

Senate Study Bill 1228

Bill Text

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1 1 Section 1. Section [163.1](#), unnumbered paragraph 1, Code
1 2 2001, is amended to read as follows:
1 3

~~In the enforcement of~~
~~The department shall administer and~~
1 4 enforce the provisions of this chapter, and rules adopted by
1 5 the department pursuant to this chapter. In administering the
1 6 provisions of this chapter, the department

~~of agriculture and~~

1 7

~~land stewardship~~

~~shall have power to do all of the following:~~

1 8 Sec. 2. Section [163.6](#), subsection 4, Code 2001, is amended
1 9 by striking the subsection.

1 10 Sec. 3. Section [163.18](#), Code 2001, is amended to read as
1 11 follows:

1 12 163.18 FALSE REPRESENTATION.

1 13

~~Any~~

~~A person~~

~~who~~

~~shall not knowingly~~

~~makes any~~

~~make a false~~

1 14 representation

~~as to the purpose for which a~~

~~about the~~

1 15 shipment of

~~animals~~

~~an animal that is being or will be made,~~

1 16 with the intent to avoid or prevent

~~an~~

~~the animal's inspection~~

1 17

~~of such animals for the purpose of determining~~

~~that is~~

1 18 conducted in order to determine whether the

~~animals are~~

~~animal~~

1 19 is free from disease

~~, shall be guilty of a simple misdemeanor~~

1 20 Sec. 4. Section [163.23](#), Code 2001, is amended to read as

1 21 follows:

1 22 163.23 FALSE CERTIFICATES OF HEALTH

~~— PENALTY~~

~~—~~

1 23

~~— Any~~

~~— A veterinarian~~

~~— issuing~~

~~— shall not issue~~ a certificate of

1 24 health for an animal knowing that the animal described

~~— therein~~

~~—~~

1 25 in the certificate of health was not the same animal from

1 26 which

~~— the~~

~~— tests were made as a basis for issuing~~ the

1 27 certificate

~~— or who~~

~~— A veterinarian shall not otherwise~~

1 28

~~— falsifies any such~~

~~— falsify a~~ certificate

~~— shall be guilty of a~~

~~—~~

1 29

~~— fraudulent practice~~

~~— of health.~~

1 30 Sec. 5. Section [163.24](#), Code 2001, is amended to read as

1 31 follows:

1 32 163.24 USING FALSE CERTIFICATE.

1 33

~~— Any~~

~~— A person~~

~~— , firm, or corporation importing, exporting, or~~

~~—~~

1 34

~~— transporting~~

~~— shall not conduct a transaction to import,~~

1 35 export, or transport an animal within this state or

~~— selling~~

~~—~~

2 1 sell or

~~— offering~~

~~— offer~~ for sale

~~— any~~

~~— an~~ animal

~~— for which~~

~~— , if~~

2 2 the person uses a certificate of health

~~— has been issued and~~

-
2 3

~~who uses such certificate~~
- in connection with

~~any of said~~

-
2 4

~~transactions~~
- the transaction knowing that the animal described
2 5 in

~~said~~
- the certificate of health was not the animal from
2 6 which

~~the~~
- tests were made as a basis for issuing the
2 7 certificate

~~or who knowingly uses any~~
- of health. A person
2 8 shall not otherwise use an altered or otherwise false
2 9 certificate in connection with

~~any of said transactions shall~~

-
2 10

~~be guilty of a fraudulent practice~~
- such transaction.

2 11 Sec. 6. Section 163.25, Code 2001, is amended to read as
2 12 follows:
2 13 163.25 ALTERING CERTIFICATE.
2 14

~~Any~~

- A person

~~, firm, or corporation removing or altering~~

-
2 15 shall not remove or alter a tag or mark of identification
2 16 appearing on

~~any~~

- an animal, tested or being tested for
2 17 disease,

~~any~~

- if the tag or mark of identification is
2 18 authorized by the department or inserted by any qualified
2 19 veterinarian

~~or altering any~~

- A person shall not alter a
2 20 certificate of vaccination issued by

~~one~~

- a person authorized
2 21 to vaccinate

~~animals shall be guilty of a fraudulent practice~~

-
2 22 the animal.

2 23 Sec. 7. NEW SECTION. 163.51 CIVIL PENALTIES.

2 24 1. The department shall establish, by rule, civil
2 25 penalties which may be administratively or judicially
2 26 assessed. The attorney general shall cooperate with the
2 27 department in the assessment and collection of civil
2 28 penalties.

2 29 2. a. Except as provided in paragraph "b", a person
2 30 violating a provision of this chapter, or a rule adopted
2 31 pursuant to this chapter, shall be subject to a civil penalty
2 32 of at least one hundred dollars but not more than one thousand
2 33 dollars. In the case of a continuing violation, each day of
2 34 the continuing violation is a separate violation. However, a
2 35 person shall not be subject to a civil penalty totaling more
3 1 than twenty-five thousand dollars.

