

FILED FEB 21 2006

SENATE FILE 2243  
BY COURTNEY

(COMPANION TO LSB 5567HH  
BY SANDS)

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

**A BILL FOR**

1 An Act relating to swine, by regulating feral swine, and  
2 providing penalties.  
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

AGRICULTURE

SF 2243

1 Section 1. FINDINGS AND DECLARATION.

2 1. The general assembly finds all of the following:

3 a. Feral swine are known carriers of a variety of diseases  
4 including but not limited to pseudorabies, swine brucellosis,  
5 leptospirosis, and trichinosis impacting upon this state's  
6 domestic livestock herds and especially its domestic swine  
7 herds.

8 b. Feral swine carry diseases which may be transmitted to  
9 human populations.

10 c. Feral swine disrupt native wildlife and destroy native  
11 habitat.

12 2. a. The general assembly declares that the increased  
13 movement of feral swine into this state presents an immediate  
14 and serious risk to the state's economy, public health, and  
15 ecosystems.

16 b. The general assembly further declares that the state  
17 establishes a policy to eradicate all feral swine from this  
18 state with all possible speed.

19 Sec. 2. Section 170.6, Code 2005, is amended by adding the  
20 following new subsection:

21 NEW SUBSECTION. 3. The department shall revoke a fence  
22 certification issued pursuant to section 170.4 or disapprove a  
23 person's application for the certification of a fence pursuant  
24 to that section for a period of three years if the person  
25 violates a provision of section 171.5.

26 Sec. 3. NEW SECTION. 171.1 DEFINITIONS.

27 As used in this chapter, unless the context otherwise  
28 requires:

29 1. "Authorized department" means the department of  
30 agriculture and land stewardship or the department of natural  
31 resources.

32 2. "Department" means the department of agriculture and  
33 land stewardship.

34 3. "Domestic swine" means swine other than feral swine.

35 4. "Feral swine" means swine which is classified as part

1 of the species sus scrofa linnaeus and commonly referred to as  
2 a Russian boar or European boar.

3 5. "Landholder" means a titleholder or leaseholder of  
4 land.

5 6. "Local authority" means a county as provided in chapter  
6 331 or a city as defined in section 362.2.

7 7. "Move" or "movement" means to ship, transport, or  
8 deliver swine by land, water, or air.

9 8. "Public land" means land owned by the federal  
10 government, the state, or a local authority.

11 9. "Responsible party" means a person who owns or has  
12 custody of a swine, including by providing for the care and  
13 feeding of the swine.

14 10. "Swine" means an animal belonging to the order  
15 artiodactyla, and classified as part of the family suidae.

16 11. "Swine of unknown status" means swine which is not  
17 known to be a domestic swine or feral swine.

18 12. "System" means the feral swine reporting system  
19 established pursuant to section 171.4.

20 13. "Take" means to kill, injure, or capture a feral swine  
21 by a person other than the owner of the feral swine.

22 Sec. 4. NEW SECTION. 171.2 STATE FERAL SWINE ERADICATION  
23 POLICY -- AGENCY COOPERATION.

24 1. Feral swine in this state are declared to be a public  
25 nuisance and subject to a policy of eradication as  
26 administered by the department of agriculture and land  
27 stewardship pursuant to this chapter.

28 a. The department of agriculture and land stewardship  
29 shall be the principal enforcement agency charged with  
30 carrying out the policy.

31 b. The department of natural resources shall cooperate  
32 with the department of agriculture and land stewardship in  
33 carrying out the policy. The authorized departments shall  
34 periodically consult about how to most effectively contribute  
35 resources and their respective expertise, and divide

1 jurisdictional responsibility, including investigative  
2 personnel where appropriate. However, the department of  
3 natural resources shall regulate hunting preserves under  
4 chapter 484B or 484C, and the regulation of persons taking  
5 animals under Title XI, subtitle 6.

6 2. The department shall cooperate with the animal and  
7 plant health inspection service of the United States  
8 department of agriculture, and may enter into cooperative  
9 agreements with the animal and plant health inspection service  
10 in order to carry out the provisions of this chapter.

11 Sec. 5. NEW SECTION. 171.3 SWINE OF UNKNOWN STATUS  
12 DEEMED TO BE FERAL SWINE.

13 A person may deem a swine of unknown status as feral swine  
14 if all of the following apply:

15 1. The person finds the swine on public land, or on land  
16 other than public land and any of the following applies:

17 a. The swine is not enclosed to reasonably prevent escape  
18 including within a structure or behind a barrier such as a  
19 fence as provided in rules adopted by the department.

