



Livestock Protection Act Policy Development 2013

Issue:

In the recent decades, farm operations have been subjected to undercover intrusion. Individual activists or members of animal rights groups are often responsible for these coordinated activities. These activities have uncovered animal abuse and malpractice, which a stated goal of the groups performing the undercover work. Many activists use the evidence, such as video recordings, to sensationalized their cause. The evidence is released to the public to damage the reputation of animal agriculture and cause negative economic impacts to the industry.

Questions:

1. Should the Livestock Protection Act be pursued again?
2. How could the legislation be improved?
3. What are the pros and cons for pursuing a Livestock Protection Act?

Background:

Animal abuse is not tolerated or sanctioned by the agricultural sector and the industry is actively reiterating this point to the public. The emotional appeals and undercover videos used by animal rights groups undermine the credibility of the animal industry.

The Tennessee legislature got involved in this issue last session. SB1248/HB 1191, known as the Livestock Protection Act, would have required individuals who intentionally recorded abuse of livestock to report the abuse to law enforcement within 48 hours and submit any unedited photographs or video recordings. Failure to do so would result in a Class C misdemeanor. The bill was vetoed by Governor Haslam after the Attorney General opined the bill was constitutionally suspect. Animal rights activists were concerned the bill would limit their ability to perform undercover investigations.

SB1248/HB 1191 was a pragmatic attempt to curb the sensationalized nature of undercover investigations into animal agriculture. Lessons can be learned from the failure of the bill in legal and public image aspects. A bill similar to HB 1191 could be drafted next session and the Governor stated that he would consider it. However, the bill needs to be refined in order to coexist with existing law.

Attorney General's Opinion

The Attorney General's (AG) opinion contains his reasons for determining the bill, as constitutionally suspect. A key factor in his decision was the concept of underinclusiveness. A law can be deemed "underinclusive" if it prohibits or limits some form of conduct but does not prohibit or limit similar conduct. The Livestock Protection Act stated that individuals' knowingly recording animal abuse must report to law enforcement. It did not include those who knowingly or unknowingly witnessed animal abuse without recording the alleged abuse. If all witnesses to animal abuse were held responsible to report abuse, underinclusiveness would not be an issue in the law. This would also more closely track the Livestock Protection Act to child abuse laws in Tennessee.

Careful study of the mechanisms of the child and adult abuse laws, such as defining which legal jurisdiction to report abuse, would also improve the constitutionality.

The AG was also concerned that courts would find the duty to turn in recordings of abuse as unconstitutional "prior restraint". "Prior restraint" refers to unconstitutional attempts to prevent the publication or public disbursement of any statement or idea that is protected by the First Amendment. A famous instance of prior restraint in American history was the Nixon Administration's unsuccessful attempt to block the publication of the Pentagon Papers. The issue is that the evidence of an undercover investigation would be impeded from public consumption by the requirement of submitting unedited documentation, even though the SB 1248/HB 1191 did not explicitly require all copies be surrendered.

The AG also opined SB 1248/HB 1191 created an unconstitutional burden on news gathering. News gathering is a First Amendment right. Tennessee's Shield Law defines the protections and scope, Tenn. Code Ann. § 24-1-208(a):

(a) A person engaged in gathering information for publication or broadcast connected with or employed by the news media or press, or who is independently engaged in gathering information for publication or broadcast, shall not be required by a court, a grand jury, the general assembly, or any administrative body, to disclose before the general assembly or any Tennessee court, grand jury, agency, department, or commission any information or the source of any information procured for publication or broadcast.

The Fifth Amendment provides individuals the right not to self-incriminate. Mandating the submission of recorded evidence to law enforcement could reveal an act of trespassing or fraud and thus violate Fifth Amendment rights.

Policy:
Animal Welfare (partial)

Modern livestock production techniques supply generous amounts of high quality food for consumers. These same practices have also instituted the highest degree of animal care in the history of livestock production. No other element of society, including any animal rights group, has more compassion or concern for livestock than does the farmer. However, we do not believe in the humanizing of animals. Man and animals do not exist with the same basic rights. There are theological, scientific and philosophical arguments for why man cares for animals so they may serve him. Man has a moral obligation to avoid cruelty in dealing with animals in all situations. All farmers and animal owners should follow the best practical animal care practices. Farmers are responsible in their treatment and care of livestock. We support the Tennessee animal cruelty law and aggravated animal cruelty law as written and the enforcement of these statutes.

Animal rights organizations should not be given authority to establish standards for the raising, handling, feeding, housing or transporting of livestock and poultry. Making accurate decisions regarding claims of animal cruelty is often a very difficult determination.

Breaking into a farm, animal research facility or any other agricultural facility to steal animals, vandalize, or disrupt the activities of the facility is a crime. Those guilty should be prosecuted to the full extent of the law.