

FILED FEB 16 1998

AGRICULTURE

SENATE FILE 2212

BY KING

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

**A BILL FOR**

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

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

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

S.F. 2212

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 evidence of both either of the following:

21 a. The animal feeding operation unreasonably ~~and~~  
22 ~~continuously~~ interferes with another person's comfortable use  
23 and enjoyment of the person's life or property.

24 b. The injury or damage is proximately caused by the  
25 negligent operation of the animal feeding operation.

26 EXPLANATION

27 This bill amends Code section 657.11, which provides that  
28 in a legal action asserting a nuisance against an animal  
29 feeding operation, there is a rebuttable presumption that the  
30 animal feeding operation which complies with state and federal  
31 regulations is not a public or private nuisance. The Code  
32 section provides that the rebuttable presumption must be  
33 overcome by clear and convincing evidence of two facts: (1)  
34 that the operation unreasonably and continuously interferes  
35 with the comfortable use and enjoyment of life or property,

1 and (2) that the injury or damage is proximately caused by the  
2 negligent operation of the animal feeding operation.

3 This bill eliminates the provision requiring a continuous  
4 interference. It also provides that the plaintiff does not  
5 have to prove both elements. The plaintiff must prove that  
6 either the interference is unreasonable or that the operator's  
7 negligence is the proximate cause of the injury or damage.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35