

# Sides clash over Idaho’s ‘ag gag’ law

By SEAN ELLIS  
Capital Press

BOISE — The opposing parties in a federal lawsuit targeting Idaho’s Agricultural Security Act differed greatly in federal court April 28 over what the law actually does.

Plaintiffs, who seek to overturn the 2014 law, said it violates free speech rights and prevents whistle-blowing.

Defenders of the law said it only prevents certain types of conduct, such as trespassing on private property and lying to gain access to an agricultural operation or its records.

The law makes it a crime to gain employment with an agricultural operation through

misrepresentation or deception with the intent to cause harm to that operation. It also prohibits people from making a video or audio recording of the production facility’s operations without the owner’s consent.

A broad coalition of animal welfare, food safety and civil rights groups and journalists filed a federal lawsuit against the law.

Private property rights, trade secrets and intimate private details are already protected by federal and state statutes, Justin Marceau, a constitutional law professor who is representing the plaintiffs, told Chief U.S. District Judge B. Lynn Winmill during oral arguments on plaintiffs’ motion

for summary judgment.

“None of these things are issues in this case,” he said. “This is not a case about private property rights ... This is a speech-repressing and whistle-blowing repressing law.”

Rather than chilling free speech, the law is “protecting property from wrongful conduct,” countered Deputy Idaho Attorney General Carl Withroe.

There is no First Amendment right to engage in free speech activities on private property, he said, and added that the statute was written “to protect agricultural operations and not target journalists or would-be whistle-blowers.”

Marceau said agriculture enjoys a lesser expectation of

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— Justin Marceau  
Constitutional Law Professor

privacy because it’s a highly regulated industry and food safety and animal welfare are major public concerns.

The industry, he said, “has one of the lowest expectations of privacy one can imagine.”

Winmill took the motion for summary judgment under advisement and said it might take some time for him to issue a written decision.

He also said briefings

plaintiffs have argued abstractions and have not adequately addressed what the statute actually does.

He said the statute doesn’t affect free speech at all.

“The only activity it affects is going onto someone’s property that is not open to the public and recording what’s going on there without their consent,” Steenson said. “The question then is, is that specific conduct protected by the First Amendment? The answer is, ‘no.’”

He said lying to gain access to an agricultural operation is also not protected by the First Amendment.

“In my view, they’re attacking a bill that we didn’t write,” Steenson said.

## Feedlot inventory masks continued tight supply

By CAROL RYAN DUMAS  
Capital Press

Both cattle on feed numbers in large U.S. feedlots on April 1 and March placements are slightly higher year over year, USDA National Agricultural Statistics Service reported on Friday.

But the numbers belie the reality of extremely tight supplies, said Derrell Peel, livestock marketing specialist with Oklahoma State University.

Cattle on feed are up 5,000 head year over year, and March placements were up 8,000 head, but cattle placed into large feedlots over the last four or five months are down about a half million head, he said.



Steers graze in southern Twin Falls County, Idaho, on April 22. Cattlemen are feeding cattle longer before sending them to feedlots to take advantage of record feeder cattle prices.

**Online**

**Cattle of feed report:** <http://www.nass.usda.gov/>

Year to date, cattle slaughter is down 7.5 percent and beef production is down 5.3 percent, Peel said.

Despite the most recent report, the number of cattle moving through the system is not as big as a year ago. The inventory reflects holding cattle longer in the feedlot, but feedlot production is down, he said.

Marketings have been delayed to increase weights and have been down even more than placements, giving the appearance of steady on-feed inventories, he said.

March marketings were down 29,000 head and the lowest for March since the reporting series began in 1996. December through March marketings were down 306,000 head year over year, USDA-NASS reported.

