

EXHIBIT L

ENROLLED BILL REPORT

CONFIDENTIAL-Government Code §6254(l)		
Department:/Board Food and Agriculture	Author: Huffman	Bill Number/Version Date: AB 1437 / 5-28-2010
Sponsor: HSUS	Related Bills	Chaptering Order (if known)
<input type="checkbox"/> Admin Sponsored	Proposal No.	<input type="checkbox"/> Attachment
Subject: Shelled eggs: sale for human consumption: compliance with animal care standards		

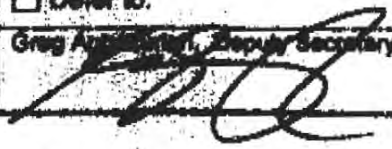

SUMMARY

Commencing January 1, 2015, this bill would prohibit the sale of shell eggs for human consumption if it is the product of an egg-laying hen that was caged or confined on a farm or place that is not in compliance with animal care standards as mandated in Proposition 2. Furthermore, violation of this provision would be a crime.

RECOMMENDATION AND SUPPORTING ARGUMENTS

SIGN. In November 2008, voters passed Proposition 2, requiring California farm animals, including egg-laying hens, have room to move freely. Approximately 35% of shell eggs consumed in California are imported from out of state. California is the fifth largest producer behind Iowa, Ohio, Indiana and Pennsylvania, in that order. This will ensure a level playing field for California's shell egg producers by requiring out of state producers to comply with the state's animal care standards.

This bill would not affect the operations of the Department's Egg Quality Control Program. The purpose of the Egg Quality Control Program is to monitor shell egg quality at production, wholesale and retail levels. The goal is to provide California consumers with eggs that are wholesome, properly labeled, refrigerated, and of established quality and grade, while maintaining fair and equitable marketing standards in the California egg industry. This bill would allow the program to continue its purpose and goals.

Departments That May Be Affected CDFA, DPH			
<input type="checkbox"/> New / Increased Fee	<input type="checkbox"/> Governor's Appointment	<input type="checkbox"/> Legislative Appointment	<input type="checkbox"/> State Mandate <input type="checkbox"/> Urgency Clause
Dept/Board Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to:	Agency Secretary Position <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Veto <input type="checkbox"/> Defer to:		
Greg Applegate, Deputy Secretary 	Date 6/28/10	A.G. Kawamura, Agency Secretary 	Date 6/28/10

LEGISLATIVE INTENT SERVICE (800) 666-1917

PURPOSE OF THE BILL

Prohibit the sale of shell eggs for human consumption if it is the product of an egg-laying hen that was caged or confined on a farm or place that is not in compliance with animal care standards.

Any person who violates this chapter is guilty of a misdemeanor upon conviction.

ANALYSIS

- Existing law enacted as Proposition 2, an initiative measure approved by state wide general election, establishes, commencing January 1, 2015, specified farm animal treatment standards for animal production in California.
- Shell eggs for human consumption are the product of egg-laying hens that are not confined on a farm or other place whether produced in California or imported into the state.

This bill would:

- Prohibit the sale of shell eggs for human consumption if they are produced from confined egg-laying hens and would make violations of these provisions a crime.
- Commencing January 1, 2015, a shelled egg may not be sold or contracted for sale for human consumption in California if it is the product of an egg-laying hen that was confined on a farm or place that is not in compliance with animal care standards set forth in Chapter 13.8 (commencing with Section 25990).

LEGISLATIVE HISTORY

Introduced February 27, 2009

PROGRAM BACKGROUND

The Egg Quality Control Program has the regulatory authority on shell egg issues concerning labeling, quality, size, grade, non retail refrigeration, and inspects eggs at production, wholesale and retail outlets. Annually, the program carries out hundreds of egg quality and grade inspections at these facilities through out the state and has written violations to those who have not been in compliance of its laws.

OTHER STATES' INFORMATION

At this time, no other state has an existing law that is similar to Proposition 2. Ohio had a November ballot measure which would require their State Board of Agriculture to implement "Animal Welfare Guidelines" for their industry.

FISCAL IMPACT

The Department is not aware of the potential fiscal implications associated with this bill. However, this bill will ensure a level playing field for California's shell egg producers by requiring out of state producers to comply with the state's animal care standards.

