IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

EMPACADORA DE CARNES DE FRESNILLO, S.A. DE C.V., BELTEX CORPORATION, and DALLAS CROWN, INC. Plaintiffs	§	
VS.	§	CIVIL ACTION NO. 4:02-CV-0804-Y
TIM CURRY, District Attorney, Tarrant County, Texas, and BILL CONRADT [ED WALTON], District Attorney, Kaufman County, Texas Defendants	§	
AND	§	
UNITED STATES DEPARTMENT OF AGRICULTURE, Party Needed for Just Adjudication	§	

ANSWER OF TIM CURRY, TARRANT COUNTY CRIMINAL DISTRICT ATTORNEY TO PLAINTIFFS' AMENDED COMPLAINT

TO THE HONORABLE TERRY MEANS, UNITED STATES DISTRICT JUDGE:

Comes now TIM CURRY, the duly elected and qualified Criminal District Attorney of Tarrant County, Texas, a Defendant herein, [hereafter "DA" or "Defendant"] and files this his Answer to Plaintiffs' Amended Complaint ["Complaint"], denying that Plaintiffs are entitled to the relief they seek. This is a States' Rights case; the issue is whether Texas may enforce a State statute within its borders. The law in question currently applies equally and without discrimination to Texans, persons from sister-States, and international visitors alike. The State statute at issue is in

effect and has not been preempted or repealed. [There is pending (introduced) State legislation, previously filed with the Court, which if passed into law could permit the export of horsemeat for human consumption.]

Response to Specific Provisions of Amended Complaint.

Except as admitted herein, Defendant denies each part of the Plaintiffs' Amended Complaint.

1. Jurisdiction.

1.0 Defendant admits that this Court has jurisdiction over the dispute. Defendant admits that there is a genuine, imminent threat of prosecution against Plaintiff Beltex Corporation ["Beltex"] by the Tarrant County Criminal District Attorney, and Defendant Curry understands that there was such a threat against Plaintiff Dallas Crown, Inc. ["Dallas Crown"] by Bill Conradt, the predecessor to Ed Walton. Defendant Walton is the newly-elected Kaufman County Criminal District Attorney. Defendant Curry understands that the current Kaufman County DA has not threatened criminal enforcement action against Dallas Crown; Walton is apparently a party solely by operation of FRCP 25(d), and not because of any action or inaction on his own part since taking office. The circumstances set forth regarding Plaintiff Empacadora De Carnes De Fresnillo, S.A. De C.V. ["Empacadora"] do not confer standing for Empacadora to be in this lawsuit; Empacadora should be required to clearly acknowledge facts that confer standing to sue one or more of the Defendants or it should be denied further consideration in this lawsuit. Defendant notes that Empacadora states that it is prosecution against Beltex, not itself, that concerns it. Plaintiffs' Reply to Defendant Tim Curry's Opposition to Temporary Injunction, para. 3, p. 1. Concern about its Tarrant County business associate is too attenuated to support standing for Empacadora to take part in this challenge. Defendant admits that the DA's are State actors and that any threat by them of prosecution are as a

matter of law under color of State law and fully within their State function as prosecutors. Accordingly, they are immune from any suit for damages. Defendant denies that the actions threatened by Defendants will deprive any Plaintiffs of any rights, privileges, or immunities secured by the Constitution of the United States and Acts of Congress. This is a federal question suit. This is not a diversity lawsuit, since there is not complete diversity of the parties; there are Texas parties who are Plaintiffs and Texas parties who are Defendants. Defendant denies that Plaintiffs are entitled to any of the relief they seek. Except as otherwise denied, Defendant admits the jurisdiction statement of paragraph 1 of the Amended Complaint.

2. Background.

2.1 The precise question in this case is whether Texas may enforce against the three (or, more appropriately, two) Plaintiffs the following provisions of a current Texas statute:

> Texas Agriculture Code
> **§ 149.002. Sale or Possession of Horsemeat**
>
> A person commits an offense if:
>
> (1) the person sells, offers for sale, or exhibits for sale horsemeat as food for human consumption; or
>
> (2) the person possesses horsemeat with the intent to sell the horsemeat as food for human consumption.
>
> **§ 149.003. Transfer of Horsemeat**
>
> A person commits an offense if the person:
>
> (1) transfers horsemeat to a person who intends to sell the horsemeat, offer or exhibit it for sale, or possess it for sale as food for human consumption; and
>
> (2) knows or in the exercise of reasonable discretion should know that the person receiving the horsemeat intends to sell the horsemeat, offer or exhibit it for sale, or possess it for sale as food for human consumption.

The above statute is currently in force in Texas, has not been repealed, is not preempted, and has not been struck by the Courts. It currently applies equally and without discrimination to intrastate commerce, to interstate commerce, and to international commerce. There is a severability clause in the 1949 predecessor legislation; if one part of what is now Chapter 149 is "for any reason unenforceable", the remainder of the statute remains in effect and fully enforceable, as provided by Section 8 of Acts of the 51st Legislature, 1949, Page 79, Chapter 45, copy at Attachment B hereto. Defendant admits that Beltex and Dallas Crown export horsemeat for sale for human consumption from Texas to foreign countries. Beltex and Dallas Crown are indeed the last two known commercial horse slaughtering plants in the United States that slaughter horses for sale for human consumption. Defendant notes that in paragraph 2.1 of their Amended Complaint Plaintiffs plead that 'Plaintiffs make no sales of horsemeat for human consumption in the United States'; thus, Plaintiffs are only presenting to this Court the issue of whether Chapter 149, Texas Agriculture Code, is enforceable when the horsemeat is commercially transported for consumption outside of the United States. Defendant admits the last sentence of paragraph 2.1 of the Amended Complaint. However, Chapter 149 applies to all horsemeat sold for human consumption, regardless of the location of the ultimate human consumer.

2.2 Cattle are not at issue in this case. Defendant admits that the Spaniards reintroduced horses to the Western Hemisphere approximately 500 years ago. The earliest known horse is believed to have existed from 55 to 45 million years ago; remains of this horse have been found in Utah, Wyoming, and Europe. The predecessor of today's grazing horse is believed to have appeared approximately 17 million years ago. Horses are believed to have become extinct in the Western Hemisphere approximately 8,000 years ago. They returned, probably in about 1493, when the Spanish brought

them back to this hemisphere. Because of the land bridge to Europe that previously existed, these horses may be distantly related to those horses that roamed the Western Hemisphere in prior eras. There are now millions of horses on this continent, approximately 7 million in the United States. Defendant admits that horsemeat has long been consumed in Europe. Defendant denies that "human consumption of horsemeat has never been popular enough to warrant commercial sales" in the United States, alleged in paragraph 2.2 of the Amended Complaint. During World War II, there were retail horsemeat markets in the eastern United States; these markets catered to persons of foreign origin who had been accustomed to having horsemeat in their diets in their native lands. Thus, any suggestion that there is no body of knowledge or domestic experience with horsemeat consumption in United States history would be in error. There was adequate domestic experience for the Texas Legislature to have made an informed decision when it put the horsemeat laws into place. The Texas Legislature acted from its then-contemporary knowledge of events in the United States, not from some uninformed cultural objection to persons in foreign countries eating horsemeat, as Plaintiffs imply. Defendant admits that Plaintiffs and other horse slaughterers have found horse slaughtering to be commercially successful. A little over a decade ago there were several horsemeat processing plants in the United States; now there are only Beltex and Dallas Crown. Defendant admits that horse slaughterhouses have operated profitably for a number of years, at least since the approximate time that a former procurer of horses for the United States government and its allies during World War I (for use in combat, not for food), persuaded the French government to lift French restrictions on importing U.S. horsemeat following World War I. At that time, the United States government enacted the Federal Horsemeat Act of 1919, 41 Stat. 241, 66th Congress, 21 U.S.C.A. § 96, repealed by Pub. L. 90-201 Sec. 18, Dec. 15, 1967, 81 Stat. 600, note at 21 U.S.C.A.

§ 601. The 1919 Horsemeat Act, repealed, now 21 U.S.C.A. § 619, put Federal government inspectors in place, as demanded by the French government in order to accept U.S. horsemeat exports. France did not beg for exported American horsemeat; it tolerated it. The 1919 law served to ensure that at least the same minimum Federal meat inspection and handling rules would apply to horsemeat in commerce as had previously applied to other meat in commerce. Through the current FMIA, they still do. Except as otherwise denied, Defendant admits paragraph 2.2 of the Amended Complaint.

2.3 Defendant admits that the 1945 Texas Meat Inspection Law was passed in the 49th Regular Legislative Session. Therein, the Texas Legislature indicated that the purpose of the law was to protect human health. Section 2 of the Act provides "This Act shall be construed so as to effectuate its general purpose, to prohibit and prevent the sale of food for human consumption of meat from animals where said animals suffer from diseases communicable to human beings, and to provide adequate and uniform regulations for inspection of meat and meat products intended for human consumption, thereby protecting the public health." The 1945 law was split into two parts; the meat inspection laws (which did not include horses) were placed in 4476-3, Revised Civil Statutes. The prohibition on eating horses, dogs, cats, and various other animals was placed in Penal Code 719d. Plaintiffs correctly set out the Act's prohibition on the sale of horsemeat in Section 18 of the 1945 law (former 719d Penal Code). The detailed 1949 horsemeat ban law, initially placed at 719e Penal Code, is substantially similar, but not identical, to the current law, which was enacted in 1991, purportedly as a nonsubstantive codification of prior law. It is true, as Plaintiffs admit, that the original expressed purpose of the 1945 Texas horsemeat law was to protect the public from unhealthy meat, and it is also true that the Texas Legislature has decided that, healthy or not, people

should not sell horsemeat to others for human consumption. That remains Texas law today. Plaintiffs' paragraph 2.3 of the Amended Complaint truncates the explanation of Legislative purpose. A copy of the entire 1945 Act is attached hereto and incorporated herein as Attachment A. Except as otherwise admitted, Defendant denies paragraph 2.3 of the Amended Complaint.

2.4 The exact tonnage of world horsemeat production is not a material issue in this lawsuit; Defendant accepts Plaintiffs' representations in paragraph 2.4 of the Amended Complaint.