3 2 b. Notwithstanding the provisions of paragraph "a", a
3 3 person who falsifies a health certificate, veterinarian
3 4 inspection certificate, or certificate of inspection shall be
3 5 subject to a civil penalty of not more than five thousand
3 6 dollars for each reference to an animal falsified on the
3 7 certificate. However, a person who falsifies a certificate of
3 8 inspection issued pursuant to chapter 166D shall be subject to
3 9 a civil penalty as provided in this section or section
3 10 166D.16, but not both. A person shall not be subject to a
3 11 civil penalty totaling more than twenty-five thousand dollars
3 12 for falsifying a certificate, regardless of the number of
3 13 animals falsified on the certificate.

3 14 3. Moneys collected from civil penalties shall be
3 15 deposited into the general fund of the state.

3 16 Sec. 8. NEW SECTION. 163.51 INJUNCTIVE RELIEF.

3 17 The department or the attorney general acting on behalf of
3 18 the department may apply to the district court for injunctive
3 19 relief in order to restrain a person from acting in violation
3 20 of this chapter. In order to obtain injunctive relief, the
3 21 department shall not be required to post a bond or prove the
3 22 absence of an adequate remedy at law, unless the court for
3 23 good cause otherwise orders. The court may order any form of
3 24 prohibitory or mandatory relief that is appropriate under
3 25 principles of equity, including but not limited to issuing a
3 26 temporary or permanent restraining order.

3 27 Sec. 9. DIRECTIONS TO CODE EDITOR. The Code editor shall
3 28 organize chapter 163 into subchapters based on divisions of
3 29 the chapter and this Act, and replace the term "division" with
3 30 "subchapter" wherever it occurs in the chapter.

3 31 Sec. 10. Sections 163.21, 163.29, and 163.31, Code 2001,
3 32 are repealed.

3 33 EXPLANATION

3 34 Code chapter 163 provides for the general regulation of
3 35 infectious and contagious diseases in animals (livestock).
4 1 Other chapters of the Code provide specific and occasionally
4 2 overlapping regulations affecting individual species of
4 3 livestock. The chapter regulates a number of practices
4 4 including the shipment or movement of livestock; the sale of
4 5 infected livestock; the issuance of certificates related to
4 6 movement, such as a certificate of health or certificate of
4 7 inspection; feeding garbage to livestock, the identification
4 8 of swine consigned to slaughter; and licenses required to
4 9 breed bulls.

4 10 A number of penalties apply to violations of these
4 11 provisions, including both criminal and civil penalties. The
4 12 criminal penalty is generally a simple misdemeanor. A simple
4 13 misdemeanor is punishable by confinement for no more than 30
4 14 days or a fine of at least \$50 but not more than \$500 or by
4 15 both. Several provisions provide that a violation is a
4 16 fraudulent practice under Code chapter 714. The penalty
4 17 ranges from a simple misdemeanor to a class "C" felony, based
4 18 on the value of the property involved in the commission of the
4 19 offense. A class "C" felony is punishable by confinement for
4 20 no more than 10 years and a fine of at least \$1,000 but not

4 21 more than \$10,000. The bill provides that certain violations
4 22 are subject to a civil penalty. For example, under Code
4 23 section 163.31, a person who falsifies an official health
4 24 certificate or veterinarian inspection certificate for the
4 25 movement of swine is subject to a civil penalty of not more
4 26 than \$5,000 for each reference to a swine falsified on the
4 27 certificate, but not more than \$25,000.

4 28 This bill eliminates those penalties and authorizes the
4 29 department to establish, by rule, civil penalties. The bill
4 30 provides that a person violating a provision of Code chapter
4 31 163, or a rule adopted pursuant to the Code chapter, is
4 32 subject to a civil penalty of at least \$100 but not more than
4 33 \$1,000. In the case of a continuing violation, each day of
4 34 the continuing violation is a separate violation. The bill
4 35 provides that a person shall not be subject to a civil penalty
5 1 totaling more than \$25,000. The bill also carves out one area
5 2 where higher penalties are applicable. The bill provides that
5 3 a person who falsifies a health certificate, veterinarian
5 4 inspection certificate, or certificate of inspection is
5 5 subject to a civil penalty of not more than \$5,000 for each
5 6 reference to an animal falsified on the certificate, with a
5 7 maximum civil penalty of \$25,000.

5 8 The bill authorizes the department or the attorney general
5 9 acting on behalf of the department to apply to the district
5 10 court for injunctive relief in order to restrain a person from
5 11 acting in violation of this Code chapter.

5 12 The bill repeals current provisions that refer to penalties
5 13 and directs the Code editor to reorganize the chapter into
5 14 subchapters as is appropriate.

5 15 LSB 3308SC 79

5 16 da/cf/24