ECONOMIC IMPACT

This bill may have a positive effect on the regulated shell egg industry in California. It may provide the industry with fair and equitable marketing standards with shell eggs that are imported into California by prohibiting the sale of shell eggs from confined egg-laying hens. Currently, greater than 90% of California produced eggs are from conventional caged systems. When Proposition 2 requirements are implemented in 2015, these producers will no longer be economically competitive with out-of-state producers. Without a level playing field with out-of-state producers, companies in California will no longer be able to operate in this state and will either go out of business or be forced to relocate to another state. This will result in a significant loss of jobs and reduction of tax revenue in California.

OUTSTANDING ISSUES

Enforcement

Without the development of regulations, there is no way to know of eggs being imported into California that meet Proposition 2 requirements. Currently, the department's enforcement authority is specific to out-of-state audits to verify compliance with assessment reports submitted by the out-of-state egg handlers (Food and Agricultural Code (FAC) Sections 27863- 27885). CDFA investigators audit paper records to ensure that out of state registrants selling eggs into California pay the appropriate fees. The department does not have current authority to conduct on-sight inspections of physical condition of out-of-state facilities.

Precedential Implications

Passing legislation that appears to exclude imports that do not meet California animal husbandry standards may mislead the public into thinking that imposing standards that put California farmers and ranchers at a cost disadvantage related to how they house, feed and care for their animals will not negatively impact their ability to survive economically. If the public is lead to believe that laws that restrict interstate trade can be imposed and enforced by California, they may be more inclined to support future laws that make it very difficult for California farmers to offer products that can price compete with products from farmers in other states and nations.

Trade Implications

At this point in time it is difficult to assess the potential trade implications resulting from passage of this bill. However, there are currently situations where California has different standards than other states which pose no negative implications. For example the Department's Egg Quality Control Program requires a 30 day sell by date from the date on which the eggs were packaged (FAC Sections 27510), other states have a 45 day sell by



date. California requires specific labeling requirements (30 day sell by date, refrigeration, date and size) if other states are packing eggs to be shipped into California; they pack those eggs into cartons that meet our labeling requirements. Like California, every state requires their eggs be refrigerated at 45 degrees Fahrenheit; therefore refrigeration would not pose an issue with other states. Currently 35 % of the eggs consumed in California are from other states, of which Iowa is the largest producer.

Similarly it is difficult to assess potential foreign trade implications. For example, Mexico would have to meet all our requirements (labeling, refrigeration, grade, and size) to import eggs into this state. However, at this time we are not aware of foreign eggs being imported into California other than a de minimis amount of eggs imported from New Zealand.

LEGAL IMPACT

AB 1437, as amended in the Senate on May 26, 2010, prohibits anyone from selling, or contracting for sale, shelled eggs for human consumption if it is the product of egg-laying hens confined in a manner that does not comply with the animal care standards set forth in Health and Safety Code section 25990. Section 25990 specifically states:

"Prohibitions. In addition to other applicable provisions of law, a person shall not tether or confine any covered animal, on a farm, for all or the majority of any day, in a manner that prevents such animal from:

- (a) Lying down, standing up, and fully extending his or her limbs; and
- (b) Turning around freely."

Both AB 1437 and Section 25990 take effect on January 1, 2015. Consistent with section 25990, anyone who violates AB 1437 is guilty of a misdemeanor, and shall be punished with a fine not to exceed \$1,000, or imprisonment in the county jail for period of 180 days, or both. AB 1437 would create an additional disincentive for confining egg-laying hens in violation of section 25990 by making it illegal to sell the eggs that they produce.

As with section 25990, there are a number of significant legal issues associated with its application and enforcement. Three of them are addressed in this opinion: (1) federal commerce clause concerns; (2) due process issues associated with criminal prosecution; and (3) the potential for retaliation by other states.

In regard to the commerce clause, the fact that AB 1437 treats in state and out of state producers equally is not dispositive. State restraint of the national market, even under the guise of local health and safety pursuits may be invalidated if a less burdensome alternative exists. *Dean Milk Co. v. City of Madison* (1951) 340 U.S. 349, provides some essential guidance. In *Dean Milk*, the city of Madison, Wisconsin passed an ordinance that made it illegal to sell milk as pasteurized within the city unless pasteurized at an approved pasteurization plant within 5 miles of the city's central square. The Court threw out the ordinance on the ground that less restrictive alternatives to protect public health existed, such as inspecting distant milk sources and charging the producer the reasonable costs of such inspections. (*Dean Milk Co.*, *supra*, at pp. 354-355.)



