

SENATE FILE **2375**
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2312)

Passed Senate, Date ^(p.571) 3/4/96 Passed House, Date ^(p.1090) 3/28/96
Vote: Ayes 47 Nays 1 Vote: Ayes 98 Nays 0

Re-passed Senate Approved April 17, 1996
4/1/96 49-0 (p.1156)

A BILL FOR

1 An Act relating to a limitation on qualifications for rebuttable
2 presumptions for nuisance defenses for certain persons
3 classified as chronic violators involved in confinement
4 feeding operations.

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

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HOUSE AMENDMENT TO
SENATE FILE 2375

S-5600

- 1 Amend Senate File 2375 as follows:
- 2 1. Page 1, lines 5 and 6, by striking the words
- 3 "subsection, including a" and inserting the following:
- 4 "subsection as to any".

RECEIVED FROM THE HOUSE

S-5600 FILED MARCH 28, 1996 *Senate Concurred 4/1/96*
(p.1155)

S.F. 2375

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1 Section 1. Section 657.11, Code Supplement 1995, is
2 amended by adding the following new subsection:

3 NEW SUBSECTION. 3A. The rebuttable presumption does not
4 apply to a person during any period that the person is
5 classified as a chronic violator under this subsection,
6 including a confinement feeding operation in which the person
7 holds a controlling interest, as defined by rules adopted by
8 the department of natural resources. The rebuttable
9 presumption shall apply to the person on and after the date
10 that the person is removed from the classification of chronic
11 violator. For purposes of this subsection, "confinement
12 feeding operation" means an animal feeding operation in which
13 animals are confined to areas which are totally roofed, and
14 which are regulated by the department of natural resources or
15 the environmental protection commission.

16 a. A person shall be classified as a chronic violator if
17 the person has committed three or more violations as described
18 in this subsection prior to, on, or after the effective date
19 of this Act. In addition, in relation to each violation, the
20 person must have been subject to either of the following:

21 (1) The assessment of a civil penalty by the department or
22 the commission in an amount equal to three thousand dollars or
23 more.

24 (2) A court order or judgment for a legal action brought
25 by the attorney general after referral by the department or
26 commission.

27 Each violation must have occurred within five years prior
28 to the date of the latest violation, counting any violation
29 committed by a confinement feeding operation in which the
30 person holds a controlling interest. A violation occurs on
31 the date the department issues an administrative order to the
32 person assessing a civil penalty of three thousand dollars or
33 more, or on the date the department notifies a person in
34 writing that the department will recommend that the commission
35 refer, or the commission refers the case to the attorney

1 general for legal action, or the date of entry of the court
2 order or judgment, whichever occurs first. A violation under
3 this subsection shall not be counted if the civil penalty
4 ultimately imposed is less than three thousand dollars, the
5 department or commission does not refer the action to the
6 attorney general, the attorney general does not take legal
7 action, or a court order or judgment is not entered against
8 the person. A person shall be removed from the classification
9 of chronic violator on the date on which the person and all
10 confinement feeding operations in which the person holds a
11 controlling interest have committed less than three violations
12 described in this subsection for the prior five years.

13 b. For purposes of counting violations, a continuing and
14 uninterrupted violation shall be considered as one violation.
15 Different types of violations shall be counted as separate
16 violations regardless of whether the violations were committed
17 during the same period. The violation must be a violation of
18 a state statute, or a rule adopted by the department, which
19 applies to a confinement feeding operation and any related
20 animal feeding operation structure, including an anaerobic
21 lagoon, earthen manure storage basin, formed manure storage
22 structure, or egg washwater storage structure; or any related
23 pollution control device or practice. The structure, device,
24 or practice must be part of the confinement feeding operation.
25 The violation must be one of the following:

26 (1) Constructing or operating a related animal feeding
27 operation structure or installing or using a related pollution
28 control device or practice, for which the person must obtain a
29 permit, in violation of statute or rules adopted by the
30 department, including the terms or conditions of the permit.

