

Senate File 2413 - Reprinted

SENATE FILE 2413

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO SF 2387)

(SUCCESSOR TO SSB 3172)

(As Amended and Passed by the Senate June 5, 2020)

A BILL FOR

1 An Act relating to agriculture and food, including the
2 powers and duties of the department of agriculture and
3 land stewardship, providing penalties, making penalties
4 applicable, and including effective date provisions.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

ANIMAL HEALTH

Section 1. NEW SECTION. **163.2A Part — definitions.**

As used in this part, unless the context otherwise requires:

1. "Animal" means any livestock or agricultural animal as defined in section 717A.1.

2. "Interested person" means the owner of an animal; a person caring for the animal, if different from the owner of the animal; or a person holding a perfected agricultural lien or security interest in the animal under chapter 554.

Sec. 2. Section 163.3, Code 2020, is amended to read as follows:

163.3 Veterinary and special assistants.

The secretary or the secretary's designee may appoint one or more veterinarians licensed pursuant to chapter 169 in each county as assistant veterinarians. The secretary may also appoint ~~such~~ one or more special assistants as may be necessary in cases of emergency, including as provided in section 163.3A.

Sec. 3. Section 163.3A, subsection 1, Code 2020, is amended to read as follows:

1. The department may provide veterinary emergency preparedness and response services necessary to prevent or control a serious threat to the public health, public safety, or the state's economy caused by the transmission of disease among ~~livestock as defined in section 717.1 or agricultural animals as defined in section 717A.1.~~ The services may include measures necessary to ensure that all such animals carrying disease are properly identified, segregated, treated, or destroyed as provided in this Code.

Sec. 4. Section 163.3C, subsection 1, Code 2020, is amended by striking the subsection.

Sec. 5. Section 163.3C, subsection 2, unnumbered paragraph 1, Code 2020, is amended to read as follows:

The department shall develop and establish a foreign animal disease preparedness and response strategy for use by the

1 department in order to prevent, control, or eradicate the
2 transmission of foreign animal diseases among populations
3 of livestock animals. The strategy may be part of the
4 department's veterinary emergency preparedness and response
5 services as provided in [section 163.3A](#). The strategy shall
6 provide additional expertise and resources to increase
7 biosecurity efforts that assist in the prevention of a foreign
8 animal disease outbreak in this state. In developing and
9 establishing the strategy, the department shall consult with
10 interested persons including but not limited to the following:

11 Sec. 6. Section 163.3C, subsection 3, Code 2020, is amended
12 to read as follows:

13 3. The department shall implement the foreign animal
14 disease preparedness and response strategy if necessary to
15 prevent, control, or eradicate the transmission and incidence
16 of foreign animal diseases that may threaten or actually
17 threaten livestock animals in this state. In implementing
18 the strategy, the department may utilize emergency response
19 measures as otherwise required under [section 163.3A](#). The
20 department may but is not required to consult with interested
21 persons when implementing the strategy.

22 Sec. 7. NEW SECTION. 163.3D **Emergency measures — abandoned**
23 **animals — authorization and seizure.**

24 1. *a.* The department may seize one or more abandoned
25 animals pursuant to an authorization providing emergency
26 measures to prevent or control the transmission of an
27 infectious or contagious disease among any population or
28 species of animals.

29 *b.* The authorization must be any of the following:

30 (1) A declaration or proclamation issued by the governor
31 pursuant to chapter 29C, including as provided in section
32 163.3A.

33 (2) An order issued by the secretary or the secretary's
34 designee pursuant to a provision in this subtitle.

35 (3) Any other provision of law in this subtitle that

1 requires the department to control the transmission of an
2 infectious or contagious disease among a population or species
3 of animals in this state.

4 *c.* If there is a conflict between a measure authorized to
5 be taken under paragraph "a", that is less restrictive than the
6 standards or procedures provided in this section, the measures
7 authorized to be taken under paragraph "a" shall prevail.

8 2. The department may appoint veterinary assistants or
9 special assistants as provided in section 163.3 as required to
10 administer this section.

11 3. It is presumed that an abandoned animal belonging to a
12 species subject to emergency measures as provided in subsection
13 1 has been exposed to an infectious or contagious disease as
14 provided in the authorization.

