

Linda Leehman

From: Barry Londeree <blonderee@humanesociety.org>
Sent: Wednesday, March 10, 2021 12:56 PM
To: Carolyn Partridge
Cc: Linda Leehman
Subject: [External] RE: Livestock shelter standards, proposed changes to Act 116

[External]

Chair Partridge,

Thanks for holding the hearing today, I think it was very productive. I believe restoring an reference the exemption for accepted practices in the subsection on livestock shelter will alleviate most of the concerns that were raised without altering the protections for other animals in the law.

[Sec.351\(b\)](#) exempts “(3) livestock and poultry husbandry practices for raising, management, and use of animals;” from the subchapter containing animal cruelty violations, [Sec.352](#). One of those violations is “(4) Deprives an animal that a person owns, possesses, or acts as an agent for of **adequate food, water, shelter**, rest, sanitation, or necessary medical attention or transports an animal in overcrowded vehicles.” As a result, current law prevents accepted livestock and husbandry practices from being considered an animal cruelty violation.

[Sec.365](#) includes specific shelter standards for livestock and other species. This section explains what the requirement for “adequate shelter” in Sec.352 means when applied to certain species. For livestock raised in a manner that is considered an accepted “livestock and poultry husbandry practice,” the requirements in Sec.365 do not apply because of the exemption in Sec.351(b).

In [Act 116 \(page 5\)](#), the language in Sec. 365(b) on shelter requirements for livestock was moved to the definition section ([Sec.351; #22 and #23](#)) in the form of definitions for “natural shelter” and “constructed shelter.” When this was done, the phrase at the end of that Sec.365(b) [“This subdivision shall not apply to any accepted housing or grazing practices for any livestock industry”] seems to now apply only to the ventilation and exercise standards that remained in Sec. 365(b). I did not notice this quirk at the time, likely because I was aware of the exemption in Sec.351(b) that makes this second exemption redundant. But I can see how, if you are reading Sec.365 in isolation, this might look like a change in the exemption for these activities. That was not the intent.

A solution may be to copy the exemption language in Sec.365(b) to Sec.365(a) so it is clear that it applies to shelter standards too. Below is a draft of what that would look like.

§ 365. Shelter of animals

(a) Adequate shelter. All livestock and animals that are to be predominantly maintained in an outdoor area shall be provided with adequate natural shelter or adequate constructed shelter to prevent direct exposure to the elements. This subdivision shall not apply to any accepted housing or grazing practices for any livestock industry.

(b) Shelter for livestock.

(1) Livestock animals confined in enclosed areas shall be provided with adequate ventilation and shall have access to adequate exercise. Equines housed within a designated space continually, without access to a paddock, turn out, or other exercise area, shall be provided the opportunity for periodic exercise, either through free choice

or through a forced work program, to maintain normal muscle tone and mass for the age, size, and condition of the animal or in accordance with accepted agricultural or veterinary practices. Nothing in this section shall control dairy herd housing facilities, either loose housing, comfort tie-stall, or stanchion lockups, or other housing under control of the Agency of Agriculture, Food and Markets. This subdivision shall not apply to any accepted housing or grazing practices for any livestock industry.

One more thing to consider: Sec.365 uses the phrase “This subdivision shall not apply to any *accepted housing or grazing practices for any livestock industry.*” This differs from the exemption language in Sec.351(b) which uses the phrase “*livestock and poultry husbandry practices for raising, management, and use of animals.*” There is a definition for “livestock and poultry husbandry practices” in the law ([Sec.351, #13](#)). Perhaps it would be better to for Sec.365(a) and (b) to use the phrase: “This subdivision shall not apply to any livestock and poultry husbandry practices for raising, management, and use of animals.” That would ensure consistent phrasing is used throughout the law.

I was nice to see and speak with you today. Please let me know if I can answer any questions.

