

# Senate Study Bill 2312

## Conference Committee Text

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1 1 Section 1. Section [657.11](#), Code Supplement 1995, is  
1 2 amended by adding the following new subsection:  
1 3 NEW SUBSECTION. 3A. The rebuttable presumption does not  
1 4 apply to a person during any period that the person is  
1 5 classified as a chronic violator under this subsection,  
1 6 including a confinement feeding operation in which the person  
1 7 holds a controlling interest, as defined by rules adopted by  
1 8 the department of natural resources. The rebuttable  
1 9 presumption shall apply to the person on and after the date  
1 10 that the person is removed from the classification of chronic  
1 11 violator. For purposes of this subsection, "confinement  
1 12 feeding operation" means an animal feeding operation in which  
1 13 animals are confined to areas which are totally roofed, and  
1 14 which are regulated by the department of natural resources or  
1 15 the environmental protection commission.  
1 16 a. A person shall be classified as a chronic violator if  
1 17 the person has committed three or more violations as described  
1 18 in this subsection prior to, on, or after the effective date  
1 19 of this Act. In addition, in relation to each violation, the  
1 20 person must have been subject to either of the following:  
1 21 (1) The assessment of a civil penalty by the department or  
1 22 the commission in an amount equal to three thousand dollars or  
1 23 more.  
1 24 (2) A court order or judgment for a legal action brought  
1 25 by the attorney general after referral by the department or  
1 26 commission.  
1 27 Each violation must have occurred within five years prior  
1 28 to the date of the latest violation, counting any violation  
1 29 committed by a confinement feeding operation in which the  
1 30 person holds a controlling interest. A violation occurs on  
1 31 the date the department issues an administrative order to the  
1 32 person assessing a civil penalty of three thousand dollars or  
1 33 more, or on the date the department notifies a person in  
1 34 writing that the department will recommend that the commission  
1 35 refer, or the commission refers the case to the attorney  
2 1 general for legal action, or the date of entry of the court  
2 2 order or judgment, whichever occurs first. A violation under  
2 3 this subsection shall not be counted if the civil penalty  
2 4 ultimately imposed is less than three thousand dollars, the  
2 5 department or commission does not refer the action to the  
2 6 attorney general, the attorney general does not take legal  
2 7 action, or a court order or judgment is not entered against  
2 8 the person. A person shall be removed from the classification  
2 9 of chronic violator on the date on which the person and all  
2 10 confinement feeding operations in which the person holds a  
2 11 controlling interest have committed less than three violations  
2 12 described in this subsection for the prior five years.  
2 13 b. For purposes of counting violations, a continuing and  
2 14 uninterrupted violation shall be considered as one violation.  
2 15 Different types of violations shall be counted as separate  
2 16 violations regardless of whether the violations were committed  
2 17 during the same period. The violation must be a violation of  
2 18 a state statute, or a rule adopted by the department, which  
2 19 applies to a confinement feeding operation and any related  
2 20 animal feeding operation structure, including an anaerobic  
2 21 lagoon, earthen manure storage basin, formed manure storage

2 22 structure, or egg washwater storage structure; or any related  
2 23 pollution control device or practice. The structure, device,  
2 24 or practice must be part of the confinement feeding operation.  
2 25 The violation must be one of the following:

2 26 (1) Constructing or operating a related animal feeding  
2 27 operation structure or installing or using a related pollution  
2 28 control device or practice, for which the person must obtain a  
2 29 permit, in violation of statute or rules adopted by the  
2 30 department, including the terms or conditions of the permit.

2 31 (2) Intentionally making a false statement or  
2 32 misrepresenting information to the department as part of an  
2 33 application for a construction permit for the related animal  
2 34 feeding operation structure, or the installation of the  
2 35 related pollution control device or practice, for which the  
3 1 person must obtain a construction permit from the department.

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

3 7 (4) Operating a confinement feeding operation, including a  
3 8 related animal feeding operation structure or pollution  
3 9 control device or practice, which causes pollution to the  
3 10 waters of the state, if the pollution was caused  
3 11 intentionally, or caused by a failure to take measures  
3 12 required to abate the pollution which resulted from an act of  
3 13 God.

3 14 (5) Failing to submit a manure management plan as  
3 15 required, or operating a confinement feeding operation  
3 16 required to have a manure management plan without having  
3 17 submitted the manure management plan.

3 18 EXPLANATION

3 19 The bill amends section 657.11, which currently provides  
3 20 that a rebuttable presumption arises that an animal feeding  
3 21 operation is not a public or private nuisance, if the animal  
3 22 feeding operation is not in violation of law and has obtained  
3 23 all required permits. This bill provides that the rebuttable  
3 24 presumption does not apply to a person classified as a chronic  
3 25 violator, including a confinement feeding operation in which  
3 26 the person holds a controlling interest. A person is  
3 27 classified as a chronic violator if the person has committed  
3 28 three or more violations prior to, on, or after the effective  
3 29 date of the bill. In addition, the person must have been  
3 30 subject to either the assessment of a civil penalty by the  
3 31 department or the commission in an amount equal to \$3,000 or  
3 32 more, or a court order or judgment based on a referral from  
3 33 the department or commission. The assessment, court order, or  
3 34 judgment must have occurred five years prior to the date of  
3 35 the latest violation. The bill provides that a person is  
4 1 classified as a chronic violator if the person commits certain  
4 2 violations relating to the construction or operation of the  
4 3 confinement feeding operation, including the storage and  
4 4 disposal of manure from the operation.

4 5 LSB 4393XC 76

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