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SENATE FILE **2350**
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SF 2243)

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:

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SF 2350

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.

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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.

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SENATE FILE 2350

S-5057

1 Amend Senate File 2350 as follows:

2 1. Page 2, by inserting after line 2, the
3 following:

4 "____. "Hunting preserve" means a hunting preserve
5 as regulated by the department of natural resources
6 pursuant to chapter 484B."

7 2. Page 3, line 13, by striking the word "A" and
8 inserting the following:

9 "1. Except as provided in subsection 2, a".

10 3. Page 3, line 15, by striking the figure "1."
11 and inserting the following: "a."

12 4. Page 3, line 17, by striking the word "a." and
13 inserting the following: "(1)".

14 5. Page 3, line 20, by striking the word "b." and
15 inserting the following: "(2)".

16 6. Page 3, line 22, by striking the word
17 "subsection" and inserting the following: "paragraph
18 "a"".

19 7. Page 3, line 23, by striking the figure "2."
20 and inserting the following: "b."

21 8. Page 3, line 26, by striking the word "a." and
22 inserting the following: "(1)".

23 9. Page 3, line 30, by striking the word "b." and
24 inserting the following: "(2)".

25 10. Page 3, by inserting after line 33, the
26 following:

27 "2. A person may deem a swine of unknown status as
28 feral swine if the feral swine is within a hunting
29 preserve or has escaped from a hunting preserve."

30 11. Page 5, line 7, by striking the word and
31 figure "1. A" and inserting the following: "1. a.
32 Except as provided in paragraph "b", a".

33 12. Page 5, line 8, by striking the word "a." and
34 inserting the following: "(1)".

35 13. Page 5, line 9, by striking the word "b." and
36 inserting the following: "(2)".

37 14. Page 5, line 11, by striking the word "c."
38 and inserting the following: "(3)".

39 15. Page 5, by inserting after line 12, the
40 following:

41 "b. A person shall only maintain the custody or
42 control of a feral swine on land which is part of a
43 hunting preserve."

44 16. Page 8, by striking lines 11 through 27, and
45 inserting the following:

46 "Sec. _____. Section 484B.1, Code 2005, is amended
47 by adding the following new subsection:

48 NEW SUBSECTION. 3A. "Feral swine" means the same
49 as defined in section 171.1.

50 Sec. _____. Section 484B.4, subsection 2, Code 2005,

S-5057

1 is amended by adding the following new paragraph:
2 NEW PARAGRAPH. f. If a person has been issued a
3 license to operate a hunting preserve where feral
4 swine are maintained, information regarding the feral
5 swine as required by the department, including but not
6 limited to the greatest number of feral swine that may
7 be maintained on the preserve, and other information
8 required to ensure compliance with special
9 requirements as provided in section 484B.12A.

10 Sec. _____. Section 484B.4, subsection 3, Code 2005,
11 is amended to read as follows:

12 3. a. All licenses issued to persons to operate
13 hunting preserve operator's licenses shall expire
14 preserves expire on March 31 of each year.

15 b. A person shall not be issued a license to
16 operate a hunting preserve where feral swine are
17 maintained unless all of the following apply:

18 (1) The person maintained feral swine on the
19 hunting preserve on the effective date of this Act.

20 (2) The person maintained feral swine on the
21 hunting preserve on the date that the person's
22 previous license expired.

23 Sec. _____. Section 484B.5, Code 2005, is amended to
24 read as follows:

25 484B.5 BOUNDARIES SIGNED -- FENCED.

26 1. Upon receipt of a hunting preserve license, the
27 licensee shall promptly ~~sign~~ post the licensed
28 property with signs informing the public that the
29 licensed property is a hunting preserve. If the
30 licensed property may include feral swine, each sign
31 must conspicuously notify the public that the licensed
32 land may include feral swine. The signs shall be
33 provided for in a manner prescribed by the department.