2.5 Defendant admits the first sentence of paragraph 2.5 of the Amended Complaint. Defendant admits that a substantial number of the horses slaughtered by Plaintiffs originate in other States and are transported in interstate commerce to the Texas slaughtering plants. Defendant accepts that the number is not materially different from the 90% sworn to by Plaintiffs Beltex and Dallas Crown in the attachments to their Motion for Temporary Injunction. There is a wide range of therapeutic and recreational uses for 'used' horses. Defendant denies Plaintiffs' assertion that "horses sent for slaughter are typically older, neglected, displaced, or retired animals no longer useful for saddle, ranch, recreation, breeding or racing activities." Except as denied, Defendant admits paragraph 2.5 of the Amended Complaint.

2.6 Defendant denies that downing a horse with a charge-powered (blank shot) captive bolt stunner (the method used by Beltex and Dallas Crown) is necessarily "humane" to any observing condemned horse next in the queue, but acknowledges, as he must, that the captive bolt stunner is a method of slaughter legally considered humane by the Federal government's statutes and regulations and by the State's regulations. When competently and properly applied, the method rapidly drives the captive bolt forcefully into the head of the animal and renders it impervious to further pain. If it is improperly applied, that anesthetic result is, unfortunately, not achieved. Defendant admits that the

captive bolt stunner is also a method used to stun cattle at slaughter. The stunned cattle and horses are then "stuck" (cut) and bled to death. Defendant admits that USDA inspectors have a public duty to be present at Beltex and Dallas Crown operations during all operating hours. Although thought to be swift and effective when done correctly, the reason that the animals are stunned and killed in this fashion is probably not because it is a gentle way to die but because when correctly done captive bolt stunning is quick, effective, inexpensive, and does not impair the food value of the resulting meat. Defendant admits the last sentence of Amended Complaint paragraph 2.6. Except as admitted, Defendant denies paragraph 2.6 of the Amended Complaint.

2.7 Chapter 149 simply does not apply to zoo or endangered animals eating horsemeat. Defendant denies that any zoo animal or endangered species is dependent on horsemeat sold for *human* consumption for the survival of the species, while acknowledging that horsemeat prepared to human consumption standards is one of the items currently fed to some zoo animals and to some endangered species. Defendant denies that Plaintiffs and others are prohibited from making baseball covers, shoes, leather products, violin bows, pet food, fertilizer, or other products from horses. Indeed, Plaintiffs admit as much in paragraph 7.5 of their Amended Complaint. Defendant denies that any organization or person party to this suit will be irreparably injured if the Plaintiffs are not permitted to process horsemeat for human consumption. Those parties-Plaintiff who would be impacted are in violation of a law of the State of Texas or derive benefit through someone else in such violation; demanding that all comply with the law should not be recognized as an 'irreparable injury'. The examples given by Plaintiffs (testing for anemia, horse thief policing efforts, veterinary school projects, medical research, horse shoeing instruction, animal food, treatment of any cardiovascular disease, heart surgery, and so on) are not prohibited by Chapter 149. All the uses of horse parts

lauded by Plaintiffs, except for those prohibited by Chapter 149 of the Texas Agriculture Code, can proceed without fear of prosecutive intervention (unless other laws not relevant to this lawsuit are broken). Except as denied, Defendant admits paragraph 2.7 of the Amended Complaint.

2.8 Defendant DA opposes the acts of Plaintiffs because they are in violation of the plain language of Texas law; it is his duty to uphold the law and when sued to defend challenged Texas statutes. The former Texas Attorney General issued a formal opinion that Defendant should enforce Chapter 149, and two Texas State Representatives have written to ask Defendant DA to look into Beltex's slaughter operations. The opinion and the letters from the Representatives were received in August, 2002. Defendant denies that all people who oppose horse slaughter can be lumped together in one or two categories. Defendant admits that in Texas horses are not normally eaten by humans. Defendant denies that there are 'no' legitimate health or safety issues involved, but the existence or non-existence of health and safety issues would not be dispositive, since States are not limited to nationally-recognized health and safety issues in their local legislation. Defendant acknowledges, as he must, that USDA and FMIA recognize that from at least a health perspective horsemeat is edible by humans. States are not required to continually review their classic statutes to determine if the original purpose is still the justification that would be expressed for keeping the law on the books. Defendant admits the last sentence of paragraph 2.8 of the Amended Complaint. Except as admitted, Defendant denies paragraph 2.8 of the Amended Complaint.

2.9 The former Attorney General issued his opinion on August 7, 2002. The former Attorney General found that the Texas Department of Agriculture lacks authority to investigate and prosecute criminal violations of Chapter 149, but did not suggest that Texas peace officers were barred from their usual law enforcement role with regard to Chapter 149's penal provisions. Otherwise,

Defendant admits paragraph 2.9 of the Amended Complaint.

3. Defendants.

3.1 Defendant Tim Curry is the Criminal District Attorney of Tarrant County. Defendant admits the first and second sentences of paragraph 3.1 of the Amended Complaint. Defendant admits that prosecutor Richard Alpert signed the August 29, 2002, letter; the letter was drafted for his signature by the office. Defendant admits the remainder of paragraph 3.1 of the Amended Complaint. Defendant DA is duty-bound to defend the statutes of the State of Texas and it is his privilege to do so, protecting Texans and the right of the Texas Legislature to pass such laws as it, in its discretion, finds to be in the best interests of Texas.

3.2 Ed Walton is the immediate successor in office to Bill Conradt, as Criminal District Attorney of Kaufman County. Otherwise, Defendant admits paragraph 3.2 of the Amended Complaint.

4. Plaintiffs.

4.1 Defendant accepts Plaintiff Beltex's pleading that all of its horsemeat product for sale for human consumption – that is, all product that falls under Chapter 149 – is currently exported from the United States. Defendant denies that all of the Beltex commercial product for human consumption over the past 27 years has always been exported from the United States, though that appears to be the case currently and for the period covered by the applicable criminal statute of limitations, to the best of Defendant's knowledge. Thus, the issues before the Court are limited to those involving horsemeat that is commercially exported for human consumption outside of the United States. Beltex is not challenging the prohibition on sale for human consumption within Texas or the United States. However, Chapter 149 currently applies regardless of the location of human consumption. Since corporations may have multiple business interests and they may change over time, Defendant

does not know that Beltex will cease all corporate operations if Chapter 149 is enforceable. However, if it is enforceable Beltex is reasonably expected to cease all horsemeat operations in Texas since Beltex would be subject to prosecution, conviction, and an injunction banning the company from all meat (not just all horsemeat) operations. Except as denied, Defendant admits paragraph 4.1 of the Amended Complaint.

4.2 Dallas Crown is not located in Tarrant County, and Defendant Curry does not by his answer intend to intrude upon any prosecutorial decision or assessment made by the Kaufman County Criminal District Attorney. Defendant Curry accepts Plaintiff Dallas Crown's pleading that all of its horsemeat product for sale for human consumption – that is, all product that falls under Chapter 149 – is currently exported from the United States. Dallas Crown is not challenging the prohibition on sale for human consumption within Texas or the United States. Thus, as Defendant Curry understands it, the issues before the Court are limited to those involving horsemeat that is commercially exported for human consumption outside of the United States. However, Chapter 149 currently applies regardless of the location of human consumption. Since corporations may have multiple business interests and they may change over time, Defendant does not know that Dallas Crown will cease all corporate operations if Chapter 149 is enforceable. However, if it is enforceable Dallas Crown is reasonably expected to cease all Texas horsemeat operations since Dallas Crown would be subject to prosecution, conviction, and an injunction banning the company from all meat (not just all horsemeat) operations. Except as denied, Defendant admits paragraph 4.2 of the Amended Complaint.

4.3 Defendant states that Dallas-Fort Worth International Airport is located in great part, but not entirely, in Tarrant County, Texas. Defendant denies that Empacadora commits any violation of

Texas Agriculture Code Chapter 149 within Tarrant County or within the jurisdiction of the Tarrant County Criminal District Attorney. Because Defendant understands that Empacadora does not act within Tarrant County and that the product of Empacadora is not owned by Empacadora nor otherwise handled or transferred by Empacadora when the meat is in Tarrant County, Defendant denies that Empacadora commits any acts within the jurisdiction of the Tarrant County Criminal District Attorney that are contrary to the plain language of Chapter 149, Texas Agriculture Code. Plaintiffs' Reply to the Response to the Motion for Temporary Injunction indicates that Empacadora probably does no act within the prosecutorial jurisdiction of either Defendant, although it does business with Tarrant County-based Beltex. Empacadora does not show standing to be party to this lawsuit against these Defendants. Defendant accepts Plaintiffs' averments of fact in the first eight sentences of paragraph 4.3 of Plaintiffs' Amended Complaint. Defendant denies that Chapter 149 constitutes an impermissible embargo on a product in international commerce and asserts that the powers of the State of Texas are not impaired by current international obligations to such an extent that Texas would be required to permit prohibited substances, including horsemeat for human consumption, into or out of the State. And, that issue is not properly before this Court. Texas currently treats foreign interests the same as its citizens and all others, no better and no worse: it is effectively illegal to commercially slaughter horses in Texas for human consumption, and it is illegal to bring horsemeat into the State or out of the State if it is for sale for human consumption. Further, only horsemeat, not living horses, is regulated by Chapter 149 of the Texas Agriculture Code. Mexican corporate interests may, without violating Chapter 149, still ship horses into and out of Texas, so long as they are alive and they are shipped in accordance with any other applicable laws. [There is pending (introduced) Federal legislation, previously filed with the Court, which if passed

into law could prohibit the interstate and international transportation of both horsemeat and live horses for commercial slaughter for human consumption.] Mexican corporate interests may still, without violating Chapter 149, ship horsemeat and horse products into and out of Texas, so long as the shipped horsemeat is not and will not be for sale for human consumption. To say that prohibiting someone from violating Texas law closes the border to them is not accurate. The border remains open; the only prohibition is on a forbidden product and forbidden action, not on lawful trade or on any lawful commerce that does not contravene Texas law. The effect of this Texas law is to uphold the will of the Texas Legislature, as expressed in duly passed Texas legislation. The Texas Legislature, in its discretion, has determined that everyone – Texas resident, resident of a sister-State, and foreign national — should be treated alike. No unfair advantage is given to Texas residents. No unfair burden is placed on Texans or those in sister-States or international trading partners. All are equal. Nondiscrimination, not a total lack of local standards, is the hallmark and basic premise of international trade cooperation: no discriminatory barriers should be raised to favored trading partners. Defendant accepts the representation that none of Empacadora's product is sold for human consumption in Texas. Empacadora is not challenging the prohibition on sale for human consumption in Texas or the United States. However, Chapter 149 currently applies regardless of the location of human consumption. It is true that there are criminal penalties in Chapter 149, and that those penalties, and the Texas penalties applicable to fining convicted corporations, apply to all who contravene the penal provisions of the law. Defendant cannot reasonably determine at this time whether all of the Empacadora product meets United States Federal standards for food intended for safe human consumption. Except as admitted, Defendant denies paragraph 4.3 of the Amended Complaint.