20 b. The swine is on the land without the consent of the  
21 landholder regardless of whether the swine is enclosed to  
22 reasonably prevent escape as required in this subsection.

23 2. The swine is not in the custody or control of a person.  
24 However, the person may only deem the swine to be a feral  
25 swine after a waiting period if one of the following applies:

26 a. The swine is reasonably identifiable as a domestic  
27 swine by an ear tag, brand, mark, or other conspicuous  
28 evidence of ownership. The waiting period shall be for five  
29 days after the person first finds the swine.

30 b. The person is provided notice by the responsible party  
31 that swine is no longer in the control or custody of the  
32 responsible party. The waiting period shall be for fifteen  
33 days after the person first finds the swine.

34 Sec. 6. NEW SECTION. 171.4 FERAL SWINE REPORTING SYSTEM.

35 1. a. The department of agriculture and land stewardship

1 shall establish a feral swine reporting system, in cooperation  
2 with the department of natural resources. The system may  
3 include receipt of reports by any of the following:

4 (1) Automated toll-free telephone number.

5 (2) Postcard.

6 (3) Electronic communication at an electronic licensing  
7 location.

8 (4) Electronic communication to the department including  
9 by the internet.

10 b. The department of natural resources shall maintain a  
11 database of information collected by the system which shall be  
12 made available to the department of agriculture and land  
13 stewardship.

14 2. The system shall allow persons to conveniently report  
15 the presence of a feral swine to an authorized department.  
16 Either authorized department may conduct the investigation or  
17 refer the report to the local authority responsible for the  
18 prevention and detection of crime in the jurisdiction where  
19 the swine is found.

20 3. a. The system shall provide for reports by persons who  
21 have taken or injured feral swine in this state. A person who  
22 has taken or injured feral swine in this state shall report to  
23 an authorized department within ten days after taking the  
24 swine. The report shall include at least all of the  
25 following:

26 (1) The name and address of the person who has taken or  
27 injured the feral swine.

28 (2) The county and township where the feral swine was  
29 taken or injured.

30 (3) The date when the feral swine was taken or injured.

31 (4) The number of feral swine found by the person on the  
32 date when the feral swine was taken or injured.

33 b. A person who takes a feral swine shall retain the feral  
34 swine or its carcass for examination by the authorized  
35 department. The authorized department may temporarily or

1 permanently confiscate the carcass for purposes of analysis  
2 including disease testing.

3 c. A person who does not report taking a feral swine as  
4 required in this subsection is subject to a civil penalty of  
5 not more than one hundred dollars.

6 Sec. 7. NEW SECTION. 171.5 PROHIBITIONS AND PENALTY.

7 1. A person shall not do any of the following:

8 a. Move a feral swine into this state.

9 b. Acquire custody or control of a feral swine in this  
10 state.

11 c. Maintain custody or control of a feral swine in this  
12 state on and after August 1, 2006.

13 2. A person who violates subsection 1 is guilty of an  
14 aggravated misdemeanor. A person is guilty of a separate  
15 offense for each feral swine which is the subject of  
16 violation.

17 Sec. 8. NEW SECTION. 171.6 MAINTAINING FERAL SWINE --  
18 INJUNCTIVE RELIEF.

19 A court may prevent and restrain a violation of section  
20 171.5 through the issuance of an injunction. The attorney  
21 general or a county attorney shall institute an action on  
22 behalf of the state to prevent or restrain a violation of this  
23 chapter.

24 Sec. 9. NEW SECTION. 171.7 MAINTAINING FERAL SWINE --  
25 STATE INVESTIGATORY AND LEGAL EXPENSES.

26 A person having custody or control of a feral swine and  
27 convicted of violating section 171.5 is liable for all of the  
28 following:

29 1. The amount to indemnify the state or a local authority  
30 for investigative expenses incurred by the state or the local  
31 authority. The amount paid for indemnification shall be  
32 deposited in the general fund of the state. However, if the  
33 investigation is not conducted by an authorized department or  
34 other state agency, the amount shall be paid to the local  
35 authority which conducts the investigation for deposit in the

1 general fund of the county or city, as the case requires.

2 2. If the attorney general or a county attorney is the  
3 prevailing party in an action for a violation of section  
4 171.5, the prevailing party shall be awarded court costs and  
5 reasonable attorney fees, which shall be taxed as part of the  
6 costs of the action. If the attorney general is the  
7 prevailing party, the moneys shall be deposited in the general  
8 fund of the state. If the county is the prevailing party, the  
9 moneys shall be deposited in the general fund of the county.