34 2. A licensee holding and releasing ungulates
35 shall construct and maintain boundary fences
36 prescribed by the department so as to enclose and
37 contain all released ungulates and exclude all
38 ungulates which are property of the state from
39 becoming a part of the hunting preserve enterprise.
40 The department of natural resources, in consultation
41 with the department of agriculture and land
42 stewardship, may provide special requirements for the
43 construction and maintenance of boundary fences which
44 confine feral swine.

45 Sec. _____. Section 484B.12, Code 2005, is amended
46 to read as follows:

47 484B.12 HEALTH REQUIREMENTS -- UNGULATES.

48 1. ~~All ungulates~~ An ungulate which is
49 purchased, propagated, confined, released, or sold by
50 a licensed hunting preserve shall be free of ~~diseases~~

1 any disease considered significant for wildlife,
2 poultry, or livestock.

3 2. The department of agriculture and land
4 stewardship shall provide for the regulation of farm
5 deer as provided in chapter 170.

6 3. The department of agriculture and land
7 stewardship may provide for the certification of feral
8 swine maintained on the licensed property as provided
9 in section 484B.12A.

10 Sec. ____ . NEW SECTION. 484B.12A SPECIAL
11 REQUIREMENTS FOR MOVING, RELOCATING, OR MAINTAINING
12 FERAL SWINE.

13 1. As used in this section, unless the context
14 otherwise requires:

15 a. "Move" or "movement" means to ship, transport,
16 or deliver swine by land, water, or air, except that
17 "move" or "movement" does not mean a relocation.

18 b. "Relocate" or "relocation" means to ship,
19 transport, or deliver swine by land, water, or air,
20 from one hunting preserve to a different hunting
21 preserve, if the ownership of the swine does not
22 change, the two hunting preserves are located within
23 the state, and the shipment, transportation, or
24 delivery between the two hunting preserves occurs
25 within the state.

26 2. Swine shall be deemed to be feral swine if the
27 swine is moved or relocated to or from a hunting
28 preserve or maintained on land which is a hunting
29 preserve under this chapter.

30 3. a. A person licensed under this chapter may
31 move or relocate feral swine on land which is a
32 hunting preserve. The feral swine must be all of the
33 following:

34 (1) Accompanied by a certificate of veterinary
35 inspection as provided in section 163.30.

36 (2) Segregated from other animals.

37 (3) Secured in a manner that prevents escape.

38 b. The department of agriculture and land
39 stewardship may require that the feral swine be
40 certified prior to relocation as required in this
41 section.

42 c. A person licensed under this chapter shall not
43 move feral swine on or after January 1, 2008.

44 4. A person licensed under this chapter may
45 maintain feral swine on land which is a hunting
46 preserve, subject to all of the following:

47 a. The person may be required to construct and
48 maintain fences pursuant to section 484B.5 which
49 conform to special requirements established by the
50 department of natural resources in consultation with

1 the department of agriculture and land stewardship.
2 The special requirements shall ensure that the feral
3 swine do not escape.

4 b. The feral swine may be required to be certified
5 or recertified by the department of agriculture and
6 land stewardship in consultation with the department
7 of natural resources. The certification may provide
8 that feral swine react negatively to tests for
9 contagious or infectious diseases as provided in
10 chapter 163. The department of agriculture and land
11 stewardship or a veterinarian approved by the
12 department may do all of the following:

13 (1) Provide for the testing of each feral swine or
14 a statistical sampling of the feral swine as required
15 by the department of agriculture and land stewardship.

16 (2) Require that a feral swine be segregated for
17 any period until the swine is certified.

18 5. The department of natural resources in
19 cooperation with the department of agriculture and
20 land stewardship may order the quarantine or
21 destruction of an ungulate which is suspected of being
22 afflicted or carrying a contagious or infectious
23 disease which originates with a feral swine. The
24 department of natural resources in cooperation with
25 the department of agriculture and land stewardship may
26 also provide for the depopulation of the ungulates.