5. Real Parties in Interest.

5.1 The former Attorney General of Texas declined to participate in this litigation. Defendant admits that all prosecutors acted at all relevant times in the course and scope of their offices for the State of Texas. Defendant admits that Plaintiffs gave notice to the former Texas Attorney General during his term of office, and that the DA's prosecute criminal cases in the name of and on behalf of the State of Texas. Defendant DA's have no financial interest in this litigation because they and the State of Texas are immune from suit for damages with regard to the issues before this Court.

5.2 If there is any danger that Texas' enforcement of Chapter 149 contravenes Federal law or improperly interferes with the awesome power of the United States or American international obligations, the United States of America, through whatever agency is appropriate, would be an interested party. USDA has responded to the Motion for Temporary Injunction by stating that it is not a necessary party, yet asserting that it believes Chapter 149 is preempted.

6. Relief Requested by Plaintiffs.

6.1 Defendant reasserts paragraph 1.0 of this Answer. Defendant denies the second sentence of paragraph 6.1 of the Amended Complaint. Until conviction, the threatened prosecution will limit only the illegal activities of the Plaintiffs; if sufficient lawful activities remain in Plaintiffs' operations they are permitted to continue those lawful activities until such time as a conviction occurs, at which time the convicting State court misdemeanor Judge will implement the statutory provisions requiring an injunction, as below:

§ 149.005. Penalty

(a) An offense under this chapter is punishable by:

(1) a fine of not more than $1,000;

(2) confinement in jail for not less than 30 days nor more than two years; or

(3) both the fine and confinement.

(b) A second or subsequent offense under this chapter is punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for not less than two years nor more than five years.

§ 149.006. Injunction

On a conviction of an offense under this chapter, the court shall enjoin the defendant from slaughtering animals, selling meat, transporting meat, or in any manner purveying meat to the public as food for human consumption. Each day the injunction is violated constitutes a separate contempt.

Whether the prosecution itself, or the penalty upon conviction, will cause Texas Plaintiffs' businesses to fail is unknown to Defendant, although certainly one would expect convicted Texas horse slaughter businesses to close. If the injunction is issued by the State Judge on conviction as apparently required by the State statute, it is true that a later success by the Plaintiffs in higher State courts "could take so long that Plaintiffs will be put out of business in the interim". Corporate criminal defendants are subject to the injunction provisions of Chapter 149 the same as individual criminal defendants, and may be fined pursuant to Texas law. Texas Penal Code art. 12.51. Except as admitted, Defendant denies paragraph 6.1 of the Amended Complaint.

6.2 Plaintiffs are seeking a declaration of rights and legal relations. Defendant denies that Plaintiffs are entitled to any of the relief sought. Defendant denies that Chapter 149 has been repealed.

6.3 Plaintiffs are seeking a temporary restraining order and/or temporary (preliminary) injunction and a permanent injunction. Defendant denies that Plaintiffs are entitled to any of the relief sought.

7. Commerce Clause and States' Rights Issues.

7.1 Defendant admits the first sentence of paragraph 7.1 of the Amended Complaint. Defendant denies that Chapter 149 violates the Commerce Clause. There are other important applicable

Constitutional provisions, namely the Ninth Amendment ["The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."] and the Tenth Amendment ["The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."]. The fact that a State law has an incidental effect on interstate or foreign commerce, as does Chapter 149, does not render the State law invalid. If the Federal government has not chosen to preempt a field either explicitly or impliedly, and it has not chosen to preempt the field of horsemeat, States are free to act insofar as the State acts do not actually conflict with Federal laws. Chapter 149 does not actually conflict with any Federal law, as it is possible to comply with all the applicable Texas and Federal laws on this issue.

7.2 Defendant agrees that sometimes States can lawfully regulate activities affecting interstate and foreign commerce; that is what Texas has done here. Chapter 149 is a proper regulation – it does not forbid the movement of live horses or all horse products, just horsemeat for sale for human consumption. Since horses 'on the hoof' may be transported for slaughter without violating Chapter 149, the law is not a prohibition, it is a regulation. It is true that all are treated alike – Texas residents, sister-State residents, and foreign interests – within the borders of Texas. Under current law, no one within the borders of Texas may sell, offer for sale, exhibit for sale, possesses with intent to sell or transfer for sale horsemeat for human consumption. It is true that Plaintiffs cannot transport horsemeat through Texas to any other location. It is true that Texas has major ports of trade which Plaintiffs are apparently accustomed to using. It is true that many Federal dollars have been invested in these ports, and in the interstate highways, in part to encourage *lawful* foreign and interstate commerce. However, it is not true that the Federal government has done anything that

would operate to give a 'free pass' to interstate or international travelers who violate the laws of Texas. All who are present in Texas must obey Texas law. Except as admitted, Defendant denies paragraph 7.2 of the Amended Complaint.

7.3 Defendant denies the first sentence of paragraph 7.3 of the Amended Complaint. Chapter 149 prohibits activities relating only to a single product – horsemeat for human consumption. Defendant admits the second and third sentences of the same paragraph. Defendant states that other Texas laws would prohibit offering a harmful substance (contaminated horsemeat) to another or perpetrating a fraud on them; those laws are not challenged by Plaintiffs in this lawsuit. Defendant denies that there is no legitimate interest supporting Chapter 149; since the Texas Legislature has enacted the statute, it is presumed to be valid and done for proper purposes. Recently, California's State Legislature enacted a horsemeat ban. It is not accurate to suggest that the Texas Law is a relic with no modern application and that the Texas Legislature would necessarily, upon modern reflection, jettison Chapter 149. [As this Answer to the Amended Complaint is filed, the Texas Legislature is in Session, and at least one proposed bill on this issue has been introduced for consideration of the Texas House of Representatives. Copy of HB 1324 as introduced was previously filed with the Court.] That the modern continuation of the law is a reflection of enduring Texas values more than it is of European-recognized [or even USDA–recognized] human health or safety concerns does not invalidate the law. The same criticism that Plaintiffs make against Chapter 149 can be leveled against any *malum prohibitum* law in any jurisdiction in the world: it is wrong because the law says it is wrong. Even if that is so, that does not invalidate the law. As an example, is there a substantial safety difference between going 55 and 56 miles per hour on the highway? Probably not. However, the Legislature is free to determine that traveling 55 is lawful and traveling 56 is a criminal act. This

is true even if hundreds of people parade onto a witness stand and testify that one act is as safe as the other, that one is as lawful as the other in distant lands, that one is in their estimation not morally inferior to the other, that in Canada and Mexico and Germany and perhaps Arizona higher highway speeds are lawful. Whether the interest protected by a State statute rises to the level of proper State concern is a matter entrusted to the Legislatures of each of the Sovereign States of this Nation. And, the office of the former Texas Attorney General has issued an opinion dismissing certain of these Plaintiffs' attacks against the validity of Chapter 149. Those who violate Chapter 149 are not abiding by Texas law; this is true whether they are honest about their activities or not. [Defendant acknowledges that Plaintiffs Beltex and Dallas Crown honestly and clearly admit that their actions are those prohibited by the plain language of Chapter 149.] Except as admitted, Defendant denies paragraph 7.3 of the Amended Complaint.

7.4 Defendant admits the first sentence of paragraph 7.4 of the Amended Complaint. The purpose of the Commerce Clause as it relates to foreign commerce is to give the Federal government power over matters that it considers require uniformity of regulation. When the Federal government chooses to speak for the entire Nation in matters of international commerce, it is fully empowered to do so. In the case of horsemeat, there has not been such a choice made by the Federal government. States may not prohibit international commerce in an area where the Federal government has preempted the law, but there is no preemption applicable here. States may legislate with regard to local concerns even though their legislation incidentally affects international commerce. Regulations involving public health, public morals, and public safety, for example, are local concerns. Plaintiffs critically imply that morality is the driving force behind the continuation of Chapter 149; by so doing, they place Chapter 149 squarely in the realm of the power of the State to govern local concerns until such

time, if ever, that the Federal government preempts the specific issues covered by Chapter 149. Except as admitted, Defendant denies paragraph 7.4 of the Amended Complaint.

7.5 Defendant denies that Chapter 149 constitutes an improper embargo. The purpose of Chapter 149 is to keep Texas, all of Texas, in compliance with the will of the Texas Legislature. Those who wish to buy and consume horsemeat elsewhere in the world need not avoid horsemeat, they need only avoid Texas and Texas-slaughtered horses. Mexican interests are free to export from Mexico to anywhere horsemeat possession is lawful; they just cannot force themselves into Texas to do so. Mexico is a modern country with access to international commerce that is not wholly dependent on Texas ports or Texas airports. The 90% of Texas horsemeat that originates as out of state horses can either be exported through Texas while still 'on the hoof', providing that no other law is violated, or, unless and until the Federal Legislature outlaws horse slaughter for human consumption throughout the country, it can go for slaughter, processing, and transport to a location somewhere else in the United States where horsemeat possession is not unlawful, avoiding Texas altogether. To say that because someone in Europe desires to eat horsemeat Texas is prohibited from banning the product within Texas borders is a giant leap. Many items criminalized in Texas are lawful elsewhere in the United States or in the world. That cannot mean that merely because items are lawful somewhere in the world they must all be permitted to be trafficked through Texas for their use elsewhere, as Plaintiffs' argument suggests. It is untrue that the law does not protect Texans; the presumption exists that the law exists for the welfare of Texas. Plaintiffs invite this Court to make what is essentially a policy finding that the law no longer serves its original health and safety purpose and therefore should be judicially 'repealed'; the Court should avoid that political issue and leave the issue for consideration of the Texas Legislature. As Plaintiffs admit, it is true that Plaintiffs could

lawfully slaughter horses for numerous other purposes, such as those listed by Plaintiffs in paragraph 2.7, without violating Chapter 149. Horsemeat provided for human consumption without sale is permitted by Chapter 149. A person who decides, one sunny day, that their long time pet horse would make a wonderful meal for a family gathering may, indeed, proceed to prepare that menu without violating Chapter 149. Or, to put it in an Old West context, if someone lost and dying in the desert decided to eat their horse, unlikely as that might be, they need not fear criminal prosecution. Defendant denies that there is no legitimate State interest justifying Chapter 149; the Texas Legislature has determined that the prohibition is a proper State policy and it must be presumed valid. Defendant specifically denies that there is any national or international interest that justifies compelling Texas to permit the slaughter of horses or the transportation of horsemeat. Except as admitted, Defendant denies paragraph 7.5 of the Amended Complaint.