Accordingly, in this instance, the State will have to satisfy two requirements in order to preserve AB 1437 if enacted. First, it will have to establish that there is a public health justification for limiting the confinement of egg-laying hens as set forth in section 25990. This will prove difficult because, given the lack of specificity as to the confinement limitations, it will invariably be hard to ascribe any particular public health risk for failure to comply. To date, no regulations have been adopted to clarify section 25990. Even if such regulations existed, the State would have to draw upon extensive scientific evidence to support the conclusory findings of the Legislature in regard to the spread of pathogens, specifically salmonella. While we have not researched the question, we doubt that the federal judiciary will allow the State to rely exclusively upon the findings of the Legislature, such as they are, to establish a public health justification for section 25990.

Second, the State will have to assert that the imposition of a criminal penalty for selling shell eggs produced by egg producers who have failed to comply with section 25990 is the least restrictive means to address the public health issues established by the evidence. To the extent the evidence is stronger, it will be in a more persuasive position, to the extent that it is weaker, less so. Given that a criminal prosecution is the most harsh form of a deterrent, it is possible that, even under a best case scenario, that a court would rule negatively. A court might well find that the overall adverse impact upon interstate commerce as a consequence of such intimidation would invalidate it, despite its lack of discrimination against out of state commerce. Pertinent evidence might include the overall percentage of eggs consumed in California, and the possible decline in the production and sales from other states that might result.

In regard to the second issue associated with criminal prosecutions, Terrance W. Flanagan of the The Flanagan Law Firm has highlighted them in a letter to the Governor on behalf of The Egg Farmers Association. He asserts that it is impossible for egg producers to establish that they are in compliance with section 25990, and, hence, also renders it impossible for anyone to sell eggs with the assurance that they are section 25990 compliant as required by AB 1437. In the absence of clarifying regulations, his argument has merit. Even though the California criminal courts permit a simplified form of pleading when it comes to alleging criminal offenses, it is doubtful whether it is possible to plead a violation of AB 1437 that fulfills the constitutional due process requirement of placing defendants on notice of the charges against them and thus enabling them to prepare a defense. (*In re Hess* (1955) 45 Cal.2d 171,175.) Pleading in the language of the statute is not sufficient when the statute does not define the offense. (*In re Jamil H.* (1984) 158 Cal.App.3d 556, 560-581.)

A brief inquiry into the factual circumstances of *Jamil H.* provide some insight into this situation. In *Jamil H.*, a juvenile was charged with entering a school "without lawful business", but the juvenile petition did not identify the statutory prohibition that he intended to violate. Accordingly, the Court of Appeal ruled that the petition was too vague to enable him to prepare a defense against it. Here, any criminal prosecution would allege in the indictment or information that the seller had sold shell eggs produced in violation of section 25990, but there are no recognized standards, no safe harbor, in effect, so any such defendant would likewise be unable to prepare a defense. Such a defendant would be unable to understand the essential elements of the prosecution's case as constitutionally required. (*People v.*

Swinney (1975) 46 Cal.App. 3d 332.) Clearly, this is a rare circumstance, as most criminal prohibitions are readily understandable within the context of everyday life, but the rarity of it does not render it any less problematic. Flanagan also suggests that it is impossible to establish any standards for the implementation of section 25990 so as to render both egg producers and sellers legally compliant, and provide them with necessary notice. In the absence of any attempt to adopt standards through a publicly noticed regulatory approval process, this is a premature conclusion.

Lastly, there is the concern of retaliation through statutory enactments by other states. Given that individual states already possess the legal authority to protect public health and safety through reasonable measures that reach products and production processes in other states, it is not possible to quantify whether the enactment of AB 1437 creates an additional risk of such activity. There is always a chance that people and economic enterprises in states affected by AB 1437 may respond by seeking the adoption of measures that would adversely affect California eggs or other products, but they, too, must conform to the constraints of the commerce clause of the United States Constitution. Of course, even constitutionally permissible measures may create burdens that have not heretofore existed, but, as with Flanagan's assertion that it is not possible to establish regulatory standards of compliance for section 25990, the issue remains speculative.