27 6. Chapter 171 shall apply to a feral swine which
28 escapes from a hunting preserve. The person licensed
29 pursuant to this chapter shall be the responsible
30 party having lost custody or control of the feral
31 swine as provided in that chapter."

32 17. Page 8, by inserting after line 34, the
33 following:

34 "Sec. ____ . EFFECTIVE DATE. This Act, being deemed
35 of immediate importance, takes effect upon enactment."

36 18. Title page, line 1, by striking the word
37 "and".

38 19. Title page, line 2, by inserting after the
39 word "penalties" the following: ", and providing an
40 effective date."

41 20. By renumbering as necessary.

By EUGENE S. FRAISE

**EIGHTY FIRST GENERAL ASSEMBLY
2006 REGULAR SESSION
DAILY
SENATE CLIP SHEET**

MAY 2, 2006

SENATE FILE 2350

S-5238

1 Amend Senate File 2350 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "SUBCHAPTER I
5 GENERAL PROVISIONS

6 Section 1. NEW SECTION. 171.101 DEFINITIONS.

7 As used in this chapter, unless the context
8 otherwise requires:

9 1. "Authorized department" means the department of
10 agriculture and land stewardship or the department of
11 natural resources.

12 2. "Custody or control" means to keep swine in a
13 manner that prevents the release or escape of the
14 swine from containment at all times, including keeping
15 swine for breeding, growing, or transport.

16 3. "Department" means the department of
17 agriculture and land stewardship.

18 4. "Estray swine" means swine that are not in the
19 custody or control of a responsible party.

20 5. "Feral swine" means swine that are classified
21 as part of the species *sus scrofa linnaeus* which may
22 be commonly known as Russian boar or European boar of
23 either sex.

24 6. "Landholder" means a titleholder or leaseholder
25 of land.

26 7. "Local authority" means a county as provided in
27 chapter 331 or a city as defined in section 362.2.

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

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

32 10. "Responsible party" means a person who owns or
33 has custody or control of swine, including by
34 providing for the care and feeding of the swine.

35 11. "Swine" means an animal belonging to the order
36 *artiodactyla*, and classified as part of the family
37 *suidae*.

38 12. "System" means the feral swine reporting
39 system established pursuant to section 171.202.

40 13. "Take" means to kill or attempt to kill a
41 feral swine by a person other than the owner of the
42 feral swine.

43 Sec. 2. NEW SECTION. 171.102 STATE PUBLIC
44 NUISANCE SWINE ERADICATION POLICY -- AGENCY
45 COOPERATION.

46 1. The following classes of swine are declared to
47 be a public nuisance:

48 a. Feral swine, regardless of whether the swine
49 are in a person's custody or control.

50 b. Estray swine.

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1 c. Swine which are produced or maintained to
2 provide persons with the opportunity to hunt the
3 swine.

4 2. Swine which are a public nuisance are subject
5 to a policy of eradication as administered by the
6 department of agriculture and land stewardship
7 pursuant to this chapter.

8 3. a. The department of agriculture and land
9 stewardship shall be the principal enforcement agency
10 charged with carrying out the policy.

11 b. The department of natural resources shall
12 cooperate with the department of agriculture and land
13 stewardship in carrying out the policy. The
14 authorized departments shall periodically consult
15 about how to most effectively contribute resources and
16 their respective expertise, and divide jurisdictional
17 responsibility, including the assignment of
18 investigative personnel where appropriate. However,
19 the department of natural resources shall regulate
20 hunting preserves under chapter 484B or 484C, and the
21 regulation of persons taking animals under Title XI,
22 subtitle 6.

23 c. The department of agriculture and land
24 stewardship shall cooperate with the animal and plant
25 health inspection service of the United States
26 department of agriculture, and may enter into
27 cooperative agreements with the animal and plant
28 health inspection service in order to carry out the
29 provisions of this chapter.

