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About the National Animal Identification System (NAIS)

Part 16: The “Forced March” into the NAIS

By Bruno Schmidt

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In my previous essay (Part 15: “*No NAIS in Washington State?*”), I briefly discussed the Assembly’s recent House Bill 1151. Following its introduction on January 11, 2007, this bill was promptly referred to the Assembly’s “Agriculture and Natural Resources” committee for further action. Will the committee act on this bill, though, and do it soon? Let us take one more look at this bill, and get a sense for what is a stake here, and I quote:

Sec. 6 Nothing in this chapter may be construed as prohibiting private agricultural industry organizations from establishing voluntary source verification programs for their own members or others who elect to participate. However, any private system is subject to the following conditions and limitations:

- (1) The program must provide for full and informed consent of all participants, including disclosure of the entire program, the possible uses of information collected thereunder, and every entity or person to whom such information may be disclosed;*
- (2) Persons who voluntarily enroll in the program shall be allowed to withdraw from the program at any time and their personal information shall be permanently removed from program records;*
- (3) No public funds may be used to support such a program; The private program shall not be used to gain unfair competitive advantage, but shall be considered a commercial term subject to laws restricting unfair competition; and*
- (4) A private source verification program identification system, device, or marking shall not obliterate or supersede or otherwise make unreadable this state's or any local entity's brand or mark on any animal. A source verification program's rules may not supersede this state's brand or marking system rules as a matter of law.*

This means that any participation in registration-based systems, such as the NAIS, would be voluntary as a matter of law (at least in Washington State), and that farmers / producers / livestock owners truly could either “opt in”, or “opt out”, as they see fit and can do so without the State’s interference or say-so. However, what happens if the “private sector” tries to pressure you into “volunteering”? This situation is covered as well, and I quote from Section 7:

- (1) No services, compensation, favors, payments, credits, benefits, licenses, permits, certifications, insurance or risk management coverage, special consideration, or other incentives may be provided by any public or private person, directly or indirectly, to any participant in an animal identification or premises registration program based solely on that person's participation in such program.*
- (2) No services, compensation, favors, payments, credits, benefits, licenses, permits, certifications, insurance or risk management coverage, special consideration, or other incentives may be denied, revoked, or limited by any public or private person, directly or indirectly, based solely on that person's lack of participation in an animal identification or premises registration program.*
- (3) Neither this state nor any local government in this state may require any of its suppliers to participate in a premises registration or animal identification program as a condition of supplying goods or services.*
- (4) Failure to participate in a premises registration or animal identification program, or the providing of services to persons who are not participants in a premises registration or animal identification program, shall not be a crime, an element of any crime, or evidence of any negligence or gross negligence on the part of any livestock owner or provider of goods or services*

So you can clearly see the far reaching effect this bill has: the State is ordered to get out of the Federal registration business (a.k.a. the NAIS), and while the private sector is entirely free to competitively offer such services, NOBODY can be discriminated against for not “participating” in any of it. Not surprisingly, this bill does not sit well with the “Federal-State-Industry Partnership” that aims for 100% “voluntary participation” in the NAIS by 2009. On January 12, 2007, at the request of the Washington State Department of Agriculture (WSDA), the State Senate introduced Senate Bill 5204, “*AN ACT Relating to*

the enforcement of animal health law; amending [four RCW] sections; adding [five new RCW] sections; and prescribing penalties.” Without offering any findings of fact whatsoever, or stating any reasons why the State’s existing animal-health laws need updating, SB 5204 grants unprecedented, new powers (someone might label them as police-state powers) to the Department. These new powers fall into three categories: Proclamation and revision of the Department’s “rules”; broadened enforcement of existing laws, regulations and new “rules”, and “civil” punishment of any violations thereof. To get an idea of what SB 5204 portends for all of us, we don’t need to look far, and I quote:

NEW SECTION. Sec. 1. A new section is added to chapter 16.36 RCW to read as follows:

The director may establish points of inspection for vehicles transporting animals on the public roads of this state to determine if the animals being transported are accompanied by valid health certificates, permits, or other documents as required by this chapter or its rules. Vehicles transporting animals on the public roads of this state are subject to inspection and must stop at any posted inspection point established by the director. The director or appointed officers are authorized to stop a vehicle transporting animals upon the public roads of this state at a place other than an inspection point if there is reasonable cause to believe the animals are being transported in violation of this chapter or its rules.

No, the above is NOT my “conspiracy theory”. If this were to become law, it would authorize the WSDA to build permanent check points; to setup unscheduled road blocks; to stop anybody, anywhere, anytime, if there is “*reasonable cause to believe the animals are being transported in violation of this chapter or its rules*”. Now ask yourself: Who sets the standard for “reasonable cause”; or “believe”; or “being transported in violation of”? Who makes the “rules”? The WSDA does. If you are not alarmed yet by what you have just read, perhaps the next quote from SB 5204 will get your attention:

NEW SECTION. Sec. 3. A new section is added to chapter 16.36 RCW to read as follows:

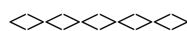
Any person found transporting animals on the public roads of this state that are not accompanied by valid health certificates, permits, or other documents as required by this chapter or its rules has committed a class 1 civil infraction. The director is authorized to issue notices of and enforce civil infractions in the manner prescribed under chapter 7.80 RCW.

Easily overlooked in this proposed new law is the changeover from what was previously a misdemeanor-type offense (criminal in nature, but with the burden of proof resting on the Department), to a civil infraction-type offense where the burden of proof, and the expense of putting up a defense, is placed on the alleged violator. For all intents, from now on, a farmer / producer / livestock owner cited with an unproven (alleged) violation must FIRST prove his/her “innocence” and convince the Department, BEFORE going to court. What is at stake here? A lot more than just a fix-it type ticket, i.e. for a broken tail light. See for yourself, and I quote:

NEW SECTION. Sec. 4. A new section is added to chapter 16.36 RCW to read as follows:

Any person in violation of this chapter or its rules may be subject to a civil penalty in an amount of not more than one thousand dollars for each violation. Each violation is a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation is in violation of this chapter or its rules and may be subject to the civil penalty provided in this section. Moneys collected under this section must be deposited in the state general fund.

Up to ONE THOUSAND DOLLARS FOR EACH VIOLATION !!! ... Example: if WSDA would require that all cattle be tagged with the USDA’s new AIN (U.S. Animal Identification Number), and your cows are not properly tagged, the fine levied on you could be as high as \$1,000 per cow in your trailer! Got 10 un-tagged cows in your trailer? Are you ready to pay a \$10,000 fine? Given this kind of “law”, can you see just how EASY a WSDA-sponsored “forced march into the NAIS” can be implemented here?



Bruno Schmidt is co-author of the self-published “Farmer’s Field Guide to the NAIS”. He has spent in excess of 1000 hours over the past three years researching the National Animal Identification System. For more information and latest updates, please visit www.FarmersFieldGuide.com