All the best,

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From: Barry Londeree

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Cc: John Bartholomew <JBartholomew@leg.state.vt.us>; Kristin Haas <Kristin.Haas@vermont.gov>; Linda Leehman <LLeehman@leg.state.vt.us>

Subject: Livestock shelter standards, proposed changes to Act 116

Chair Partridge and Committee Members,

I am writing in response to a proposal before your Committee from NOFA-VT to alter the standards for livestock shelter in Vermont’s animal cruelty law. I previously served as Vermont State Director for the Humane Society of the United States. In this role, I helped to draft H.254 (Act 116) and lobbied for its enactment in 2020. I believe the proposed changes are unnecessary and unwise, and I appreciate the opportunity to outline my concerns in this email.

In 2015, the Vermont Humane Federation organized a meeting of equine rescue groups and humane investigators with experience investigating large-animal cruelty cases to identify common challenges impacting livestock and equine welfare in Vermont. Data collected from 2008-2015 found that equine-related cases represented nearly 22 percent of all complaints by species, second most behind dogs. It is important to understand that equines are considered “livestock” under Vermont law and are subject to all the investigative procedures specified for livestock.

This group identified several problems with livestock and equine cases, including unclear Vermont statutes regarding access to shelter and care standards for equines and livestock. Specific cases were discussed involving horses having to stand outside in direct sunlight and humidity, high winds, freezing rain, and hail without shelter, without sufficient shelter for all the animals, or without the ability to quickly access shelter to protect themselves. They also identified the problem of horses being held in confinement for long periods of

time with no access to outdoor living areas. All participants agreed that the lack of clarity in our laws made the shelter requirements for livestock difficult to understand, communicate and enforce. In particular, the lack of a definition for “natural shelter” made that provision challenging to apply to the varying circumstances an investigator may encounter.

H.254 (Act 116), introduced by Rep. John Bartholomew, embodied the recommendations of this group. As I will explain further, Act 116 did not create a new shelter requirement for livestock or require shelter to be provided in circumstances not already mandated by law. Specifically, Act 116 made four changes to law:

1. Provided a definition for adequate “natural” or “constructed” shelter
2. Provided a definition for “proper ventilation”
3. Clarified a requirement for proper exercise for equines housed continually in a confined area
4. Clarified standards for the use of a leash, rope, or chain on livestock

My understanding from reviewing testimony and working on the development of Act 116 is that some individuals believe that current law makes illegal certain livestock practices used by the grazing community, such as managed rotational grazing systems, and does not permit progressive livestock and land management methods. This is not accurate.

Vermont law on the humane and proper treatment of animals (Title 13, Chapter 8) has ALWAYS required animals “predominantly maintained in an outdoor area” to be provided access to natural or manmade shelter. Prior to Act 116, the term “natural shelter” was undefined. Act 116 added a definition for natural shelter, to provide clarity to humane officers, and added a definition for “constructed shelter” that largely adopted the standards already in law. Therefore, no NEW shelter requirements were created by Act 116. It is possible that some observers noticed this shelter provision in the law for the first time and attributed it to Act 116, but that is not the case.

Does this mean that rotational grazing or other managed agricultural production plans are illegal because they fail to provide shelter? No. The law provides, as it always has, a full exemption for “livestock and poultry husbandry practices for raising, management, and use of animals” (13 V.S.A. § 351b) from ALL animal cruelty violations, including the requirement to provide shelter. The law also provides the following definition (13 V.S.A. § 351):

“Livestock and poultry husbandry practices” means the raising, management and using of animals to provide humans with food, fiber, or transportation in a manner consistent with:

- (A) husbandry practices recommended for the species by fully accredited agricultural colleges and the U.S. Department of Agriculture Extension Service;*
- (B) husbandry practices modified for the species to conform to the Vermont environment and terrain; and*
- (C) husbandry practices that minimize pain and suffering.*

In addition to this broad exemption, the section of law that specifies shelter requirements for animals (13 V.S.A. § 365) states that those provisions “shall not apply to any accepted housing or grazing practices for any livestock industry.” Read in its entirety, it is clear the law, before and after passage of Act 116, exempts from the shelter requirement “livestock and poultry husbandry practices” that are appropriate for grazing livestock.

