

Y 4
.In 8/4

1019

92-6
In 8/4
9244

92-6

CONFECTIONERY AMENDMENTS TO THE FOOD AND DRUG ACT

GOVERNMENT
Storage

DOCUMENTS

JUN 15 1971

HEARING THE LIBRARY
BEFORE THE KANSAS STATE UNIVERSITY
SUBCOMMITTEE ON
PUBLIC HEALTH AND ENVIRONMENT
OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
NINETY-SECOND CONGRESS
FIRST SESSION
ON
H.R. 7785 and H.R. 4764

BILLS TO AMEND CERTAIN PROVISIONS OF THE FEDERAL FOOD,
DRUG, AND COSMETIC ACT TO PERMIT INTERSTATE SHIPMENT OF
CONFECTIONERY CONTAINING ALCOHOL OF AN AMOUNT NOT IN
EXCESS OF 8.5 PERCENT BY VOLUME

MAY 3, 1971

Serial No. 92-6

Printed for the use of the
Committee on Interstate and Foreign Commerce



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

60-846

KSU LIBRARIES



A11900 808799

DOCUMENTS

JUN 18 1951

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HARLEY O. STAGGERS, West Virginia, *Chairman*

TORBERT H. MACDONALD, Massachusetts	WILLIAM L. SPRINGER, Illinois
JOHN JARMAN, Oklahoma	SAMUEL L. DEVINE, Ohio
JOHN E. MOSS, California	ANCHER NELSEN, Minnesota
JOHN D. DINGELL, Michigan	HASTINGS KEITH, Massachusetts
PAUL G. ROGERS, Florida	JAMES T. BROYHILL, North Carolina
LIONEL VAN DEERLIN, California	JAMES HARVEY, Michigan
J. J. PICKLE, Texas	TIM LEE CARTER, Kentucky
FRED B. ROONEY, Pennsylvania	CLARENCE J. BROWN, Ohio
JOHN M. MURPHY, New York	DAN KUYKENDALL, Tennessee
DAVID E. SATTERFIELD III, Virginia	JOE SKUBITZ, Kansas
BROCK ADAMS, Washington	FLETCHER THOMPSON, Georgia
RAY BLANTON, Tennessee	JAMES F. HASTINGS, New York
W. S. (BILL) STUCKEY, Jr., Georgia	JOHN G. SCHMITZ, California
PETER N. KYROS, Maine	JAMES M. COLLINS, Texas
BOB ECKHARDT, Texas	LOUIS FREY, Jr., Florida
ROBERT O. TIERNAN, Rhode Island	JOHN WARE, Pennsylvania
RICHARDSON PREYER, North Carolina	JOHN Y. MCCOLLISTER, Nebraska
BERTRAM L. PODELL, New York	RICHARD G. SHOUP, Montana
HENRY HELSTOSKI, New Jersey	
JAMES W. SYMINGTON, Missouri	
CHARLES J. CARNEY, Ohio	
RALPH H. METCALFE, Illinois	
GOODLOE E. BYRON, Maryland	
WILLIAM R. ROY, Kansas	

W. E. WILLIAMSON, *Clerk*

KENNETH J. PAINTER, *Assistant Clerk*

Professional Staff

JAMES M. MENDER, Jr.
WILLIAM J. DIXON

ROBERT F. GUTHRIE
KURT BORCHARDT

SUBCOMMITTEE ON PUBLIC HEALTH AND ENVIRONMENT

PAUL G. ROGERS, Florida, *Chairman*

DAVID E. SATTERFIELD III, Virginia	ANCHER NELSEN, Minnesota
PETER N. KYROS, Maine	TIM LEE CARTER, Kentucky
RICHARDSON PREYER, North Carolina	JAMES F. HASTINGS, New York
JAMES W. SYMINGTON, Missouri	JOHN G. SCHMITZ, California
WILLIAM R. ROY, Kansas	

CONTENTS

Text of—	Page
H.R. 4764-----	1
H.R. 7785-----	2
Report of Department of Health, Education and Welfare on H.R. 4764 and H.R. 7785-----	2
Statement of—	
Francisco, Dr. J. T., Conwood Corp-----	11, 23
Kintner, Earl W., Conwood Corp-----	11
Kuyendall, Hon. Dan, a Representative in Congress from the State of Tennessee-----	3
Ruttenberg, Charles B., Conwood Corp-----	11
Waggonner, Hon. Joe D., Jr., a Representative in Congress from the State of Louisiana-----	10
Watts, Hon. John C., a Representative in Congress from the State of Kentucky-----	8
Whitesmith, Bernard, Conwood Corp-----	11
Additional material submitted for the record by—	
Baker, Hon. Howard H., Jr., a U.S. Senator from the State of Ten- nessee, joint statement with Senator Marlow W. Cook, of Kentucky--	6
Cook, Hon. Marlow W., a U.S. Senator from the State of Kentucky, joint statement with Senator Howard H. Baker, Jr., of Tennessee--	6
Conwood Corp.:	
Appendix A—Letter dated January 21, 1969, from the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service to Mr. Donald W. Pemberton, attorney for Conwood Corp., re analysis of samples of liqueur chocolate candies-----	17
Appendix B—Memorandum from Dr. J. T. Francisco, department of pathology, University of Tennessee, opinion that the alcoholic content of the candies would have no harmful effects on a child--	18
Appendix C—Memorandum from Dr. Amos Christie, professor of pediatrics, Vanderbilt University, opinion that the alcoholic content of the candies would have no harmful effects on a child--	19
Appendix D—Memorandum from Dr. J. Pearson Allen, Jr., Pediatric Clinic, Memphis, Tenn., opinion that the alcoholic content of the candies would have no harmful effects on a child--	20
Curriculum vitae of J. T. Francisco, M.D-----	21
References to the statement of Conwood Corp-----	17
Kuykendall, Hon. Dan, a Representative in Congress from the State of Tennessee, report dated October 20, 1970, on H.R. 13426 from the Health, Education, and Welfare Department-----	5

CONTENTS

1	Report of the Department of Health, Education and Welfare on H.R. 13426
2	H.R. 13426
3	H.R. 13426
4	H.R. 13426
5	H.R. 13426
6	H.R. 13426
7	H.R. 13426
8	H.R. 13426
9	H.R. 13426
10	H.R. 13426
11	H.R. 13426
12	H.R. 13426
13	H.R. 13426
14	H.R. 13426
15	H.R. 13426
16	H.R. 13426
17	H.R. 13426
18	H.R. 13426
19	H.R. 13426
20	H.R. 13426
21	H.R. 13426
22	H.R. 13426
23	H.R. 13426
24	H.R. 13426
25	H.R. 13426
26	H.R. 13426
27	H.R. 13426
28	H.R. 13426
29	H.R. 13426
30	H.R. 13426
31	H.R. 13426
32	H.R. 13426
33	H.R. 13426
34	H.R. 13426
35	H.R. 13426
36	H.R. 13426
37	H.R. 13426
38	H.R. 13426
39	H.R. 13426
40	H.R. 13426
41	H.R. 13426
42	H.R. 13426
43	H.R. 13426
44	H.R. 13426
45	H.R. 13426
46	H.R. 13426
47	H.R. 13426
48	H.R. 13426
49	H.R. 13426
50	H.R. 13426
51	H.R. 13426
52	H.R. 13426
53	H.R. 13426
54	H.R. 13426
55	H.R. 13426
56	H.R. 13426
57	H.R. 13426
58	H.R. 13426
59	H.R. 13426
60	H.R. 13426
61	H.R. 13426
62	H.R. 13426
63	H.R. 13426
64	H.R. 13426
65	H.R. 13426
66	H.R. 13426
67	H.R. 13426
68	H.R. 13426
69	H.R. 13426
70	H.R. 13426
71	H.R. 13426
72	H.R. 13426
73	H.R. 13426
74	H.R. 13426
75	H.R. 13426
76	H.R. 13426
77	H.R. 13426
78	H.R. 13426
79	H.R. 13426
80	H.R. 13426
81	H.R. 13426
82	H.R. 13426
83	H.R. 13426
84	H.R. 13426
85	H.R. 13426
86	H.R. 13426
87	H.R. 13426
88	H.R. 13426
89	H.R. 13426
90	H.R. 13426
91	H.R. 13426
92	H.R. 13426
93	H.R. 13426
94	H.R. 13426
95	H.R. 13426
96	H.R. 13426
97	H.R. 13426
98	H.R. 13426
99	H.R. 13426
100	H.R. 13426

CONFECTIONERY AMENDMENTS TO THE FOOD AND DRUG ACT

MONDAY, MAY 3, 1971

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PUBLIC HEALTH AND ENVIRONMENT,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2322, Rayburn House Office Building, Hon. Paul G. Rogers (chairman) presiding.

Mr. ROGERS. The hearings this morning are on H.R. 7785, which has been introduced by our colleague on the full committee, Mr. Kuykendall. A companion bill, S. 782, has been introduced in the Senate by Mr. Baker. H.R. 4764, introduced by Congressman Watts, of Kentucky, is similar in intent to H.R. 7785.

The Federal Food, Drug, and Cosmetic Act presently prohibits interstate shipment of candy containing alcohol in excess of one-half of 1 percent by volume derived solely from the use of flavoring extracts. H.R. 7785 would relax this limitation by providing that confectionery containing alcohol of an amount not in excess of 8.5 percent by volume shall not fall within the prohibitions of the act. The effect of this legislation would be to remove the current prohibition of the act against the shipment in interstate commerce of "bourbon balls" and similar confectioneries which contain alcohol as a characterizing ingredient. It is this subcommittee's understanding that locally produced products of this nature have been marketed in intrastate commerce in certain areas of the country for several years.

Similar legislation was introduced last session. As that time, the Department of Health, Education, and Welfare's report on the bill indicated that HEW had no opposition to enactment of the legislation, but recommended that such legislation require precautionary labeling. H.R. 7785 requires labeling which would disclose the alcoholic content of confectioneries.

