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Place On Calendar

HOUSE FILE 729  
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO HF 510)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to habitual violators of regulations relating to  
2 confinement feeding operations, by providing for penalties and  
3 the forfeiture of property, and providing an effective date.

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

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HF 729

1 Section 1. NEW SECTION. 455B.202A SUBSEQUENT VIOLATIONS  
2 BY HABITUAL VIOLATORS -- CLOSING OPERATIONS.

3 1. This section applies to a violation of any provision of  
4 this division involving a condition or requirement of a permit  
5 required for a confinement feeding operation pursuant to  
6 section 455B.200A, a provision of this part, or a rule or  
7 order issued by the department under this division, if the  
8 violation is committed by a confinement feeding operation  
9 which is classified as a habitual violator pursuant to section  
10 455B.191.

11 2. The department shall order that the owner of the  
12 confinement feeding operation transfer the ownership to a  
13 person approved by the department, not later than sixty days  
14 from the issuance of the departmental order.

15 3. Until the confinement feeding operation is transferred,  
16 a person shall not transport animals, or viable eggs or semen  
17 into the confinement feeding operation.

18 4. If the confinement feeding operation or a person who  
19 holds a controlling interest in the confinement feeding  
20 operation owes the state moneys for the payment of civil  
21 penalties, criminal fines, or the reimbursement of  
22 departmental expenses, a departmental official shall be  
23 present during the transportation of the animals to slaughter.  
24 The payment received for the sale of the animals shall be made  
25 by joint check payable to the confinement feeding operation  
26 and the department.

27 5. In order to access the confinement feeding operation, a  
28 departmental official must comply with standard disease  
29 control restrictions customarily required by the operation.  
30 The department shall comply with section 455B.103, subsection  
31 4, in entering the premises of the confinement feeding  
32 operation.

33 6. The department shall assess, and the confinement  
34 feeding operation shall pay, the actual costs of providing the  
35 oversight to assure compliance with this section.

1     Sec. 2. NEW SECTION. 455B.202B SUBSEQUENT VIOLATIONS BY  
2 HABITUAL VIOLATORS -- ENHANCED PENALTIES.

3     This section applies to a violation of any provision of  
4 this division involving a condition or requirement of a permit  
5 required for a confinement feeding operation pursuant to  
6 section 455B.200A, a provision of this part, or a rule or  
7 order issued by the department under this division, if the  
8 violation is committed by a person who is classified as a  
9 habitual violator.

10    1. For each violation committed subsequent to the  
11 violation which results in the person being classified as a  
12 habitual violator, one of the following shall apply:

13    a. If the violation is knowingly committed, the person is  
14 guilty of an aggravated misdemeanor. A conviction for a  
15 violation is punishable by a fine of not more than twenty-five  
16 thousand dollars for each day of violation.

17    b. The person is subject to a civil penalty not to exceed  
18 twenty-five thousand dollars for each day the violation  
19 continues.

20    2. For a second violation involving a confinement feeding  
21 operation which is committed subsequent to the violation which  
22 results in classifying the person as a habitual violator, the  
23 attorney general may proceed in an action to forfeit all  
24 confinement feeding operations in which the person holds a  
25 controlling interest as provided in section 455B.202. The  
26 forfeiture shall proceed in lieu of any transfer of ownership  
27 otherwise required by section 455B.202A. However, if the  
28 attorney general does not bring a proceeding as provided in  
29 section 455B.202C within ninety days following a final  
30 administrative or judicial determination that the second  
31 violation was committed, the department shall order that the  
32 owner of the confinement feeding operation transfer the  
33 ownership of each confinement feeding operation in which the  
34 habitual violator holds a controlling interest as provided in  
35 section 455B.202A. A confinement feeding operation which is

1 transferred and a person who has transferred a controlling  
2 interest in the confinement feeding operation shall be subject  
3 to the same conditions and enhanced penalties as applied to  
4 the habitual violator at the time of the transfer.

5 Sec. 3. NEW SECTION. 455B.202C HABITUAL VIOLATORS --  
6 FORFEITURE AND RECEIVERSHIP -- PROCEEDINGS.

7 1. If a confinement feeding operation is subject to  
8 forfeiture, the forfeiture shall proceed as provided in  
9 chapter 809A. The attorney general shall serve as the  
10 prosecuting attorney and the department shall serve as the  
11 seizing agency.