30 SUBCHAPTER II

31 FERAL SWINE

32 Sec. 3. NEW SECTION. 171.201 FINDINGS AND
33 DECLARATION.

34 1. The general assembly finds all of the
35 following:

36 a. Feral swine are known carriers of a variety of
37 diseases including but not limited to pseudorabies,
38 swine brucellosis, leptospirosis, and trichinosis
39 impacting upon this state's domestic livestock herds
40 and especially its domestic swine herds.

41 b. Feral swine carry diseases which may be
42 transmitted to human populations.

43 c. Feral swine disrupt native wildlife and destroy
44 native habitat.

45 d. Feral swine damage or destroy cropland and row
46 crops, including but not limited to corn and soybeans.

47 2. a. The general assembly declares that the
48 increased movement of feral swine into this state
49 presents an immediate and serious risk to the state's
50 economy, public health, and ecosystems.

1 b. The general assembly further declares that the
2 state establishes a policy to eradicate all feral
3 swine from this state with all possible speed.

4 Sec. 4. NEW SECTION. 171.202 FERAL SWINE
5 REPORTING SYSTEM -- PENALTY.

6 1. a. The department of agriculture and land
7 stewardship shall establish a feral swine reporting
8 system, in cooperation with the department of natural
9 resources. The system may include receipt of reports
10 by any of the following:

11 (1) Automated toll-free telephone number.

12 (2) Postcard.

13 (3) Electronic communication at an electronic
14 licensing location.

15 (4) Electronic communication to the department
16 including by the internet.

17 b. The department of natural resources shall
18 maintain a database of information collected by the
19 system which shall be made available to the department
20 of agriculture and land stewardship.

21 2. The system shall allow persons to conveniently
22 report the presence of a feral swine to an authorized
23 department. Either authorized department may conduct
24 the investigation or refer the report to the local
25 authority responsible for the prevention and detection
26 of crime in the jurisdiction where the swine is found.

27 3. a. The system shall provide for reports by
28 persons who have taken or injured feral swine in this
29 state. A person who has taken or injured feral swine
30 in this state shall report to an authorized department
31 within ten days after taking the swine. The report
32 shall include at least all of the following:

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

35 (2) The county and township where the feral swine
36 were taken or injured.

37 (3) The date when the feral swine were taken or
38 injured.

39 (4) The number of feral swine found by the person
40 on the date when the feral swine were taken or
41 injured.

42 b. A person who takes a feral swine shall retain
43 the feral swine or its carcass for examination by the
44 authorized department. The authorized department may
45 temporarily or permanently confiscate the carcass for
46 purposes of analysis including disease testing.

47 c. A person who does not report taking a feral
48 swine as required in this subsection is subject to a
49 civil penalty of not more than one hundred dollars.
50 The moneys collected by the department shall be

1 deposited into the general fund of the state.

2 Sec. 5. NEW SECTION. 171.203 PROHIBITIONS AND
3 PENALTY.

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

5 a. Move a feral swine into or within this state.

6 b. Release or allow the escape of feral swine from
7 the person's custody or control.

8 c. Acquire custody or control of a feral swine in
9 this state.

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

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

16 b. Upon conviction of violating subsection 1, a
17 court may, as part of the judgment, revoke or suspend
18 a license issued pursuant to chapter 481A or 483A for
19 any definite period of time.

20 Sec. 6. NEW SECTION. 171.204 MAINTAINING FERAL
21 SWINE -- INJUNCTIVE RELIEF.

22 A court may prevent and restrain a violation of
23 section 171.203 through the issuance of an injunction.
24 The attorney general or a county attorney shall
25 institute an action on behalf of the state to prevent
26 or restrain a violation of section 171.203.

27 Sec. 7. NEW SECTION. 171.205 MAINTAINING FERAL
28 SWINE -- STATE INVESTIGATORY AND LEGAL EXPENSES.

29 A person convicted of violating section 171.203 is
30 liable for all of the following:

31 1. The amount to indemnify the state or a local
32 authority for investigative and eradication expenses
33 incurred by the state or the local authority. The
34 amount of the indemnification shall not exceed ten
35 thousand dollars for each feral swine involved in the
36 violation. The amount paid for indemnification shall
37 be deposited in the general fund of the state.

