

House File 2281 - Introduced

HOUSE FILE 2281

BY STAED, CROKEN, AMOS JR.,
LEVIN, KURTH, STECKMAN,
MADISON, KRESSIG,
BROWN-POWERS, GAINES,
ABDUL-SAMAD, and JACOBY

A BILL FOR

1 An Act providing that an animal feeding operation constitutes a
2 per se interference with the comfortable use and enjoyment
3 of life or property of a person residing in proximity to the
4 animal feeding operation.

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

1 Section 1. Section 657.11, subsection 2, Code 2024, is
2 amended to read as follows:

3 2. a. An animal feeding operation, as defined in section
4 459.102, shall not be found to be a public or private nuisance
5 under this chapter or under principles of common law, and the
6 animal feeding operation shall not be found to interfere with
7 ~~another person's~~ comfortable use and enjoyment of ~~the person's~~
8 life or property under any other cause of action brought by a
9 person.

10 b. However, this section shall not apply if the person
11 bringing the cause of action proves ~~that~~ any of the following:

12 (1) That an injury to the person or damage to the person's
13 property is proximately caused by either of the following:

14 ~~a.~~ (a) The failure to comply with a federal statute or
15 regulation or a state statute or rule which applies to the
16 animal feeding operation.

17 ~~b.~~ (b) Both of the following:

18 (1) (i) The animal feeding operation unreasonably and
19 for substantial periods of time interferes with the person's
20 comfortable use and enjoyment of the person's life or property.

21 (2) (ii) The animal feeding operation failed to use
22 existing prudent generally accepted management practices
23 reasonable for the operation.

24 (2) The animal feeding operation constitutes a per se
25 interference with the comfortable use and enjoyment of life or
26 property of the person bringing the cause of action as provided
27 in section 657.12.

28 Sec. 2. Section 657.11A, subsection 5, Code 2024, is amended
29 to read as follows:

30 5. This section shall not apply ~~if the~~ under any of the
31 following circumstances:

32 a. The person bringing the action proves that the public
33 or private nuisance or interference with ~~another~~ the person's
34 comfortable use and enjoyment of the person's life or property
35 under any ~~other~~ cause of action is proximately caused by any

1 of the following:

2 ~~a.~~ (1) The failure to comply with a federal statute or
3 regulation or a state statute or rule which applies to the
4 animal feeding operation.

5 ~~b.~~ (2) The failure to use existing prudent generally
6 utilized management practices reasonable for the animal feeding
7 operation.

8 b. The animal feeding operation constitutes a per se
9 interference with the comfortable use and enjoyment of life or
10 property of the person bringing the cause of action as provided
11 in section 657.12.

12 Sec. 3. NEW SECTION. 657.12 Animal agriculture — promotion
13 of responsible animal feeding operations — per se interference.

14 1. An animal feeding operation constitutes a per se
15 interference with the comfortable use and enjoyment of life
16 or property of a person residing within one mile of an animal
17 feeding operation as defined in section 459.102, if all of the
18 following apply:

19 a. It is more likely than not that the animal feeding
20 operation is the source of the odor.

21 b. An odor measurement is taken by an official of the
22 department of natural resources who has successfully completed
23 a department-sponsored odor certification course and has
24 demonstrated the ability to distinguish various odor samples
25 and concentrations. The departmental official shall use a
26 properly maintained scentometer, an odor panel, or another
27 instrument or method approved by the department. The odor
28 measurement must comply with ASTM E679-04 standards and shall
29 be taken at a location within fifty feet the person's residence
30 closest to the animal feeding operation.

31 c. The departmental official measures seven odor
32 concentration units or higher when conducting an odor
33 measurement on five different days during normal conditions in
34 a two-month period from May 1 to September 30.

35 d. The departmental official certifies the results of the

1 odor measurement.

2 2. The department shall not conduct an odor measurement on
3 the same property more than ten times in any twenty-four-month
4 period.

5 3. All distances shall be measured from their closest
6 points.

7 4. The department shall report the finding and results of
8 any odor measurement to the person residing at the residence
9 and the owner or operator of the animal feeding operation. The
10 owner or operator may contest the certification as a contested
11 case proceeding under chapter 17A. The department shall report
12 any certification on its internet site.

13 EXPLANATION

14 The inclusion of this explanation does not constitute agreement with
15 the explanation's substance by the members of the general assembly.

16 BACKGROUND. This bill provides for a cause of action against
17 an animal feeding operation (AFO) based on odor originating
18 from the operation. An animal feeding operation refers to a
19 place where agricultural animals (e.g., horses, cattle, swine,
20 sheep, goats, turkeys, poultry, and fish) are confined, fed,
21 and maintained for 45 days or more in any 12-month period
22 without supporting vegetation and includes confinement feeding
23 operations (Code chapter 459) and open feedlot operations
24 (Code chapter 459A). The doctrine of nuisance has been
25 developed by the common law but in Iowa is also set forth by
26 general statute (Code chapter 657). Under both sources of
27 law, a cause of action may be brought by a plaintiff based
28 on an allegation that the defendant is interfering with the
29 plaintiff's comfortable use and enjoyment of life or property.
30 The Code chapter includes two special provisions applicable to
31 that cause of action involving an AFO. Generally, in order to
32 proceed with a cause of action in that case, the plaintiff must
33 prove that that owner or operator of the AFO either violated
34 applicable federal or state law or failed to use existing
35 prudent, generally accepted management practices reasonable for

1 the operation (Code section 657.11). In addition, compensatory
2 damages in such an action are limited to (1) the diminution
3 in the fair market value of a person's real property; (2) the
4 adverse effect on a person's past, present, and future health
5 condition based on objective and documented medical evidence;
6 and (3) special damages such as annoyance and the loss of the
7 comfortable use and enjoyment of real property not to exceed
8 one and one-half times the damages awarded for the diminution
9 of the fair market value of the person's real property and the
10 person's adverse health condition (Code section 657.11A).

11 BILL'S PROVISIONS. The bill carves out an exception from
12 those statutory protections afforded to an AFO when the cause
13 of action is based on odor. The bill provides that in such a
14 case, an AFO constitutes a per se nuisance if the plaintiff
15 proves four elements. First, the plaintiff's residence must
16 be located within one mile of the AFO. Second, it must be more
17 likely than not that the AFO is the source of odor. Third,
18 an official from the department of natural resources (DNR)
19 must take an odor measurement using standardized equipment
20 and procedures at a specific location near the plaintiff's
21 residence at a point closest to the AFO. Finally, the DNR
22 official must measure seven concentration units or higher of
23 the odor on five different occasions during normal seasonal
24 conditions during a 2-month period from May 1 until September
25 30.

26 The DNR cannot conduct an odor measurement at the same
27 property more than 10 times in any 24-month period. The DNR
28 must report the finding and results of any odor measurement
29 to the person residing at the residence and the owner or
30 operator of the AFO. The owner or operator may contest the
31 certification as a contested case proceeding under Code chapter
32 17A.