(The texts of H.R. 7785 and H.R. 4764, and departmental report thereon, follow:)

[H.R. 7785, 92d Cong., 1st sess., introduced by Mr. Kuykendall on April 27, 1971]

A BILL, To amend certain provisions of the Federal Food, Drug, and Cosmetic Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (d) (2) of section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) is amended to read as follows: "bears or contains any alcohol other than alcohol not in excess of one-half of 1 per centum by volume derived solely from the use of flavoring extracts:

Provided, That this clause shall not apply to confectionery bearing or containing alcohol not in excess of $8\frac{1}{2}$ per centum by volume, whether or not such alcohol is derived from the use of flavoring extracts, where such confectionery is appropriately labeled to disclose its alcoholic content by volume."

[H.R. 4764, 92d Cong., 1st sess., introduced by Mr. Watts on February 22, 1971]

A BILL, To amend certain provisions of the Federal Food, Drug, and Cosmetic Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (d) (2) of section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) is amended to read as follows: "bears or contains alcohol in excess of $8\frac{1}{2}$ per centum by volume."

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., May 21, 1971.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request for reports on H.R. 3825, H.R. 4764, and H.R. 7785, bills "To amend certain provisions of the Federal Food, Drug, and Cosmetic Act." Presently the Federal Food, Drug, and Cosmetic Act (Section 402(d)(2)) prohibits the shipment in interstate commerce of confection which contains alcohol except alcohol derived solely from the use of flavoring extracts and then not in excess of one-half of one percentum by volume.

H.R. 4764 would amend this section to permit confection to contain alcohol in amounts not to exceed $8\frac{1}{2}$ percentum by volume.

H.R. 3825 would amend Section 402(d)(2) to read as follows: "A food shall be deemed to be adulterated. . . . If it is confectionery and . . . (2) bears or contains alcohol [other than alcohol] not in excess of one-half of one percentum by volume derived solely from the use of flavoring extracts: *Provided*, That this clause shall not apply to confectionery bearing or containing alcohol not in excess of $8\frac{1}{2}$ percentum by volume, whether or not such alcohol is derived from the use of flavoring extracts, where such confectionery is appropriately labeled to disclose its alcoholic content by volume."

The bracketed phrase is in the text of the present Act and we believe its deletion in the bill was a technical error. Read literally, without the bracketed phrase, the section could be interpreted to mean that confection must bear alcohol in amounts greater than one-half of one percentum by volume.

The bill is also unclear as to whether the labeling requirement as to alcoholic content would apply only to those confections which contained alcohol from a source other than flavoring extracts and/or in excess of one-half of one percentum or whether the labeling would also apply to those confections which conform to present law.

H.R. 7785 corrects the deletion of the phrase "other than alcohol" which is noted above in the summary of H.R. 3825, and is identical to that bill in all other respects.

The objective of these bills would be to remove the current prohibition of the Federal Food, Drug, and Cosmetic Act against the shipment in interstate commerce of "bourbon balls" and similar confections which contain alcohol as a characterizing ingredient. These products have been locally produced and marketed in intrastate commerce in certain geographical areas of the United States for many years.

A prohibition against importation or interstate shipment of liquor-filled candies was included in the Act of June 30, 1906, which established Federal regulation of foods and drugs. In 1938, when that Act was superseded by the Federal Food, Drug, and Cosmetic Act, the prohibition was retained, modified however to permit the use of alcohol for flavoring.

Although the primary goal of these bills is the marketing of novelty confectionery, the increased authorized limits for alcohol would apply to all confectionery. Candy is often marketed directly to children and there is no evidence that such amounts of alcohol may not be potentially detrimental to children. We

would therefore recommend that if this type of legislation is approved by the Committee, it include a provision requiring that all confections containing alcohol in excess of one-half of one percentum by volume, or any alcohol not derived solely from the use of flavoring extracts, bear a label stating the alcoholic content by volume. We also recommend that the Secretary of Health, Education, and Welfare, be authorized to establish standards of conspicuousness for this labeling.

With the inclusion of this labeling requirement, we would not oppose enactment of this type of legislation. Should your Committee approve such a bill, it might also be appropriate to reflect in its report that the bill's enactment would in no way limit such action as the States may deem appropriate to govern the places and conditions of sale of such candies, including a prohibition on sale to children.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ELLIOT L. RICHARDSON, *Secretary.*

Mr. ROGERS. Our first witness this morning is the author of H.R. 7785, our distinguished colleague from Tennessee, and our good friend from the full committee, Mr. Kuykendall.

It is a pleasure to have you before us, and we are pleased to receive your testimony, sir.

STATEMENT OF HON. DAN KUYKENDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. KUYKENDALL. Thank you Mr. Chairman.

I greatly appreciate the opportunity to appear here today to give you my strong endorsement of H.R. 7785, which would amend the Federal Food, Drug, and Cosmetic Act to authorize the inclusion in confectionery of alcoholic beverages not in excess of 8½ percent by volume where such confectionery is labeled to disclose its alcoholic content. My remarks will be brief and general since my good friend, Earl Kintner, former Chairman of the Federal Trade Commission, and his associates will discuss the more technical aspects of the legislation in a few minutes.

Several years ago one of my constituents, a representative of the Conwood Corporation, one of the largest employers in Memphis, Tenn. and in many other parts of the United States, showed me and allowed me to sample a very delightful product manufactured by an English food concern. This product was a very fine chocolate candy with a few drops of various liquors and brandies contained inside the candy itself. Even though I am a nondrinker myself, I found this product to be quite delightful and inquired as to what the connection between the Conwood Corp. and the English concern happened to be. It developed that Conwood, the Memphis concern, had made an arrangement with the English concern to manufacture and market a similar product in this country. However, it was explained to me that there was a very obscure FDA regulation which prevented such a product from being marketed in interstate commerce.

Having been directly involved in the food industry for many years and indirectly concerned with other types of retail operations I was well aware that literally scores of food items such as bakery goods, fruits and flavor extracts in the food stores, as well as many vitamin

additives, tonics and elixirs in the drug stores contained many times the alcoholic content of this fine candy and yet are sold freely with no record of abuse by the young or by anyone else. This seemed to me a complete contradiction of policy and one which I felt should be corrected.

Upon further examination of the product and of the other products manufactured all over Europe and of the products manufactured inside the State of Kentucky for intrastate use only, I found that the infinitesimal amount of alcohol contained in the candy would make it impossible for even a small child to receive any harm from this product. Not only is the amount of alcohol extremely small but these candies, whether imported from foreign countries or manufactured by my constituent or other American companies, are all luxury items which simply would not come under the category of the normal consumption of candy.

Mr. Kintner's able firm presented these facts to the representatives of HEW and the FDA and after careful consideration I understand these agencies have informed the committee that they see no basis of harm to come from the distribution of such a product and that they are perfectly happy to leave the final decision up to the wisdom of this committee.

I will now ask Roy, with unanimous consent, this letter be inserted in the record at this point. This is addressed to Chairman Harely O. Stagers.

Section 402(d) of the Federal act defines as adulterated any confectionery food product which bears or contains any alcohol other than alcohol not in excess of one-half of one percentum by volume derived solely from the use of flavoring extracts.

I am digesting this letter and will place it into the record in full.

The bill would relax this limitation by naming the provision to define as adulterated the confection that bears or contains alcohol in excess of 2.5 percent by volume.

The bill would thus remove the current prohibition of the act against the shipment in interstate commerce of 'bourbon balls' and similar confections which contain alcohol as a characterizing ingredient. These products have been locally produced and marketed in intrastate commerce in certain geographical areas of the United States for many years.

A prohibition against importation of interstate shipment of liquor-filled candies was included in the act of June 30, 1906, which established Federal regulation of foods and drugs. In 1938, when that act was superseded by the Federal Food, Drug, and Cosmetic Act, the prohibition was retained; modified however to permit the use of alcohol for flavoring. The prohibition seems not to have come under study when, in 1966, the Congress amended section 402(d) (Public Law 89-477) to permit the use, in confectionery products, of certain non-nutritive substances.

The confections in question are not injurious to health, and we therefore do not oppose enactment of H.R. 13426.

That was the bill last year.

We would recommend, however, that the Committee amend the bill to require that the labeling of liquor-filled confections be required to disclose the alcoholic content by volume. Should your committee approve the bill. It might also be

appropriate to reflect in its report that the bill's enactment would in no way limit such action as the States may deem appropriate to govern the places and conditions of sale of such candies.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

(The full text of the letter above quoted follows:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., October 20, 1970.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request for a report on H.R. 13426, a bill "To amend certain provisions of the Federal Food, Drug, and Cosmetic Act."

Section 402(d) of the Federal Act defines as adulterated any confectionery food product which bears or contains any alcohol other than alcohol not in excess of one-half of one percentum by volume derived solely from the use of flavoring extracts. The bill would relax this limitation by amending the provision to define as adulterated a confection that bears or contains alcohol in excess of eight and one-half percentum by volume.

The bill would thus remove the current prohibition of the Act against the shipment in interstate commerce of "bourbon balls" and similar confections which contain alcohol as a characterizing ingredient. These products have been locally produced and marketed in intrastate commerce in certain geographical areas of the United States for many years.

A prohibition against importation or interstate shipment of liquor-filled candies was included in the Act of June 30, 1906, which established Federal regulation of foods and drugs. In 1938, when that Act was superseded by the Federal Food, Drug, and Cosmetic Act, the prohibition was retained, modified however to permit the use of alcohol for flavoring. The prohibition seems not to have come under study when, in 1966, the Congress amended section 402(d) (Public Law 89-477) to permit the use, in confectionery products, of certain nonnutritive substances.

The confections in question are not injurious to health, and we therefore do not oppose enactment of H.R. 13426. We would recommend, however, that the Committee amend the bill to require that the labeling of liquor-filled confections be required to disclose the alcoholic content by volume.

Should your Committee approve the bill, it might also be appropriate to reflect in its report that the bill's enactment would in no way limit such action as the States may deem appropriate to govern the places and conditions of sale of such candies.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ELLIOT L. RICHARDSON,
Secretary.

Mr. KUYKENDALL. Mr. Chairman, this is not a major matter. I appreciate the chairman enabling us to have these hearings. I feel we simply have a case where one small segment of the food industry by an accident of legislation passed over a half century ago is being discriminated against. I respectfully ask this committee to enable this type of delightful product to be sold in interstate commerce in the States where the State laws will so allow.

At this time I also ask unanimous consent that the joint statement of Senator Howard H. Baker, Jr., of Tennessee, and Senator Marlow W. Cook, of Kentucky, be placed in the record.

