

Sexton
Veenstra
Kibbie

Succeeded By
SF/HF 494

SSB-1227

Agriculture

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CHAIRPERSON McLAREN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to nuisance suits against animal feeding
2 operations by providing for causes of action relating to
3 nuisance suits.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 654B.3, subsection 1; Code 2001, is
2 amended to read as follows:

3 1. a. A person who is a farm resident, or other party,
4 desiring to initiate a civil proceeding to resolve a dispute,
5 shall file a request for mediation with the farm mediation
6 service. The person shall not begin the proceeding until the
7 person receives a mediation release or until the court
8 determines after notice and hearing that ~~one-of-the-following~~
9 applies:

10 ~~(1)--The the time delay required for the mediation would~~
11 ~~cause the person to suffer irreparable harm.~~

12 ~~(2)--The dispute involves a claim which has been brought as~~
13 ~~a class action.~~

14 b. The requirements of paragraph "a" are jurisdictional
15 prerequisites to a person filing a civil action that initiates
16 a civil proceeding to resolve a dispute subject to this
17 chapter.

18 Sec. 2. Section 657.8, Code 2001, is amended to read as
19 follows:

20 657.8 ANIMAL FEEDING OPERATIONS -- FEEDLOTS.

21 This chapter shall apply to an animal feeding operation
22 only as provided in chapter 657B or to the operation of a
23 livestock feedlot, only as provided in chapter 172D.

24 Sec. 3. NEW SECTION. 657B.1 SHORT TITLE.

25 This chapter shall be known and may be cited as the "Iowa
26 Livestock Production Defense Act".

27 Sec. 4. NEW SECTION. 657B.2 PURPOSE.

28 The purpose of this chapter is the same as set forth in
29 section 657.11.

30 Sec. 5. NEW SECTION. 657B.3 DEFINITIONS.

31 As used in this chapter, unless the context otherwise
32 requires:

33 1. "Animal feeding operation" means the same as defined in
34 section 455B.161.

35 2. "Litigation expenses" means the amount of the sum of

1 the costs, disbursements, and expenses, including reasonable
2 attorney fees, expert witness fees, and engineering fees
3 necessary in order to prepare for or participate in a cause of
4 action.

5 3. "Nuisance action" means any cause of action for private
6 or public nuisance, brought under chapter 657 or principles of
7 common law, or any related cause of action that interferes
8 with another person's comfortable use and enjoyment of the
9 person's life or property, including but not limited to
10 anticipatory nuisance, negligence, trespass, or a violation of
11 public trust.

12 Sec. 6. NEW SECTION. 657B.4 STANDING.

13 A person shall not have standing to bring a nuisance action
14 against any person for the operation of an animal feeding
15 operation, including practices and activities protected under
16 section 657.11, unless the person seeking to bring the
17 nuisance action has an ownership interest in the property
18 alleged to be affected by the animal feeding operation.

19 Sec. 7. NEW SECTION. 657B.5 DAMAGES.

20 1. In a nuisance action brought on or after the effective
21 date of this Act, where an animal feeding operation is found
22 to be a nuisance, a claimant may be awarded damages subject to
23 all of the following:

24 a. A defendant who contributes to the negligence is
25 responsible for damages under this section only to the extent
26 of the defendant's percentage of fault as provided in sections
27 668.3 through 668.6.

28 b. A claimant may recover compensatory damages as follows:

29 (1) For the loss of value of the claimant's real property,
30 the amount shall not be more than the value of the claimant's
31 real property as of the date that the animal feeding operation
32 was first operated by the defendant.

33 (2) For damages other than the loss of value of the
34 claimant's real property, the claimant may recover
35 compensation for actual and consequential damages together

1 with punitive or exemplary damages. However, all of the
2 following shall apply:

3 (a) Punitive or exemplary damages shall not be awarded,
4 unless the claimant recovers damages pursuant to this section
5 and the court or jury makes the findings required by section
6 668A.1.

7 (b) All damages awarded against all defendants in a
8 nuisance action subject to this subsection shall not exceed
9 one hundred thousand dollars, including any derivative claim
10 brought by any other claimant. A claimant shall not be
11 awarded more than fifty thousand dollars in punitive or
12 exemplary damages and a claimant bringing a derivative claim
13 shall not be awarded more than fifty thousand dollars.

14 2. In a nuisance action brought on or after the effective
15 date of this Act, where an animal feeding operation is not
16 found to be a nuisance, the defendant shall be awarded
17 litigation expenses that shall be taxed as part of the costs
18 of the action.

19 EXPLANATION

20 This bill relates to nuisance actions brought against
21 animal feeding operations by providing that only persons who
22 are injured by the nuisance have standing. The bill provides
23 that a defendant who contributes to the negligence is
24 responsible for the percentage of the person's fault as
25 provided under Code chapter 668, and limits the amount of
26 money that can be recovered in compensatory damages. Loss of
27 property value is determined based on the value as of the date
28 that the animal feeding operation was first operated. For
29 other damages, the bill limits damages to \$100,000, including
30 not more than \$50,000 for any derivative claim or \$50,000 for
31 exemplary or punitive damages.

