

CHAPTER 81

LIVESTOCK — CARE AND FEEDING — LIENS — NEGLECT

S.F. 478

AN ACT relating to livestock by providing for their feeding and care when the livestock are deemed to be neglected.

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

Section 1. Section 459.501, subsections 1, 3, and 5, Code 2011, are amended to read as follows:

1. A ~~manure storage indemnity~~ livestock remediation fund is created as a separate fund in the state treasury under the control of the department. The general fund of the state is not liable for claims presented against the fund.

3. a. The moneys collected under this section shall be deposited in the fund and shall be appropriated to the department for the following exclusive ~~purpose of providing~~ purposes:

(1) To provide moneys for cleanup of abandoned facilities as provided in section 459.505, and to pay the department for costs related to administering the provisions of this subchapter. For each fiscal year, the department shall not use more than one percent of the total amount which is available in the fund or ten thousand dollars, whichever is less, to pay for the costs of administration.

(2) To allocate moneys to the department of agriculture and land stewardship for the payment of expenses incurred by the department of agriculture and land stewardship associated with providing for the sustenance and disposition of livestock in immediate need of sustenance pursuant to chapter 717. The department of natural resources shall allocate any amount of unencumbered and unobligated moneys demanded in writing by the department of agriculture and land stewardship as provided in this subparagraph. The department of natural resources shall complete the allocation upon receiving the demand.

b. Moneys in the fund shall not be subject to appropriation or expenditure for any other purpose than provided in this section.

5. The following shall apply to moneys in the fund:

a. (1) The executive council may allocate moneys from the general fund of the state as provided in section 7D.10A in an amount necessary to support the fund, including the following:

(a) The payment of claims as provided in section 459.505.

(b) The allocation of moneys to the department of agriculture and land stewardship for the payment of expenses incurred by the department of agriculture and land stewardship associated with providing for the sustenance and disposition of livestock pursuant to chapter 717.

(2) ~~However, an~~ Notwithstanding subparagraph (1), the allocation of moneys from the general fund of the state shall be made only if the amount of moneys in the fund, which are not obligated or encumbered, and not counting the department's estimate of the cost to the fund for pending or unsettled claims, the amount to be allocated to the department of agriculture and land stewardship, and any amount required to be credited to the general fund of the state under this subsection, is less than one million dollars.

b. The department of natural resources shall credit an amount to the general fund of the state which is equal to an amount allocated to the fund by the executive council under paragraph "a". The department shall credit the moneys to the general fund of the state if the moneys in the fund which are not obligated or encumbered, and not counting the department's estimate of the cost to the fund for pending or unsettled claims, the amount to be allocated to the department of agriculture and land stewardship, and any amount required to be transferred to the general fund under this paragraph, are in excess of two million five hundred thousand dollars. The department is not required to credit the total amount to the general fund of the state during any one fiscal year.¹

¹ See chapter 131, §35, 158 herein

Sec. 2. Section 579A.2, subsection 5, Code 2011, is amended to read as follows:

5. ~~a. Except as provided in this paragraph, a~~ A custom cattle feedlot lien that is perfected under this section is superior to and shall have priority over a conflicting lien or security interest in the cattle, including a lien or security interest that was perfected prior to the perfection of the custom cattle feedlot lien. ~~However~~

~~b. Notwithstanding paragraph "a", a custom cattle feedlot lien shall not be superior to a court-ordered lien provided in section 717.4 or a veterinarian's lien created under chapter 581, that if such lien is~~ perfected as an agricultural lien as provided in chapter 554, article 9.

~~b. c.~~ A custom cattle feedlot lien that is effective but not perfected under this section has priority as provided in section 554.9322.

Sec. 3. Section 579B.4, subsection 4, paragraph a, Code 2011, is amended to read as follows:

a. ~~(1) Except as provided in this paragraph, a~~ A commodity production contract lien that is perfected under this section is superior to and shall have priority over a conflicting lien or security interest in the commodity, including a lien or security interest that was perfected prior to the perfection of the commodity production contract lien under this chapter. ~~However~~

~~(2) Notwithstanding subparagraph (1), a commodity production contract lien shall not be superior to a court ordered lien provided in section 717.4 or a veterinarian's lien created under chapter 581, that if such lien is~~ perfected as an agricultural lien.

Sec. 4. Section 581.2, subsection 2, Code 2011, is amended to read as follows:

2. ~~a.~~ A veterinarian's lien that is perfected under section 581.3 shall have priority over any conflicting security interest or lien in livestock treated by a veterinarian, regardless of when such security interest or lien is perfected.