Mr. ROGERS. Without objection, that statement will be ordered placed in the record.

(The joint statement of Senators Baker and Cook is as follows:)

JOINT STATEMENT OF HON. HOWARD H. BAKER, JR., A U.S. SENATOR FROM THE
STATE OF TENNESSEE AND HON. MARLOW W. COOK, A U.S. SENATOR FROM THE
STATE OF KENTUCKY

Mr. Chairman and Members of the Subcommittee: We appreciate this opportunity to submit a statement in support of H.R. 7785. The bill is designed to amend Section 402(d) (2) of the Federal Food, Drug and Cosmetic Act, to permit the sale in interstate commerce of confectionery containing no more than eight and one-half per cent alcohol by volume, provided such confectionery is appropriately labeled to disclose its alcoholic content.

H.R. 7785 is of great interest to the Conwood Corporation, a publicly-owned company with its home office in Memphis, Tennessee, and to its partially owned subsidiary at Hopkinsville, Kentucky, Cavenham Confectioneries, Ltd., which engages in the manufacture of a number of products including confectionery. The Conwood Corporation has been instrumental in promoting the economy of the State of Tennessee, as well as that of the southeastern United States. We understand that representatives of the Corporation will be testifying later in this hearing.

Enactment of this bill would have a beneficial effect on the entire confectionery industry, as well as on the economy of Tennessee and Kentucky, and the United States in general. Passage of H.R. 7785 also will result in increased employment of personnel in the confectionery industry throughout the United States, and as a consequence will aid in the efforts which all of us are making to reduce unemployment.

As demonstrated by the experience in Europe with the production and sale of liqueur chocolate candy, it is our understanding that the sale of such confectionery in the United States would have no harmful results. On the contrary, it will result in a new submarket of the confectionery industry, and promote its healthy growth. Therefore, we urge that favorable consideration be given to H.R. 7785.

Mr. ROGERS. Thank you Mr. Kuykendall. I think your statement makes it amply clear that as a proponent of the legislation you have only sampled the concoction and have not indulged in it.

Mr. KUYKENDALL. If the chairman will yield; you can eat a lot of this and still be a nondrinker.

Mr. ROGERS. Mr. Nelsen.

Mr. NELSEN. No questions. I do, however, welcome my distinguished colleague to this hearing. We always enjoy his enthusiasm and listening to his testimony.

Thank you very much.

Mr. ROGERS. Dr. Carter.

Mr. CARTER. No questions. You really don't think there is much danger of anyone getting stoned through eating this candy; is that right?

Mr. KUYKENDALL. Well, when I was first presented with this product, Dr. Carter, this was one of the first things I wanted to be sure of, and they showed me a rather large box which sold for \$4.50. I would defy anybody to eat all of it, and I carefully, with my slide rule, calculated how much alcohol there was in three-fourths of that \$4.50 box and it came to about the same amount as a can of beer.

Mr. CARTER. Well, the present proposal calls for 8½ percent alcohol.

Mr. KUYKENDALL. By volume, of the total candy.

Mr. CARTER. By volume of the total candy? What percent alcohol is here?

Mr. KUYKENDALL. About 6 or 6½ percent.

Mr. CARTER. You don't think youngsters would be damaged or hurt by eating this delicious confection?

Mr. KUYKENDALL. I think all he would get, if he ate 32 pieces of this stuff, is a bellyache, Dr. Carter.

Mr. CARTER. I thank the distinguished gentleman.

Mr. NELSEN. For his diagnosis.

Mr. KUYKENDALL. By the way I think everyone would agree that 32 pieces of candy would be likely to give a bellyache to anyone.

Mr. CARTER. Absolutely, and I feel that is the only thing that would be incurred.

Thank you Mr. Chairman.

Mr. SCHMITZ. I am searching for a reason as to why they made that exception in the original law. All the bill does, according to your testimony, is to allow it to be shipped interstate and it is still up to the local States as to whether they want it sold and how it is to be sold?

Mr. KUYKENDALL. That is correct. It is my understanding that the reason is very obscure. You might ask Mr. Kintner about it, but my understanding is that even in the research done, this was a flash amendment back in 1906, and it seems that about that time, and maybe the gentlemen from Kentucky could add something to this, about that time there were cough sirups and cough drops and some things like this not only with alcohol, but with narcotics being placed in them that were creating a little stir at the time, and this is about the only record that we can find as to what caused it, because as you know, you can go around and buy a fruit cake with a content of three times this much, you can buy lemon extract that is 166 proof, yet here you can buy cakes or cherry drops or things like that but there is very little record we can find as to what the basis was for this.

Mr. SCHMITZ. Your bill does not in any way prevent action by the separate States?

Mr. KUYKENDALL. Absolutely not.

Mr. CARTER. Will the distinguished gentleman yield?

Mr. SCHMITZ. Which distinguished gentleman?

Mr. CARTER. I would ask our witness if they still sell Hadacol, if it doesn't have a higher alcohol content?

Mr. KUYKENDALL. Hadacol has been weakened and has about 24 proof or 12 percent.

Mr. CARTER. Twenty-four proof?

Mr. KUYKENDALL. Yes, but there is a liver and bone tonic which I have seen in the drugstores recently that has 24 percent, that is 48 proof, and anybody can buy it, but it is not abused, that is the main point, these things are not abused.

For instance, the liquid off of brandied cherries is about 40 proof, but people do not abuse it.

Mr. CARTER. I understand Hadacol has been abused at times?

Mr. KUYKENDALL. It used to be about 40 percent at the time of its hey day.

Mr. CARTER. There was a saying "Have you had your Hadacol?"

Thank you.

Mr. ROGERS. Thank you.

There seems to be a number of ways in which a nondrinker can keep his reputation clear—

Mr. KUYKENDALL. Yes, and keep his credentials up with either side.

Mr. ROGERS. Dr. Roy.

Mr. ROY. No questions.

Mr. ROGERS. Thank you Mr. Kuykendall. We appreciate your being here today.

Our next witness is the Honorable John C. Watts, of Kentucky.

Welcome to our subcommittee, Mr. Watts. Proceed as you see fit, sir.

**STATEMENT OF HON. JOHN C. WATTS, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF KENTUCKY**

Mr. WATTS. Mr. Chairman, I wish to make the following statement in support of H.R. 4764 which I introduced on February 22, 1971, which would amend certain provisions of the Federal Food, Drug, and Cosmetic Act.

Impressed by the farflung market acceptance enjoyed and sustained by suppliers of high quality chocolate candy containing alcoholic flavoring in recent years in Western Europe, Great Britain, Canada, and Australia, the candy industry in Kentucky and elsewhere is interested in manufacturing and selling a complete line of such products in the United States. This is the primary purpose behind the introduction of H.R. 4764 which is referred to above.

These candies, well known to Americans traveling abroad, cannot presently be introduced, delivered, or sold in interstate commerce in the United States. The Federal Food, Drug, and Cosmetic Act, which was initially enacted in 1906, states that confectionary products such as candy shall be considered adulterated if they contain any alcohol, unless alcohol content does not exceed one-half of 1 percent per volume and is derived solely from flavoring extracts.

The premise for this prohibitory provision is set forth in the legislative history of the Food, Drug, and Cosmetic Act of 1906 and states that such candy might be harmful if consumed by children and it ought not to be sold to or consumed by anyone. This position does not comport, however, with the actual experience of the many countries which have permitted the sale of quality chocolate candies containing alcoholic flavoring over the years.

For example, Great Britain's Licensing Act of 1961 which first permitted the sale in Britain of chocolate containing alcoholic flavoring by confectionaries, grocery stores, and other retail outlets, provided the alcoholic content in the candy was not in excess of a stipulated maximum, gave rise to a burgeoning candy industry without in any way compromising the public health. Since that time it has been the British experience that no one has ever been known to be adversely affected by the consumption of chocolate containing alcoholic flavoring and that no litigation has been instituted for illness caused to infants and/or minors resulting from consumption of chocolate containing alcoholic flavoring against any manufacturer of such products supplied to the British market.

The significance of the industry's record in Britain is underscored by the fact that the 1961 Licensing Act merely provides nominal fines for persons knowingly selling chocolate containing alcoholic flavoring to anyone under 16 years of age and does not otherwise regulate the sale of such products.

It is important to note that the alcoholic flavored chocolate candy products proposed to be manufactured by the candy industry in Kentucky and elsewhere will contain a minimum of 91½ percent of ingredients other than alcohol or a ratio of about 11 to 1. Thus, even if a child should accidentally or purposely consume any of this product, more than likely he would be apt to become nauseated as a result of eating such a high quantity of sugar, butterfat, and chocolate long before he could consume enough alcohol to cause him any physical harm.

In seeking an amendment to the Federal Food, Drug and Cosmetic Act, to permit the interstate sale of chocolate candy containing alcoholic flavoring, the candy industry in Kentucky and elsewhere emphasizes that such an amendment would almost certainly have the affect of creating a whole new submarket in the domestic candy industry. It is conservatively estimated that the type of candy discussed herein would sell for \$4 to \$5 per pound and would be promoted exclusively to a sophisticated adult market which can afford and has a taste for a high quality candy product.

In the event nationwide distribution of this type of product is ultimately permitted by law, it is estimated that the potential sales of chocolate containing alcoholic flavoring in the United States would exceed \$50 million at the manufacturer's level and approximately \$80 million at retail. Also, it is assumed that the manufacture and sale of such a product in the United States will generate an initial investment of \$30 million in plant and equipment, and approximately \$35 million annually in raw materials, packaging, and other inventory items. Needless to say, increased employment of management, marketing, sales, technical, and production employees would follow in proportion to sales and investment.

It has been indicated that these candies would be subject to section 402(d)(2) of the Federal Food, Drug and Cosmetic Act, but that otherwise, "since such candies would not be considered to be beverages, they would not be subject to any other provision of law or regulations administered by the Internal Revenue Service relating to liquor."

Since the alcoholic content of the candy analyzed by the Internal Revenue Service ranged up to 8.5 percent by volume, the candy industry in Kentucky and elsewhere proposed that section 402(d)(2) of the Federal Food, Drug, and Cosmetic Act be amended to eliminate the flavoring extract reference and permit interstate transactions in candies containing alcohol not in excess of 8.5 percent by volume as provided in H.R. 4764, which I have introduced and is now being considered by the subcommittee.

