



Milk Unfair Trade Practices

Issue

Tennessee law regulates the retail and wholesale trade practices for milk products however, market conditions for the original purpose of the law no longer exist. The dairy industry is national in scope and endures lower consumption and oversupply. Milk products include virtually all products such as bottled milk, cheeses, ice cream, and other creams. Current law prohibits milk products from being sold below cost at the wholesale and retail level in an effort to prevent price wars and milk being used as a loss leader to entice customers. The dairy industry has changed dramatically at the farm, wholesale, and retail level since passage of the law. The law was intended to protect small, private grocers, local dairy processors, and dairy farmers who sold directly to local processors and grocers. Since the 1970s, milk has become less of a staple product in homes and competes with other beverages on store shelves which do not have the same trade practice restrictions.

Background

State fair trade laws originated during the height of the Great Depression. California was the first to pass fair trade laws. The origin of the laws came from small pharmacies trying to remain competitive with larger pharmacies. The Great Depression caused states to consider economic regulation to ensure fair trade corresponded with free trade. Throughout the 1930s every state, including Tennessee, passed some type of fair trade laws.

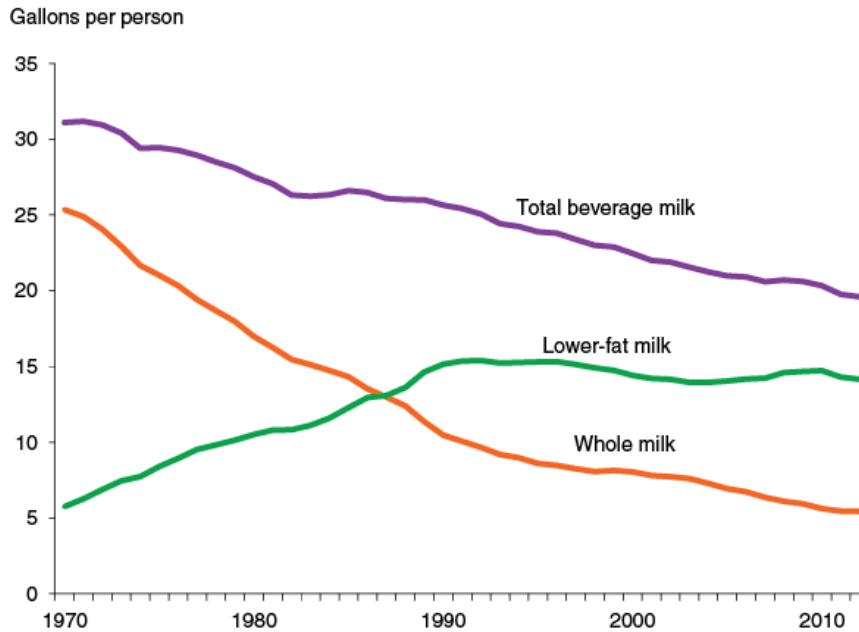
Tennessee's Milk Unfair Trade Practices law closely mirrors fair trade laws of the time but is specific to milk products. It prohibits processors and distributors from advertising or selling any milk product for less than cost to the processor or distributor. It also prohibits retailers from advertising or selling milk products for less than cost to the retailer. Milk products includes all or any one of the following: market milk, pasteurized milk, vitamin-D milk, homogenized milk, flavored milk or flavored milk drinks, sweet cream, whipping cream, homogenized cream, skim milk, cottage cheese, buttermilk, cultured buttermilk, and all other products offered for sale by a milk processor or distributor, derived, in whole or in part, from milk and frozen desserts.

It was first passed in 1955 to keep retail and wholesale prices of milk and milk products at levels above cost to protect small retailers, dairy processors, and dairy farmers. Large grocery store chains were a new trend and every community was served by a small grocery. Milk products were considered a staple household food item and fluid milk did not compete with any other beverage. The law also prevented milk from other states being sold in Tennessee at a "dumping" price at a time when milk was supplied at a community level. Changes made in 1961 were described in the 1961-62 Tennessee Department of Agriculture Biennial report: "The intention of the legislature was to strengthen the provisions relating to sales practices and to provide for the orderly enforcement of the Fair Trade Act....". The report also highlighted new technology for the time which included refrigeration and improved roads making it easier to transport milk longer distances. The publication said there were 19 processing plants outside of Tennessee selling milk in Tennessee.

The dairy industry has changed dramatically since 1961. Grocery store chains are the norm instead of the exception and processors are owned by multi-state corporations. Some grocery chains own processing plants. Fluid milk also competes with several other beverages on store shelves and milk products no longer are a major portion of the household food budget. Tennessee is considered a milk deficit state meaning more milk products are consumed in Tennessee than what is actually produced in Tennessee. A considerable portion of raw milk processed in Tennessee plants is from other states.

Milk consumption has fallen for several years. USDA estimates that per capita consumption has fallen from 339.2 pounds per person in 1970 to 275.9 pounds in 2012. There are many factors that have caused this trend but price in comparison to other beverages and products is a natural reason.

Milk availability down 37 percent since 1970



Source: USDA, Economic Research Service, Food Availability (Per Capita) Data System.

Questions

1. Does the Milk Unfair Trade Practices law still protect dairy farmers in Tennessee?
2. Does the Milk Unfair Trade Practices law help or hurt small grocers competing with larger grocery chains that own processing plants or have legal ways to lower costs?
3. Would consumption of milk products increase in Tennessee if retailers were able to sell below costs for advertising and marketing purposes?

Farm Bureau Policy (partial)

Dairy

Tennessee dairymen provide wholesome, nutritious milk products for consumers and deserve realistic prices for their products. The inability of Southeastern production to satisfy market demand for volume has resulted in federal order, creating a dumping ground for transported milk. These pooling provisions have resulted in lower blend prices. The resulting decrease in Class I utilization has drastically impacted milk prices and impeded the ability of local family dairy farms to survive. It is time the dairy farmers of Tennessee and other southern states be given an equal playing field allowing them to realize the rewards of good management and efficiency.