15 4. As part of the seizure of an abandoned animal, the
16 department may take, impound, and retain custody of the animal,
17 including by maintaining the animal in a manner and at a
18 location determined by the department to be reasonable under
19 the emergency circumstances. The department may take action as
20 provided in this subtitle to ensure that all animals exposed to
21 an infectious or contagious disease are properly identified,
22 tested, segregated, treated, or destroyed as provided in this
23 subtitle.

24 5. *a.* The department may seize an animal if the department
25 has a reasonable suspicion the animal has been abandoned,
26 including by entering onto public or private property or into a
27 private motor vehicle, trailer, or semitrailer parked on public
28 or private property, as provided in this subsection.

29 *b.* The department may enter onto private property or into
30 a private motor vehicle, trailer, or semitrailer to seize an
31 abandoned animal if the department obtains a search warrant
32 issued by a court, or enters onto the premises in a manner
33 consistent with the laws of this state and the United States,
34 including Article I, section 8, of the Constitution of the
35 State of Iowa, or the fourth amendment to the Constitution of

1 the United States.

2 *c.* An abandoned animal shall only be seized by the
3 department pursuant to the following conditions:

4 (1) The department provides written notice of its
5 abandonment determination to all reasonably identifiable
6 interested persons. The department shall make a good-faith
7 effort to provide the notice to interested persons by regular
8 mail, hand delivery, telephone, electronic mail, or other
9 reasonable means. The notice shall include all of the
10 following:

11 (a) The name and address of the department.

12 (b) A description of the animal subject to seizure.

13 (c) The delivery date of the notice.

14 (d) A statement informing the interested person that the
15 animal may be seized pursuant to this chapter within one day
16 following the delivery date of the notice. The statement
17 must specify a date, time, and location for delivery of the
18 interested person's response designated by the department, as
19 provided in this subsection.

20 (e) A statement informing the interested person that in
21 order to avoid seizure of the animal, the person must respond
22 to the notice in writing, stating that the animal has not been
23 abandoned and identifying what measures are being taken to care
24 for and manage the animal.

25 (2) Notwithstanding subparagraph (1), if the department
26 determines that it is not feasible to provide direct notice
27 of its abandonment determination to an interested person,
28 the department shall deliver a constructive notice of the
29 determination to that person by any reasonable manner, which
30 may include posting the notice at or near the place where
31 the animal is located. The department shall also post the
32 constructive notice on the department's internet site.

33 *d.* The department may seize the animal if the department
34 fails to receive a written response by the interested person by
35 the end of normal office hours of the next day the department

1 is available to receive the response after written notice of
2 the department's abandonment determination is delivered.

3 e. Upon a determination by the department that exigent
4 circumstances exist, the department may enter onto private
5 property without a warrant and may seize an abandoned animal,
6 in a manner consistent with the laws of this state and
7 the United States, including Article I, section 8, of the
8 Constitution of the State of Iowa, or the fourth amendment to
9 the Constitution of the United States.

10 6. If an animal is seized pursuant to this section, the
11 department shall post a notice in a conspicuous place at the
12 location where the animal was seized. The notice shall state
13 the animal has been seized by the department pursuant to this
14 section and at least briefly describe where and when the animal
15 was seized, the species and number of animals seized, and that
16 a dispositional proceeding is to be conducted pursuant to
17 section 163.3E.

18 Sec. 8. NEW SECTION. 163.3E **Emergency measures — abandoned**
19 **animals — dispositional proceeding.**

20 1. a. The department shall file a petition with the
21 district court for the disposition of an animal seized pursuant
22 to section 163.3D as soon as practicable.

23 b. The court shall notify the department and all interested
24 persons of the dispositional proceeding in a manner determined
25 reasonable by the court. The court shall hear the matter
26 within twenty-four hours from the time the department's
27 petition is filed. The court may grant a continuance by a
28 motion of the department or upon petition by an interested
29 person. However, the interested person shall post a bond or
30 other security with the department in an amount determined by
31 the court, which shall not be more than the amount sufficient
32 to provide for the maintenance of the animal for the duration
33 of the continuance.

34 2. Upon a determination by the department that exigent
35 circumstances exist, the dispositional proceeding may be

1 conducted by an administrative law judge in the same manner
2 as an emergency adjudicative proceeding pursuant to section
3 17A.18A. The administrative law judge shall notify the
4 department and all interested persons of the dispositional
5 proceeding in a manner determined reasonable by the
6 administrative law judge given the circumstances in the case.
7 The procedures provided in this section may be supplemented
8 or modified by a declaration or proclamation issued by the
9 governor or an order issued by the secretary or the secretary's
10 designee pursuant to section 163.3D.