But how are acceptable “livestock and poultry husbandry practices” determined on a case-by-case basis and doesn’t this allow for unjustified enforcement? The law includes a process for making this determination (13

V.S.A. § 354) and requires a humane officer to consult with the Agency of Agriculture to determine “whether the practice or animal condition, or both, represent acceptable livestock or poultry husbandry practices” prior to any enforcement action.

§ 354. Enforcement; possession of abused animal; searches and seizures; forfeiture

(a) The Secretary of Agriculture, Food and Markets shall be consulted prior to any enforcement action brought pursuant to this chapter that involves livestock and poultry. Law enforcement may consult with the Secretary in person or by electronic means, and the Secretary shall assist law enforcement in determining whether the practice or animal condition, or both, represent acceptable livestock or poultry husbandry practices.

This means that prior to a humane officer asking for even voluntary compliance in a matter, he or she is required to verify with the Agency of Agriculture that the situation justifies action. Relatedly, current law also requires that “a veterinarian licensed to practice in Vermont must accompany the humane officer during the execution of the search warrant,” providing yet another safeguard against unjustified actions (13 V.S.A. § 354).

I have always interpreted the “livestock and poultry husbandry practices” exemption to be very favorable to farmers and other livestock owners. It permits the Agency of Agriculture to deem legal any agricultural practice it determines is “acceptable,” effectively preventing enforcement action in those cases. I am not aware of any testimony stating that owners of grazing livestock have been convicted, charged, or faced any enforcement actions for livestock activities that are allowed under the law as an accepted practice.

This provision in the law is well-known enough that it has informed the legislature’s work on other animal legislation. When this Committee updated the laws governing adequate shelter of dogs and cats in 2018 (Act 58), that bill included an exception from the shelter requirement for livestock guardian dogs. This was done with the understanding that the livestock may not always be provided shelter in a rotational grazing system and it seemed unreasonable to then require shelter for the guardian dog.

It is important to remember that Vermont’s animal cruelty laws were not created only for livestock being actively raised for food or fiber by experienced farmers. The law’s primary function, I would argue, is to offer protections for “backyard” livestock, animals owned by novice farmers, and those treated more like companion animals. These scenarios make up the vast majority of livestock/equine cases investigated by humane officers. Clear shelter standards for all livestock, as improved upon in Act 116, combined with a broad exemption for accepted “livestock and poultry husbandry practices” strikes the right balance and ensures real cases of abuse can be investigated.

Concerns with the NOFA-VT Proposed Adequate Shelter Language

Below are some additional concerns I have identified with the proposed language. I hope they underscore the need to thoughtfully consider any revisions to Act 116 for unintended consequences before action is taken.

Creates confusing standards, the opposite of Act 116’s intent

- Combines “natural” and “constructed” shelter back into one definition. Separating these terms was a deliberate decision by Committee to provide clarity for each. Combining them again undermines this objective. It also results in awkward and unclear wording in (22)(c) when trying to describe conditions of one term but not the other.

- Introduces the new term “inclement weather” and requires shelter ONLY during those conditions. In addition to being far too limited for the many species and circumstances covered by this law, the definition provided for “inclement weather” is full of unclear terms:
 - “weather that is violent” – what constitutes “violent” weather?
 - “characterized by extreme temperatures (high or low)” – again, what does “extreme” mean in this context?
 - “characterized by excessive precipitation that can cause physical harm to a given species of livestock” – once more, what constitutes “excessive” precipitation? Does this only cover periods of intense precipitation over a short period of time, or would it include prolonged exposure to lower levels of precipitation?
 - “adequate ventilation” is now dependent on the animal being exposed to “inclement weather,” which seems to imply that animals kept in an enclosure must only be provided proper ventilation during times of inclement weather, not at all times they are in the shelter structure.