8. Preemption Issues/Federal Statutes and Regulations

8.1 Defendant denies paragraph 8.1 of the Amended Complaint with regard to the issues in this lawsuit. Chapter 149 has not been expressly preempted. Plaintiffs bear a considerable burden of overcoming the presumption that Congress does not intend to preempt State law. Federal sensitivity and due care regarding State Legislation remain an important part of our Nation's jurisprudence. The former Texas Attorney General opined that Texas Agriculture Code Chapter 149 is not preempted by the Federal Meat Inspection Act. Op. Tex. Att'y Gen. No. JC-0539 (2002). Plaintiffs argue express preemption, but then do not provide any express language that preempts the Texas law. For example, the Federal Meat Inspection Act, 21 U.S.C. § 601 *et seq.*, does not expressly assert that it preempts the entire field of horsemeat or that it requires the several States to permit horse slaughter for human consumption. Likewise, the Federal Humane Methods of Slaughter Act, 7 U.S.C. § 1901

et seq., sets out how those animals that it covers must be slaughtered; it does not purport to require that every covered species be permitted to be slaughtered in every State in the Union. And, the Federal Commercial Transportation of Equine for Slaughter Act, located at 7 U.S.C. § 1901 note, regulates how horses destined for slaughter must be treated, but does not mandate that States permit horse slaughter. Texas Agriculture Code Chapter 149 does not unconstitutionally interfere with an express Federal exercise of authority. The FMIA has an express preemption clause as to those narrow activities that the Federal government chose to preempt: inspection and labeling. 21 U.S.C. § 678. The inclusion of an express preemption clause in the FMIA as to inspection and labeling and the absence of an express preemption clause as to which animals may be slaughtered for human consumption is strong evidence that preemption was not specifically intended except for inspection and labeling. The FMIA does not discourage continued activity of the States; it acknowledges the continued important role of the States and their cooperation. With regard to preemption by occupation of the field, whether the Federal government has the authority to preempt the field is not the question; of course it has that authority. But, the question before this Court is whether the Federal government has thus far chosen to exercise its power of preemption. It has not. This is determined by looking to see if it is possible to comply with all the Federal and State laws at once, or whether complying with one makes compliance with the other impossible. It is perfectly possible to comply with Chapter 149 and with all the Federal laws cited by Plaintiffs. Congress did not intend that FMIA preempt the entire field of horsemeat. Prohibition by a State of the slaughter of horses for human consumption in no way interferes with FMIA efforts regarding inspection or labeling, nor forces or causes the introduction of unwholesome, adulterated, improperly marked, labeled or packaged foods into commerce. To the contrary, if no horses are slaughtered, there is no need for

inspection or labeling and there is no possibility of unwholesome or mislabeled horsemeat entering the Nation's food supply. No Federal interest is offended by Texas' enforcement of Chapter 149. Plaintiffs cannot show preemption by conflict. The FMIA states that "meat and meat food products are an important source of the Nation's total food supply". 21 U.S.C. § 602. This cannot refer to the products of Plaintiffs, since none of the Plaintiffs purport to introduce even a single horsemeat steak into the Nation's commercial food supply, instead producing and transferring horsemeat for ultimate human consumption in other countries only. The FMIA aims to oversee Federal interests in ensuring that only "wholesome, not adulterated, and properly marked, labeled and packaged" food travels in commerce. 21 U.S.C. § 602. The Act accomplishes this by regulating inspection of slaughterhouses and labeling of meat. No issues relating to inspection or labeling are part of the dispute before this Court.

8.2 Defendant admits that the transportation of horses to slaughterhouses is governed by Federal law but denies that those rules preempt the relevant Texas law. The status of Federal law does not mean that Texas must permit horse slaughter or transportation and handling of horsemeat, only that if it occurs it must comply with Federal law. Defendant specifically denies Plaintiffs' assertion that Texas prohibits the transportation of live horses destined for slaughter. The law is clear that only horsemeat is regulated. A live horse cannot properly be called 'meat' under Chapter 149. And, while it is true that the only two horsemeat processing plants in the United States currently are in Texas, that is a relatively recent evolution. About a decade ago, there were about a dozen such plants, and there is talk in the industry of one of the prior plants outside of Texas re-opening. Except as admitted, Defendant denies paragraph 8.2 of the Amended Complaint.

8.3 Plaintiffs accurately set out language from the Meat Inspection Act; Defendant denies that the

excerpted language and the Act preempt the matters covered by Chapter 149. Except as admitted, Defendant denies paragraph 8.3 of the Amended Complaint.

8.4 Defendant admits paragraph 8.4 of the Amended Complaint, but denies that the Federal statutes preempt Chapter 149.

8.5 Defendant admits paragraph 8.5 of the Amended Complaint, but denies that the Federal regulations preempt Chapter 149.

8.6 Defendant admits paragraph 8.6 of the Amended Complaint, but denies that any of the cited laws preempt Chapter 149 or that they conflict with Chapter 149.

8.7 Defendant admits paragraph 8.7 of the Amended Complaint, but denies that Texas is required to handle its affairs the same way as Arizona, Florida, Georgia, Minnesota, New Jersey, Ohio, and/or Virginia, or even – if it ever were to happen – the same way as all the other 49 States put together. Each Sovereign State is permitted to regulate matters within its borders unless it is in violation of a specific greater law, which Plaintiffs have not shown exists in this matter. Indeed, the fact that, as Plaintiffs admit, at least nine States have affirmatively enacted laws relating to this area – the seven that legalize horsemeat and the two that Plaintiffs admit expressly prohibit it – indicates that this is not an area preempted by the Federal government.

8.8 Defendant does not dispute that the Federal government has the authority to preempt horse slaughtering. Rather, Defendant states that the Federal government has simply not chosen to do so. And, Legislation was proposed in the previous Legislative Session at the Federal level, as well as in this Session, that would ban the slaughter of all horses for human consumption in the United States. The Federal government has the power to do either: it could require that horsemeat be permitted to travel freely across the boundaries of the States, or it could ban horse slaughter for human

consumption and outlaw the presence of such horsemeat altogether. The Commerce Clause does not require any State to permit the production of any product within its borders. The Commerce Clause permits the Federal government to regulate commerce between States and international commerce, but does not require that every State permit the production of every product that is lawful somewhere in the world or somewhere in the United States. To read the Commerce Clause as Plaintiffs suggest is to ignore the essential Sovereignty of each of the fifty States. Horses cannot be slaughtered in Texas for sale for sale for human consumption (technically, the actual act of slaughter is not illegal, but possessing the meat for sale is illegal and once a slaughter has occurred the commercial slaughterer is in immediate and unavoidable possession of illegal horsemeat), nor can horsemeat be handled or transported through Texas for sale for human consumption. But, foreign interests and out of state horsemeat eaters need not fear: as Plaintiffs note, at least seven other States welcome trade in horsemeat. Just as one must go to Las Vegas to engage in some acts that are illegal in Texas, so too must one go to another State to slaughter or consume horses or escort horsemeat along the roadway. Except as admitted, Defendant denies paragraph 8.8 of the Amended Complaint.

9. Preemption Issues/Treaty and Trade Agreements

9.1 Defendant admits paragraph 9.1 of the Amended Complaint. The United States Constitution provides other relevant law, namely the Ninth Amendment ["The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."] and the Tenth Amendment ["The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."]. On the international front, Texas treats everyone similarly. It has no barriers to foreign horsemeat interests that do not apply within Texas and to all from within the United States. No one in the United States

may transfer horsemeat through Texas; it is not discriminatory to hold Empacadora to the same standard. Because it treats those entering Texas on par with its own citizens, Chapter 149 cannot be said to be discriminatory as to any NAFTA or EC trading partners of the United States. Non-discrimination, not the entire lack of any local standards, is the hallmark of international trade and treaty law. *See* NAFTA, Articles 754.1 and 754.4 (P. Ex. 43 to Plaintiffs' Motion for Temporary Injunction, 4 Apx. 677-678). There is no dual standard; business interests from Mexico are welcome in Texas, so long as they comply with Texas law while they are here. That Texas law prohibits the presence of some items within our borders that are lawful in other States is not an international issue. States have Rights to their continued separate identities, and they have Rights to expect all present within their borders to obey their local laws. Plaintiffs suggest that if a product or activity is lawful anywhere in the Nation, and perhaps anywhere in the world, Texas is powerless to stop it within our borders. Defendant rejects that argument. Plaintiffs argue that Congress has the power, embodied in the Commerce Clause, to regulate interstate and foreign commerce. Indeed, it does have that authority. But Plaintiffs do not offer, and Defendant does not find, a single federal or international law that requires *every* State (or, in this case, Texas) to permit *every* product (or, in this case, horsemeat for human consumption) to be produced in or to enter into its borders merely because the product could lawfully be produced in or lawfully enter another of the States. The logical result of Plaintiffs' contrary argument would be to require all the States to permit every product that any State permits. This is a lowest common denominator approach to Legislation, and if applied as Plaintiffs suggest it would eviscerate the concept of the Sovereignty of the several States with regard to important local issues.

