

CHAPTER 1107**FREESTANDING HOSPICE FACILITIES***H.F. 2308*

AN ACT relating to freestanding hospice facilities.

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

Section 1. Section 135B.1, subsection 1, Code 1989, is amended to read as follows:

1. "Hospital" means a place which is devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care over a period exceeding twenty-four hours of two or more nonrelated individuals suffering from illness, injury, or deformity, or a place which is devoted primarily to the rendering over a period exceeding twenty-four hours of obstetrical or other medical or nursing care for two or more nonrelated individuals, or any institution, place, building or agency in which any accommodation is primarily maintained, furnished or offered for the care over a period exceeding twenty-four hours of two or more non-related aged or infirm persons requiring or receiving chronic or convalescent care; and shall include sanatoriums or other related institutions within the meaning of this chapter. Provided, however, nothing in this chapter shall apply to hotels or other similar places that furnish only food and lodging, or either, to their guests or to a freestanding hospice facility which operates a hospice program in accordance with 42 C.F.R. § 418. "Hospital" shall include, in any event, any facilities wholly or partially constructed or to be constructed with federal financial assistance, pursuant to Public Law 725, 79th Congress, approved August 13, 1946.

Sec. 2. Section 135C.6, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 7. A freestanding hospice facility which operates a hospice program in accordance with 42 C.F.R. § 418 may be operated without obtaining a license under this chapter and shall not be deemed to be licensed by the state.

Approved March 29, 1990

CHAPTER 1108**REGULATION OF DAMS***H.F. 2296*

AN ACT relating to the regulation and operation of dams.

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

Section 1. Section 111.4, unnumbered paragraph 1, Code 1989, is amended to read as follows:

A person, association, or corporation shall not build or erect any pier, wharf, sluice, piling, wall, fence, obstruction, building, or erection of any kind upon or over any state-owned land or water under the jurisdiction of the commission, without first obtaining from the commission a written permit. ~~However, this provision does not apply to dams constructed and operated under chapter 469.~~ A permit, in matters relating to or in any manner affecting flood control, shall not be issued without approval of the environmental protection commission of the department. A person shall not maintain or erect any structure beyond the line of private ownership along or upon the shores of state-owned waters in a manner to obstruct the passage of pedestrians along the shore between the ordinary high-water mark and the water's edge, except by permission of the commission.

Sec. 2. Section 455A.4, subsection 1, paragraph b, Code 1989, is amended to read as follows:

b. Provide overall supervision, direction, and coordination of functions to be administered by the administrators under chapters 84, 93, 106, 107, 108, 108A, 109, 109A, 110, 110A, 110B, 111, 111B, 111D, 112, 305, 321G, 455B, and 455C, and 469.

Sec. 3. Section 455A.6, subsection 6, paragraph a, Code Supplement 1989, is amended to read as follows:

a. Establish policy for the department and adopt rules, pursuant to chapter 17A, necessary to provide for the effective administration of chapter 455B, 455C, or 469 455C.

Sec. 4. Section 455B.275, subsection 1, 3, 4, and 6, Code 1989, are amended to read as follows:

1. A person shall not permit, erect, use, or maintain a structure, dam, obstruction, deposit, or excavation in or on a floodway or flood plains, which will adversely affect the efficiency of or unduly restrict the capacity of the floodway, or adversely affect the control, development, protection, allocation, or utilization of the water resources of the state, and the same are declared to be public nuisances. However, this subsection does not apply to dams constructed and operated under the authority of chapter 469.

3. A person shall file a written application with the department if the person desires to do any of the following:

a. If a person desires to erect or make or to permit Erect, construct, use, or maintain a structure, dam, obstruction, deposit, or excavation, other than a dam constructed and operated under chapter 469, to be erected, made, used, or maintained in or on any floodway or flood plains, the person shall file a written application with the department, setting.

b. Erect, construct, maintain, or operate a dam on a navigable or meandered stream.

c. Erect, construct, maintain, or operate a dam on a stream for manufacturing or industrial purposes.

The application shall set forth information as required by rule of the commission. The department, after an investigation, shall approve or deny the application imposing conditions and terms as prescribed by the department.

4. The department may maintain an action in equity to enjoin a person from erecting or making or permitting to be made a structure, dam, obstruction, deposit, or excavation ~~other than a dam constructed and operated under the authority of chapter 469~~, for which a permit has not been granted. The department may also seek judicial abatement of any structure, dam, obstruction, deposit, or excavation erected or made without a permit required under this part. The abatement proceeding may be commenced to enforce an administrative determination of the department in a contested case proceeding that a public nuisance exists and should be abated. The costs of abatement shall be borne by the violator. Notwithstanding section 176B.11, a structure, dam, obstruction, deposit, or excavation on a floodway or flood plain in an agricultural area established under chapter 176B is not exempt from the sections of this part which relate to regulation of flood plains and floodways. As used in this subsection, "violation" includes a person contracted to erect or make a structure, dam, obstruction, deposit, or excavation in a floodway including stream straightening unless the project is authorized by a permit required under this part ~~or the project is a dam authorized pursuant to chapter 469~~.

6. The department may require, as a condition of an approval order or permit granted pursuant to this part ~~or chapter 469~~, the furnishing of a performance bond with good and sufficient surety, conditioned upon full compliance with the order or permit and the rules of the commission. In determining the need for and amount of bond, the department shall give consideration to the hazard posed by the construction and maintenance of the approved works and the protection of the health, safety, and welfare of the people of the state. This subsection does not apply to orders or permits granted to a governmental entity.

Sec. 5. NEW SECTION. 469A.8 UNLAWFUL COMBINATION — RECEIVERSHIP.

The state may take possession of a dam for which a permit has been issued under section 455B.275 through receivership proceedings, if the dam becomes owned, leased, trustee, possessed, or controlled by a person in a manner constituting an unlawful combination or trust, or if the dam is the subject or part of the subject of an agreement to limit the output of hydraulic

or hydroelectric power derived from the dam for the purpose of price fixing. The receivership proceedings must be instituted by the executive council, and shall be conducted for the purpose of disposing of the dam for a lawful use. The proceeds from the disposition shall be used to reimburse the state for expenses incurred in the receivership. The remaining proceeds shall be awarded to persons found by the court to be entitled to the proceeds.

Sec. 6.

A permit or license issued pursuant to chapter 469 before July 1, 1990, shall be deemed to be a permit issued pursuant to section 455B.275, and shall be valid to the same extent that it had been valid under chapter 469. However, a person holding a permit or license under chapter 469 shall have the same rights and be subject to the same obligations and restrictions as a person holding a permit under section 455B.275.

Sec. 7. Sections 469.1 through 469.17, 469.26, 469.27, 469.29, and 469.30, Code 1989, are repealed.

Approved March 29, 1990

CHAPTER 1109

HANDICAPPED PERSONS' USE OF CROSSBOW

S.F. 57

AN ACT requiring the natural resource commission to adopt a rule to allow handicapped individuals to use a crossbow.

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

Section 1. Section 109.38, subsection 1, Code Supplement 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The commission shall adopt a rule permitting a crossbow to be used only by handicapped individuals physically incapable of using a bow and arrow under the conditions in which a bow and arrow is permitted. The commission shall prepare an application to be used by an individual requesting the status. The application shall require the individual's physician to sign a statement declaring that the individual is not physically able to use a bow and arrow.

Approved March 30, 1990