38 However, if the investigation or eradication is not
39 conducted by an authorized department or other state
40 agency, the amount shall be paid to the local
41 authority which conducts the investigation or
42 eradication for deposit in the general fund of the
43 county or city, as the case requires.

44 2. If the attorney general or a county attorney is
45 the prevailing party in an action for a violation of
46 section 171.203, the prevailing party shall be awarded
47 court costs and reasonable attorney fees, which shall
48 be taxed as part of the costs of the action. If the
49 attorney general is the prevailing party, the moneys
50 shall be deposited in the general fund of the state.

1 If the county is the prevailing party, the moneys
2 shall be deposited in the general fund of the county.

3 Sec. 8. NEW SECTION. 171.206 MAINTAINING FERAL
4 SWINE -- STRICT LIABILITY -- ATTORNEY FEES.

5 If a person is convicted of violating section
6 171.203, the person is strictly liable for damages
7 caused to the property of another person. The person
8 who is the prevailing plaintiff in the case shall be
9 awarded court costs and reasonable attorney fees,
10 which shall be taxed as part of the costs of the
11 action.

12 Sec. 9. NEW SECTION. 171.207 TAKING OR CAPTURING
13 FERAL SWINE BY THE DEPARTMENT OR A LOCAL AUTHORITY.

14 An authorized department or local authority may
15 take or capture feral swine which are maintained on
16 land in violation of section 171.203, if one of the
17 following applies:

- 18 1. The landowner provides consent.
- 19 2. If the authorized department or local authority
20 has credible reason to believe that feral swine are on
21 land, the authorized department or local authority may
22 enter onto the land pursuant to a warrant issued by a
23 court, or otherwise enter onto the land in a manner
24 consistent with the laws of this state and the United
25 States, including Article I, section 8, of the
26 Constitution of the State of Iowa, or the fourth
27 amendment to the Constitution of the United States.

28 Sec. 10. NEW SECTION. 171.208 FERAL SWINE
29 INDEMNITY FUND.

30 1. A feral swine indemnity fund is created as a
31 separate fund in the state treasury under the control
32 of the department. The general fund of the state is
33 not liable for claims presented against the indemnity
34 fund.

35 2. The feral swine indemnity fund consists of any
36 moneys appropriated by the general assembly and any
37 other moneys available to and obtained or accepted by
38 the department from the federal government or private
39 sources for placement in the fund. Notwithstanding
40 section 12C.7, subsection 2, interest or earnings on
41 moneys deposited in the fund shall be credited to the
42 fund.

43 3. The moneys deposited in the feral swine
44 indemnity fund are appropriated to the department
45 exclusively for paying claims of persons who purchased
46 feral swine on or before the effective date of this
47 Act.

48 4. In order to be eligible to file a claim for
49 indemnification, a person shall do all of the
50 following:

1 a. File an application, including supporting
2 documentation, with the department as required by the
3 department pursuant to procedures established by the
4 department. The application shall state the amount of
5 the claim. The application shall be filed with the
6 department not later than September 30, 2006.

7 b. Relinquish custody or control of the feral
8 swine to an authorized department or a local
9 authority, as required by the department of
10 agriculture and land stewardship.

11 5. The department shall determine the validity of
12 a claim which is submitted by an eligible person as
13 part of the application for indemnification as
14 provided in this section. The dollar value of the
15 claim shall be based on a formula established by rule
16 and adopted by the department. The formula shall
17 provide for the payment of the fair market value of
18 the feral swine based on market prices paid for
19 similar swine according to categories or criteria
20 established by the department.