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H. 4/3/01 Agriculture
H. 4/9/01 Amend/Do Pass
w/ H 1452

FILED MAR 19 01

SENATE FILE 494
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SSB 1227)

Passed Senate, Date ^(P.934) 4-2-01 Passed House, Date _____
Vote: Ayes 49 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to disputes in mediation involving agricultural
2 operations.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SC 494
HbH JS

1 Section 1. Section 654B.3, subsection 1, Code 2001, is
2 amended to read as follows:

3 1. a. A person who is a farm resident, or other party,
4 desiring to initiate a civil proceeding to resolve a dispute,
5 shall file a request for mediation with the farm mediation
6 service. The person shall not begin the proceeding until the
7 person receives a mediation release or until the court
8 determines after notice and hearing that ~~one-of-the-following~~
9 ~~applies:~~

10 ~~{1}--The the time delay required for the mediation would~~
11 ~~cause the person to suffer irreparable harm.~~

12 ~~{2}--The-dispute-involves-a-claim-which-has-been-brought-as~~
13 ~~a-class-action.~~

14 b. The requirements of paragraph "a" are jurisdictional
15 prerequisites to a person filing a civil action that initiates
16 a civil proceeding to resolve a dispute subject to this
17 chapter.

18 EXPLANATION

19 This bill amends Code chapter 654B that provides for
20 mediation involving livestock care and feeding contracts and
21 nuisance disputes, by eliminating a provision that exempts
22 from mediation a dispute involving a claim which has been
23 brought as a class action.

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SENATE FILE 494

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1 Amend Senate File 494, as passed by the Senate, as
2 follows:

3 1. Page 1, by striking lines 1 through 17, and
4 inserting the following:

5 "Section 1. Section 654B.3, subsection 1,
6 paragraph a, subparagraph (2), Code 2001, is amended
7 to read as follows:

8 (2) ~~The dispute involves a claim which has been~~
9 ~~brought as person is a party in a class action as~~
10 provided in section 654B.4A.

11 Sec. 2. Section 654B.4, subsection 2, paragraph b,
12 Code 2001, is amended to read as follows:

13 b. ~~The dispute involves a claim which has been~~
14 ~~brought as person is a party in a class action as~~
15 provided in section 654B.4A.

16 Sec. 3. NEW SECTION. 654B.4A PARTIES IN CLASS
17 ACTIONS.

18 1. a. A person who is a member of a class in a
19 class action to adjudicate a dispute is not required
20 to have received a mediation release as otherwise
21 required in this chapter, if the person is not a
22 representative party. Except as provided in paragraph
23 "b", a person shall not be a representative party in a
24 class action unless the person has received a
25 mediation release as provided in section 654B.8 prior
26 to the initiation of the civil proceeding or the
27 parties to the dispute waive mediation as provided in
28 section 654B.4.

29 b. In a civil proceeding to adjudicate a dispute
30 in which at least one representative plaintiff and one
31 representative defendant has received a mediation
32 release, a court upon petition by any party may issue
33 an order waiving the requirement that a person must
34 have received a mediation release as provided in
35 paragraph "a", based on the fair and efficient
36 adjudication of the dispute. The order shall require
37 that the person receive a mediation release prior to
38 acting as a representative party in trial or
39 settlement conference. The court may for good cause
40 grant a continuance if necessary. The mediation shall
41 be conducted as provided in this chapter, unless the
42 court otherwise orders.

43 2. A person who signs a mediation agreement as
44 provided in section 654B.8 shall not be a
45 representative party in the class action.

46 Sec. 4. Section 654B.8, subsection 2, Code 2001,
47 is amended to read as follows:

48 2. a. The mediator shall issue a mediation
49 release unless the other party desiring to initiate a
50 civil proceeding to resolve the dispute fails to

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1 personally attend and participate in all mediation
2 meetings. The mediator shall issue a mediation
3 release if the farm resident waives or fails to
4 personally attend and participate in all mediation
5 meetings, regardless of participation by the other
6 party. ~~However, if~~ All of the following shall apply:

7 (1) If the other party or the farm resident is not
8 a natural person, the other party or farm resident
9 must be represented by a natural person who is an
10 officer, director, employee, or partner of the other
11 party or farm resident.

12 (2) If a person acts in a fiduciary capacity for
13 the other party or farm resident, the fiduciary may
14 represent the other party or farm resident.

15 (3) If the other party or farm resident may be a
16 member of a class in a class action adjudicating the
17 dispute, the other party or farm resident may be
18 represented by a person who may act as a
19 representative party in the class action. The other
20 party or farm resident being represented is not
21 required to participate in a mediation meeting. The
22 mediator must receive a statement by an attorney for
23 the other party or farm resident verifying that the
24 other party or farm resident may be a member of a
25 class in a class action adjudicating the dispute and
26 that the other party or farm resident may be
27 represented by the person as a representative party in
28 the class action.

29 (4) If the other party or farm resident or
30 eligible representative is not able to attend and
31 participate as required in this paragraph due to
32 physical infirmity, mental infirmity, or other exigent
33 circumstances determined reasonable by the farm
34 mediation service, the other party or farm resident
35 must be represented by another natural person.

36 PARAGRAPH DIVIDED. Any Except as provided in this
37 paragraph, a representative of the other party or the
38 farm resident must be authorized to sign instruments
39 provided by this chapter, including a mediation
40 agreement or a statement prepared by the mediator that
41 mediation was waived. However, any representative of
42 the other party or farm representative who may be a
43 representative party in a class action to adjudicate a
44 dispute shall not be authorized to sign a mediation
45 agreement for another party in the dispute.

46 b. This section does not require a party to reach
47 an agreement. This section does not require a person
48 to change a position, alter an activity which is a
49 subject of the dispute, or restructure a contract in
50 order to receive a mediation release.

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1 ~~b~~ c. The mediator shall promptly notify a party
2 by certified mail of a denial to issue a mediation
3 release and the reasons for the denial. The notice
4 shall state that the party has seven days from the
5 date that the notice is delivered to appeal the
6 mediator's decision, pursuant to procedures adopted by
7 the service. After a final decision by the farm
8 mediation service, the party may seek an action for
9 judicial review pursuant to section 654B.10."

By COMMITTEE ON AGRICULTURE
KLEMME of Plymouth, Chairperson

H-1452 FILED APRIL 9, 2001