9.2 Defendant acknowledges the existence of the 1999 Agreement referenced in paragraph 9.2 of the

Amended Complaint. [Defendant understands that in the context of international agreements such as this, the reference to 'sanitary' refers to public and animal health issues.] The Agreement was published on April 21, 1998. Thereafter, on July 20, 1999, the two parties notified each other "of the completion of their internal ratification procedures". Thus, if this Agreement is the inspiration for the preemptive authority Plaintiffs claim, the preemptive change in law must have occurred prior to July 20, 1999. No such change is set out by Plaintiffs nor known to Defendant. The USDA's obligations with regard to exports from the U.S. are set out in Annex II to that Agreement, which provides as follows:

> In relation to exports from the USA, unless otherwise noted, these agencies are responsible for:
>
> - controlling the circumstances of domestic production and processing,
>
> - providing information concerning compliance with agreed regulatory requirements,
>
> - providing agreed additional guarantees,
>
> - carrying out the consultations provided for pursuant to Article 7 of this Agreement,
>
> - carrying out the information exchange provided for in Article 10, the notifications provided for in Article 11, and the safeguards provided for in Article 12 of the Agreement.

None of the Agreement's provisions require the United States to require a State to permit horse slaughter, and the enabling regulations likewise do not require Texas to permit horse slaughter within its borders. Moreover, Plaintiffs do not allege that they have standing to enforce an international trade agreement, and their interpretation of it is not binding on this Court. The EC has not intervened in this dispute. While the USDA has now filed papers in this lawsuit expressing to the Court its belief that Chapter 149 is preempted, the United States Trade Representative has not asserted to Defendant that enforcing Texas law as set out by the former Texas Attorney General

would in any manner offend the trading partners of the United States of America. The presumption that Texas law is valid is not overcome by the arguments of Plaintiffs. Acknowledging that if horse slaughter occurs, it must at least comply with Federal laws, including, when applicable, those Federal laws on the books with regard to international exports, Defendant says that because no horses may lawfully be slaughtered in Texas for human consumption this issue is never reached. When Chapter 149 is enforced there will not be horsemeat produced in Texas that would enter international commerce without meeting the international Agreement requirements, so none will originate in Texas that violates the trade obligations cited by Plaintiffs. As to the provisions of 9 C.F.R. § 94.15 (a), no Plaintiff has pleaded specific facts that both confer standing for that Plaintiff to sue these Defendants and also bring that Plaintiff within the provisions of 9 C.F.R. § 94.15(a). That section provides a litany of conditions that would be required before a party would come under that regulatory provision. Defendant notes that the horsemeat originating at Beltex and Dallas Crown does not appear to be even arguably within this provision, and Mexico is not a member of the European Community.

9.3 Defendant denies that the Agreement requires the Federal government to be the sole enactor of relevant law, except to the specific extent set out in the Agreement. Nothing in the Agreement prohibits State laws such as Chapter 149. The Agreement provides that USDA is 'responsible for various categories of activity', but it does not say that USDA must demand that each State permit horse slaughter or horsemeat transfer. Defendant does not allege that Empacadora violates Federal law; the concern is that the Plaintiff would violate Texas law while in Texas if it acts in a manner contrary to Chapter 149, if Empacadora even comes into Tarrant County, which does not appear to occur. The international agreements entered by the United States and the EC provide only that a

pathway exist through the United States for products eligible for entry. Those agreement do not require that everyone and every law in every part of the United States give way to some sort of sacrosanct choice by Plaintiffs of route into or through the United States. Empacadora is free to import into Arizona, Florida, Georgia, Minnesota, New Jersey, Ohio, and/or Virginia, and probably numerous other States. Empacadora must comply with local laws as it does so. It cannot excessively speed along highways, it cannot drive on the sidewalks, it cannot drive through schoolyards or cemeteries or hospitals or libraries or through sealed military bases. In short, it must route itself along a legal route. If that route excludes some places, even whole States, that does not mean that the United States is in any violation of its treaty obligations. Texas law is entitled to a presumption of validity unless and until a Court determines that it is in conflict with Federal law or otherwise not enforceable. That presumption of validity does not ban horsemeat from the United States, it merely routes the horsemeat along a different route, one that excludes Texas. Chapter 149 is not in violation of Federal law, and it is not preempted by Federal law. Except as admitted, Defendant denies paragraph 9.3 of the Amended Complaint.

9.4 Defendant admits that there is an Agreement between the United States and the European Community regarding Federal authority over horsemeat produced in the United States and exported for human consumption in Europe. The Agreement gives the Federal government control, but it does not say how the Federal government must exercise that control in relation to the States. Plaintiffs plead that States cannot enforce regulations contrary to those of the Federal government; Defendant maintains that no part of Chapter 149 applicable to this lawsuit is contrary to any Federal law applicable to this lawsuit. No part of the Agreement requires Texas or any other State to permit horse slaughter within its borders. And, while EC Nations may have some rights under this

Agreement, those rights are not implicated by Empacadora's product as Empacadora is a Mexican, not an EC, company. The Agreement does not say that Texas must permit horsemeat to be produced in Texas for export, only that if Texas chooses to do so that meat must be produced and handled in compliance with Federal law. Since Texas chooses to in effect prohibit all commercial horse slaughter for human consumption by banning the commercial handling, possession, and transfer of the horsemeat, the requirements are not relevant to operations in Texas, since there should be no operations in Texas that would need to comply with the Federal law. Defendant understands that USDA believes that Plaintiffs substantially comply with Federal laws that would apply if horsemeat could be lawfully processed and transported through Texas and, to the extent that they may not, those issues are not properly before the Court in this lawsuit since Defendant DA's are not empowered to enforce Federal law. Defendant denies that Texas cannot, within its borders, criminalize the exportation and transportation in interstate and foreign commerce of horsemeat intended for human consumption. It can, and it has. Except as admitted, Defendant denies paragraph 9.4 of the Amended Complaint.

9.5 Defendant admits that NAFTA is in place and that the United States is a signatory party. Defendant admits that the United States government could, if it thought NAFTA was implicated by a Chapter 149 prosecution, "consult with the states and eliminate restrictions not compatible with NAFTA." This has not occurred with regard to Chapter 149. Defendant admits that the USDA should be given the opportunity to be heard, as further set out in paragraph 5.2 of this Answer, and acknowledges that the USDA has now filed papers in this Court expressing its belief that Chapter 149 has been preempted. Defendant denies that Chapter 149 is invalid under any theory put forward by Plaintiffs or the USDA. Except as denied, Defendant admits paragraph 9.5 of the Amended

Complaint.

9.6 Defendant admits the first three sentences of paragraph 9.6 of the Amended Complaint. Defendant denies that any treaties or agreements cited by Plaintiffs require Texas to produce or permit any product within its borders merely because those products are lawful in the land of a trading partner, and further denies that any of the proffered treaties or agreements control the issues of Chapter 149 in this litigation with these parties. NAFTA is subject to the following provision: "No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the [NAFTA] agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid." 19 U.S.C. § 3312 (b)(2). Since NAFTA permits its parties to maintain laws necessary for human or animal health, including those that are more stringent than an international standard, there is no relevant international issue with NAFTA. The fact that the Federal government may have preempted some issues involved in foreign commerce does not mean that it has preempted all issues involving foreign commerce. Plaintiffs do not show preemption with regard to incoming horsemeat from Mexico. Except as admitted, Defendant denies paragraph 9.6 of the Amended Complaint.

10. Due Process and Self-Incrimination Issues.

10.1 Defendant admits paragraph 10.1 of the Amended Complaint. Defendant acknowledges the importance of the 5th Amendment, but point out that this applies to the right of individuals to not incriminate themselves while in custodial interrogation or on the witness stand in a criminal case; here, corporations Beltex and Dallas Crown have judicially confessed in order to trigger the jurisdiction of the Federal Court.

10.2 Defendant denies the first two sentences in paragraph 10.2 of the Amended Complaint. The 5th

Amendment is not implicated by a non-custodial rendering of a public report by Plaintiffs pursuant to mandatory State law. Defendant admits that the Federal court has pendent jurisdiction, but denies that Texas Health and Safety Code §443.022 and §433.007(a) repeal or supersede Chapter 149. Except as admitted, Defendant denies paragraph 10.2 of the Amended Complaint.

10.3 While Plaintiffs accurately quote Texas Health and Safety Code, § § 433.033 and 433.003, codified in 1989 at Acts, 71st Tex. Leg., 1989, pp. 2815-2831, ch. 678, § 1, Defendant denies that Texas Agriculture Code Chapter 149, codified in 1991, is repealed thereby, and denies that the quoted section is in conflict with or that it has the effect suggested by Plaintiffs in paragraph 10.3 of the Amended Complaint. In fact, the excerpt provided by the Plaintiffs makes clear that horsemeat should be kept apart from all other meat. Horsemeat has a disfavored, not equal, status in Texas law.

