois, addressed, “*Misleading Food Labelling*

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and the Reasonable Consumer.” Michaela Oldfield from Gorman Heritage Farm provided a presentation on, *“Food Policy Councils, A Lawyer’s Perspective,”* wherein she provided everything a lawyer needs to know to establish or represent food policy councils.

The keynote lunch speaker, Professor Alexia Kulweic from the University of Wisconsin addressed, *“Legal and Policy Challenges faced by Independent Farms and Food Producers.”* Afternoon topics were equally engaging. Eric Greenberg, a Chicago attorney who regularly advises

clients on regulatory compliance with the FDA, presented, *“Two Hot Topics: Label Claims & General Recognition of Safety.”* Section Council member Elaine Vorberg of McCarthy Duffy LLP presented on her practice area: *“Legal Aspects of Financing a Food or Agtech Start-up.”* Terence Centner, a professor with the University of Nebraska, presented on *“Liability for Damages from Pesticides with Examples Involving Injuries from Glyphosate and Dicamba.”* Section Council member Lynne Ostfeld, who practices food law internationally, provided a presentation on *“Contracts and*

International Supply Chains in a Time of Uncertainty.” And finally, Bryan Endres, Section Council member and professor at the University of Illinois ACES (and coordinator of this excellent CLE program) presented on *“Agritourism Risk Management.”*

The Bock Symposium was an excellent example of what the Food Law Section Council can do in concert with others, here the University of Illinois ACES. This year, we plan to also again sponsor the Bock symposium jointly with the University of Illinois ACES Program, this time in Chicago. Details will be forthcoming. ■

Farm and Food Law: Is Climate Change Calling for a New National Perspective?

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Challenges in Formulating a National Food Policy.”

Quoting from the USDA’s website, specifically the 2018 National Climate Assessment, Professor Schneider explained how rising temperatures, extreme heat, drought, wildfires, and downpours will continue to create disruptions to agricultural productivity in the U.S – increasingly causing challenges to livestock health, declines in crop yields and quality – and threatening rural livelihoods, food security and price stability.

She explained how the direct impacts caused by elevated temperatures, scarce water resources, and extreme weather will impact crops and livestock. Her point was that the concentration of production in the U.S. makes our food system even more vulnerable, citing as just one example the concentration of production of certain foods in California and the southwest.

Calling for a new national food policy, Professor Schneider dubbed the Farm Bill – as “farm policy, but not food policy” – “food safety policies but not food security policies”. She examined the lack of coordinated diet, health and agriculture policies and spoke of the lack of coordinated policy regarding food production challenges that result from climate change. While she indicated there was increasing support for regional food systems, she noted an “insufficient impetus for the scale of change needed”.

She challenged participants to think about and lawmakers to address the following difficult questions: How to prioritize crops that make best use of limited water resources (the cotton, gourd, alfalfa problem); How to design disaster assistance and government-subsidized insurance that support farmers without encouraging unsustainable crops in vulnerable areas (the crop insurance for lost crops in wet areas problem); How to address water shortages, allocating fairly between urban and rural spaces (should food crops be prioritized?); How to (whether to?) limit government interference with market influences; How to prioritize healthy crops to address systemic health issues present in the US population.

We thank Professor Schneider for her thought-provoking presentation – and look forward to more exciting presentations at our next co-sponsored Bock Symposium, on September 15 in Chicago. ■

Food Law: Hot Topics for the Illinois Legislature this Session

BY CLAIRE A. MANNING

The Food Law Section Council is watching various bills that have been introduced that would impact food and agriculture and health in Illinois. Obviously, many of these bills will die in committee – some much sooner than others; nonetheless, the following bear watching:

House Bill 3849 (Cyril Nichols) Food Label - Standardization. Assigned to the Consumer Protection Committee and set for hearing the first week of March, this bill would amend the Illinois Food, Drug and Cosmetic Act to provide that the Department of Agriculture in conjunction with the Department of Public Health publish information encouraging food manufacturers and others related to labelling issues (“sell by” dates, etc.).