I recommend the strongest possible manner that H.R. 4764, be favorably reported by the Subcommittee on Public Health and Environment of the Interstate and Foreign Commerce Committee and appropriate action by the House of Representatives as soon as practicable.

Mr. ROGERS. Thank you Mr. Watts. Are there any questions?

If not, then thank you so much for sharing your thoughts with us this morning, Congressman.

Mr. WATTS. Thank you, Mr. Chairman, I have enjoyed it very much.

Mr. ROGERS. Next, we shall hear from our colleague from Louisiana, the Honorable Joe D. Waggoner, Jr. Come forward, sir, we welcome you.

STATEMENT OF HON. JOE D. WAGGONNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. WAGGONNER. The U.S. Food and Drug Act adopted in 1906 prohibits the sale in foreign or interstate commerce of any confectionery containing any alcohol other than alcohol not in excess of one-half of 1 percent by volume derived solely from the use of flavoring extracts. Twenty-eight States and the District of Columbia have a similar prohibition, and 19 States prohibit the sale of a confectionery containing any alcohol. Three States, Kentucky, Iowa, and West Virginia, permit the use of alcohol in the manufacture and sale of a confectionery.

In Great Britain and other European countries the candy industry has developed a substantial and growing business in the manufacture and sale of liqueur chocolates. This product consists of a chocolate shell about the size of our American box chocolate which encases and has for its center various liqueurs, whiskies, and wines in liquid form. Liqueur chocolates contain from 4- to 8-percent alcohol by volume with the majority running around 6 percent.

Because of the high cost of ingredients coupled with unusually expensive manufacturing, packaging, distribution, and marketing costs, liqueur chocolates are necessarily a high-priced product, and must be placed in the gourmet-luxury class as compared to almost any chocolate now made in the United States. It is estimated that this product will carry a retail price of \$4 to \$5 per pound in this country.

In order to permit the manufacture and sale of this type of product in interstate commerce it is proposed that the Federal Food and Drug Act be amended accordingly. If this is done, it is anticipated that most of the States would amend their statutes to conform.

Samples of this product as now manufactured in England have been submitted to the Alcohol, Tobacco, and Firearms Division of the U.S. Internal Revenue Service, and they have issued a statement in writing to the effect that it would not be considered a beverage, and therefore, would not be subject to their jurisdiction or any other provisions of the law and regulations administered by them relating to liquors.

Assuming that the Federal and State laws are amended as proposed and thus permit nationwide sale, the British marketing experience suggests that the potential sale of liqueur chocolates in the United States would exceed \$54 million at retail.

On the same assumption it is estimated that the manufacture and sale of this product in the United States will generate an initial investment of \$18 million in plant and equipment, and \$22 million annually in raw materials, packaging, and other inventory items.

Increased employment of management, marketing, sales, technical, and production employees would follow in proportion to sales and investment.

These estimates are based on current sales of liqueur chocolates in Great Britain, and do not take into consideration the pattern of growth which is clearly evident in that country as well as other European countries.

The introduction and development of liqueur chocolates has not hurt the candy industry in European markets, but rather has acted as a catalyst to speed its healthy growth. Therefore, it is reasonable to

assume that its introduction in the United States would have a similar salutary effect on the candy industry in this country.

Investigation of the Federal law and the laws of the States which prohibit the use of alcohol in confectionery indicates that the basic reason for those laws at the time they were adopted was the protection of children—or any minor—from the supposed danger of accidental or unintentional consumption of alcohol. However, there are a number of reasons to believe that there is little problem in this area.

First, the product is a luxury item, and is not as likely to get into the hands of minors through their purchase of it as are the much cheaper candy products not containing alcohol.

Second, the very small amount of alcohol contained in each piece precludes any significant possibility that a child could consume enough of such confectionary to cause him any problem. Liqueur chocolates, as proposed, will contain a minimum of 91½ percent of ingredients other than alcohol, or a ratio of about 11 to 1. Thus, even if a child should accidentally or purposely consume any of this product, he would undoubtedly become nauseated as a result of eating such a high quality of sugar, butterfat, and chocolate before he could consume enough alcohol to cause him any physical harm.

Third, this type of product has been on the market in Europe for years, as has another chocolate with a high alcoholic content in Kentucky and there have been no adverse effects in those markets so far as minors are concerned.

Fourth, young children, at least, generally dislike the taste of liqueur candies and have difficulty in swallowing them.

Mr. ROGERS. Thank you, Mr. Waggonner, for taking time out of your busy schedule to be with us today.

Mr. WAGGONNER. Thank you, Mr. Chairman, it is my pleasure.

Mr. ROGERS. Our next witness is Mr. Earl Kintner, former Chairman of the Federal Trade Commission.

I imagine you have testified before this committee a number of times in the past, before I was associated with it.

We are glad to welcome you back.

**STATEMENTS OF EARL W. KINTNER, AND DR. J. T. FRANCISCO,
ON BEHALF OF CONWOOD CORP.; ACCOMPANIED BY CHARLES B.
RUTTENBERG AND BERNARD WHITESMITH**

Mr. KINTNER. I have had that privilege, sir, on numerous occasions and I am pleased to be back here this morning on this little chore.

Mr. ROGERS. Would you like to introduce your associates?

Mr. KINTNER. Mr. Chairman, members of the committee, my name is Earl W. Kintner. I am a senior partner in the law firm of Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C., and I appear this morning, accompanied by my partner Charles B. Ruttenberg, on behalf of the Conwood Corp. Also with us is Dr. J. T. Francisco who is a forensic pathologist, and Mr. Bernard Whitesmith, managing director of Cavenham Confectionery, Ltd. of England.

The Conwood Corp. is a publicly owned company with its home office in Memphis, Tenn. Among the products which it manufactures for retail sale are snuff, chewing tobacco, household insecticides, pack-

aged popcorn and confectionery products. It is as a manufacturer of certain candy products that the Conwood Corp. is interested in the legislation presently before this subcommittee.

H.R. 7785 is intended to amend section 402(d)(2) of the Federal Food, Drug and Cosmetic Act,¹ to permit the sale in interstate commerce of confectionery containing no more than 8½ percent of alcohol by volume, provided such confectionery is appropriately labeled to disclose its alcoholic content. Conwood Corp. supports enactment of this legislation to modernize an archaic provision in the law dating from 1906.

My testimony will trace the history of the present statutory provision. I will also discuss the Internal Revenue Service's position as to whether confectionery containing up to 8½ percent alcohol by volume constitutes an alcoholic beverage. Further, I wish to discuss Great Britain's experience with similar legislation permitting liqueur-filled chocolates. Finally, I will discuss expert evaluations of the effect of such candy on children, and the beneficial effect which this legislation would have on the U.S. economy.

The Federal Food, Drug and Cosmetic Act prohibits, "the introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded."² The definition of "adulterated food," elsewhere in the Act,³ includes any confectionery which, "bears or contains any alcohol other than alcohol not in excess of one-half of 1 percent by volume derived solely from the use of flavoring extracts."⁴

H.R. 7785 would remove the absolute statutory impediment to the production and marketing of liqueur chocolate candy and similar confectionery in the United States, products which have long enjoyed popularity in Europe with no adverse effects.

It is important to remember that the Food and Drug Administration would still be authorized, as it is with other food products, to prohibit the sale of adulterated candy, and to promulgate labeling requirements which it deems necessary for confectionery containing permitted amounts of alcohol.

For a complete understanding of the singularly disadvantaged position given to candy under the present law, the reasons for it, and the resultant need for H.R. 7785, we must examine the legislative history of the present confectionery provision.

Confectionery has occupied a peculiar legal status since the passage of the first Federal Food and Drug Act in 1906. The 1906 law required containers of food marketed in interstate commerce to bear labels indicating to the purchaser the contents thereof. Confectionery, however, was singled out for special treatment. It was excluded from the general labeling requirement, and a special "confectionery clause" was added prohibiting the use of certain ingredients, such as poisonous coal-tar and lead-based food colorings, in candy. Thus, candy was made a separate class of food, and this distinction has remained in the act for 65 years, long after its purpose has been served.

A prohibition against the use of alcohol was included in the confectionery clause during consideration of the 1906 act by the House of Representatives. This had earlier been suggested in the course of hearings before the Senate Committee on Manufacturers in 1900,

when one witness stated that alcohol should be prohibited by law from being in candy because it could possibly be harmful to children.⁵

Candy manufacturers made no objection to the adoption of a clause prohibiting the use of alcohol in candy. There is some evidence that this position was based on the fact that a number of States already had statutes with similar confectionery clauses, and the manufacturers wished to promote uniform legislation.⁶ Further, there apparently was concern over the labeling provisions to which confectionery would have been subject had it been classified as a "food." This latter problem appears to have preoccupied the Congress and industry as well, as legislation emerged to treat confectionery under a distinctive provision in the Food and Drug Act of 1906.⁷

The temperance movement at the turn of the century apparently did not address itself to the absolute prohibition of alcohol in candy. For example, during the National Pure Food and Drug Congress held in 1898, a spokesman for the National Women's Christian Temperance Union stated that candy should be included with other food products, since this would be the best way to assure complete protection to consumers.⁸ Recognition was given on the floor of the Senate, however, to the temperance view that all alcoholic beverages constitute poisons, and in this respect the temperance movement exerted an oblique influence.⁹

Thus, the 1906 act was cast, without empirical foundation, to prohibit liqueur-filled and similar confectionery. Legislative discussion was minimal, but the substance of this provision remains intact to this day.

When the Food and Drug Act was reviewed and revised in the 1930's the separate treatment of confectionery was maintained. The general prohibitions contained in the confectionery clause were expanded to include nonnutritive substances. The entire 1938 Food, Drug and Cosmetic Act reflected a view that stricter compliance in labeling was required, and provision was made for the Secretary of Agriculture to promulgate standards of quality and identity for foods.¹⁰

An interesting aspect of the 1938 amendments is that the bill which was initially proposed included ice cream in the confectionery clause. (11) The Senate Commerce Committee agreed with the recommendation, and reported out a bill with the prohibition on alcohol in ice cream similar to the alcohol in candy proscription. (12) The House Committee on Interstate and Foreign Commerce, however, deleted this latter provision. (13) and the conference committee accepted the House version. (14) No explanation was offered for the conference committee action beyond the statement that ice cream (like confectionery) would then be singled out and subject to a special provision apart from the general food law. For some inexplicable reason, the same rationale was never applied to candy. (15)

In 1966 the confectionery clause of the Federal Food, Drug and Cosmetic Act was amended to its present form to permit the use of certain additives previously prohibited, provided that such additives have a functional value. (16) Parenthetically, we note that a functional value requirement is not present in the FDA regulations

governing general food products. (17) The act's provision prohibiting the introduction into interstate commerce of confectionery containing alcohol other than alcohol not in excess of one-half of 1 percent by volume derived from flavoring extracts was retained.

