



**Interstate Commerce Restrictions
AFBF Policy Development
May 2014**

Issue:

In 2008, California voters approved a ballot initiative (Prop 2) requiring that veal calves, egg-laying hens and pregnant pigs in California may be confined only in ways that allow the animals to lie down, stand up, fully extend their limbs and turn around freely. The California Assembly subsequently passed a law (AB1437) imposing those same Prop 2 standards on all eggs sold in the state, including those produced in other states.

During the formation of the new farm bill, the House Agriculture Committee included a provision aimed at nullifying the effect of AB1437 on egg producers outside of California, as well as the broader issue of prohibiting one state from imposing production standards or practices not related to food safety or animal/plant health. When the provision was not included in the final version of the farm bill, the Missouri State Attorney General filed suit against AB1437, alleging it violated the Interstate Commerce Clause.

The American Farm Bureau Federation's board of directors determined, in separate considerations, its support of the provision and the lawsuit. But the board also recognized that while national policy has several references to preventing restrictions on interstate commerce, most are specific to federal agency actions relating to transportation, environment, water, energy and the Endangered Species Act. There is no specific policy regarding one state imposing non-food or product safety production practices or standards on another state.

In addition, there is no clear policy regarding support of, or help for, producers in a state where these types of anti-competitive, anti-technology lifestyle production practice decisions are forced on farmers, ranchers or livestock and poultry producers.

Questions:

How should AFBF support producer members in a state that approves legislation or ballot initiatives that would restrict those producers' access to safe, approved agriculture practices or technology?

How should AFBF support producer members in states that may be affected by a particular state's enactment of legislation or a ballot initiative that applies to commodities or agricultural products sold in that state?

Similarly, what should AFBF do to support or help producers in the impacted state who may be at a competitive disadvantage to out-of-state producers?

Should AFBF have specific policy regarding state actions unrelated to food safety, public safety or animal/plant health that have the effect of restricting interstate commerce?

Background:

In general, the U.S. Constitution grants the federal government exclusive authority to regulate trade between states. This section of the Constitution has been interpreted by the Supreme Court to prohibit states from disrupting the free flow of commerce by passing laws that impose undue burdens on economic activity in other states. The undue burdens can take the form of laws that protect local economic interests by discriminating against out-of-state interests. Or, the laws can directly regulate conduct that occurs wholly in other states.

However, courts have long held that states may utilize their “police power” authority to enact food, safety and other regulations that further a public interest, as long as they do not arbitrarily discriminate against businesses in other states. Courts have generally accepted the police power authority of states to restrict trade for “health and public safety reasons.” Thus, many states have regulations regarding animal and plant health, public health and safety, etc., that differ from federal rules and standards, or that are by law the purview of state authorities. Examples include:

- The movement of quarantine of forestry products, subject to overriding protections in the Plant Protection Act;
- Livestock movement subject to Federal and state animal health regulations, including vaccine requirements, where restrictions and quarantine are common for disease purposes; and
- Federal and state food safety laws.

In addition, states are allowed to require labeling to distinguish product standards and characteristics, such as “organic” or “free-range,” and over the past several years, a number of states have adopted unique agricultural production standards that apply to farmers and ranchers in their respective state that have no food safety or public safety basis. But typically these provisions are applicable to in-state producers only.

There is no question that farmers and ranchers face business pressures when their states adopt measures that restrict their production options. Examples in place or that have been/or are being debated by state legislatures range from cage sizes for laying hens and livestock to use of biotechnology-derived crop varieties.

In the states where these new provisions are being imposed or considered, farmers and ranchers will face higher investment costs as they are forced to retool their facilities, and they may be hit with higher operating costs compared to producers in other states. Producers in those states are being forced to essentially eat those costs, move to another state or cease operating altogether.

Farm Bureau Policy:

No Specific Policy