Enforcement challenges

- As detailed above, the bill includes terminology that is unclear and would severely complicate the ability of humane officers to understand what the law requires so that they can enforce it consistently. The purpose of Act 116 was to provide clarity; this proposal does the opposite.
- The bill ties the requirement for shelter to the animal being exposed to “inclement weather.” Otherwise, no shelter is required for any livestock species at any time. In practice, this would require a humane officer to witness the animal exposed to inclement weather. This is rarely the case, and this change would effectively render the shelter requirement unenforceable.
- No longer would harm done to an animal by prolonged lack of shelter clearly be a violation of law. A humane officer would have to prove exposure to weather that is “violent,” “extreme,” or “excessive,” even in circumstances with clear evidence the duration of exposure is causing harm.

Removes shelter requirements for ALL livestock species, not just grazing animals

While the focus of concerns has been about grazing livestock (animals already exempt from the law), this proposal would repeal shelter standards for all livestock species, including equines, chickens, and other poultry – even those should have shelter accessible to them.

Not consistent with an “animal-based” measurements approach

During Committee discussion on Act 116, some witnesses (including the Livestock Care Standards Advisory Council) expressed a desire for the animal cruelty laws to include more direct welfare measurements to determine the necessity of shelter. These measurements might include parameters such as body condition score, fleece/haircoat cleanliness, and animal behavior. In full disclosure, I argued against those changes, and I continue to believe that was the right decision. As I explained to the Committee at the time, my concerns about this approach are based upon practicalities that would make shelter standards unenforceable. Linking the requirement for shelter to an animal’s physical condition that can only be determined through a hands-on evaluation, rather than observable standards, would make it impossible to establish probable cause of a violation without the animal’s owner voluntarily agreeing to an examination.

This proposal from NOFA-VT is not a step towards an animal-based measure of shelter needs. Quite to the contrary, it makes the law murkier by adding yet another ambiguous metric, exposure to “inclement weather,” for a humane officer to decipher during the investigative process.

Unintended consequences

- By reviving the term “adequate shelter” and requiring it only during “inclement weather,” this change may alter the use of that term elsewhere in the animal cruelty statute. For example, dogs and cats are required to be provided “adequate shelter.” Would altering this definition change the shelter standards for these other species so that they are only required during inclement weather? I do not know the answer to this question, but I think it needs to be scrutinized by the Committee with input from legislative counsel.
- The NOFA-VT language may have the exact opposite result than is intended. Under current law, a primary question for humane officers in livestock cases is whether conditions in a case qualify as an accepted “livestock and poultry husbandry practice.” To determine this, the law lays out a clear process that involves consultation with the Agency of Agriculture. If enacted, this proposal would require a humane officer to determine if an animal was exposed to “inclement weather.” This determination does not appear to require consultation with the Agency of Agriculture. As a result, we could begin to see enforcement based upon differing concepts of “inclement weather” depending upon the interpretation of that term by the investigating agent.

Alternative Options:

If the intent of this proposal is to reduce the number of incidents when livestock owners are contacted about unfounded reports of animal cruelty violations, I would suggest the following ideas rather than altering the long-standing structure of the animal cruelty statute:

- Clarify the definition/application of “livestock and poultry husbandry practices” to exclude for certain accepted practices. This would provide those producers clarity in the law that their activities are not illegal while leaving in place shelter requirements for other livestock.
- Strengthen the role of the Agency of Agriculture in verifying acceptable “livestock and poultry husbandry practices.” While the law already requires consultation with the Agency of Agriculture before an enforcement action, you could establish a clearer responsibility for the Agency to provide a documented response to those requests.
- More clearly define the category of individuals designated as humane officers, require minimum training for humane officers, and better organize our animal cruelty response system to respond consistently to cases throughout the state.

In conclusion, the changes sought by NOFA-VT are unnecessary to protect livestock practices used by the grazing community, such as managed rotational grazing systems, from inadvertently being considered animal cruelty. Those practices, so long as the Agency of Agriculture considers them to be acceptable “livestock and poultry husbandry practices,” have always been exempted from the shelter standards. Adoption of this proposal would only result in removing shelter protections for livestock not used in managed agriculture, those most likely to be the subjected of mistreatment and abuse.

Thank you for consideration of these concerns. I am available to discuss this topic in more detail at your convenience.

Sincerely,

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