



Testimony Regarding Animal Identification Program

Texas Senate Subcommittee on Agriculture, Rural Affairs and Coastal Resources

By Marc Levin, Center for Effective Justice, Texas Public Policy Foundation

I am pleased to appear before Chairman Estes and this distinguished committee.

I am the Director of the Center for Effective Justice at the Texas Public Policy Foundation, a non-profit, non-partisan research institute guided by the core principles of limited government, free markets, private property rights, individual liberty and personal responsibility.

One of Center's goals is to ensure that criminal law is not extended to non-traditional areas where public safety is not at risk, where the conduct is not per se immoral, and where either free market approaches or civil law would be more effective in addressing the problem. Neither the Center nor the Foundation studies animal health or disease control so we do not offer an opinion today regarding the scientific issues involved here.

I also want to note at the outset that we realize that the specter of a mandatory animal identification program was brought upon Texas by the federal government and that Texas leaders were put in an unenviable position of choosing between an onerous state-run program or an even more onerous program run by bureaucrats in Washington D.C. We very much appreciate the leadership of Chairman Estes and the other members of this subcommittee, all of whom we know are strong advocates for Texas agriculture, in addressing this issue during the interim.

Now that the Congress has put funding for the national animal ID program on hold, this presents an excellent

opportunity for the Legislature to reexamine HB 1361 and consider whether a voluntary program would be more appropriate. Moreover, if either Congress or the Legislature determines that a mandatory program is in fact necessary for public health, we believe there are ways to minimize the negative impact, particularly when it comes to criminalizing small farmers who make a good-faith effort to comply with the complicated requirements.

Although the primary focus of my remarks today will be on the nature of the criminal offense that this bill created, the Foundation believes strongly in the benefits of allowing free markets to work and minimizing government red tape.

The red tape associated with the animal identification begins but does not end with a premises owner registering his premises and tagging and registering his animals with the government. The burden continues as the owner must report, within 24 hours, any missing animal, any missing tag, the sale of an animal, the death of an animal, the slaughter of an animal, the purchase of an animal, the movement of an animal off the farm or homestead, or the movement of an animal onto the farm or homestead.

Certainly, we know that Japan and other countries may be demanding beef from cattle that have been tagged, but there are many small Texas ranchers with just a few heads of cattle who have no interest in exporting. We believe that, if the market were simply allowed to work, countries, beef processors, supermarket chains, and even individual consumers could choose from a wide range of beef

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available based on their own preferences and without government interference. I like to compare free markets to an ice cream store with many flavors while one-size-fits-all government edicts necessarily require that everyone choose either chocolate or vanilla.

The seemingly limitless scope of HB 1361 presents a problem from a free market, limited government perspective, which is exacerbated by the fact that the bill allows the Animal Health Commission to create an unlimited number of criminal offenses for failure to comply. The scope of HB 1361 extended well beyond even individuals and businesses that produce animal products for human consumption. Although the Commission adopted a rule that most household pets do not have to be registered, the plain language of HB 1361 appears to cover any animal. The Commission has acknowledged that birds kept as pets would be covered as well as folks who take animals on trail rides. Texans whose cats have kittens that they then give away to friends or extended family members who do not live on their premises could also be ensnared. There was some discussion on the Commission on whether to grant an exemption for school 4-H clubs, and I do not know whether a resolution was ever reached on that issue. In sum, it is clear that legislative action is needed to clarify the seemingly limitless scope of HB 1361.

With regard to the criminal penalty, we have several concerns and suggestions. First, we believe civil penalties could be substituted for criminal penalties since the conduct at issue is more of a regulatory offense than an immoral activity that would traditionally be subject to criminal law. Civil penalties are also easier and cheaper for the state to enforce since they usually do not require the involvement of a court.

Second, if there is going to be a criminal penalty, we would suggest that the word “knowingly” be added so that farmers, ranchers, and other animal owners who are unaware that an animal is not registered would not be guilty of an offense.

We are also concerned about the vagueness of the language defining the offense in HB1361 as “failing to comply with an order or rule adopted under this section.” This phrase is so nebulous that it suggests the Animal Health Commission, not the Legislature, can create an unlimited number of criminal offenses pursuant to this bill. Indeed, as an attorney, my opinion is that this provision may be unconstitutionally vague because it fails to give an individual fair notice of the nature and elements of the criminal offense and involves a broad delegation of the power to create criminal offenses from the elected Legislature to an unelected Commission.

The Class B designation may also be excessive for a second offense because that can result in up to 180 days of jail time. This is especially true because it is a second offense under this section, which could be the same conduct of failing to register two separate premises with animals.

We would also suggest that the Commission be required to notify individuals out of compliance and give them a certain amount of time to come into compliance. This would ensure that the individual is aware of the problem and would probably save the state money by achieving enforcement in most cases without the need for legal proceedings.

Thanks very much for your consideration and I would be glad to answer any questions you might have. ★