10.4 While Plaintiffs accurately quote the 1989 codification, Texas Health and Safety Code, § 433.007(a), Defendant denies that the provisions included in the 1991 codification, Texas Agriculture Code Chapter 149, are repealed thereby and denies that the quoted sections have the effect suggested by Plaintiffs in paragraph 10.4 of the Amended Complaint. The Legislature explicitly set out that Texas Health and Safety Code, § 433 prevails over § 431 and any other law *in conflict*, but did not specify repeal of the predecessor to Texas Agriculture Code Chapter 149; had a repeal of the predecessor to 149 been specifically intended, it would have been simple to have said so. Indeed, the 1989 codification specifically repealed Texas Civil Statutes 4476-1a, 4476-5, 4476-5a, and 23 other enumerated provisions in the '4476' series, but not 4476-3a, the forerunner to Chapter 149. Defendant denies Plaintiffs' 1969 'express repeal' argument. The relevant horsemeat ban provision was not in the section (4476-3) that was repealed at the operative moment in 1969, it was in the Penal Code at 719e; therefore, it was not expressly repealed. Following 1969, the Texas

Legislature did not consider 719e repealed by the 1969 action; it moved the 719e language to art. 4476-3a R.C.S. in 1973. That language is now codified in the 1991 law. Repeal by implication is disfavored. Repeal by implication does not exist unless provisions in the two acts are in irreconcilable conflict. Texas Chapter 149 is not in irreconcilable conflict with any other after-enacted Texas law cited by Plaintiffs. That a Texas inspection and labeling statute describes horsemeat as 'livestock', Texas Health & Safety Code Sec. 433.003 (11), does not mean that it is legal for human consumption. Whether or not humans can safely eat unadulterated horsemeat is not the sole issue guiding the public interest in the continued existence of what is now Chapter 149. There is no irreconcilable conflict between Chapters 149 and 433; both laws can be complied with. The way one complies with multiple laws is to only do a regulated act where that act is lawful – simple enough. The prohibition in the repealed 1969 Texas Meat and Poultry Inspection Act forbade improperly marked or labeled meat, echoing the similar federal labeling restrictions; that Act was not a grant of authority to slaughter horses. It would be a simple matter to have complied with both Acts: if no horses were slaughtered for human consumption, there would be none mislabeled. Likewise, Texas Agriculture Code Chapter 148 imposes a fee on the slaughter of horses, but it does not grant authority to slaughter horses for sale for human consumption. It is easy to comply with both Chapter 148 and Chapter 149: if no horses are slaughtered, no slaughter fee is due. Except as admitted, Defendant denies paragraph 10.4 of the Amended Complaint.

10.5 Defendant admits the first four sentences of paragraph 10.5 of the Amended Complaint and supporting citation. Defendant denies the fifth and sixth sentences of the same paragraph; Chapter 149 has not been repealed, it is not void, and prosecution would not violate due process. Levying a fee or tax on a prohibited substance or on an unlawful income stream does not legalize the substance

or the income stream. Defendant admits the seventh sentence of the same paragraph regarding the former Attorney General's observation that state-mandated reports furnish information that will facilitate prosecution. While the Fifth Amendment prohibits evidentiary use of coerced custodial statements against an individual, the reports required by Texas Agriculture Code Chapter 148 are not of the sort prohibited as evidence in a criminal case. And, in any event, coercion is a ruling to be made by the State criminal court on a case-by-case basis depending on the actual coercion that might exist in the specific case before the criminal court. Defendant states that Plaintiff Beltex, a corporation, did not even file any of the required Chapter 148 reports of which they now complain until the recent demand by the prosecutor in Tarrant County. Except as admitted, Defendant denies paragraph 10.5 of the Amended Complaint.

11. Plaintiffs' First Amendment Argument: Is Slaughtering Horses a Constitutionally Protected Religion?

11.1 The purpose the 1949 Texas laws, as set out in the preamble to the 1949 legislation, was to prohibit the selling, offering, exhibiting for sale, and possession of horsemeat with intent to sell it as food for human consumption. The 1949 laws are attached hereto as Attachments B and C. The rules are more explicit than, but completely in harmony with, the prohibition first enacted in 1945. Since the law was an expansion of the 1945 law, it is fair to assume that the Legislature's reason for the law was consistent with its earlier stated purpose, in 1945; Section 2 of the 1945 Act provides "This Act shall be construed so as to effectuate its general purpose, to prohibit and prevent the sale of food for human consumption of meat from animals where said animals suffer from diseases communicable to human beings, and to provide adequate and uniform regulations for inspection of meat and meat products intended for human consumption, thereby protecting the public health." Except as denied, Defendant admits paragraph 11.1 of the Amended Complaint.

11.2 Defendant acknowledges that lawyers representing a number of animal welfare groups briefed the Chapter 149 Federal Meat Inspection Act preemption issue to the former Attorney General prior to the former Attorney General's issued opinion. No doubt, some of those likely find the thought of eating horsemeat repugnant. No doubt, others of the correspondents are likely revolted about the thought of slaughtering or eating any animal. Defendant agrees with Plaintiffs that the opinions of these correspondents are entitled to respect. The former Texas Attorney General found that not only are the opinions entitled to 'respectful review and civil tolerance,' they were determined entitled to the former Attorney General's concurrence regarding their correct interpretation of Chapter 149 as it interplays with the Federal Meat Inspection Act. Accordingly, the Texas Attorney General stood behind Chapter 149. Defendant will not join in categorizing groups of people 'into two groups' or in any other such pigeon-holing activity.

11.3 Plaintiffs' paragraph 11.3 misstates applicable First Amendment principles. The First Amendment protects *religion*; Plaintiffs' slaughter activity is a horse of a different color. Plaintiffs are not asserting that they slaughter horses to honor their deity or because horse slaughter or the sale of horsemeat for human consumption has some religious significance. Indeed, as to Plaintiffs, this is apparently purely a commercial matter, not a holy mission. That some people who refrain from some meats or other foods do so because of religious or deeply held moral beliefs (which Defendant admits) is wholly irrelevant to this lawsuit. Plaintiffs' slaughter plant is not a religion and it is not entitled to the protection of a religious view. The fact that some people abstain from eating pork does not elevate pig farming, which is certainly considered a lawful and honorable profession in Texas, to the status of a First Amendment protected religious activity. Likewise, commercial horse slaughtering is not a First Amendment protected activity. There is no indication that Texas

legislators in 1945 or at any other time were acting out of religious bigotry or that the Legislature was aware of and hostile to any religiously motivated horse slaughterhouses, and such a legislative motive should not be presumed. Plaintiffs' argument that Chapter 149 is repugnant to the First Amendment because it discourages tolerance of others is simply not correct. One can be 'tolerant' of the fact that people in other countries eat horses or dogs or cats or mules or monkeys or perhaps, for the exceedingly 'tolerant', even human beings without requiring that every State in the Union take part in supplying those preferences (or, as Plaintiffs word it, 'tastes'). Plaintiffs' argument, taken to its logical conclusion, is that if anyone in another culture wants a product, no matter how abhorrent to the majority of the good people of Texas, the Texas Legislature is powerless to prohibit that product's production or presence in Texas. That is not the law. That cannot be the law. Except as admitted, Defendant denies paragraph 11.3 of the Amended Complaint.

12. General Response.

12.1 Defendant denies that Plaintiffs are entitled to the relief sought by their prayer and to all relief requested by them in their Amended Complaint.

13. Abstention Doctrines Not A Bar.

13.1 As the Court has already determined, abstention is inappropriate in this case. Neither the Federal Anti-Injunction Act, 28 U.S.C. § 2283, the *Younger* abstention doctrine, nor the "Our Federalism" abstention doctrines bar this Court from determining all the issues involved in this dispute, including the disputed request by Plaintiffs for injunctive relief. This suit was filed by Plaintiffs prior to initiation of a State Court case or formal grand jury proceeding. As further separately briefed by this Defendant, *Pullman* and *Thibodaux* abstention are also uniquely inappropriate in this case.

Attachments.

Attached hereto and incorporated herein for convenience are the following:

Attachment A	Acts, 49th Tex. Leg., 1945, pp. 554-558, ch. 339.
Attachment B	Acts, 51st Tex. Leg., 1949, pp. 78-79, ch. 45.
Attachment C	Acts, 51st Tex. Leg., 1949, pp. 1055-1056, ch. 545.

Prayer

Defendant asks the Court to deny the relief requested by Plaintiffs.

Respectfully submitted,

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Assistant Tarrant County
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ATTORNEYS FOR DEFENDANT
TIM CURRY
TARRANT COUNTY CRIMINAL
DISTRICT ATTORNEY

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing Answer of Tim Curry, Tarrant County Criminal District Attorney, to Plaintiffs' Amended Complaint, was mailed, certified mail, return-receipt requested, unless otherwise indicated, to the following on this date in compliance with the provisions of Rule 5, FED. R. CIV. P.:

Mr. David Broiles
Attorney at Law
1619 Pennsylvania Avenue
Fort Worth, TX 76104

By fax to 817.335.7733 and
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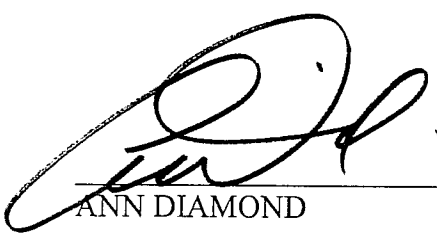
By fax to 202/616.8202 and
CMRRR # 7002 2030 0003 4838 3126

[And a courtesy copy was faxed to John Linebarger at **817.336.4889.**]



ANN DIAMOND — Date signed 3/17/03

MEAT INSPECTION LAW

CHAPTER 339 [1]

H. B. No. 38

An Act providing for the protection of the public health; defining certain terms used in the Act; authorizing the State Health Officer to define and fix the specifications and standards for certain meat and meat food products sold for human food as defined in the Act; providing for voluntary adoption by cities, persons, firms, associations, or corporations; providing that specifications and standards defined and fixed shall be in harmony with the regulations contained and set out in this Act; authorizing the State Health Officer and his representatives to supervise and regulate the processing and labeling of meat and meat products sold for human food; enabling cities to require all meat and meat products sold for human food and sold within their boundaries to be inspected and labeled as set out in the Act; forbidding the use of certain meat labels except under certain conditions and providing penalties and remedies for violation of said provisions; providing that specifications for approved meat and meat products sold for human food shall conform to the current regulations and requirements governing the meat inspection of the U. S. Department of Agriculture now known as Bureau of Animal Industry Order No. 211 as revised; authorizing the State Health Officer and his representatives to supervise and regulate the labeling of meat and meat food products sold for human food and to revoke permits; providing for the State Health Officer to approve slaughter establishments; prohibiting the duplication and reproduction of labels authorized under this Act and the use of any unauthorized labels; forbidding the use of approved labels or other designs or definitions misrepresenting the grade of meat or meat food products; providing a penalty for slaughtering diseased cattle for human food, and/or offering for sale meat from diseased cattle for human food, requiring diseased cattle to be slaughtered at certain plants; providing penalties for the violation of this Act; providing that if any portion of the Act be held unconstitutional, inoperative, or invalid, the remainder of the Act shall be unaffected thereby; repealing all laws or parts of laws in conflict herewith; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Style of Act: This Act shall be styled "The Meat Inspection Law."