House Bill 2099 (Dave Vella) Food Truck Freedom Act. Assigned to the Consumer Protection Committee, this bill would provide new restrictions on units of local government in multi licensing of food truck businesses.

House Bill 1290 (Jonathan Carroll and others) Pet Food – Disclose Allergens. Placed on calendar for second reading on March 1, 2023. This bill amends the Illinois Commercial Feed Act of 1961 by providing that pet food and specialty pet food are misbranded if the label fails to disclose whether the pet food contains major food allergens. It defines “major food allergen” as milk, eggs, fish, crustaceans, tree nuts, wheat, peanuts, soybeans, and food ingredients that contain protein derived from those foods.

House Bill 1242 (Chris Miller) Food & Drug - Beef Packaging. Assigned to the Consumer Protection Committee on February 28, 2023, this bill would amend the Illinois Food, Drug and Cosmetic Act to provide that any packaging of beef sold in Illinois must contain on the label the beef’s country of origin.

House Bill 2524 (Sonya M. Harper)

EPA - Food Waste Reduction. Assigned to the Energy & Environment Committee on February 28, 2023, this bill would amend the Environmental Protection Act by providing findings of the General Assembly establishing a goal to reduce food waste in Illinois by 50% by 2030. Also provides that by October 1, 2024, the IEPA, in consultation with the Department of Agriculture and the Department of Public Health, must develop a State Wasted Food Reduction and Food Waste Diversion Plan. Also creates a fund to be used for specified purposes.

House Bill 2769 (Cyril Nichols) Health Local Food Initiative. Assigned to the Human Services Committee on February 28, 2023, this bill would amend the Illinois Public Aid Code to expand the Department of Human Services’ Health Local Food Incentives Program by expanding to provide grants to farmstands, mobile markets, community-supported agriculture sites, grocery stores, and other direct food retailers that participate in the SNAP program.

House Bill 2879 (Sonya M. Harper) Farm to Food Bank Program Act. Assigned to the Agriculture & Conservation Committee on February 28, 2023, this bill would establish the Illinois Farm to Food Bank Program within the Department of Human Services. The program will expand the availability of nutritious, locally grown, raised, or processed foods for Illinois’s emergency food system.

House Bill 3450 (Sonya M. Harper) Food Prescription Pilot Program. Assigned to the Appropriations - Health & Human Services Committee on February 28, 2023, this bill would amend the Medical Assistance Article of the Illinois Public Aid Code and require the Department of Healthcare and Family Services to establish a 2-year pilot program that would provide medically supportive food to medical assistance recipients through one or more food prescription programs

operated by a participating managed care health plan.

House Bill 3638 (Joyce Mason) Food Handling-Allergen Notice. Assigned to the Consumer Protection Committee on February 28, 2023, this bill would amend the Food Handling Regulation Enforcement Act by directing the operator of a restaurant to identify on the restaurants’ menus those menu items that contain milk, eggs, wheat, fish, shellfish, peanuts, tree nuts, soy, or sesame.

Senate Bill 167 (Ram Villivalam) Kosher & Halal Foods. Assigned to the Senate Subcommittee on Government Operations, this bill amends the School Code by requiring public schools to provide both halal and kosher food options in school cafeterias.

Senate Bill 2432 (David Koehler) Local Food Infrastructure Grant. This bill would require the Department of Agriculture to develop and administer an annual Local Food Infrastructure Grant Program to enhance local food processing, aggregation, and distribution within the State. ■

Food-Related Legislation Bills

BY ANGELA PETERS

Nineteen bills that were recently sent to the Food Law Section Council to review and comment on:

- HB 1242- Food and Drug-Beef Packaging
- HB 1266- Food Delivery Service-Fee Cap
- HB 1290- Pet Food-Disclose Allergens
- HB 2099-Food Truck Freedom Act
- HB 2524-EPA-Food Waste Reduction
- HB 2769-Health Local Food Initiative
- HB 2879-Farm to Food Bank Program Act

