

**CHAPTER 1118****CONFINEMENT FEEDING OPERATIONS – NUISANCE DEFENSE**

S.F. 2375

**AN ACT** relating to a limitation on qualifications for rebuttable presumptions for nuisance defenses for certain persons classified as chronic violators involved in confinement feeding operations.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 657.11, Code Supplement 1995, is amended by adding the following new subsection:

**NEW SUBSECTION.** 3A. The rebuttable presumption does not apply to a person during any period that the person is classified as a chronic violator under this subsection as to any confinement feeding operation in which the person holds a controlling interest, as defined by rules adopted by the department of natural resources. The rebuttable presumption shall apply to the person on and after the date that the person is removed from the classification of chronic violator. For purposes of this subsection, “confinement feeding operation” means an animal feeding operation in which animals are confined to areas which are totally roofed, and which are regulated by the department of natural resources or the environmental protection commission.

a. A person shall be classified as a chronic violator if the person has committed three or more violations as described in this subsection prior to, on, or after the effective date of this Act. In addition, in relation to each violation, the person must have been subject to either of the following:

(1) The assessment of a civil penalty by the department or the commission in an amount equal to three thousand dollars or more.

(2) A court order or judgment for a legal action brought by the attorney general after referral by the department or commission.

Each violation must have occurred within five years prior to the date of the latest violation, counting any violation committed by a confinement feeding operation in which the person holds a controlling interest. A violation occurs on the date the department issues an administrative order to the person assessing a civil penalty of three thousand dollars or more, or on the date the department notifies a person in writing that the department will recommend that the commission refer, or the commission refers the case to the attorney general for legal action, or the date of entry of the court order or judgment, whichever occurs first. A violation under this subsection shall not be counted if the civil penalty ultimately imposed is less than three thousand dollars, the department or commission does not refer the action to the attorney general, the attorney general does not take legal action, or a court order or judgment is not entered against the person. A person shall be removed from the classification of chronic violator on the date on which the person and all confinement feeding operations in which the person holds a controlling interest have committed less than three violations described in this subsection for the prior five years.

b. For purposes of counting violations, a continuing and uninterrupted violation shall be considered as one violation. Different types of violations shall be counted as separate violations regardless of whether the violations were committed during the same period. The violation must be a violation of a state statute, or a rule adopted by the department, which applies to a confinement feeding operation and any related animal feeding operation structure, including an anaerobic lagoon, earthen manure storage basin, formed manure storage structure, or egg washwater storage structure; or any related pollution control device or practice. The structure, device, or practice must be part of the confinement feeding operation. The violation must be one of the following:

(1) Constructing or operating a related animal feeding operation structure or installing or using a related pollution control device or practice, for which the person must obtain a permit, in violation of statute or rules adopted by the department, including the terms or conditions of the permit.

(2) Intentionally making a false statement or misrepresenting information to the department as part of an application for a construction permit for the related animal feeding operation structure, or the installation of the related pollution control device or practice, for which the person must obtain a construction permit from the department.

(3) Failing to obtain a permit or approval by the department for a permit to construct or operate a confinement feeding operation or use a related animal feeding operation structure or pollution control device or practice, for which the person must obtain a permit from the department.

(4) Operating a confinement feeding operation, including a related animal feeding operation structure or pollution control device or practice, which causes pollution to the waters of the state, if the pollution was caused intentionally, or caused by a failure to take measures required to abate the pollution which resulted from an act of God.

(5) Failing to submit a manure management plan as required, or operating a confinement feeding operation required to have a manure management plan without having submitted the manure management plan.

Approved April 17, 1996

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**CHAPTER 1119**  
**BRANDING OF LIVESTOCK**  
*H.F. 2390*

**AN ACT** providing for the branding of livestock.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 169A.4, Code 1995, is amended to read as follows:  
169A.4 RECORDING – FEE.

~~Any~~ A person desiring to adopt a brand shall forward to the secretary ~~proper~~ a brand application ~~on forms of such approved by the secretary and providing for the desired brand,~~ together with a recording fee in an amount established by rule of the secretary pursuant to chapter 17A, ~~which.~~ The fee amount shall be based upon the administrative costs of maintaining the brand program provided for by this chapter. Upon receipt ~~of such,~~ the secretary shall file the application and fee, the secretary shall file the same and unless such the brand is of record as that of some other another person or conflicts with or closely resembles the brand of another person, the secretary shall record the same. If the secretary determines that such brand is of record or conflicts with or closely resembles the brand of another person, the secretary shall not record it but shall return ~~such~~ the facsimile and fee to the forwarding person. However, the secretary shall renew a conflicting brand, if the brand was originally recorded prior to the effective date of this Act, and the brand is renewed as provided in section 169A.13. The department may notify each owner of a conflicting brand that the owner may record a nonconflicting brand. The power of examination, approval, acceptance, or rejection shall be vested in the secretary. ~~It shall be the duty of the~~ The secretary ~~to~~ shall file all brands offered for record pending the examination provided for in this section. The secretary shall make such examination as promptly as possible. If the brand is accepted, the brand's ownership ~~thereof~~ shall vest in the person recording it from the date of filing.

Sec. 2. Section 169A.16, Code Supplement 1995, is repealed.

Approved April 17, 1996