Sec. 2. Interpretation: This Act shall be construed so as to effectuate its general purpose, to prohibit and prevent the sale of food for human consumption of meat from animals where said animals suffer from diseases communicable to human beings, and to provide adequate and uniform regulations for inspection of meat and meat products intended for human consumption, thereby protecting the public health.

Sec. 3. Definitions: The following definitions shall apply in the interpretations in this Act:

(a) Meat Product: Any edible part of the carcass of any cattle, calf, sheep, swine, or goat which is not manufactured, cured, smoked, processed, or otherwise treated.

(b) Meat food product: Any article of food or any article which enters into the composition of food for human consumption, which is derived or prepared in whole or in part from any portion of the carcass of any cattle, calf, sheep, swine, or goat, if such portion is all or a considerable and definite portion of the article, except such articles as organotherapeutic substance, meat juice, meat extract, and the like, which are only for medicinal puposes and are advertised only to the medical profession.

[1] Vernon's Ann.Civ.St., art. 4476—3; Pen.Code, art. 719d.

(c) Meat and products: Carcass, parts of carcass, meat, products, food products, meat products, and meat food products, of or derived from, cattle, calf, sheep, swine, and goats, which are capable of being used as food by man.

(d) Prepared meats: The products obtained by subjecting meat to a process of comminuting, drying, curing, smoking, cooking, seasoning, or flavoring, or any combination of such process.

(e) Official establishment: Any slaughtering, meat canning, curing, smoking, salting, packing, rendering, or other similar establishments at which inspection is maintained under these regulations.

(f) Person: Natural persons, individuals, firms, partnerships, corporations, companies, societies, and associations, and every agent, officer, or employee of any thereof. This term shall import both the plural and the singular as the case may be.

(g) Subsidiary: Any individual, firm, partnership, corporation, company, or association, in whose name any business is controlled, or owned, in whole or in part, directly or indirectly, by another.

(h) Inspection Legend: A mark or statement authorized by these regulations on an article or on the container of an article indicating that the article has been inspected and passed for human food by a representative of the Food and Drug Division of the State Department of Public Health of the State of Texas, or by persons authorized by the State Department.

(i) Label: A display of written, printed, or graphic matter upon any meat, meat by-product, prepared meat, or meat food product, or the immediate container thereof, and a requirement made by or under authority of this Act that any word, statement, or other information also appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if there be, of the retail package of such meat, meat by-product, prepared meat or meat food product, or is easily legible through the outside container or wrapper.

(j) Labeling: All labels and other written, printed, or graphic matter (1) upon any meat, meat by-products, prepared meat, or meat food products or any of its containers or wrappers, or (2) accompanying such meat, meat by-product, prepared meat, or meat food products.

(k) "Texas State Inspected and Approved Establishment No. ——": That the carcass, parts of carcass, meat, meat products, prepared meat, or meat food products so marked have been inspected, passed, and labelled under the provisions of this Act and under the regulations and specifications promulgated by the State Board of Health under the authority of this Act, and that at the time they were inspected, passed, and so marked they were found to be sound, healthful, wholesome and fit for human food.

Sec. 4. Rules and Regulations. The State Health Officer is hereby authorized and empowered, from time to time, to make such rules and regulations as are necessary to prevent and prohibit the sale of meat for food for human consumption when such meat is unfit for human consumption and dangerous to human health, and for the efficient execution of the provisions of this Act; and all inspections and examinations made under this Act shall be such and shall be made in such manner as prescribed in the rules and regulations promulgated by the State Health Officer and shall not be inconsistent with or an enlargement upon the provisions of this Act.

Sec. 5. Meat Inspection. The meat inspection provided by this Act shall be under the supervision of the State Health Officer of the State of Texas.

Sec. 6. **Enforcement of Act.** The Board of Health, through its representatives, shall supervise and regulate the processing, handling, and labeling of meat, meat by-products, prepared meat, or meat food products in conformity with the definitions, specifications, and standards which the State Health Officer promulgates and in conformity with the provisions of this Act; and the State Board of Health shall have the power to revoke permits as herein provided, when upon examination and hearing it is found that any provisions or Section of this Act or any provision of any regulation promulgated by authority of this Act have been violated.

Sec. 7. **Inspection mark, stamp, tag, or label.** The State Health Officer is hereby authorized and empowered to have designed a distinctive inspection mark, stamp, tag, or label which shall state "Texas State Approved Establishment No. —" and said mark, stamp, tag, or label shall be applied by an authorized person to all products found to be sound, healthful, wholesome, and fit for food for human consumption and shall contain no chemicals, dyes, preservatives, or ingredients which render such meat, prepared meat or meat food products unfit for human food. The State Health Officer is hereby authorized and empowered to condemn such meat or meat products or meat food products or prepared meat found unsound, unhealthful, and unwholesome or shall contain chemicals, dyes, preservatives, or ingredients which render such meat or meat food products unsound, unhealthful, unwholesome or unfit for human food and all such condemned meat food products shall not be sold for human consumption. Provided further that meats bearing the inspection mark, stamp, tag, or label of the United States Department of Agriculture shall be considered as conforming to this Act.

Sec. 8. **False use of inspection mark, stamp, tag, or label prohibited.** That for the purposes hereinbefore set forth the State Health Officer or his representatives shall cause to be made by inspectors provided for that purpose, such inspections of all slaughtering, meat canning, sausage factories, salting, packing, rendering, or similar establishments in which cattle, calves, sheep, swine, or goats are slaughtered and the meat or meat food products thereof prepared for sale for human food within the State of Texas, as may be necessary to inform himself concerning the sanitary conditions of the same and to prescribe rules and regulations of sanitation under which such establishment shall be maintained not inconsistent with United States Department of Agriculture Bureau of Animal Industry Order No. 211 as revised; and where the sanitary conditions of such establishment are such that the meat or meat food products are rendered unclean, unsound, unhealthful, unwholesome or otherwise unfit for human food, he shall refuse to allow such meat or meat food products to be labeled, marked, stamped, or tagged as "Texas State Approved Establishment No. ——".

Sec. 9. **Application for Texas State Approved Establishment No. ——.** Any person, firm, association, or corporation desiring to use the inspection mark, stamp, tag, or label as provided in Section 7 of this Act in representing, publishing, or advertising any meat or meat food products offered for sale or to be sold within this State shall make application for a permit to the State Board of Health at Austin, Texas, who shall take the necessary steps to determine and award the permit for the use of a Texas State Approved Establishment No. —— to such application, all in accordance with the rules and regulations of the State Board of Health as provided for herein.

All meats or meat food products bearing the inspection mark, stamp, tag, or label shall be permitted to be offered for sale, sold, or transported anywhere within the geographical limits of the State of Texas.

Sec. 10. Meat to conform to label. No meat or meat products sold, produced, or offered for sale within this State by any person, firm, association, or corporation shall carry a label, device, or design marked "Texas State Approved Establishment No. ——," or any other grade, statement, design, or device regarding the safety, sanitary quality, or the wholesomeness and fitness of said food for human consumption which is misleading or which does not conform to the definition and requirements of this Act.

No meat or meat products, except those produced or processed by a person, firm, association, or corporation having a permit to use the "Texas State Approved" label under the provisions of this Act and which are produced, treated, and handled in accordance with the specifications and requirements promulgated by the State Board of Health for sound, healthful, and wholesome meat and meat products shall be represented, published, labeled, or advertised as being "Texas State Approved Meat Products."

Sec. 11. Regulations of Inspection and Labeling by State Board of Health. The State Board of Health through the State Health Officer is hereby authorized and empowered to supervise and regulate the inspecting and labeling of meat and meat products in conformity with the standards, specifications, and requirements which it promulgates for the purpose set forth in this Act and in conformity with the definitions of this Act. The State Board of Health shall have the power, after due notice to the affected permittee sent by registered mail and after the hearing to be had in accordance with regulations to be issued covering this subject, to revoke permits issued when, upon such hearing, it shall be found that such permittee has violated some provision of this Act, or has failed to comply with some proper regulation issued under the provisions of this Act.

Sec. 12. Adoption by cities. The governing body of any city in the State of Texas may make mandatory the provisions of this Act and the inspection and labeling of meat and meat food products produced, sold, or offered for sale within their respective jurisdictions by adopting any ordinance to that effect and by providing the necessary facilities for inspection and for the enforcement of this Act.

Any city adopting any specifications and regulations as a basis for issuing any permit for the use of the "Texas State Approved Meat for Human Food" label on meat and meat food products shall be governed by the specifications and regulations promulgated by the State Board of Health as herein authorized.

Sec. 13. Application for permits. Any person, firm, association, or corporation desiring to use the "Texas State Approved" meat label in representing, publishing, or advertising any meat, or meat food products offered for sale or to be sold within this State for food for human consumption shall make application to the State Board of Health, prior to the use of such a label for a permit to use any such label in advertising, representing, or labeling such meat or meat food products.

Sec. 14. Authority to issue and revoke permit. The State Health Officer receiving such applications as provided for in Section 4 of this Act is hereby authorized and empowered to award to such applicant a permit to use the "Texas State Approved" meat label according to the requirements of this Act. The State Board of Health shall have the power to revoke any permit issued, after notice by registered mail to the affected permittee and after a hearing to be held in accordance with regulations issued covering this subject, when upon examination and hearing it is found that any penal provision or Section of this Act has been violated. The State Health Officer shall keep a record for public inspection of

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all reports received, and the issuance or revocation of permits under this Act.

Sec. 15. It shall be unlawful to knowingly sell for human consumption meat from animals affected with the following diseases: Carcinoma or sarcoma, actinomycosis, a downer showing temperatures of one hundred and six (106) degrees, black leg, so-called hemorrhagic septicemia, anthrax, rabies, shipping fever, hog cholera, tetanus, pyemia, mastitis, and erysipelas and other visible diseases.

Sec. 16. It shall be unlawful for any person, persons, firm, or corporation to knowingly slaughter for food for human consumption any diseased animal or animals knowing them to be diseased and unfit for food for human consumption, and all such diseased animals shall be slaughtered only at either a Federal or State approved slaughter plant.

Sec. 17. It shall be unlawful for any person, persons, firm, or corporation to knowingly sell or offer for sale for food for human consumption or to process meat or meat food products from any animal which died other than by slaughter for food for human consumption purposes, and such dead animals shall be denatured.