31 (2) Intentionally making a false statement or
32 misrepresenting information to the department as part of an
33 application for a construction permit for the related animal
34 feeding operation structure, or the installation of the
35 related pollution control device or practice, for which the

1 person must obtain a construction permit from the department.

2 (3) Failing to obtain a permit or approval by the
3 department for a permit to construct or operate a confinement
4 feeding operation or use a related animal feeding operation
5 structure or pollution control device or practice, for which
6 the person must obtain a permit from the department.

7 (4) Operating a confinement feeding operation, including a
8 related animal feeding operation structure or pollution
9 control device or practice, which causes pollution to the
10 waters of the state, if the pollution was caused
11 intentionally, or caused by a failure to take measures
12 required to abate the pollution which resulted from an act of
13 God.

14 (5) Failing to submit a manure management plan as
15 required, or operating a confinement feeding operation
16 required to have a manure management plan without having
17 submitted the manure management plan.

18 EXPLANATION

19 The bill amends section 657.11, which currently provides
20 that a rebuttable presumption arises that an animal feeding
21 operation is not a public or private nuisance, if the animal
22 feeding operation is not in violation of law and has obtained
23 all required permits. This bill provides that the rebuttable
24 presumption does not apply to a person classified as a chronic
25 violator, including a confinement feeding operation in which
26 the person holds a controlling interest. A person is
27 classified as a chronic violator if the person has committed
28 three or more violations prior to, on, or after the effective
29 date of the bill. In addition, the person must have been
30 subject to either the assessment of a civil penalty by the
31 department or the commission in an amount equal to \$3,000 or
32 more, or a court order or judgment based on a referral from
33 the department or commission. The assessment, court order, or
34 judgment must have occurred five years prior to the date of
35 the latest violation. The bill provides that a person is

1 classified as a chronic violator if the person commits certain
2 violations relating to the construction or operation of the
3 confinement feeding operation, including the storage and
4 disposal of manure from the operation.

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SENATE FILE 2375

H-5706

1 Amend Senate File 2375, as passed by the Senate, as
2 follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. Section 657.1, Code Supplement 1995,
6 is amended to read as follows:

7 657.1 NUISANCE -- WHAT CONSTITUTES -- ACTION TO
8 ABATE.

9 Whatever is injurious to health, indecent, or
10 unreasonably offensive to the senses, or an
11 obstruction to the free use of property, so as
12 essentially to unreasonably interfere with the
13 comfortable enjoyment of life or property, is a
14 nuisance, and a civil action by ordinary proceedings
15 may be brought to enjoin and abate the same and to
16 recover damages sustained on account thereof.

17 Sec. ____ . Section 657.2, subsection 1, Code
18 Supplement 1995, is amended to read as follows:

19 1. The erecting, continuing, or using any building
20 or other place for the exercise of any trade,
21 employment, or manufacture, which, by occasioning
22 noxious exhalations, unreasonably offensive smells, or
23 other annoyances, becomes injurious and dangerous to
24 the health, comfort, or property of individuals or the
25 public."

26 2. Page 1, line 1, by striking the word and
27 figure "Section 1." and inserting the following:

28 "Sec. ____ . REPEAL OF NUISANCE SUIT RESTRICTION."

29 3. By striking page 1, line 2, through page 3,
30 line 17, and inserting the following: "repealed."

31 4. Title page, line 1, by striking the words "a
32 limitation on qualifications for rebuttable" and
33 inserting the following: "nuisance actions."

34 5. Title page, by striking lines 2 through 4.

35 6. By renumbering as necessary.