~~b. Notwithstanding paragraph "a", a veterinarian's lien shall not be superior to a court ordered lien provided in section 717.4, if such lien is~~ perfected as an agricultural lien.

Sec. 5. Section 717.1, Code 2011, is amended by adding the following new subsections:

NEW SUBSECTION. 01. "*Department*" means the department of agriculture and land stewardship.

NEW SUBSECTION. 001. "*Electronic mail*" means any message transmitted through the internet including but not limited to messages transmitted from or to any address affiliated with an internet site.

Sec. 6. NEW SECTION. 717.3 Livestock in immediate need of sustenance — court order.

1. This section applies only to livestock which are cattle, sheep, swine, or poultry.

2. For purposes of this section, "*interested person*" means all of the following:

a. An owner of the livestock.

b. A person caring for the livestock, if different from the owner of the livestock.

c. A person holding a perfected agricultural lien or security interest in the livestock under chapter 554.

3. The department may determine that some or all of the livestock kept by a person are in immediate need of sustenance. Upon making the determination the department may file a petition with a district court in a county where some or all of the livestock are kept requesting the court to issue an order to provide sustenance of the livestock. The petition may be made separately or with a petition filed pursuant to section 717.5. The petition must at least include all of the following:

a. A statement signed by a veterinarian licensed pursuant to chapter 169 stating that the livestock are in immediate need of sustenance.

b. The address of each location where the livestock are kept.

c. A brief description of the livestock.

d. The name and address of each interested person, if known.

e. The name and address of each qualified person appointed by the department to provide sustenance to the livestock.

4. Upon receiving the petition, the court may do any of the following:

a. Notify any interested person that the petition has been filed with the court. The notification must be made in writing and may be delivered by ordinary, certified, or restricted certified mail by United States postal service; delivered by a common carrier; or transmitted by electronic mail.

b. Hold a hearing to determine whether the livestock are in immediate need of sustenance.

5. If the court determines that the livestock are in immediate need of sustenance, the court shall issue an order which at least declares all of the following:

a. That the livestock are in immediate need of sustenance.

b. That the department shall assume supervision of and provide for the sustenance of the livestock and² as provided in section 717.4.

c. That a lien is created attaching to the livestock and associated proceeds and products as provided in section 717.4.

6. The department shall assume supervision of the livestock as provided in the court order. The department may directly provide for the sustenance of the livestock or appoint a qualified person to provide for such sustenance.

Sec. 7. NEW SECTION. 717.4 Livestock in immediate need of sustenance — lien.

1. This section applies to a lien created by a court order entered pursuant to section 717.3 or 717.5. The court ordered lien is an agricultural lien subject to chapter 554 except as otherwise provided in this section.

2. The court ordered lien shall be for the benefit of the department. The amount of the lien shall be not more than expenses incurred in providing sustenance to the livestock pursuant to section 717.3 and providing for the disposition of the livestock pursuant to section 717.5.³

3. The court ordered lien shall attach to the livestock, identifiable proceeds from the disposition of the livestock, and products from the livestock in the products' unmanufactured states.

4. The court ordered lien becomes effective on the date that the court order is entered. To perfect the lien, the department must file a financing statement in the office of the secretary of state as provided in sections 554.9308 and 554.9310 on or after but not later than twenty days after the effective date of the lien. For purposes of chapter 554, article 9, the department is a secured party; the owner of the livestock is a debtor; and the livestock and associated proceeds and products as provided in subsection 3 are the collateral.

5. The court ordered lien that is perfected under this section is superior to and shall have priority over a conflicting lien or security interest in the livestock and associated proceeds and products as provided in subsection 3, including a lien or security interest that was perfected prior to the perfection of the court ordered lien.

Sec. 8. NEW SECTION. 717.4A Livestock in immediate need of sustenance — livestock remediation fund.

The department may utilize the moneys deposited into the livestock remediation fund pursuant to section 459.501 to pay for any expenses associated with providing sustenance to or the disposition of the livestock pursuant to a court order entered pursuant to section 717.3 or 717.5. The department shall utilize moneys from the fund only to the extent that the department determines that expenses cannot be timely paid by utilizing the available provisions of sections 717.4 and 717.5. The department shall deposit any unexpended and unobligated moneys in the fund. The department shall pay⁴ the fund the proceeds from the disposition of the livestock and associated products less expenses incurred by the department in providing for the sustenance and disposition of the livestock, as provided in section 717.5.

