

FILED FEB 5 1998

AGRICULTURE

SENATE FILE 2122

BY RITTMER

Passed Senate, Date _____ Passed House, Date _____

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

Approved _____

A BILL FOR

1 An Act changing the conditions for providing nuisance suit
2 protection for animal feeding operations.

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

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S.C. 2122

1 Section 1. Section 657.11, subsections 2 and 3, Code 1997,
2 are amended to read as follows:

3 2. If a person has received all permits required pursuant
4 to chapter 455B for an animal feeding operation, as defined in
5 section 455B.161, there shall be a rebuttable presumption that
6 an animal feeding operation is not a public or private
7 nuisance under this chapter or under principles of common law,
8 and that the animal feeding operation does not unreasonably
9 ~~and-continuously~~ interfere with another person's comfortable
10 use and enjoyment of the person's life or property under any
11 other cause of action. The rebuttable presumption also
12 applies to persons who are not required to obtain a permit
13 pursuant to chapter 455B for an animal feeding operation as
14 defined in section 455B.161. The rebuttable presumption shall
15 not apply if the injury to a person or damage to property is
16 proximately caused by a failure to comply with a federal
17 statute or regulation or a state statute or rule which applies
18 to the animal feeding operation.

19 3. The rebuttable presumption may be overcome by ~~clear-and~~
20 ~~convincing a preponderance of the evidence of-both-of-the~~
21 ~~following~~:

22 ~~a--The~~ that the animal feeding operation unreasonably and
23 ~~continuously~~ interferes with another person's comfortable use
24 and enjoyment of the person's life or property and that either
25 of the following applies:-

26 ~~b-~~ a. The injury or damage is proximately caused by the
27 negligent operation of the animal feeding operation.

28 b. The animal feeding operation failed to minimize the
29 source of the interference by using technology and practices
30 that a prudent person would consider reasonable based on the
31 size of the operation.

32 EXPLANATION

33 This bill amends Code section 657.11, which provides that
34 in a legal action asserting a nuisance against an animal
35 feeding operation, there is a rebuttable presumption that the

1 animal feeding operation which complies with state and federal
2 regulations is not a public or private nuisance. The Code
3 section provides that the rebuttable presumption must be
4 overcome by clear and convincing evidence of two facts: (1)
5 that the operation unreasonably and continuously interferes
6 with the comfortable use and enjoyment of life or property,
7 and (2) the injury or damage is proximately caused by the
8 negligent operation of the animal feeding operation.

9 This bill provides that a plaintiff must overcome the
10 presumption by a preponderance of the evidence. It eliminates
11 the requirement providing that the interference must be
12 continuous. It also provides that the presumption may be
13 overcome by evidence that the animal operation unreasonably
14 interferes with another person's life and property and either
15 the injury or damage is proximately caused by negligence or
16 the operation failed to minimize the source of the
17 interference by using technology and practices that a prudent
18 person would consider reasonable based on the size of the
19 operation.

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