11 3. a. A court or administrative law judge shall issue an
12 order for the disposition of the animal after making any of the
13 following determinations:

14 (1) That no interested person holds a legal interest in
15 the seized animal. In that case, the animal shall be deemed
16 abandoned and the order shall extinguish all prior legal
17 interests in the animal. The order shall grant an undivided
18 ownership interest in the animal free from any security
19 interest or other agricultural lien or encumbrance to the
20 department.

21 (2) That an interested person holds a legal interest in
22 the seized animal, and the department has reasonable suspicion
23 to believe that the animal has been exposed to an infectious
24 or contagious disease. In that case, the order shall provide
25 for the disposition of the animal in the same manner as if the
26 department had identified the animal as having been exposed to
27 the infectious or contagious disease under the authorization
28 provided in section 163.3D.

29 (3) That a person holds a legal interest in the seized
30 animal, and there is no reasonable suspicion that the seized
31 animal has been exposed to an infectious or contagious disease.
32 In that case, the order shall direct the department to transfer
33 custody of the animal to the interested person. In the event
34 the animal is returned to the interested person, the department
35 shall not be subject to any claim for damages caused by the

1 seizure if the department's actions were taken pursuant to
2 the department's emergency efforts to establish and maintain
3 quarantine in response to a disease outbreak, as set forth in
4 section 669.14, subsection 3.

5 *b.* A reasonable suspicion asserted by the department may
6 be based on any credible evidence that shows the animal's
7 possible exposure to an infectious or contagious disease or the
8 animal was abandoned. This paragraph "b" does not require the
9 department to conduct a test of an animal to determine whether
10 an animal has been exposed.

11 *c.* If two or more interested parties may be transferred
12 custody of an animal by the department pursuant to paragraph
13 "a", subparagraph (3), the court or administrative law judge
14 shall order the department to transfer the animal to the owner
15 or otherwise to the interested person best able to care for the
16 animal without prejudicing the rights of any other interested
17 person. However, in any cause of action brought by an
18 interested person contesting the order to transfer under this
19 subsection, the department shall not be included as a party.

20 4. *a.* In a dispositional proceeding conducted by a court or
21 administrative law judge under this section, or in a separate
22 cause of action brought by the department against an interested
23 person, the court or administrative law judge may award the
24 department all of the following:

25 (1) An amount necessary to reimburse the department for
26 expenses incurred in seizing and maintaining an abandoned
27 animal as well as any costs for the disposition of the
28 abandoned animal.

29 (2) Expenses related to the investigation and adjudication
30 of the case.

31 *b.* In a dispositional proceeding conducted by a court under
32 this section, or in a separate cause of action brought by the
33 department against an interested person, the court may award
34 the department court costs and reasonable attorney fees.

35 *c.* An award ordered under this subsection shall be paid

1 by an interested party who is transferred a seized animal by
2 the court or administrative law judge, or the owner of the
3 seized animal as determined by the court or administrative law
4 judge. The amount awarded the department shall be subtracted
5 from the proceeds, if any, received by the department from the
6 disposition of the animal. Any amount awarded by a court shall
7 be taxed as part of the costs of the cause of action.

8 *d.* If more than one interested person holds a legal interest
9 in the animal, the court or administrative law judge shall
10 calculate the respective contributions of the interested
11 persons based upon the percentage of legal interest in the
12 seized animal held by each interested person. The amount paid
13 to the department shall be sufficient to allow the department
14 to repay the livestock remediation fund as provided in section
15 459.501 and fully reimburse the department for all costs, fees,
16 and expenses incurred by the department under this section.

17 **Sec. 9. NEW SECTION. 163.3F Interference with official**
18 **acts.**

19 1. A person shall not interfere with an official act of the
20 department taken in the performance of a duty to prevent or
21 control the transmission of an infectious or contagious disease
22 among a population or species of animals, if the official act
23 is authorized as part of any of the following:

24 *a.* A veterinary emergency preparedness and response service
25 pursuant to section 163.3A.

26 *b.* A foreign animal disease preparedness and response
27 strategy pursuant to section 163.3C.

28 *c.* An emergency measure pursuant to section 163.3D or
29 163.3E.