The liqueur-filled and similar candies to be permitted under the proposed legislation are not considered to be alcoholic beverages. Samples of the liqueur chocolate as presently manufactured in England and Kentucky (18) were submitted to the Alcohol, Tobacco, and Firearms Division of the U.S. Internal Revenue Service during the latter part of 1968. The agency responded in a letter dated January 21, 1969 that none of the samples submitted was an alcoholic beverage within the division's jurisdiction. (A copy of the letter is attached to this statement as appendix A.) The samples submitted had an alcoholic content of up to 8.5 percent by volume, the same maximum amount of alcohol permitted by H.R. 7785.

At the present time, there are some 47 States which have followed the lead of the Federal Government in restricting the use of alcohol in confectionery. (19) However, officials, of the Association of State Food and Drug Administrators have voiced no opposition to the revision of State laws along the lines proposed in H.R. 7785.

The British experience with the sale of liqueur-filled candies is illustrative as to what might happen in the United States if H.R. 7785 is enacted. Prior to 1961, it was illegal in Great Britain to sell chocolates containing alcohol through stores not holding an excise license, the British equivalent of a liquor license. The Licensing Act of 1961 repealed the prohibition, and now permits the sale of liqueur-filled chocolates by outlets not holding such excise licenses, for example, tobacco shops and food markets. (20)

The British law is in part a "shopkeeper's statute," prohibiting the sale by retailers of liqueur-filled chocolates to anyone under 16 years of age. It should be noted that British law authorizes a maximum of 12 percent alcohol by volume in such confectionery.

As I mentioned earlier, Mr. Bernard Whitesmith, managing director of Cavenham Confectionery, a division of Cavenham Foods Ltd., London, England, is here with us. He will be pleased to answer any questions which the subcommittee might have concerning the sale or marketing of liqueur chocolate confectionery in the United Kingdom and on the Continent.

It is our understanding that in Britain no person has even been known to be adversely affected by the consumption of liqueur chocolates. This experience has been paralleled in Switzerland, Sweden, Denmark, France, Italy, Holland, and Germany, other European countries which permit the sale of such candy. Further, candy containing alcohol has been manufactured and sold in the State of Kentucky for many years, and no harmful results have been reported as a result. Such experience suggests that no adverse results should be expected if H.R. 7785 is enacted.

The restrictive legislation applicable to confectionery was originally passed, in part, because of anticipated adverse effects on children. (21) This possibility seemed remote in view of the fact that the liqueur chocolates produced and sold in Kentucky by a corporation owned in

part by the Conwood Corp. contain only approximately .022 ounce of alcohol per piece. Even so, since no one had ever studied the effects of such candy on children, Conwood Corp. asked three eminent physicians to study samples of the candy and give their opinions as to whether there could be any adverse effects if eaten by children.

Dr. J. T. Francisco, whom I introduced at the beginning of my testimony, and who is a nationally recognized pathologist serving on the faculty of the Department of Pathology, University of Tennessee, after studying samples of the candy, has stated that "there could be no reasonable fear of effects on a child by the use of an alcoholic beverage in chocolates." Dr. Francisco is with us today and will present a statement.

Dr. Francisco's view is supported by two other physicians who participated in the evaluation of liqueur chocolate products. Dr. Amos Christie, professor of pediatrics at Vanderbilt University, and Dr. F. Pearson Allen, Jr., formerly associated with the Pediatric Clinic in Memphis, Tenn. According to Dr. Christie, "It is inconceivable that a small child would ingest enough of the product to do harm or, as a matter of fact, take enough of the product to get any measurable blood level of alcohol." Dr. Allen, recently deceased, found that a child would become nauseated before he could consume enough alcohol to cause any physical damage, and that in any event, young children have difficulty in even swallowing alcoholic beverages.

The opinion letters from all three doctors are attached to this statement as appendixes B, C and D.

I would ask that these letters, as well as my footnotes be incorporated in this statement, Mr. Chairman.

Mr. ROGERS. Without objection, they are all incorporated.

Mr. KINTNER. It is thus apparent that the fear of adverse effects on children from the use of alcohol in candy which prompted the legislative restrictions is unfounded, and should not stand in the way of realistic reform of an archaic law. The likelihood of a child enjoying the candy is small, and even if he did, the likelihood of his eating enough to suffer ill effects is virtually nonexistent. The fact that the maximum percentage of alcohol would be $8\frac{1}{2}$ percent buttresses this conclusion, since it means that at least $91\frac{1}{2}$ percent of each piece of candy will be nonalcoholic.

The economic benefits which would be occasioned by this legislation should not be ignored. In Great Britain and other European countries, the candy industry has developed a substantial and growing business in the manufacture and sale of liqueur chocolates containing from 4 to $8\frac{1}{2}$ percent alcohol by volume.

Assuming that Federal and State laws are amended to permit the manufacture and sale of liqueur chocolates throughout the United States, the effect would be to create an entirely new submarket in the domestic candy industry. It is estimated by the Conwood Corp., based on current sales of liqueur chocolates in Great Britain, that potential sales would exceed \$54 million at the retail level annually. Even ignoring the growth pattern which is present in Britain and which would undoubtedly come into play in the United States as well, \$22 million annually in raw materials, packaging and other inventory

items would be generated. It is estimated also that an initial investment of \$18 million in plant and equipment would be required.

Needless to say, increased employment of management, marketing, sales, technical, and production employees would follow in proportion to sales and investment. Based on candy industry averages, approximately 1,500 additional people would have to be employed by the domestic candy industry. If the British experience is a reliable indicator, these people would be in addition to those persons already employed in the industry. These estimates are based on current sales of liqueur chocolates in Great Britain, and comparison of the British population of 55 million people with the United States population of 210 million people. They do not take into consideration the pattern of sales growth which is clearly evident in all European countries.

Because of the high cost of ingredients and the unusually expensive manufacturing, packaging, distribution, and marketing costs, liqueur chocolates are necessarily a high-priced product, and must be placed in the gourmet-luxury class as compared to almost any chocolate candy now made in the United States. It is estimated that this product will carry a retail price of \$5 or more per pound in this country.

The introduction and development of liqueur chocolates in Europe has not hurt the candy industry in the least in those markets where it has been introduced. On the contrary, it has acted as a catalyst to speed its healthy growth and it is reasonable to assume that there would be a similar salutary effect on the candy industry in this country.

In conclusion, Mr. Chairman and members of the subcommittee I wish to emphasize again our strong support for passage of H.R. 7785. The bill, which permits the use of alcohol in confectionery up to 8½ percent by volume provided the alcoholic content is appropriately labeled, would merely reform an anachronistic provision of the Food and Drug Act which has no valid basis in reality.

The labeling provision in the bill should be emphasized. The alcoholic content of the candy must be displayed on the package so that none will be bought and inadvertently given to children. Further, the Food and Drug Administration would retain the power to regulate adulterated candy sold in interstate commerce. Similarly, the agency would retain its power to assure that no hazardous substances are included in candy.

It must be remembered that this candy is a luxury product, clearly aimed at an adult market. The estimated price of approximately \$5 per pound illustrates this fact. The experiences in Europe and Kentucky, and the opinions of the medical experts noted previously, demonstrate that there is no risk of harm to children from ingesting liqueur chocolate candy.

In summary Mr. Chairman, there is no rational basis for retaining the present archaic provision in the Federal Food, Drug and Cosmetic Act, and we respectfully request that H.R. 7785 be given a favorable response.

Mr. Chairman, I ask that the opinion letters and other materials attached to my statement as appendixes be made a part of this record.

(The references to Mr. Kintner's statement and Appendixes A, B, C, and D follow:)

REFERENCES

- (1) 21 U.S.C. § 342(d) (2).
- (2) 21 U.S.C. § 331.
- (3) 21 U.S.C. § 342.
- (4) 21 U.S.C. § 342(d) (2).
- (5) S. Rep. No. 516, 56 Cong., 1st Sess., at pp. 30-32 (1900) (Testimony of Dr. H. W. Wiley).
- (6) See, e.g., Letter from James J. Mitchell, President, and H. W. Hoope, Chairman of the Executive Committee, National Confectionery Association, Hearing on H.R. 3109 Before the House Interstate and Foreign Commerce Committee, 57th Cong., 1st Sess., at p. 65 (1902).
- (7) See, e.g., Testimony of Mr. Robert Moses, id. at p. 67.
- (8) Journal of Proceedings of the National Pure Food and Drug Congress at p. 31 (March 4, 1898) (Statement of Mrs. Marian A. McBride).
- (9) See, e.g., 40 Cong. Rec. 2751-2 (1906) Remarks of Senator McCumber; 40 Cong. Rec. 2565 (1906) Remarks of Senator Money).
- (10) Hearings on S. 1944 Before a Subcommittee of the Senate Commerce Committee, 73d Cong., 2d Sess. at p. 12 (1933).
- (11) Id. at p. 107 (Statement of John J. Schmidt).
- (12) S. Rep. No. 361, 74th Cong., 1st Sess. (1935).
- (13) H.R. Rep. No. 2755, 74th Cong., 2d Sess. (1936).
- (14) H.R. Rep. No. 2716, 75th Cong., 3d Sess. (1938).
- (15) Ice cream is presently regulated under a food identity standard of the Food and Drug Administration, 21 C.F.R. § 20.1. Under this standard, distilled alcoholic beverages, liqueurs and wines may be used to flavor the ice cream, but any excessive alcohol would make the use of the term "ice cream" inappropriate, and constitute a "misbranding" in violation of the Food and Cosmetic Act. The FDA has set no specific limit on the permissible amount of alcohol which may be used for flavoring.
- (16) H. Rep. 376, 89th Cong., 1st Sess. (1965).
- (17) See, e.g., 21 C.F.R. § 121.10.48.
- (18) The manufacture and sale of liqueur-filled candy is permitted in Kentucky under Statutes § 217.025. See also reference 19, *infra*.
- (19) Iowa, Kentucky and West Virginia are the three States which permit the use of alcohol in the manufacture of confectionary. See Iowa Code of Laws, ch. 189, § 190.3; Kentucky Statutes § 217.025; W. Va. Code § 16-7-2(b).
- (20) Bell's Food & Drug, p. 166, sec. 566.
- (21) See, e.g., S. Rep. No. 516, 56th Cong., 1st Sess., at pp. 30-32 (1900) (Testimony of Dr. H. W. Wiley).