12 2. Upon petition, the court hearing the case shall appoint  
13 the department as receiver. Upon the filing of the petition  
14 the court shall issue ex parte such temporary orders as may be  
15 necessary to preserve or protect the assets in receivership,  
16 or the assets' value, and the rights of creditors until a plan  
17 of disposition is approved.

18 a. A petition filed by the department shall be accompanied  
19 by the department's plan for disposition of the assets of the  
20 confinement feeding operation. The plan shall provide for the  
21 sale of the assets, including animals, for the benefit of  
22 creditors, or as may be necessary, as the department in its  
23 discretion determines to be necessary to minimize losses. The  
24 plan shall provide for reimbursing expenses of the department  
25 in administering the receivership, including expenses incurred  
26 in appointing a receiver.

27 b. When a petition for receivership is filed by the  
28 department, the clerk of the district court shall set a date  
29 for hearing on the department's proposed plan of disposition  
30 at a time not less than ten nor more than fifteen days after  
31 the date the petition is filed. When appointed as a receiver  
32 under this section, the department shall cause notification of  
33 the appointment to be published once each week for two  
34 consecutive weeks in a newspaper of general circulation in  
35 each of the counties in which the confinement feeding

1 operation is located.

2 c. The actions of the department in connection with  
3 petitioning for appointment as a receiver, and all actions  
4 pursuant to such appointment, shall not be subject to the  
5 provisions of chapter 17A.

6 d. The department may appoint a person to act as receiver.  
7 A person appointed by the department and carrying out the  
8 duties of the department in acting as receiver under this  
9 section shall be deemed to be an employee of the state as  
10 defined in section 669.2. Chapter 669 is applicable to any  
11 claim as defined in section 669.2 against the person carrying  
12 out the duties of the department in acting as receiver.

13 Sec. 4. EFFECTIVE DATE. This Act, being deemed of  
14 immediate importance, takes effect upon enactment.

15 EXPLANATION

16 This bill amends Code chapter 455B, which provides for  
17 environmental protection as administered by the department of  
18 natural resources. Specifically, the bill imposes increased  
19 penalties upon persons classified as habitual violators of  
20 regulations relating to confinement feeding operations. Under  
21 current law, a habitual violator is a person who commits three  
22 or more violations concerning specific regulations involving  
23 confinement feeding operations. The violations relate to  
24 completing a false application for a construction permit,  
25 failing to obtain a construction permit prior to construction,  
26 causing pollution to the waters of the state, or failing to  
27 submit a manure management plan.

28 The bill imposes special penalties upon habitual violators  
29 who commit a subsequent violation of provisions in Code  
30 chapter 455B, including departmental rules. First, the  
31 department must order the owner of the confinement feeding  
32 operation to transfer ownership of the confinement feeding  
33 operation to a person approved by the department. The bill  
34 places restrictions upon the management of the confinement  
35 feeding operation, which may involve direct departmental

1 oversight of the confinement feeding operation. In addition,  
2 the bill imposes enhanced penalties upon habitual violators  
3 who commit a subsequent violation. A habitual violator  
4 knowingly committing a subsequent offense is guilty of an  
5 aggravated misdemeanor punishable by a \$25,000 per day  
6 criminal fine. In addition, a civil penalty of up to \$25,000  
7 per day may be assessed. The bill provides that for another  
8 subsequent violation, committed by a person holding a  
9 controlling interest in a confinement feeding operation, all  
10 confinement feeding operations in which the person holds a  
11 controlling interest is forfeited to the state. The bill  
12 provides for the management of the forfeited confinement  
13 feeding operation, including the appointment of the department  
14 as a receiver. If the attorney general does not proceed in a  
15 forfeiture action, the habitual violator must transfer  
16 ownership of all confinement feeding operations in which the  
17 person holds a controlling interest. A confinement feeding  
18 operation which is transferred and the person who transferred  
19 the controlling interest is classified as a habitual violator.  
20 The bill takes effect upon enactment.

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