

459.317 Habitual violators pending actions restrictions on construction.

1. As used in this section, unless the context otherwise requires:

a. "*Habitual violator*" means a person classified as a habitual violator pursuant to section 459.604.

b. "*Operation of law*" means a transfer by inheritance, devise or bequest, court order, dissolution decree, order in bankruptcy, insolvency, replevin, foreclosure, execution sale, the execution of a judgment, the foreclosure of a real estate mortgage, the forfeiture of a real estate contract, or a transfer resulting from a decree for specific performance.

c. "*Suspect site*" means a confinement feeding operation or land where a confinement feeding operation could be constructed, if the site is subject to a suspect transaction.

d. "*Suspect transaction*" means a transaction in which a habitual violator does any of the following:

(1) Transfers a controlling interest in a suspect site to any of the following:

(a) An employee of the habitual violator or business in which the person holds a controlling interest.

(b) A person who holds an interest in a business, including a confinement feeding operation, in which the habitual violator holds a controlling interest.

(c) A person related to the habitual violator as spouse, parent, grandparent, lineal ascendant of a grandparent or spouse and any other lineal descendant of the grandparent or spouse, or a person acting in a fiduciary capacity for a related person. This paragraph does not apply to a transaction completed by an operation of law.

(2) Provides financing for the construction or operation of a confinement feeding operation to any person, by providing a contribution or loan to the person, or providing cash or other tangible collateral for a contribution or loan made by a third person.

e. "*Transaction*" includes a transfer in any manner or by any means, including any of the following:

(1) Delivery and acceptance between two parties, including by contract or agreement with or without consideration, including by sale, exchange, barter, or gift.

(2) An operation of law.

2. a. A person shall not construct or expand a confinement feeding operation structure if the person is any of the following:

(1) A party to a pending action for a violation of this chapter* concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) A habitual violator.

b. A person shall not construct or expand a confinement feeding operation structure for five years after the date of the last violation, committed by the person or confinement feeding operation in which the person holds a controlling interest, during which the person or operation was classified as a habitual violator.

c. This subsection shall not prohibit a person from completing the construction or expansion of a confinement

feeding operation structure, if any of the following apply:

(1) The person has an unexpired permit for the construction or expansion of the confinement feeding operation structure.

(2) The person is not required to obtain a permit for the construction or expansion of the confinement feeding operation structure.

d. For purposes of this subsection, "*construct*" or "*expand*" includes financing and contracting to build a confinement feeding operation structure regardless of whether the person subsequently leases, owns, or operates the confinement feeding operation structure.

3. A person who receives a controlling interest in a suspect site pursuant to a suspect transaction must submit a notice of the transaction to the department within thirty days. If, after notice and opportunity to be heard, pursuant to the contested case provisions of chapter 17A, the department finds that one purpose of the transaction was to avoid the conditions and enhanced penalties imposed upon a habitual violator, the person shall be subject to the same conditions and enhanced penalties as applied to the habitual violator at the time of the transaction.

4. The department shall conduct an annual review of each confinement feeding operation which is a habitual violator and each confinement feeding operation in which a habitual violator holds a controlling interest.

97 Acts, ch 150, §1

CS97, §455B.202

98 Acts, ch 1209, §29, 53; 99 Acts, ch 114, §29; 2002 Acts, ch 1137, §67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.317

*This section was enacted in chapter 455B and transferred to this chapter in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137; reference to chapter 455B may also be intended