- HB 3450-Food Prescription Pilot Program
- HB 3527-Food Handling-Providers
- HB 3557-Local Farm and Food Products
- HB 3638-Food Handling-Allergen Notice
- HB 3849-Food Label-Standardization
- SB 152-Sale of Unpasteurized Milk
- SB 167-KOSHER & HALAL FOODS
- SB 1697-SNAP-HOT FOODS-GROCERY STORES
- SB 1936-FOOD & DRUG SODIUM NITRATE

- SB 2022-Schools-Food Scoville Scale
- SB 2212-Consumer-Owned Containers
- SB 2432-Local Food Infrastructure Grant

We would appreciate your comments on any proposed legislation. (<https://central.isba.org/home>) ■

Food Law Items of Interest in This Month's ISBA Central Community

BY ANGELA PETERS

Food Law Section Council member and our former chair, Lynne Ostfeld, has posted a number of very relevant and interesting posts in the ISBA's Central Community.

This was just announced in GAIN (Global Agricultural Information Network):

1. European Union: European Commission Authorizes Two GE Crops for Import

On February 22, 2022, the European Commission (EC) approved two genetically engineered (GE) crops (1 soybean and 1 oilseed rape) for food and animal feed. The two authorizations were published in the European Union's Official Journal on February 24, 2022, and they remain valid for 10 years.

European Union: US Beef Imports into the EU High Quality Beef Quota Increased in 2022

U.S. beef exports under the EU High Quality Beef (HQB) quota increased by

over 2,000 metric tons (MT) in 2022, to 13,438 MT. The quota usage rate increased to 52.9 percent, up from 50.1 percent in 2021, despite an increase in the quota from 23,000 MT in 2021 to 25,400 MT in 2022.

The US won the "war" that the EU must allow the importing of American beef but the primary marketplace is still the restaurant and hotel. The average French consumer is still a bit hesitant about importing American beef due to concerns about the hormone content/additions.

2. Food Safety Magazine is sponsoring a Food Safety Summit May 8-11, 2023 at the Donald E. Stephens Convention Center in Rosemont (on the NW edge of Chicago and close to O'Hare Airport). For more info, contact them at: FoodSafetySummit@events-bnp.com.

3. A group of Illinois ag organizations is launching a campaign to show people that 96% of the farms in Illinois are run by family farmers. The video, part of which was shown at the Super Bowl, is at this link-www.youtube.com/watch?v=5e3dMPt49r4.
4. Attached is the link to an interesting, nay mesmerizing, video about how a great variety of food around the world is harvested (today, not at the beginning of agriculture production when Egypt created the plow)-www.linkedin.com/feed/update/...
5. Magdalena Zielinska-Kuc, a Polish lawyer who participated in the recent UIA webinar about the effect of sanctions on Russia made some interesting comments about the effect on ag and food, which are not directly sanctioned: both Russia and

Ukraine are key global suppliers of cereals and sunflower oil. “Every 3rd portion of French fries in the EU is fried in Ukrainian oil”. In 2021 Russia and Ukraine were responsible for 25% of global wheat exports (FAO, 2022). FAO also reported that Sunflower oil exports from both countries was 72% of global exports in 2021. The main Ukrainian commodities account for substantial imports by other countries in the region: (wheat) 80% by Lebanon, 46% by Pakistan, 44% by Libya, 42% by Tunisia; (corn) 55% by China, 32% by the EU, 32% by Turkey, 26% by Egypt; (Sunflower Oil) 75% by India, 74% by Iraq, 62% by the EU, 59% by China. If the item itself is not directly sanctioned, the loss to the world is due to transportation problems with Russia trying to block shipment by boat. These problems raise the cost of insurance on the boat and the cargo. Attorneys for buyers and sellers are trying to figure out how to deal with contracts rendered difficult, more expensive or simply impossible. Emergency substitutions of a raw ingredient into a transformed product raises legal issues in the food labeling sector.