10 Sec. 10. NEW SECTION. 171.8 MAINTAINING FERAL SWINE --  
11 STRICT LIABILITY -- ATTORNEY FEES.

12 If a person having custody or control of a feral swine is  
13 convicted of violating section 171.5, the person is strictly  
14 liable for damages caused to the property of another person.  
15 The person who is the prevailing plaintiff in the case shall  
16 be awarded court costs and reasonable attorney fees, which  
17 shall be taxed as part of the costs of the action.

18 Sec. 11. NEW SECTION. 171.9 ORDINARY LIABILITY.

19 Nothing in this chapter affects a responsible party's  
20 liability which arises out of trespassing or stray swine or  
21 swine running at large and any remedies available to an  
22 injured party, as provided under statute, common law, or  
23 contract.

24 Sec. 12. NEW SECTION. 171.10 MAINTAINING FERAL SWINE --  
25 RESTITUTION.

26 A person having custody or control of a feral swine and  
27 convicted of violating section 171.5 is liable to the  
28 department of natural resources for restitution.

29 1. The amount of the restitution shall be paid to the  
30 department. The department shall adopt rules providing for  
31 the administrative assessment of restitution amounts, which  
32 shall include methods used to determine the extent of monetary  
33 values for the loss of wildlife based on species. The amount  
34 for restitution shall be collected in the same manner as a  
35 civil penalty imposed upon a person who violates chapter 455B.

1 Moneys collected from payments for restitution shall be  
2 deposited into the state fish and game protection fund.

3 2. Moneys paid to the department of natural resources for  
4 restitution shall be used by the department exclusively to do  
5 any of the following:

6 a. Restore or improve the natural habitat degraded by the  
7 feral swine, including the repopulation of native wildlife.

8 b. Reimburse a local authority for expenses incurred by  
9 the local authority in restoring or improving the natural  
10 habitat which was degraded by the feral swine, including the  
11 repopulation of native wildlife.

12 Sec. 13. NEW SECTION. 171.11 TAKING OF FERAL SWINE BY  
13 THE DEPARTMENT OR A LOCAL AUTHORITY.

14 An authorized department or local authority may take feral  
15 swine on public land and on land other than public land if one  
16 of the following applies:

17 1. The landowner provides consent.

18 2. The landowner may maintain custody or control of the  
19 feral swine on the landowner's land. The department or local  
20 authority may enter onto the land pursuant to a warrant issued  
21 by a court, or otherwise enter onto the land in a manner  
22 consistent with the laws of this state and the United States,  
23 including Article I, section 8, of the Constitution of the  
24 State of Iowa, or the fourth amendment to the Constitution of  
25 the United States.

26 Sec. 14. NEW SECTION. 171.12 TAKING OF FERAL SWINE BY A  
27 PERSON OTHER THAN THE DEPARTMENT OR A LOCAL AUTHORITY --  
28 CRIMINAL PENALTY.

29 A person other than an authorized department or a local  
30 authority may take feral swine which is not in the custody or  
31 control of a person as provided in this section.

32 1. a. The person may take feral swine at any time  
33 regardless of whether the person has been issued a license  
34 under chapter 483A, unless a person's hunting license has been  
35 suspended or revoked as provided in chapter 481A, including



1 but not limited to section 481A.134, or chapter 483A,  
2 including but not limited to section 483A.21.

3 b. The person shall not capture the feral swine.

4 c. The person shall not take feral swine on public land  
5 unless in compliance with regulations adopted by rule of the  
6 department of natural resources or an ordinance of the local  
7 authority that is responsible for the public land.

8 2. A person who violates this section is guilty of a  
9 simple misdemeanor. A person is guilty of a separate offense  
10 for each feral swine which is the subject of violation.

11 Sec. 15. Section 484B.13, Code 2005, is amended to read as  
12 follows:

13 484B.13 ~~LICENSE-REFUSAL~~ DISCIPLINARY ACTION.

14 1. The department may either refuse to issue, refuse to  
15 renew, or suspend or revoke a person's hunting preserve  
16 operator's license issued pursuant to section 484B.4 if the  
17 department finds that the licensed area or the operator or  
18 employees of the licensed area are not in compliance with this  
19 chapter, or that the property or area is operated in violation  
20 of this chapter or administrative rules adopted under this  
21 chapter.

22 2. The department shall revoke a person's hunting preserve  
23 operator's license issued pursuant to section 484B.4, or  
24 disapprove a person's application for a hunting preserve  
25 operator's license issued under that section for a period of  
26 three years if the person violates a provision of section  
27 171.5.