21 6. Upon a determination that the amount claimed in
22 a person's application is valid, the department shall
23 provide for payment of one hundred percent of the
24 amount claimed. The department shall pay all valid
25 claims not later than January 1, 2007. If the
26 department determines that there are insufficient
27 moneys in the feral swine indemnity fund to fully
28 satisfy the amounts claimed in valid applications
29 submitted by all eligible persons, the department
30 shall prorate the amount paid to all eligible persons.

31 7. A person's submission of an application under
32 this section constitutes a waiver of any further claim
33 by the person against the state regarding the feral
34 swine.

35 8. This section is repealed on July 1, 2007. Any
36 moneys remaining in the feral swine indemnity fund on
37 that date shall be distributed as follows:

38 a. The amount of moneys which were contributed to
39 the fund by persons other than a state or federal
40 government source shall be refunded to the respective
41 persons. If the department determines that there are
42 insufficient moneys in the fund to fully satisfy the
43 amounts for refunds to all persons, the department
44 shall prorate the amount of refunds paid to those
45 persons based on their contributions.

46 b. Any remaining moneys that were appropriated by
47 a state or federal government source shall be repaid
48 to that source. If the department determines that
49 there are insufficient moneys in the fund to fully
50 satisfy the amounts for repayments to these sources,

1 the department shall prorate the amounts repaid to
 2 those sources based on the amounts appropriated.
 3 9. This section does not imply any guarantee or
 4 obligation on the part of the state of Iowa, the
 5 department of agriculture and land stewardship, or any
 6 state agency, employee, or official, either elective
 7 or appointive.

8 SUBCHAPTER III
 9 ESTRAY SWINE

10 Sec. 11. NEW SECTION. 171.301 ORDINARY
 11 LIABILITY.

12 Nothing in this subchapter affects a responsible
 13 party's liability which arises out of estray swine and
 14 any remedies available to an injured party, as
 15 provided under statute, common law, or contract.

16 Sec. 12. NEW SECTION. 171.302 TAKING OR
 17 CAPTURING ESTRAY SWINE BY THE DEPARTMENT OR A LOCAL
 18 AUTHORITY.

19 An authorized department or local authority may
 20 take or capture estray swine on public land. An
 21 authorized department or local authority may take or
 22 capture estray swine on land other than public land if
 23 one of the following applies:

- 24 1. The landowner provides consent.
- 25 2. If the authorized department or local authority
 26 has credible reason to believe that estray swine are
 27 on land, the authorized department or local authority
 28 may enter onto the land pursuant to a warrant issued
 29 by a court, or otherwise enter onto the land in a
 30 manner consistent with the laws of this state and the
 31 United States, including Article I, section 8, of the
 32 Constitution of the State of Iowa, or the fourth
 33 amendment to the Constitution of the United States.

34 Sec. 13. NEW SECTION. 171.303 TAKING OF ESTRAY
 35 SWINE BY A PERSON OTHER THAN THE DEPARTMENT OR A LOCAL
 36 AUTHORITY -- CRIMINAL PENALTY.

37 A person other than an authorized department or a
 38 local authority may take estray swine only as provided
 39 in this section.

- 40 1. The person may take the estray swine at any
 41 time regardless of whether the person has been issued
 42 a license under chapter 483A, unless a person's
 43 hunting license has been suspended or revoked as
 44 provided in chapter 481A, including but not limited to
 45 section 481A.134, or chapter 483A, including but not
 46 limited to section 483A.21.

- 47 2. a. The person shall not take or capture estray
 48 swine on public land unless in compliance with
 49 regulations adopted by rule of the department of
 50 natural resources or an ordinance of the local

1 authority that is responsible for the public land.

2 b. The person shall not take or capture stray
3 swine on land other than public land unless the
4 landowner provides consent.

5 3. A person who violates this section is guilty of
6 a simple misdemeanor. A person is guilty of a
7 separate offense for each stray swine which is the
8 subject of violation.