APPENDIX A

TREASURY DEPARTMENT,
INTERNAL REVENUE SERVICE,
Washington, D.C., January 21, 1969.

BOONE, BOONE, LANGSCHMIDT AND PEMBERTON LAW OFFICES,
Memphis, Tenn.

(Attention: Mr. Donald W. Pemberton)

GENTLEMEN: We have analyzed the samples of liqueur chocolate candies, manufactured by Carson's, Ltd., Bristol, England, which you recently furnished in support of your letter of November 25, 1968, as discussed during our conference with your Mr. Donald W. Pemberton on December 11, 1968.

We have concluded, on the basis of our analyses, that all of the aforementioned samples are unfit for beverage use. Therefore, pursuant to the provisions of 26 CFR Part 197 (a copy of which was furnished you during our conference on December 11, 1968) candies of similar composition could be manufactured in the United States with taxpaid distilled spirits on which drawback of the tax would be claimed. Since such candies would not be considered to be beverages, they would not be subject to any other provisions of law or regulations administered by this Service relating to liquors. You are aware, of course, that the candies would be subject to all applicable requirements of the Food and Drug Administration, including those restricting the introduction into interstate commerce of candies containing $\frac{1}{2}$ percent or more of alcohol.

If your client, the Conwood Corporation, intends to manufacture candies of the aforementioned type in the State of Kentucky, we will be pleased to consider

its formulas for such manufacture, filed on Forms 1678 pursuant to the provisions of 26 CFR Part 197. Forms for such purpose and detailed instructions for filing drawback claims and for maintaining the required records may be obtained from Assistant Regional Commissioner, Alcohol, Tobacco and Firearms, Room 6503 Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202.

We are furnishing a copy of your letter and a copy of this reply to the Assistant Regional Commissioner at the address shown above.

Very truly yours,

HAROLD A. SERR,
Director, Alcohol, Tobacco and Firearms Division.

APPENDIX B

J. T. FRANCISCO, M.D.,
DEPARTMENT OF PATHOLOGY,
UNIVERSITY OF TENNESSEE,
Memphis, Tenn.

To Whom It May Concern:

I have reviewed the (1) Liqueur Chocolate Presentation which is appended to this report and a document identified as (2) Exhibit (A)—also appended.

In my opinion the medical statements contained in item (1) referred to above are reasonable, accurate, and correct. I specifically refer to paragraphs 13 and 16 which are marked. The document (2) is in specific agreement with paragraph 13 in that this document refers to conditions of maximum absorption, maximum distribution, and minimum metabolism of alcohol in the human body. It also gives the number of chocolates which must be consumed in essentially one mouthful. In other words, if a one year old child weighing 23 pounds (which is a very reasonable average weight) should eat between seven and eight chocolates in one bite, on an empty stomach, he would achieve a blood level of alcohol of about .075% within one hour. This further assumes all the alcohol present would be immediately available to the small intestinal wall, this alcohol would be immediately available to the brain, and the body chemistry would only burn the minimum amount of alcohol.

It would be very highly unlikely that all of these factors would occur at any given time in a child. If any of these factors is modified the effect would be that the child would attain a blood level of alcohol of less than .075%.

In all probability if this hypothetical child should consume seven to eight pieces of chocolate in a usual and ordinary manner there would probably be no detectable alcohol present in the blood stream and certainly no effect upon the brain.

The child that consumes large volumes of candy in bites equal to seven to eight pieces would tend to be a child which was overweight. The very fact that the child was overweight would tend to produce a lower than maximum blood level of alcohol because there would be more body mass in which the alcohol could distribute. Fat has a high water content and alcohol distributes itself according to the water content of the tissues. Therefore, there would be less alcohol available to the brain. Since the only significant effect to be concerned about in this hypothetical situation is the brain alcohol, the fat child would be less affected.

Because the alcohol present in the candy is encased in a chocolate shell which contain both sugar and fat, much of the alcohol ingested in the candy would be coated or otherwise "blocked" from entering the blood stream. This "blocking" effect would further reduce the theoretical maximum predicted in Exhibit A.

There is considerable evidence that the higher the concentration of alcohol in food or beverage, the faster it will get into the blood stream. The fact that 6 to 8 ounces of 100 proof whiskey consumed rapidly will cause a man (150 pounds) to have blood level of .15% is based upon a concentration of 50%. There is good reason to believe that as one lowers the concentration of alcohol the amount necessary to get the blood to 0.15% is increased. If we then assume a food which contains less than 10% alcohol the theoretical maximum predicted in Exhibit A is further changed toward the point of no effect.

If one assumes that the concentration of alcohol in a piece of chocolate is 4% instead of 8% then the attached schedule regarding number of chocolates must be doubled. In the one year old, for example, the stated number of chocolates for

mildly intoxicating effects is 7.4. If the alcohol concentration is 4% then the number increases to 15 pieces of chocolate.

In summary, there are many factors which would cause a blood alcohol level to be lower than predicted (as in Exhibit A) and essentially none which cause the actual blood level to be higher than that predicted in Exhibit A. It is my opinion based upon the above documents and for the reasons given above there could be no reasonable fear of effects on a child by the use of an alcoholic beverage in chocolates.

Submitted,

J. T. FRANCISCO, M.D.

EXHIBIT (A)

Facts:

1. It will take 6 to 8 ounces of 100 proof whiskey taken in a period of 20 to 30 minutes to produce a .15 percent alcohol level in the bloodstream of an average 150 pound man, and .15 percent alcohol is generally recognized as the level at which a normal person is a little more than mildly intoxicated.
2. (a) 1 fl. oz. = 29.57 cc's
(b) Each piece of candy contains 10.7 cc's
(c) 8.5 percent of candy is alcohol
(d) 6 ozs. of 100 proof whiskey equals 3 ozs. of straight alcohol

Calculations and formulae:

1. (a) 10.7 cc's times 8.5 percent equals .91 cc's alcohol per piece
(b) 3 ozs. straight alcohol times 29.57 cc's/oz equals 88.71 cc's required to get .15 percent alcohol in bloodstream.
2. (a) Child's weight over 150 times 88.71 cc's equals cc's to produce .15 percent alcohol in child's bloodstream.
(b) cc's required to produce .15 percent alcohol in child's bloodstream over .909 cc's per piece equals number pieces required to get .15 percent in child's bloodstream.
(c) Child's weight over 150 times 44.35 cc's equals number of cc's required to produce .075 percent in child's bloodstream.
(d) cc's required to produce .075 percent alcohol in child's bloodstream over .909 cc's per piece equals number of pieces required to produce .075 percent in child's bloodstream.

Age (years)	Weight (pounds)	Number pieces to produce mildly intoxicating effects .075 percent ¹	Number pieces to produce more than mild effect .15 percent ²	Age (years)	Weight (pounds)	Number pieces to produce mildly intoxicating effects .075 percent ¹	Number pieces to produce more than mild effect .15 percent ²
1	23.0	7.4	14.8	10	70.0	22.7	45.5
2	28.5	9.4	18.7	11	76.0	24.7	49.4
3	33.5	11.0	22.0	12	83.0	26.9	53.8
4	37.5	12.1	24.2	13	93.0	30.2	60.4
5	42.0	13.7	27.5	14	105.0	34.0	68.0
6	46.0	14.8	29.6	15	120.0	39.0	78.0
7	51.0	16.5	33.0	16	130.0	42.3	84.6
8	57.0	18.9	36.8	17	138.0	44.6	89.2
9	63.0	20.5	41.1				

¹ Note formulae No. 2(c) and 2(d).

² Note calculation No. 2(a) and 2(b).

APPENDIX C

VANDERBILT UNIVERSITY,
DEPARTMENT OF PEDIATRICS, SCHOOL OF MEDICINE,
Nashville, Tenn., August 5, 1969.

To Whom It May Concern:

I have had an opportunity to study a presentation by the Conwood Corporation concerning a liqueur chocolate product. It is my considered opinion that the

presentation is accurate and represents an objective appraisal, particularly as it pertains to danger to child life. I have personally observed child acceptance of the product. It is inconceivable that a small child would ingest enough of the product to do harm or, as a matter of fact, take enough of the product to get any measurable blood level of alcohol.

Being a distinctly luxury product, it is likewise inconceivable that older children with an acquired taste for chocolate would ever engage in ingestion of this product to the point of harmful effects.

AMOS CHRISTIE, M.D.,
Professor of Pediatrics.

APPENDIX D

PEDIATRIC CLINIC,
Memphis, Tenn., August 6, 1969.

To Whom It May Concern:

I have been requested to furnish a medical opinion as to the possibilities and probabilities of danger to children which might result from the general sale of candy or other confectionery containing alcohol in amounts exceeding $\frac{1}{2}$ of 1% by volume which is the present limit provided by the United States Food & Drug Act.

The particular product submitted to me is a liqueur chocolate consisting of a chocolate shell about the size of our American box chocolates which encases and has for its center either a liqueur, whiskey or wine in liquid form.

I have been furnished samples of this product for examination.

The following information has been given me with respect to this product:

1. It is presently and for some years has been manufactured and sold in Great Britain and other European countries, as has another chocolate with a high alcoholic content in Kentucky, with no adverse effects so far as minors are concerned.

2. A single chocolate contains 10.7 cubic centimeters by volume of which a maximum of 8.5%, or .91 cubic centimeters, is alcohol. The amount of alcohol in the various different types of liqueur chocolates varies from 4% to 8.5% alcohol by volume with the majority running about 6%. I also have knowledge of the confidential formula for the product with the percentages of all of its ingredients other than alcohol.