Heifer and heifer calves on

### Cattle on feed, placements, marketing, and other disappearances, March

(Feedlots with 1,000-head capacity or more)

Item	(1,000 head) 2014	2015	Percent change
On feed April 1	10,792	10,797	—
Placed on feed, March	1,801	1,809	—
Fed cattle marketed, March	1,660	1,631	-2
Other disappearance, March*	65	69	6

\*Includes death loss, movement from feedlots to pasture, and shipments to other feedlots for further feeding.

Source: USDA NASS

feed were also down, 10 percent and the lowest quarterly number since 1996, Peel said.

That’s both a testament to heifer retention for herd rebuilding and the overall extremely tight cattle supply, he said.

Cow/calf operators are doing great in the current environment, and good rain and forage in the Southern Plains are allowing stockers to put weight on the cattle before selling to feedlots, he said.

Cattlemen in California, Nevada, Utah and Eastern Oregon, however, are dealing with extremely dry

weather, he said.

“Feeders and packers by and large have been struggling with pretty tough margins much of this year,” he said.

With the high cost of feeder cattle, feedlot breakevens are quite high, with most calculating losses at \$150 to over \$200 a head, he said.

Packer margins are a little more up and down, but they are being squeezed by boxed beef prices relative to fed cattle prices and a drop in byproduct values due to lower global sales and a strong U.S. dollar, he said.

## Agritourism bill overcomes trial lawyer opposition

### Bill would limit liability for growers who post warnings

By MATEUSZ PERKOWSKI  
Capital Press

SALEM — Proponents of a bill limiting the legal exposure of agritourism operations in Oregon have overcome the objections of trial lawyers who initially fought the proposal.

Under Senate Bill 341, farm-

ers aren’t liable for the death or injury of agritourism participants as long as they post warnings of possible dangers, with some exceptions.

The legal protection wouldn’t cover growers who have “wanton and willful disregard” for safety, purposely hurt visitors or fail to properly inspect the property or

equipment.

Friends of Family Farmers and the Oregon Farm Bureau claim the bill would provide more certainty for agritourism operations and their insurers, but the Oregon Trial Lawyers Association had opposed the legislation for allegedly immunizing negligent farmers from lawsuits.

During an April 21 work session, however, the group dropped its objections to an amended version of SB 341 and the Senate Judiciary Committee referred the bill to the Senate floor with a “do pass” recommendation.

Arthur Tower, political director for OTLA, said his group is wary of legislation that seeks to erode consumer protections and the ability of citizens to have their day in court.

The latest revisions to SB 341 have “struck the right balance” by providing more information about safeguards for landowners and consumers while ensuring “bad actors” would still be held responsible, he said.

Ivan Maluski, policy director of Friends of Family Farms, said the changes have made the legislation more specific than the original about growers’ responsibilities.

“I’m pretty excited,” Maluski said. “This is a neat step forward if we can get it through the entire legislative process.”

The goal of SB 341 isn’t just to give more peace of mind to agritourism providers, but to clarify the legal landscape for insurers, he said.



Mateusz Perkowski/Capital Press

Peter and Carin Sherman help their children pick out pumpkins at a farm last fall on Sauvie Island near Portland, Ore.

The legislation will hopefully convince more insurers to cover agritourism operations, spurring competition and ultimately reducing rates, Maluski said.

As more states adopt such bills, it will also help create legal uniformity that reassures insurers, he said. “Almost no insurance company wants to touch agritourism right now.”



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### LEGAL

#### SECRETARY OF STATE NOTICE OF PROPOSED RULEMAKING

Oregon Department of Agriculture, Market Access & Certification Program, Administrative Rules Chapter #603, Sue Gooch, Rules Coordinator, (503) 986-4583. Amend: OAR 603-052-0051, 603-052-0385

**RULE SUMMARY:** 603-052-0051: Removes a treatment requirement that is no longer needed and, per industry's request, adds a virus to the list of regulate organisms. 603-052-0385: Corrects a typo in one section that was leading to confusion about inspection requirements for Trial Grounds. These are considered house-keeping changes to the rules. Last day for public comment is May 22, 2015.

18-2/#4

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