Sec. 18. It shall be unlawful to sell for food for human consumption meat from the carcass of horses, dogs, mules, donkeys, cats, or other animals not normally used for human food.

Sec. 19. **Penalty.** Whoever violates any provision of this Act shall upon conviction be fined in the sum of not less than One Hundred Dollars ($100) nor more than Five Hundred Dollars ($500) and each separate violation shall constitute a separate offense.

Sec. 20. **Constitutionality.** That in the event any Section, or part of Section, or provision of this Act, be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining Sections or parts of Sections of this Act, but the same shall continue in full force and effect.

Sec. 21. **Conflicting laws repealed.** That all laws or parts of laws in conflict with the provisions of this Act shall be and they are hereby repealed.

Sec. 22. The fact that there are no State laws providing for the use of meat labels indicating the safety, quality, and food value of meat and meat food products and the fact that labels are being used to misrepresent those qualities to the detriment of public health create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three successive days in each House be suspended, and the same is hereby suspended, and this Act shall take effect and be in full force from and after its passage, and it is so enacted.

Passed by the House, April 23, 1945: Yeas 113, Nays 9; House concurred in Senate amendments, June 4, 1945: Yeas 106, Nays 0; passed by the Senate, as amended, May 31, 1945, by a viva voce vote.

Approved June 16, 1945.

Effective 90 days after June 5, 1945, date of adjournment.

HORSE MEAT—SALE, ETC., FOR HUMAN CONSUMPTION

CHAPTER 45 [1]

H. B. No. 17

An Act prohibiting the selling, offering, exhibiting for sale, or having in possession with intent to sell as food for human consumption horse meat, defining horse meat, prohibiting the transfer of its possession under certain circumstances, setting out facts constituting prima facie evidence of violations of this Act; providing that the Act shall not affect provisions of city ordinance except where providing for injunctions against persons violating the Act from engaging in the business of purveying meat; prescribing a penalty for violation of any provision of this Act; providing a repealing clause; providing a saving clause; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. By the term "horse meat" as used in this Act is meant the meat or flesh of any animal of the equine genus.

Sec. 2. It shall be unlawful for any person to sell, offer or exhibit for sale, or have in his possession with intent to sell as food for human consumption, any quantity of horse meat.

Sec. 3. It shall be unlawful for any person to transfer the possession of any horse meat to any other person when the person so transferring knows, or in the exercise of a reasonable discretion should have known, that the person receiving the horse meat intends to sell it, offer it for sale, exhibit it for sale or keep it in his possession with intent to sell it as food for human consumption.

Sec. 4. Any of the following facts shall be prima facie evidence that horse meat was intended to be sold in violation of this Act as food for human consumption:

1. The presence of horse meat in any quantity in any retail store where the meat of cattle, sheep, swine, or goat is being exhibited or kept for sale, unless such horse meat be in a package or container not exceeding five (5) pounds in weight and plainly marked "horse meat."

2. The presence of horse meat in any quantity within the establishment, warehouse, meat locker, meat cooler or other place of storage or handling of any wholesaler of the meat of cattle, sheep, swine, or goat, unless such horse meat be in a container as described above.

3. The presence of horse meat mixed and commingled with the meat of cattle, sheep, swine, or goat in hamburger, sausage or other processed meat products.

4. The transportation of horse meat between the hours of 10:00 P. M. and 4:00 A. M.

5. The presence of horse meat in, or the delivery or attempted delivery of horse meat to any restaurant or cafe.

6. The presence of horse meat in or the delivery or attempted delivery of horse meat to any establishment preparing, canning, or processing meat food products from the meat of cattle, sheep, swine, or goats, such as, but not limited to, chili con carne, beef hash, and beef stew.

Sec. 5. Nothing contained in this Act shall affect any provision of any city ordinance regulating the sale or possession of horse meat and the licensing of dealers thereunder and the only provisions of such ordinances that shall be affected and set aside by the passage of this Act, shall be such provisions as are directly in conflict herewith.

[1] Vernon's Ann.P.C., art. 719e.

Sec. 6. Any person violating any of the provisions of this Act, shall be fined not to exceed One Thousand Dollars ($1,000) or confined in jail for a period of not less than thirty (30) days nor more than two (2) years, or both. For any second or succeeding violation of this Act, any person so violating the same shall be confined in the penitentiary not less than two (2) years, nor more than five (5) years.

Upon conviction of a violation of this Act, the Court in pronouncing sentence shall also enter a judgment enjoining the defendant from slaughtering animals, selling meat, transporting meat or in any manner engaging in the business of purveying meat to the public as food for human consumption. Each day any such judgment and injunction is violated shall constitute a separate contempt.

Sec. 7. Section 18 of Acts of the Forty-ninth Legislature, 1945, Page 554, Chapter 339, where in conflict herewith, is hereby expressly repealed to the extent of such conflict only.

Sec. 8. If any provision, section, subsection, sentence, clause or phrase of this Act, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Act or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the Legislature of the State of Texas in adopting this Act, that no portion thereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation, and to this end, all provisions of this Act are declared to be severable.

Sec. 9. The fact that the present law of this State prohibiting the sale of horse meat for human consumption is totally inadequate to protect the public creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

Passed the House, February 24, 1949: Yeas 121, Nays 4; passed the Senate, March 8, 1949: Yeas 28, Nays 0.

Approved March 14, 1949.

Effective March 14, 1949.

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hereby authorized and directed to exempt all citizens of Texas who at the time of their entry into a State educational institution of collegiate rank are high school graduates of the State Orphanages from the payment of all dues, fees and charges whatsoever, including fees for correspondence courses; provided, however, that the foregoing exemption shall not be construed to apply to deposits, such as library, or laboratory deposits, which may be required in the nature of a security for the return of or proper care of property loaned for the use of students, nor to fees or charges for lodging, board or clothing. The governing boards of said institutions may and it shall be their duty to require every applicant claiming the benefits of the above exemption to submit satisfactory evidence that the applicant is a citizen of Texas and is otherwise entitled to said exemption."

Sec. 2. If any Section, sentence, subdivision or clause of this Act is for any reason held invalid or to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Act.

Sec. 3. Whereas, a number of the children who have been in the various State Orphanages and have graduated from high school and are now desirous of acquiring a college education, should be encouraged in their admirable ambition by exempting them from tuition, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the said Rule is hereby suspended, and that this Act take effect and be in full force from and after its passage, and it is so enacted.

Passed the House, June 27, 1949: Yeas 54, Nays 52; passed the Senate, June 30, 1949: Yeas 22, Nays 0.

Approved July 7, 1949.

Effective 90 days after July 6, 1949, date of adjournment.

HORSEMEAT—TRANSPORTATION 1949

CHAPTER 545

H. B. No. 962

An Act to amend subdivision 4 of Section 4 of House Bill No. 17, Acts of the Fifty-first Legislature, 1949, Regular Session, so as to provide for the transportation of horsemeat between the hours of 10:00 P.M. and 4:00 A.M. unless such horsemeat be in individual packages or containers not exceeding five (5) pounds in weight and plainly marked "horsemeat" for animal consumption; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. That subdivision 4 of Section 4, House Bill No. 17, Acts of the Fifty-first Legislature, 1949, Regular Session, be amended and the same is hereby amended [42] so as hereafter to read as follows:

"Subdivision 4. The transportation of horsemeat between the hours of 10:00 P.M. and 4:00 A.M. unless said horsemeat is in individual packages or containers not to exceed five (5) pounds in weight each and plainly marked 'horsemeat' for animal consumption."

Sec. 2. The fact that there is a need for horsemeat for animal consumption and the fact that transportation will be required during these hours create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in

[42] Vernon's Ann.P.C. art. 719e, § 4(4).

each House be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

Passed the House, June 29, 1949: Yeas 120, Nays 0; passed the Senate, June 30, 1949: Yeas 19, Nays 3.

Approved July 7, 1949.

Effective 90 days after July 6, 1949, date of adjournment.

STATE BOARD OF EDUCATION—MEMBERS

CHAPTER 546

H. B. No. 964

An Act amending Senate Bill No. 115, Acts of the Fifty-first Legislature, by changing Article II; creating the State Board of Education and dividing the State into Educational Districts for the purpose of selecting members thereof; providing for the election, qualifications and terms of office of members of the State Board of Education; providing an official oath of office and bond for members of the State Board of Education; making certain persons ineligible for service on said Board; providing for elections for the purpose of filling vacancies on said Board and for filling such vacancies by appointment until filled by election; providing the manner in which persons may become or be made candidates for election to said Board in the elections herein provided for; limiting the money authorized to be expended for the purpose of furthering or opposing the candidacy of any person for election to said Board; prohibiting certain persons, groups of persons, organizations and corporations from making financial contributions to, or taking part in, the campaign of any person to become a member of said Board and prescribing penalties for anyone convicted of violating the same; providing for organization of said Board, election of officers and a State Commissioner of Education, adoption of rules of procedure and meetings of said Board; providing that members of said Board shall serve without salary and be reimbursed for expenses of attending meetings of said Board; providing that the Act hereby amended shall take effect and be in force from and after the passage of this Act; repealing conflicting laws or parts of laws; containing a saving clause; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Senate Bill No. 115, Acts of the Fifty-first Legislature, is hereby amended [43] by changing Article II so that said Article II shall read hereafter as follows:

"Article II.

Section 1. There is hereby created the State Board of Education, to consist of twenty-one (21) members. One (1) member of the State Board of Education shall be elected from each of the twenty-one (21) Congressional Districts of the State of Texas.

"Section 2. A special election shall be held in each of the twenty-one (21) Congressional Districts of the State of Texas on the second Tuesday in November, 1949, for the purpose of electing the intial members of the State Board of Education, such members so elected at such election to hold office until January 1, 1951, the names of the candidates in each district to appear on the same ballot with the Constitutional Amendments proposed by the Fifty-first Legislature to be voted on at such time.

"Section 3. Any person desiring to become a candidate in the above-mentioned election to be held on the second Tuesday in November, 1949, shall not less than fifty (50) nor more than sixty (60) days prior to the date of said election file a sworn application with the Secretary of State,

[43] Vernon's Ann.Civ.St. art. 2603c.