Sec. 9. Section 717.5, subsections 1 through 3, Code 2011, are amended to read as follows:

1. a. A court shall order the disposition of livestock neglected as provided in section 717.2 ~~after a hearing upon application or petition to the court~~ or livestock in immediate need of

² See chapter 131, §74, 158 herein

³ See chapter 131, §75, 158 herein

⁴ See chapter 131, §76, 158 herein

sustenance and associated products as provided in sections 717.3 and 717.4 in accordance with this section.

(1) A petition may be filed by a local authority or a person owning or caring for the livestock pursuant to section 717.2.

(2) A petition may be filed by the department. The court shall notify interested persons in the same manner as provided in section 717.3. The petition may be filed separately or with a petition filed pursuant to section 717.3.

b. The matter shall be heard by the court within ten days from the filing of a the petition by the local authority or the person.

(1) The For livestock alleged to be neglected under section 717.2, the court may continue the hearing for up to forty days upon petition by the person. However, the person shall post a bond or other security with the local authority in an amount determined by the court, which shall not be more than the amount sufficient to provide for the maintenance of the livestock for forty days. The court may grant a subsequent continuance by the person for the same length of time if the person submits a new bond or security.

(2) For livestock alleged to be in immediate need of sustenance under section 717.3, the court may continue the hearing for up to forty days upon petition by the department. The department may file and the court may grant one or more subsequent continuances each for up to forty days. The department is not required to post a bond or other security.

c. However, the Notwithstanding paragraph "b", the court shall order the immediate disposition of the livestock if the livestock is permanently distressed by disease or injury to a degree that would result in severe or prolonged suffering.

2. The hearing to determine if livestock has been neglected under section 717.2 for purposes of disposition shall be a civil proceeding. If the case is related to a criminal proceeding under section 717.2, the disposition shall not be part of that proceeding and shall not be considered a criminal penalty imposed on a person found in violation of section 717.2.

3. A court may order a person owning the neglected livestock neglected under section 717.2 or in immediate need of sustenance under section 717.3 to pay an amount associated with expenses associated with the livestock as follows:

a. (1) which For livestock neglected under section 717.2, the amount shall not be more than the for expenses incurred by the local authority in maintaining and disposing the neglected livestock rescued pursuant to section 717.2A, and reasonable attorney fees and expenses related to the investigation of the case. The remaining amount of a bond or other security posted pursuant to this section subsection 1 shall be used to reimburse the local authority.

(2) For livestock in immediate need of sustenance under section 717.3, the amount shall not be more than for expenses incurred by the department in providing sustenance to and disposing of the neglected livestock as provided in section 717.3 and this section. The amount paid to the department shall be sufficient to allow the department to repay the livestock remediation fund as provided in section 459.501.

b. If more than one person has a divisible ownership interest in the livestock, the amount required to be paid shall be prorated based on the percentage of interest in the livestock owned by each person. The moneys shall be paid to the local authority or department incurring the expense as provided in paragraph "a". The amount shall be subtracted from proceeds owed to the owner or owners of the livestock, which are received from the sale of the livestock ordered by the court.

c. (1) Moneys owed to the local authority from the sale of neglected livestock that have been rescued by a local authority pursuant to section 717.2A shall be paid to the local authority before satisfying indebtedness secured by any security interest in or lien on the livestock. Moneys owed to the department from the sale of livestock in immediate need of sustenance and associated products shall be paid to the department according to its priority status as a lienholder as provided in section 717.4.

(2) If an owner of the livestock is a landowner, the local authority may submit an amount of the moneys owed to the clerk of the county board of supervisors who shall report the amount to the county treasurer. The amount shall equal the balance remaining after the sale of the livestock. If the livestock owner owns a percentage of the livestock, the reported amount shall equal the remaining balance owed by all landowners who own a percentage of the livestock. That amount shall be prorated among the landowners based on the percentage of interest

in the livestock attributable to each landowner. The amount shall be placed upon the tax books, and collected with interest and penalties after due, in the same manner as other unpaid property taxes. The county shall reimburse a city within thirty days from the collection of the property taxes.

Sec. 10. NEW SECTION. **717.6 Rulemaking.**

The department may adopt rules pursuant to chapter 17A as required to implement and administer sections 717.3 through 717.5.

Sec. 11. CODE EDITOR DIRECTIVE. Sections 7D.10A,⁵ 459.303, 459.503A, and 460.206, Code 2011, are amended by striking from the sections the words “manure storage indemnity fund” and inserting in lieu thereof the words “livestock remediation fund”.

Approved April 20, 2011

⁵ See chapter 131, §11, 158 herein