28 Sec. 16. Section 484C.13, Code Supplement 2005, is amended  
29 by adding the following new subsection:

30 NEW SUBSECTION. 4. The department shall revoke a fence  
31 certification issued pursuant to section 484C.6 or disapprove  
32 a person's application for the certification of a fence issued  
33 pursuant to that section for a period of three years if the  
34 person violates a provision of section 171.5.

35

EXPLANATION

1 This bill regulates feral swine, classified as part of the  
2 species *sus scrofa linnaeus*, and commonly referred to as a  
3 Russian boar or European boar. The bill establishes a new  
4 chapter under the jurisdiction of the department of  
5 agriculture and land stewardship and the department of natural  
6 resources.

7 DEPARTMENTAL AUTHORITY. The bill provides that feral swine  
8 in this state are declared to be a public nuisance and subject  
9 to a policy of eradication as administered by the department  
10 of agriculture and land stewardship. The bill provides that  
11 the department of natural resources must cooperate with the  
12 department of agriculture and land stewardship in carrying out  
13 the policy. The department of agriculture and land  
14 stewardship may cooperate with the animal and plant health  
15 inspection service of the United States department of  
16 agriculture.

17 SWINE OF UNKNOWN STATUS. The bill addresses the issue of  
18 finding swine of unknown status on public land, unenclosed  
19 land, or on land without the consent of the landowner. The  
20 bill provides for a waiting period if the swine is reasonably  
21 identifiable as a domestic swine or notice is provided that a  
22 domestic swine is no longer in the control or custody of the  
23 person providing notice.

24 REPORTING SYSTEM. The bill establishes a feral swine  
25 reporting system (system). The system includes methods for  
26 persons to report findings of feral swine to the department of  
27 agriculture and land stewardship or the department of natural  
28 resources for purposes of investigation. It requires that a  
29 person who takes or injures a feral swine must report the  
30 information to a department. A person not reporting the  
31 taking or injuring of a feral swine is subject to a civil  
32 penalty of not more than \$100.

33 PROHIBITION AND PENALTY. The bill prohibits a person from  
34 moving a feral swine into this state, acquiring custody or  
35 control of a feral swine in this state, or maintaining custody

1 or control of a feral swine in this state on and after August  
2 1, 2006. A person who violates these provisions is guilty of  
3 an aggravated misdemeanor. An aggravated misdemeanor is  
4 punishable by confinement for no more than two years and a  
5 fine of at least \$500 but not more than \$5,000. A court may  
6 prevent and restrain a violation of the provisions.

7 INDEMNIFICATION. The bill provides that a person having  
8 custody or control of a feral swine and convicted of violating  
9 provisions regulating how it must be maintained must indemnify  
10 the state or local authority for investigative expenses  
11 incurred by the state or local authority. It provides that if  
12 the attorney general or a county attorney is the prevailing  
13 party in an enforcement action, the state or county must be  
14 awarded court costs and reasonable attorney fees.

15 STRICT LIABILITY. The bill provides that a person having  
16 custody or control of a feral swine and convicted of violating  
17 provisions regulating how it must be maintained is strictly  
18 liable for damages caused to the property of another person.

19 RESTITUTION. The bill provides that a person having  
20 custody or control of a feral swine and convicted of violating  
21 provisions regulating how it must be maintained is liable to  
22 the department of natural resources for restitution. The  
23 amount of the restitution is to be paid to the state or a  
24 local authority for measures required to restore a natural  
25 habitat which was degraded by the feral swine including the  
26 repopulation of wildlife.

27 TAKING FERAL SWINE. The bill provides that the department  
28 of agriculture and land stewardship, the department of natural  
29 resources or a local authority may take feral swine on public  
30 land; or on land other than public land, if the landowner  
31 provides consent, or the landowner may maintain custody or  
32 control of feral swine. The bill authorizes the department of  
33 agriculture and land stewardship, department of natural  
34 resources, or local authority to enter onto the land to take  
35 the feral swine.

1 The bill provides that a person other than the state or  
2 local authority may take feral swine which is not in the  
3 custody and control of a person. The person may take feral  
4 swine regardless of whether the person has been issued a  
5 hunting license, but prohibits a person from taking the feral  
6 swine if the person's hunting license has been suspended or  
7 revoked. The bill provides that a person may not capture a  
8 feral swine. A person who violates this provision is guilty  
9 of a simple misdemeanor. A simple misdemeanor is punishable  
10 by confinement for no more than 30 days or a fine of at least  
11 \$50 but not more than \$500 or by both.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35