By MORELAND of Wapello

H-5706 FILED MARCH 27, 1996

WITHDRAWN

3-28-96

(p. 1090)

SENATE FILE 2375

H-5707

1 Amend Senate File 2375, as passed by the Senate, as
2 follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. Section 657.11, subsection 2, Code
6 Supplement 1995, is amended by striking the subsection
7 and inserting in lieu thereof the following:

8 2. If an animal feeding operation is a small
9 animal feeding operation as defined in section
10 455B.161, there shall be a rebuttable presumption that
11 the small animal feeding operation is not a public or
12 private nuisance under this chapter or under
13 principles of common law, and that the small animal
14 feeding operation does not unreasonably interfere with
15 another person's comfortable use and enjoyment of the
16 person's life or property under any other cause of
17 action. The rebuttable presumption shall not apply if
18 the injury to a person or damage to property is
19 proximately caused by a failure to comply with a
20 federal statute or regulation or a state statute or
21 rule which applies to the animal feeding operation."

22 2. Title page, line 2, by striking the word
23 "persons" and inserting the following: "persons."

24 3. Title page, by striking lines 3 and 4.

By KREIMAN of Davis

H-5707 FILED MARCH 27, 1996

Lost 3/28/96 (p. 1088)

SENATE FILE 2375

H-5537

1 Amend Senate File 2375 as follows:

2 1. Page 1, lines 5 and 6, by striking the words
3 "subsection, including a" and inserting the following:
4 "subsection as to any".

By COMMITTEE ON JUDICIARY
HURLEY of Fayette, Chairperson

H-5537 FILED MARCH 25, 1996

Adopted

3/28/96

(p. 1087)

HWACSHITW

H-5714

1 Amend Senate File 2375, as passed by the Senate, as
2 follows:
3 1. Page 1, by inserting before line 1 the
4 following:
5 "Section 1. Section 657.11, subsection 2, Code
6 Supplement 1995, is amended by striking the subsection
7 and inserting in lieu thereof the following:
8 2. There shall be a rebuttable presumption that an
9 animal feeding operation, as defined in section
10 455B.161 is not a public or private nuisance under
11 this chapter or under principles of common law, and
12 that the animal feeding operation does not
13 unreasonably interfere with another person's
14 comfortable use and enjoyment of the person's life or
15 property under any other cause of action. The
16 rebuttable presumption shall not apply if the injury
17 to a person or damage to property is proximately
18 caused by a failure to comply with a federal statute
19 or regulation or a state statute or rule which applies
20 to the animal feeding operation. The rebuttable
21 presumption shall not apply to a confinement feeding
22 operation which confines swine, if the confinement
23 feeding operation is required to obtain a construction
24 permit pursuant to section 455B.173."
25 2. Title page, line 2, by striking the word
26 "persons" and inserting the following: "persons."
27 3. Title page, by striking lines 3 and 4.

By KREIMAN of Davis

H-5714 FILED MARCH 28, 1996

Loat 3/28/96 (P. 1090)

Disignano
Giannetto
Vilsack
McKean
Bartz

SSB-2312

Judiciary

Succeeded By

SENATE FILE SF/HF 2375

BY (PROPOSED COMMITTEE ON

JUDICIARY BILL BY

CHAIRPERSON GIANNETTO)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to a limitation on qualifications for rebuttable
2 presumptions for nuisance defenses for certain persons
3 classified as chronic violators involved in confinement
4 feeding operations.

5 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 adding the following new subsection:

3 NEW SUBSECTION. 3A. The rebuttable presumption does not
4 apply to a person during any period that the person is
5 classified as a chronic violator under this subsection,
6 including a confinement feeding operation in which the person
7 holds a controlling interest, as defined by rules adopted by
8 the department of natural resources. The rebuttable
9 presumption shall apply to the person on and after the date
10 that the person is removed from the classification of chronic
11 violator. For purposes of this subsection, "confinement
12 feeding operation" means an animal feeding operation in which
13 animals are confined to areas which are totally roofed, and
14 which are regulated by the department of natural resources or
15 the environmental protection commission.

