

FEB 15 1996
Agriculture

HOUSE FILE 2219
BY TEIG, SUKUP, ARNOLD,
and BRANSTAD

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

A BILL FOR

1 An Act relating to nuisance suits arising from animal feeding
2 operations.

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

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1 Section 1. Section 657.11, Code Supplement 1995, is
2 amended by striking the section and inserting in lieu thereof
3 the following:

4 657.11 ANIMAL FEEDING OPERATIONS.

5 1. Except as provided in subsection 2, an animal feeding
6 operation shall not be found to be a nuisance regardless of
7 the established date of the animal feeding operation or
8 expansion of the animal feeding operation.

9 2. An animal feeding operation may be found to be a
10 nuisance if any of the following apply:

11 a. The nuisance is the result of an animal feeding
12 operation determined to be in violation of a federal statute
13 or regulation or state statute or rule.

14 b. The nuisance is a result of the negligent operation of
15 the animal feeding operation.

16 c. An action or proceeding regarding a nuisance arises
17 from an injury or damage to a person or property caused by the
18 animal feeding operation prior to the effective date of this
19 Act.

20 d. An action or proceeding regarding a nuisance arising
21 from an injury or damage to a person sustained because of
22 pollution, a change in the condition of the waters of a
23 stream, the overflowing of land, or the excessive soil erosion
24 onto the person's land, unless the injury or damage is caused
25 by an act of God.

26 3. A person shall not bring an action or proceeding based
27 on a claim of nuisance arising from an animal feeding
28 operation unless the person proceeds with mediation as
29 provided in chapter 654B.

30 4. If a defendant is a prevailing party in an action or
31 proceeding based on a claim of nuisance and arising from an
32 animal feeding operation, the plaintiff shall pay court costs
33 and reasonable attorney fees incurred by the defendant, if the
34 court determines that the claim is frivolous.

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EXPLANATION

1 In 1995, the general assembly enacted 1995 Iowa Acts,
2 chapter 195 (house file 519), which provided for animal
3 feeding operations and their regulation. According to the
4 Act, an animal feeding operation is an area in which animals
5 are confined and fed and maintained for 45 days or more in any
6 12-month period, and all structures used for the storage of
7 manure from animals in the operation. The Act, in part,
8 provides that if a person has received all permits required
9 pursuant to chapter 455B for an animal feeding operation,
10 there is a rebuttable presumption that the animal feeding
11 operation is not a public or private nuisance, and that the
12 animal feeding operation does not unreasonably and
13 continuously interfere with another person's comfortable use
14 and enjoyment of the person's life or property under any other
15 cause of action. The rebuttable presumption also applies to
16 persons who are not required to obtain a permit pursuant to
17 chapter 455B for an animal feeding operation. However, the
18 rebuttable presumption does not apply if the injury to a
19 person or damage to property is proximately caused by a
20 failure to comply with a federal statute or regulation or a
21 state statute or rule which applies to the animal feeding
22 operation. The rebuttable presumption may be overcome by
23 clear and convincing evidence of both of the following: (1)
24 the animal feeding operation unreasonably and continuously
25 interferes with another person's comfortable use and enjoyment
26 of the person's life or property, and (2) the injury or damage
27 is proximately caused by the negligent operation of the animal
28 feeding operation. A person who brings a losing cause of
29 action against a person for whom the rebuttable presumption
30 created under this provision not rebutted, is liable to the
31 person against whom the action was brought for all costs and
32 expenses incurred in the defense of the action, if the court
33 determines that a claim is frivolous.

34 This bill replaces that section with a provision that
35 provides that an animal feeding operation shall not be found

1 to be a nuisance regardless of the established date of the
2 animal feeding operation or expansion of the animal feeding
3 operation. The bill provides that this nuisance protection
4 does not apply if the nuisance is the result of an animal
5 feeding operation determined to be in violation of a federal
6 statute or regulation or state statute or rule; the nuisance
7 is a result of the negligent operation of the animal feeding
8 operation; an action or proceeding regarding a nuisance arises
9 from an injury or damage to a person or property caused by the
10 animal feeding operation prior to the effective date of this
11 bill; or an action or proceeding regarding a nuisance arises
12 from an injury or damage to a person sustained because of
13 pollution, a change in the condition of the waters of a
14 stream, the overflowing of land, or the excessive soil erosion
15 onto the person's land. The bill provides that if a defendant
16 prevails and a court determines that the nuisance claim is
17 frivolous, the plaintiff must pay court costs and reasonable
18 attorney fees incurred by the defendant.

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