9 SUBCHAPTER IV
10 HUNTING

11 Sec. 14. NEW SECTION. 171.401 HUNTS AND SCHEDULE
12 OF HUNTS -- PENALTY.

13 1. Except as provided in subsection 2, a person
14 maintaining custody or control of swine shall not
15 provide persons with the opportunity to hunt the
16 swine.

17 2. a. A person maintaining custody or control of
18 swine shall not provide for a hunt of the swine if the
19 person sold or offered to sell the hunt, or scheduled
20 a date or time for the hunt, on or after April 15,
21 2006.

22 b. A person maintaining custody or control of
23 swine who provides persons with the opportunity to
24 hunt the swine shall report the schedule of all hunts
25 of the swine to the department not later than May 15,
26 2006, according to procedures required by the
27 department.

28 c. This subsection is repealed on July 1, 2007.

29 3. A person who violates this section is subject
30 to a civil penalty of not more than one thousand
31 dollars. The amount of civil penalties collected by
32 the department shall be deposited in the general fund
33 of the state.

34 Sec. 15. NEW SECTION. 171.402 TAKING OR
35 CAPTURING SWINE BY THE DEPARTMENT OR A LOCAL
36 AUTHORITY.

37 An authorized department or local authority may
38 take or capture swine which are maintained on land in
39 violation of section 171.401 if one of the following
40 applies:

41 1. The landowner provides consent.

42 2. If the authorized department or local authority
43 has credible reason to believe that swine are on land,
44 the authorized department or local authority may enter
45 onto the land pursuant to a warrant issued by a court,
46 or otherwise enter onto the land in a manner
47 consistent with the laws of this state and the United
48 States, including Article I, section 8, of the
49 Constitution of the State of Iowa, or the fourth
50 amendment to the Constitution of the United States.

1 Sec. 16. Section 170.6, Code 2005, is amended by
2 adding the following new subsection:

3 NEW SUBSECTION. 3. The department shall revoke a
4 fence certification issued pursuant to section 170.4
5 or disapprove a person's application for the
6 certification of a fence pursuant to that section for
7 a period of three years if the person violates a
8 provision of section 171.203 or 171.401.

9 Sec. 17. Section 484B.13, Code 2005, is amended to
10 read as follows:

11 484B.13 ~~LICENSE REFUSAL~~ DISCIPLINARY ACTION.

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

21 2. The department shall revoke a person's hunting
22 preserve operator's license issued pursuant to section
23 484B.4, or disapprove a person's application for a
24 hunting preserve operator's license issued under that
25 section for a period of three years if the person
26 violates a provision of section 171.203 or 171.401.

27 Sec. 18. Section 484C.13, Code Supplement 2005, is
28 amended by adding the following new subsection:

29 NEW SUBSECTION. 4. The department shall revoke a
30 fence certification issued pursuant to section 484C.6
31 or disapprove a person's application for the
32 certification of a fence issued pursuant to that
33 section for a period of three years if the person
34 violates a provision of section 171.203 or 171.401.

35 Sec. 19. ADOPTION OF RULES. The department of
36 agriculture and land stewardship shall adopt all rules
37 necessary to administer this Act by July 1, 2006. If
38 the department adopts the rules pursuant to section
39 17A.4, subsection 2, and section 17A.5, subsection 2,
40 it shall immediately readopt the rules as provided in
41 section 17A.4, subsection 1, and section 17A.5,
42 subsection 1.

43 Sec. 101. CONTINGENT EFFECTIVE DATE. Section
44 171.208, as enacted in this Act, takes effect upon the
45 appropriation of moneys into the feral swine indemnity
46 fund by July 1, 2006.

47 Sec. 20. EFFECTIVE DATE. Except as provided in
48 section 101 of this Act, this Act, being deemed of
49 immediate importance, takes effect upon enactment."

50 2. Title page, line 1, by striking the word

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1 "and".

2 3. Title page, line 2, by inserting after the
3 word "penalties" the following: ", and providing an
4 effective date".

5 4. By renumbering as necessary.

By THOMAS G. COURTNEY

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