16 a. A person shall be classified as a chronic violator if
17 the person has committed three or more violations as described
18 in this subsection prior to, on, or after the effective date
19 of this Act. In addition, in relation to each violation, the
20 person must have been subject to either of the following:

21 (1) The assessment of a civil penalty by the department or
22 the commission in an amount equal to three thousand dollars or
23 more.

24 (2) A court order or judgment for a legal action brought
25 by the attorney general after referral by the department or
26 commission.

27 Each violation must have occurred within five years prior
28 to the date of the latest violation, counting any violation
29 committed by a confinement feeding operation in which the
30 person holds a controlling interest. A violation occurs on
31 the date the department issues an administrative order to the
32 person assessing a civil penalty of three thousand dollars or
33 more, or on the date the department notifies a person in
34 writing that the department will recommend that the commission
35 refer, or the commission refers the case to the attorney

1 general for legal action, or the date of entry of the court
2 order or judgment, whichever occurs first. A violation under
3 this subsection shall not be counted if the civil penalty
4 ultimately imposed is less than three thousand dollars, the
5 department or commission does not refer the action to the
6 attorney general, the attorney general does not take legal
7 action, or a court order or judgment is not entered against
8 the person. A person shall be removed from the classification
9 of chronic violator on the date on which the person and all
10 confinement feeding operations in which the person holds a
11 controlling interest have committed less than three violations
12 described in this subsection for the prior five years.

13 b. For purposes of counting violations, a continuing and
14 uninterrupted violation shall be considered as one violation.
15 Different types of violations shall be counted as separate
16 violations regardless of whether the violations were committed
17 during the same period. The violation must be a violation of
18 a state statute, or a rule adopted by the department, which
19 applies to a confinement feeding operation and any related
20 animal feeding operation structure, including an anaerobic
21 lagoon, earthen manure storage basin, formed manure storage
22 structure, or egg washwater storage structure; or any related
23 pollution control device or practice. The structure, device,
24 or practice must be part of the confinement feeding operation.
25 The violation must be one of the following:

26 (1) Constructing or operating a related animal feeding
27 operation structure or installing or using a related pollution
28 control device or practice, for which the person must obtain a
29 permit, in violation of statute or rules adopted by the
30 department, including the terms or conditions of the permit.

31 (2) Intentionally making a false statement or
32 misrepresenting information to the department as part of an
33 application for a construction permit for the related animal
34 feeding operation structure, or the installation of the
35 related pollution control device or practice, for which the

1 person must obtain a construction permit from the department.

2 (3) Failing to obtain a permit or approval by the
3 department for a permit to construct or operate a confinement
4 feeding operation or use a related animal feeding operation
5 structure or pollution control device or practice, for which
6 the person must obtain a permit from the department.

7 (4) Operating a confinement feeding operation, including a
8 related animal feeding operation structure or pollution
9 control device or practice, which causes pollution to the
10 waters of the state, if the pollution was caused
11 intentionally, or caused by a failure to take measures
12 required to abate the pollution which resulted from an act of
13 God.

14 (5) Failing to submit a manure management plan as
15 required, or operating a confinement feeding operation
16 required to have a manure management plan without having
17 submitted the manure management plan.

18 EXPLANATION

19 The bill amends section 657.11, which currently provides
20 that a rebuttable presumption arises that an animal feeding
21 operation is not a public or private nuisance, if the animal
22 feeding operation is not in violation of law and has obtained
23 all required permits. This bill provides that the rebuttable
24 presumption does not apply to a person classified as a chronic
25 violator, including a confinement feeding operation in which
26 the person holds a controlling interest. A person is
27 classified as a chronic violator if the person has committed
28 three or more violations prior to, on, or after the effective
29 date of the bill. In addition, the person must have been
30 subject to either the assessment of a civil penalty by the
31 department or the commission in an amount equal to \$3,000 or
32 more, or a court order or judgment based on a referral from
33 the department or commission. The assessment, court order, or
34 judgment must have occurred five years prior to the date of
35 the latest violation. The bill provides that a person is

1 classified as a chronic violator if the person commits certain
2 violations relating to the construction or operation of the
3 confinement feeding operation, including the storage and
4 disposal of manure from the operation.