APPOINTMENTS

None.

SUPPORT/OPPOSITION (Verified as of 6/25/10)

Support: 2nd Chance for Pets
Alpha Canine Sanctuary
Animal Acres Place
Animal Protection and Rescue League
Animal Welfare Advocacy
ASPCA
Avian Welfare Coalition
Bay Animal Hospital
Blackberry Farm
Bon Appétit Management Company
California Animal Association
Center for Food Safety
Center for Science in the Public Interest Community
Market Natural Foods
Compassionate Carnivores
Dr. Bauer's Advanced Wellness
East Bay Animal Advocates
Farm Animal Protection Project
Farm Sanctuary Finance Tree, Inc
G Town G Ranch

Green Star Solution
Here's Looking at You Baby
Humane Society of Louisiana
Humane Society of the United States
Veterinary Medical Association
Internal Medicine
Le Fort's Organic Crops
League of Humane Voters
Loving Touch Animal Massage
Marin Humane Society
Marin Vegetarian Education Group
Middleton Farm
Mt. Barnabe Farm
Natural Pet
Noah's Ark Veterinary Hospital
North Star Pet Assistance Orange County
People for Animals
PAW PAC
Paw Project Physicians
Committee for Responsible Medicine
Planning and Conservation League
Positively Petal
Restaurant Soltan Banoo
Rocket Dog Rescue
Sausalito Animal Hospital
Sugar Beat Sweets
Tamalpais Pet Hospital
TCM, Inc.
The Grand Slam Diet.com
The New School of Cooking
Tree Axis
Turner's Portable Welding
Urban Cat Project
Vreels Limited (organic farm)
World Society for the Protection of Animals
102 Individuals

Neutral: Association of California Egg Farmers

Opposition: Egg Farmers Association

ARGUMENTS

Pro: Provides fair and equitable marketing standards in the California egg industry by requiring that all shelf eggs sold in California are from non-confined egg-laying hens.



Without the "playing field leveling" proposed by 1437, other states may use Proposition 2 as a tool to lure California Egg Producers out of California

Con: Approximately 35% of shell eggs consumed in California are imported from out-of-state, mostly from commercial cage production. Enactment of this bill could limit the volume of shell eggs imported for consumption.

There is no verification or regulatory process to assure that out-of-state eggs imported into California are from non-confined egg-laying hens.

Furthermore, there are outstanding legal questions regarding the constitutionality of this measure

VOTES

Senate

Third Reading 23-7 June 17, 2010
Food and Agriculture Committee 4-1 June 16, 2009

Assembly

Third Reading 65-9 June 21, 2010
Third Reading 65-12 May 26, 2009
Appropriations Committee 10-3 May 13, 2009
Agriculture Committee 8-0 April 29, 2009

LEGISLATIVE STAFF CONTACT

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LEGISLATIVE INTENT SERVICE (800) 666-1917



ASSEMBLY SIGNING MESSAGE

To the Members of the California State Assembly:

I am signing Assembly Bill 1437 which would level the playing field for California's shell egg producers by requiring out-of-state producers to comply with the state's animal care standards.

Currently, greater than 90% of California produced eggs are from conventional caged systems. When Proposition 2 requirements are implemented in 2015, these producers will no longer be economically competitive with out-of-state producers. Without a level playing field with out-of-state producers, companies in California will no longer be able to operate in this state and will either go out of business or be forced to relocate to another state. Furthermore, this will result in a significant loss of jobs and reduction of tax revenue in California.

Sincerely,

Arnold Schwarzenegger



ASSEMBLY VETO MESSAGE

To the Members of the California State Assembly:

I am returning Assembly Bill 1437 without my signature.

The provisions of AB 1437 fail to include standards for housing and space for egg-laying hens. Proposition 2 specifies that egg-laying hens may not be confined for a majority of the day in a manner that prevents the hen from lying down, standing up, fully extending their limbs, and turning around freely.

Due to the lack of specificity, AB 1437 is unenforceable. AB 1437 fails to address clear standards given that it is predicated upon provisions of Proposition 2

Sincerely,

Arnold Schwarzenegger

LEGISLATIVE INQUIRY SERVICE (800) 666-1917