3. The product is sold in boxes containing from five pieces up to large gift boxes containing thirty-six pieces, and would sell at retail in this country at about \$5.00 per pound.

Based upon the above information and my personal examination of the particular product submitted to me it is my considered opinion:

1. That, if a child should accidentally or purposely consume any of this product, he would be apt to become nauseated before he could consume enough alcohol to cause him any physical harm. This is based on the fact that the product contains 91½ percent of ingredients other than alcohol, or a ratio of about 11 to 1, and that such other ingredients consist of a very substantial percentage of sugar, butterfat and chocolate.

2. That the sale of this product would only minutely add to the already present exposure of minors to alcoholic beverages and other liquids, drugs and foods which might be harmful to them. For example, we have a number of cough syrups currently prescribed for children of all ages which contain up to 20% alcohol.

3. That it is generally true that young children, at least, dislike the taste of strong spirits, and actually have difficulty in swallowing them, and therefore, this product would not be appealing to them.

4. That it would require the consumption of a substantial quantity of this product in a period of twenty to thirty minutes by minors of various ages to cause them to become mildly intoxicated, and double that quantity to produce more than mild intoxication. To substantiate this I have made certain calculations to determine the actual number of pieces a normal child would have to consume to produce these effects.

5. That, since the product is a high-priced luxury item, it is obviously not very

likely to get into the hands of minors through their purchase of it. For example, a sixteen year old or 130-pound boy would have to purchase between \$10.00 and \$12.00 worth of candy and consume this within twenty to thirty minutes to have .15% alcohol content in his bloodstream.

It is further my considered opinion that, should a child consume a quantity of this product sufficient to become more than mildly intoxicated, he would be drowsy and possibly go to sleep, but would suffer no real harmful effects from a medical standpoint.

F. PEARSON ALLEN, JR. M.D.

Mr. KINTNER. Mr. Chairman, I would like to introduce Dr. J. T. Francisco, the eminent pathologist I mentioned during my statement.

Dr. Francisco is a forensic pathologist, doctor of medicine, and professor in pathology. He has had considerable experience in alcohol research. This research has concerned death cases, clinical cases of intoxication and studies on metabolism. Dr. Francisco is presently medical consultant to the Chemical Pathology and Toxicology Laboratory at the University of Tennessee and has been heavily involved in studying alcohol and its metabolism. As a professor of pathology at the University of Tennessee, Dr. Francisco has given many lectures on alcohol, its metabolism and effects. In the interest of time, I would like to submit a copy of Dr. Francisco's curriculum vitae for the record.

Mr. ROGERS. Without objection, it is ordered that it be made a part of the record.

(Dr. Francisco's curriculum vitae follows:)

J. T. FRANCISCO, M.D.—CURRICULUM VITAE

Birth: Huntingdon, Tenn., Dec. 18, 1932.

Education: Lambuth College, Jackson, Tenn.; September 1950–June 1951; University of Tennessee, Knoxville, Tenn., 1951–1952; University of Tennessee, Memphis, Tenn., 1952–1955; Internship—The City of Memphis Hospitals, 1955–1956; Residency—Pathology, University of Tennessee, Institute of Pathology, 1956–1961; Director of Laboratories—U.S. Naval Hospital, Memphis, Tenn., 1957–1959; Coroner's physician—Memphis and Shelby County, 1959–1961; Instructor in pathology, 1957–1960, University of Tennessee; Assistant professor of pathology, University of Tenn., 1960–1964; Associate professor of pathology, University of Tenn., 1964–1967; Professor of pathology, University of Tennessee, 1967 to present.

Memberships: Memphis and Shelby County Medical Society; Memphis and Shelby County Pathology Society; Tennessee State Medical Society; American Medical Association; Tennessee State Pathology Society, current Secretary-Treasurer; American Society of Clinical Pathologists—State Councilor; College of American Pathologists; American Academy of Forensic Sciences; and Southern Medical Association.

Activities: County Medical Examiner, Shelby County; Chief Medical Examiner, State of Tennessee, 1963–1965; Forensic Pathology Consultant—Chief Medical Examiner, State of Tennessee, 1965–1970; Chief Medical Examiner of Tennessee, 1970 to present; Director Forensic Pathology Training Program, University of Tennessee.

Boards: Certified: American Board of Pathology, Anatomic, Clinical, Forensic.

Consultant: U.S. Naval Hospital, Millington, Tenn., forensic pathology; Memphis Police Department, breath alcohol testing; Tennessee Department of Safety, breath alcohol testing; Tennessee Bureau of Investigation, drug traffic control; Chemical Pathology and Toxicology Laboratory, University of Tennessee.

Committees: University of Tennessee: medical education committee, 1967–1969; medical faculty council, 1967–1970; basic science faculty, Vice President 1970–1971; medical faculty, vice president, 1970–1971; faculty-student liaison committee, 1971 to present.

PUBLICATIONS

1. "Effect of Sickle Cell Erythrocytes on in Vitro Growth Characteristics of Certain Bacteria", *Proc. Soc. Exp. Biol. and Med.*, 1959, Vol. 100 847-850. With Drs. McCormick and Flanigan.
2. "Clinical Pathology Conference", *The Journal of the Tennessee State Medical Assoc.*, Vol. 54, 1961, pages 158-163.
3. "Toxicology, A Survey of One Year's Experiences", *The Journal of the Tennessee State Medical Association*, Vol. 54, No. 9, Sept. 1961, pages 329-332.
4. "The Medical Examiner's System—A Report on the Organization in Shelby County", *Memphis and Mid-South Medical Journal*, March 1962, pages 109-111.
5. "Case Report", *Medical Times*, Vol. 91, No. 2, February, 1963, page 34a.
6. "Clinical and Laboratory Evaluation of Rape", *Journal of the Tennessee State Medical Association*, Vol. 55, No. 10, October, 1962, pages 389-394. With L. R. Graves, Jr.
7. "The Medical Examiner System", *The Journal of the Tennessee State Medical Association*, Aug. 1963, pages 319-320.
8. "Multiple System Diseases", *Current Medical Digest*, (CPC), April, 1963, pages 35-41. With R. L. Wooten.
9. "Drugs and Disease A Pathologist Viewpoint", *Journal of Forensic Sciences*, Vol. 10 No. 4, pages 407-414, October, 1965.
10. "Clinical Pathological Conference", *Resident Physician*, pages 117-142, February, 1966.
11. "Medical Examiner Report", Volume 1, No. 1 and No. 2 and No. 3 1965-1966 Published by Tennessee Department of Public Health
12. Medico-Legal Handbook 1965-1966 Published by Tennessee Department of Public Health
13. "Forensic Pathology" *Southern Medical Journal* Vol. 61, No. 4, April, 1968 Page 438
14. "Smothering in Infancy: It's Relationship to the Crib Death Syndrome" *Southern Medical Journal* Vol. 63, October, 1970, No. 10
15. "Medicolegal Aspects of Rape" *Medical Aspects of Human Sexuality* April 1970 Pages 109-120. With L. R. Graves

Mr. KINTNER. I also again want to introduce Mr. Bernard Whitesmith, the managing director of Cavenham Confectionery, Ltd., a division of Cavenham Foods, Ltd., London, England. Mr. Whitesmith has had 23 years of experience in the confectionery industry.

Following Dr. Francisco's brief statement, we will be pleased to answer any questions which you may have.

I now ask that Dr. Francisco be permitted to make his brief statement, Mr. Chairman.

Mr. NELSEN. Mr. Chairman, the District Committee is meeting and as ranking minority member I must be there. I would like however, to ask a couple of questions before I leave.

I noted your statement relative to nausea in the children before they would feel any effects of the alcohol in the candy.

For what reason would they be nauseated?

Mr. KINTNER. Because of the sugar and other food ingredients, including the fats.

Mr. NELSEN. Is there any possibility that a child would develop a taste for alcohol as a result of eating the candy over a period of time?

Mr. KINTNER. No. We know of no medical reason for this, and I think Dr. Francisco will deal in more detail with that point.

Mr. NELSEN. What about your experience in this respect, in other countries, have you had any?

Mr. KINTNER. Absolutely none, and absolutely no evidence of any danger to any children anywhere in the world that we know of where

this candy has been sold. This is true in places where it has been sold for many years; no instance of injury to a child has arisen.

Mr. NELSEN. Why the 8½ percent, why not 9 or 10 or some other figure, perhaps 17, where did you get the 8½ percent?

Mr. KINTNER. This is about the percentage that can be conveniently put in. It is a very difficult process. The liqueur is contained within a piece of the candy.

Mr. NELSEN. I got some of my fingers—

Mr. KINTNER. It is contained in small shells, and you can only manufacture shells of a certain size without making it practically impossible to make the shells. It is a delicate operation and this is why the candy is so expensive.

Mr. NELSEN. How many companies in Europe manufacture this type of candy?

Mr. KINTNER. I think about 30.

Mr. NELSEN. Thirty?

I have no other questions. I notice that my good friend Mr. Chelf is sitting back there champing at the bit Mr. Chairman and if you will excuse me, I will go to my other meeting. The chairman asked me to be there, and I would like to do so. Thank you very much.

Mr. ROGERS. Thank you very much Mr. Nelsen.

STATEMENT OF DR. J. T. FRANCISCO

Dr. FRANCISCO. Mr. Chairman, and members of the subcommittee, the restriction to one-half of a 1-percent level is an extremely conservative restriction. It was based upon two false assumptions: One, that the child would acquire a taste for alcohol and become an alcoholic; two, that the child would be easily poisoned by food containing alcohol.

Concerning the false premise of No. 1, the child generally does not like the taste of an alcohol containing material, and although no one knows the full story concerning alcoholism, there is no scientific basis for the assumption that taste is a cause. The causes of alcoholism are clearly related to effects and not to taste. The taste is available in many, many products.

It must be pointed out that if a product were to contain 8 percent of alcohol and the child would be 2 years of age, weighing approximately 28 pounds, then it would take almost 19 pieces consumed in one mouthful to produce a blood level of .15 percent.

This would represent the level of moderate intoxication. This would be a maximum effect; in many cases the level would be less. If a child were 3 years of age, weighing approximately 33 pounds, it would take 22 pieces to attain this level.

It must be obvious that it requires a large amount of such product, consumed rapidly, in order to achieve a moderate blood alcohol level.