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SENATE FILE 2375

AN ACT

RELATING TO A LIMITATION ON QUALIFICATIONS FOR REBUTTABLE
PRESUMPTIONS FOR NUISANCE DEFENSES FOR CERTAIN PERSONS
CLASSIFIED AS CHRONIC VIOLATORS INVOLVED IN CONFINEMENT
FEEDING OPERATIONS.

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

Section 1. Section 657.11, Code Supplement 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 3A. The rebuttable presumption does not apply to a person during any period that the person is classified as a chronic violator under this subsection as to any confinement feeding operation in which the person holds a controlling interest, as defined by rules adopted by the department of natural resources. The rebuttable presumption shall apply to the person on and after the date that the person is removed from the classification of chronic violator. For purposes of this subsection, "confinement feeding operation" means an animal feeding operation in which animals are confined to areas which are totally roofed, and which are regulated by the department of natural resources or the environmental protection commission.

a. A person shall be classified as a chronic violator if the person has committed three or more violations as described in this subsection prior to, on, or after the effective date of this Act. In addition, in relation to each violation, the person must have been subject to either of the following:

(1) The assessment of a civil penalty by the department or the commission in an amount equal to three thousand dollars or more.

(2) A court order or judgment for a legal action brought by the attorney general after referral by the department or commission.

Each violation must have occurred within five years prior to the date of the latest violation, counting any violation committed by a confinement feeding operation in which the person holds a controlling interest. A violation occurs on the date the department issues an administrative order to the person assessing a civil penalty of three thousand dollars or more, or on the date the department notifies a person in writing that the department will recommend that the commission refer, or the commission refers the case to the attorney general for legal action, or the date of entry of the court order or judgment, whichever occurs first. A violation under this subsection shall not be counted if the civil penalty ultimately imposed is less than three thousand dollars, the department or commission does not refer the action to the attorney general, the attorney general does not take legal action, or a court order or judgment is not entered against the person. A person shall be removed from the classification of chronic violator on the date on which the person and all confinement feeding operations in which the person holds a controlling interest have committed less than three violations described in this subsection for the prior five years.

b. For purposes of counting violations, a continuing and uninterrupted violation shall be considered as one violation. Different types of violations shall be counted as separate

violations regardless of whether the violations were committed during the same period. The violation must be a violation of a state statute, or a rule adopted by the department, which applies to a confinement feeding operation and any related animal feeding operation structure, including an anaerobic lagoon, earthen manure storage basin, formed manure storage structure, or egg washwater storage structure; or any related pollution control device or practice. The structure, device, or practice must be part of the confinement feeding operation. The violation must be one of the following:

(1) Constructing or operating a related animal feeding operation structure or installing or using a related pollution control device or practice, for which the person must obtain a permit, in violation of statute or rules adopted by the department, including the terms or conditions of the permit.

(2) Intentionally making a false statement or misrepresenting information to the department as part of an application for a construction permit for the related animal feeding operation structure, or the installation of the related pollution control device or practice, for which the person must obtain a construction permit from the department.

(3) Failing to obtain a permit or approval by the department for a permit to construct or operate a confinement feeding operation or use a related animal feeding operation structure or pollution control device or practice, for which the person must obtain a permit from the department.

(4) Operating a confinement feeding operation, including a related animal feeding operation structure or pollution control device or practice, which causes pollution to the waters of the state, if the pollution was caused intentionally, or caused by a failure to take measures required to abate the pollution which resulted from an act of God.

(5) Failing to submit a manure management plan as required, or operating a confinement feeding operation

required to have a manure management plan without having submitted the manure management plan.

LEONARD L. BOSWELL
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2375, Seventy-sixth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved 4/17, 1996

TERRY E. BRANSTAD
Governor