6. There have been a number of stories the past few days of interest to farmers:

Mexico is still talking about not allowing the import of GMO corn; News Nation did a whole segment with a NE farmer who talked about the financial impact, given that he has bought all his seed and inputs, and the effect that this will have on the world’s food supply if we have to go back to using a lot more chemicals, not to mention the effect on the environment. Many states are looking to block the sale of farmland to China and others. China owns less than 5% I believe but has increased its ownership by 50% the past year; a big worry is the closeness to US military bases; the other worry is that they need to raise their food here for shipment to China, which has not as much arable land as one would think. The price of eggs is astronomical in Calif,

according to the WSJ, because of its laws requiring laying hens to be cage free, possibly twice as high as in the Midwest. There is a bit about the differential between white and brown eggs (my mother raised on a farm said that there is no difference, it depends on either the hen or the feed). They want a “humanly” raised egg. I twice asked my Harvard educated farmer uncle about free range eggs. He asked who felt better - me or the hen? Then Consumer Reports did an article that eggs from free range hens were not necessarily healthier because hens eat where they defecate. That is likely why my great-aunts buried pottery shards in the chicken coop yard - to get the hens to move around and scratch.

7. News Nation had an extensive segment this morning about Mexico planning to not allow the import of GMO corn. The anchor interviewed a farmer in NE with a large farm about the effect on farmers. He pointed out that GMO corn saves on chemical applications and allows for a greater profit for the farmer. It is more climate and soil friendly. He talked about how this affects not just corn eaten or feed to animals but downstream products. He pointed out that he has already bought his seed and chemicals for the year. Not having this market, which is considerable, will affect thousands of workers and cost the US economy billions. What will we all do with the corn grown and harvested?

There is a mistaken assumption that GMO corn has been created by adding a chemical or more. The French have periodically fought it on the basis that not enough time has been spent studying it. Years ago NPR reported a study which found that the earliest known GMO was 8,000 years ago when an earthworm changed the construct of a sweet potato. Ag Sec’y Vilkas (sp ?) has this problem on the top of his list of things to be resolved.

8. Laws to implement labeling of products grown/raised in the US have been bouncing around, particularly since the mid 1990’s and Mad Cow Disease. Country of

Origin Labeling has been in effect, voided, resurrected..... One purpose was to protect American raised beef which was not fed anything which might cause or spread Mad Cow disease.

9. The latest iteration is contained in an article from Farm Journal’s AgWeb discussing the USDA wanting to limit use of “Product of USA” to only items fully grown/raised in the US. Canada and Mexico may fight this because of the treaty we have with them to not discriminate against their products (tho Mexico wants to ignore this re GMO crops). The other issue is that there are feed lots in Canada used by farmers in the northern states, particularly those near cities where residents think that they should not have to smell manure. For more info, read: www.agweb.com/news/livestock/beef/... ■

Save the Date!

The ISBA's Food Law Section Council and the University of Illinois' Bock Agricultural Law & Policy Program will co-host the 5th Annual Bock Agricultural Law & Policy Fall Symposium on **September 15, 2023** from 8:00 AM – 5:00 PM. The program will be held at the ISBA's Chicago Regional Office, 20 S. Clark St., Suite 900, Chicago, IL 60603-1802.

The symposium will provide updates to a variety of food and beverage topics of interest to legal practitioners and other professionals in the food and agricultural

industries. Anticipated topics include product development and innovation, agrivoltaics, beverage licensing, food labels, and an update to government food assistance programs. The goal of the symposium is to encourage dialogue and information sharing between the agricultural and food law sectors by bringing together professionals from both realms.

Check the ISBA's website and future Food Law Section Council newsletters for more details in the future. ■



2023
ILLINOIS STATE BAR ASSOCIATION
Annual Meeting
Chicago

June 8-10, 2023
Renaissance Chicago Downtown Hotel

For the first time in over 45 years, the ISBA Annual Meeting will be held in downtown Chicago! We are planning substantive programming and social events designed to appeal to all who attend as we welcome Shawn Kasserman as ISBA's next President.
More details will be available in the coming months.
We hope to see you there!

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