It must be obvious that the consumption of this candy in such an amount is a rather unlikely event.

Further, if it should occur that the level would be attained, it is very unlikely to produce any significant harm. All of these levels represent a maximum. Under ordinary circumstances, because of the fact that one does not achieve the maximum at any given time, this predicted figure of 22 pieces attaining a 0.15 level would probably not

occur as a practical matter because of the delay in absorption produced by the food and the emptying time of the stomach. Thus the blood level would be considerably less than the maximum.

Mr. PREYER (presiding). Thank you, Dr. Francisco.

Mr. Satterfield?

Mr. SATTERFIELD. Thank you, Mr. Chairman.

I think this is a very well thought-out statement and it seems to cover all of the basic issues and is quite clear.

It seems to me the effect of the proposed legislation would be to make it very clear that the candy containing alcohol by volume content of 8½ percent would not be considered adulterated.

Do you feel that this bill in and of itself would in any way preempt an individual State from prohibiting the sale of the candy?

Mr. KINTNER. Not in the least. Indeed, before it can be sold in most of the States, there will have to be amendments to existing law. It would be up to the States.

There are only three States which permit the sale, Kentucky, West Virginia and, I think, Iowa.

Mr. SATTERFIELD. So you are not making any efforts here?

Mr. KINTNER. No; it is entirely up to the States once the Federal law is amended to determine whether they conform with the Federal law or whether they continue with their old law.

Mr. SATTERFIELD. Thank you very much.

Mr. PREYER. Mr. Hastings?

Mr. HASTINGS. I have no question, Mr. Chairman.

Mr. PREYER. Dr. Roy?

Mr. ROY. I have no question. Thank you.

Mr. Schmitz?

Mr. SCHMITZ. No questions.

Mr. PREYER. Thank you, Mr. Kintner, and Dr. Francisco.

There is a famous law case which involved an allegedly adulterated Coca Cola in which there was a mouse somehow encased in the Coke. The defense attorney won the case by consuming exhibit A before the jury. In his summation, he just tossed it down and pronounced it musty-tasting but otherwise not harmful.

He then went on to say the only way a Coke could hurt a child was by dropping a case of it on his foot.

You seem to be saying the same thing, the only way a child could be hurt by this is if he dropped a load of it on his foot.

Mr. KINTNER. That is a well-known case but I doubt if I have the fortitude to go that far in the practice of my profession.

Mr. PREYER. I think the big question that we all would be concerned with is the one—is it absolutely safe for children?

You mentioned the case of the 3-year-old and you happened to mention another age group, too, in the first part of your statement, Dr. Francisco.

How many pieces would the average 7-year-old, have to eat? That would seem to be the age at which you most likely would have someone getting into this.

Dr. FRANCISCO. In the 7-year-old, assuming an average weight of 51 pounds, and the crucial factor is the weight, it would require at least 33 pieces. This would be in one mouthful.

Mr. PREYER. How do you mean in one mouthful?

Dr. FRANCISCO. It would have to be all at one time. In other words, if you extended this eating over an hour or an hour and a half, it would take even more. This estimate is based upon one consumption, almost instantaneously, maximum absorption into the blood stream, and no inhibiting effects of absorption from the stomach.

This, therefore, is a minimum figure. In many cases, much more than this would have to be eaten.

Mr. KINTNER. As I recall, it would take somewhere between a half pound and a pound of candy to be put in the mouth at one time. This mythical child would have to have a large mouth.

Dr. FRANCISCO. This would be true at a maximum of 8½-percent level. At a 4-percent level it would double; in other words, it would be 66 pieces, roughly, a box and a half.

Mr. KINTNER. Or a pound and a half of candy put in the mouth at one time.

Again I suggest this might not be practical.

Mr. PREYER. I think there is concern that in this alcohol-soaked society, drug-drenched culture of ours, that we don't need any more stimulants of any kind. Therefore, I think it is important to make the record clear on this point, because I think you answered the argument that children might get hooked on alcohol from this, and your answer is that no one becomes an alcoholic because of liking the taste of alcohol?

Dr. FRANCISCO. That is correct. It is the effect that is significant in the alcoholic. Because the effect, even with large quantities of the chocolates, would be minimal, effect is not a major concern here.

Mr. PREYER. Do you also not become an alcoholic by getting hooked by the euphoric effect that you might get from a very small sample of it?

Dr. FRANCISCO. It would take more than a small sample to create any degree of euphoria because the euphoria produced at the level of 5 to 7 percent alcohol in the candy would require a considerable consumption on the part of this 7-year-old. At 8 percent it would require 16½ pieces again consumed at one time, one sitting, in order to achieve the effect level, and if the percentage were 4 percent, the requirement would double and he would have to consume 33 pieces in essentially one mouthful to produce any kind of euphoric effect.

Mr. KINTNER. I have a 15-year-old son who is bitterly opposed to anything alcoholic. He says he can't understand why an adult would drink that stuff because it tastes so bad.

I offered him a piece of liqueur chocolate and he said, "Dad, you are ruining a good piece of candy by having this alcohol in it." He said it is no good. I assume that that may be the attitude of most children.

Mr. PREYER. I should think it would be. Although they see Julia Childs on television sucking the Juniper juice to everything she cooks. Maybe they become a little more adjusted to it.

Mr. Whitesmith, I understand you were with a company that manufactures that in England.

Mr. WHITESMITH. Yes, sir.

Mr. PREYER. Have you had any adverse experience with the public on this? Have you had any adverse experience with the public on this? Have you had any adverse experience from any examples of harm to children in England?

Mr. WHITESMITH. No, none whatsoever. There has been no known cases since the enactment of the legislation, and we have had no complaints at all, no consumer complaints of any type or kind.

Mr. PREYER. Are there any labeling requirements in England?

Mr. WHITESMITH. Yes, there is a rather vague one, which states that the product cannot be sold as liqueur chocolate unless it contains a significant amount of the alcoholic beverage which it purports to contain.

Mr. PREYER. Sort of a reverse labeling?

Mr. WHITESMITH. It is a reverse one, a protective one, for the product rather than the other way around, so the public buying it knows it has a significant amount of liqueur in it.

Mr. PREYER. Do you have any warning labels saying, "Warning to children, this contains alcohol"?

Mr. WHITESMITH. No, none whatsoever. None of the continental countries have any such warning either.

Mr. PREYER. Of course, we know in France anything goes; but in England, we would expect a little more puritanical approach.

How many companies in England or Europe manufacture liqueur chocolates?

Mr. WHITESMITH. It is somewhere between 30 and 40, probably about 10 or 12 significant ones. It is the kind of product which lends itself to a prestige presentation, and there are a large number of small companies which have small areas of distribution. For instance, in Holland, there are two big companies but about five or six small companies. This is a pattern which is repeated in most of the European countries.

Mr. PREYER. So there is, I take it, no special process involved in which one manufacturer might be superior to another, and that theoretically there could be a number of manufacturers of it in this country?

Mr. WHITESMITH. There is no reason why there shouldn't be. There are four or five large manufacturers in England. Of course, every manufacturer likes to think his process is a little better than the other.

The process for manufacturing this product is well known, and the machinery is readily available. In fact, the machinery with which the product is being made in Kentucky was all bought in the United States of America.

Mr. PREYER. Any further questions from any member of the committee?

Mr. ROY. Is anyone other than the Conwood Corp. interested in manufacturing the liqueur chocolates?

Mr. KINTNER. I am not aware of anyone; but I daresay if the law is passed, competitors will spring up.

Mr. KUYKENDALL. Would the gentleman yield? I can answer that.

Yes, there are several who have called and asked if I wanted them to testify, and I think Frank Chelf can verify this. There have been several Kentucky concerns that were very much interested and called and asked about the hearing and have asked if it would be important for them to testify.

There is an association of some kind, I am not sure what it is, but I suppose that there have been approximately three or four inquiries, Dr. Roy, about this in Kentucky. So it will apply to them as well.

Mr. KINTNER. There is already competition in Kentucky, earlier competition, which undoubtedly will be quite vigorous.

Mr. ROY. I have no further questions.

Mr. HASTINGS. I have noticed the FDA is going to submit a statement for the record. Are you aware of what their position is on this?

Mr. KINTNER. Yes, sir. Congressman Kuykendall read the statement into the record, and they have no opposition to the legislation.

Mr. HASTINGS. Thank you.

Mr. PREYER. I believe that is true with the State FDA associations also?

Mr. KINTNER. We understand this is true of the State associations. As we understand it, they have no opposition to this legislation.

Mr. PREYER. Are there other questions, gentlemen?

Do we have any other witness, Mr. Kuykendall?

Mr. KUYKENDALL. I don't believe so.

Mr. PREYER. If not, we will adjourn the hearing today, and we appreciate all of you gentlemen being here and appreciate your presentation.

Mr. KINTNER. May I thank the chairman and the members of the subcommittee, who appeared on this rather difficult traffic day, for being here and for listening so carefully and speaking so intelligently to this matter.

Mr. PREYER. Thank you, sir. We are glad we could be here.

We will adjourn this hearing at this time.

(Whereupon, at 11 a.m. the hearing adjourned.)



There is an association of some kind. I am not sure what it is, but I suppose that there have been approximately three or four inquiries. Mr. Roy, about this in Kentucky. So it will apply to them as well.

Mr. Roy: There is already competition in Kentucky, either competition which undoubtedly will be quite vigorous.

Mr. Roy: I have no further questions.

Mr. Hixson: I have noted the RPA is going to submit a statement for the record. I am aware of what their position is on that.

Mr. Hixson: Yes, sir. Congressman Hixson will read the statement into the record, and they have no opposition to the legislation.

Mr. Hixson: Thank you.

Mr. Hixson: I believe that is true with the State RPA association.

Mr. Hixson: I understand this is the type of the State association. I am not sure if they have no opposition to the legislation.

Mr. Hixson: I have no further questions, gentlemen.

Mr. Hixson: I have no other questions, Mr. Hixson.

Mr. Hixson: I have no further questions.

Mr. Hixson: I think the chairman and the members of the committee who appeared on this rather difficult day, are being heard for their testimony and speaking so intelligently.

Mr. Hixson: Thank you. We are glad we could be here.

Mr. Hixson: I will adjourn this meeting in this time.

Mr. Hixson: I believe the hearing is adjourned.