30 2. Under this section, an official act of the department
31 may be performed by a departmental employee, or a veterinary or
32 special assistant appointed pursuant to section 163.3.

33 **Sec. 10. NEW SECTION. 163.33 Feral swine.**

34 1. "*Feral swine*" means any swine running at large.

35 2. A person shall not knowingly release swine to become

1 feral swine.

2 3. Upon discovery of feral swine on public or private
3 property, the department may destroy or order the destruction
4 of the feral swine. However, the department shall not destroy
5 the feral swine or order the feral swine's destruction, unless
6 the department concludes, after conducting a reasonable inquiry
7 in the area where the feral swine is located, that the feral
8 swine's ownership cannot be determined. The department may
9 call upon a peace officer or appropriate state or federal
10 agency, including but not limited to the department of natural
11 resources or the department of public safety, to enforce this
12 section as set forth in section 159.16.

13 4. A person may destroy feral swine if the feral swine is
14 on the person's property or is damaging the person's personal
15 property. The person shall immediately notify the department
16 of the destruction of the feral swine and allow for possible
17 testing of the feral swine by the department.

18 5. This section shall not be construed to limit the powers
19 of the department otherwise granted by law.

20 Sec. 11. Section 163.61, subsection 3, Code 2020, is amended
21 by adding the following new paragraph:

22 NEW PARAGRAPH. c. A person who interferes with an official
23 act as provided in section 163.3F shall be subject to a civil
24 penalty of at least one hundred dollars but not more than ten
25 thousand dollars. In the case of a continuing violation,
26 each day of the continuing violation is a separate violation.
27 However, a person shall not be subject to a civil penalty
28 totaling more than two hundred fifty thousand dollars arising
29 out of the same violation.

30 Sec. 12. Section 459.501, subsection 3, paragraph a, Code
31 2020, is amended by adding the following new subparagraph:

32 NEW SUBPARAGRAPH. (3) (a) To allocate moneys to the
33 department of agriculture and land stewardship for the payment
34 of expenses incurred by the department of agriculture and land
35 stewardship associated with all of the following:

1 (i) Providing for seizure of animals pursuant to sections
2 169.3D and 169.3E.

3 (ii) Court costs, reasonable attorney fees, and expenses
4 related to the investigation and prosecution of the case
5 arising from the seizure of animals.

6 (b) The department of natural resources shall allocate
7 any amount of unencumbered and unobligated moneys demanded in
8 writing by the department of agriculture and land stewardship
9 as provided in this subparagraph. The department of natural
10 resources shall complete the allocation upon receiving the
11 demand.

12 (c) The department of agriculture and land stewardship
13 shall repay the fund any amount received from an interested
14 person pursuant to an order by a court in a dispositional
15 proceeding conducted pursuant to section 163.3E.

16 Sec. 13. REPEAL. Section 166D.3, Code 2020, is repealed.

17 Sec. 14. CODE EDITOR DIRECTIVE.

18 1. The Code editor is directed to make the following
19 transfer:

20 Section 163.3 to section 163.3G.

21 2. The Code editor shall correct internal references in the
22 Code and in any enacted legislation as necessary due to the
23 enactment of this section.

24 Sec. 15. CODE EDITOR DIRECTIVE. The Code editor shall
25 divide chapter 163, subchapter I, into parts, including
26 sections 163.1 and 163.2 as part A, sections 163.2A through
27 163.5, including sections amended or enacted as provided in
28 this division of this Act, as part B, and sections 163.6
29 through 163.25 as part C.

30 Sec. 16. EFFECTIVE DATE. This division of this Act, being
31 deemed of immediate importance, takes effect upon enactment.

32 DIVISION II

33 FOOD OPERATION TRESPASS

34 Sec. 17. NEW SECTION. 716.7A Food operation trespass.

35 1. As used in this section, unless the context otherwise

1 requires:

2 *a.* "Apiary" and "bee" mean the same as defined in section
3 160.1A.

4 *b.* "Food animal" means an animal belonging to the bovine,
5 caprine, ovine, or porcine species; farm deer as defined in
6 section 170.1; turkeys, chickens, or other poultry; fish or
7 other aquatic organisms confined in private waters for human
8 consumption; or bees.

9 *c.* "Food establishment", "food processing plant", and
10 "farmers market" mean the same as defined in section 137F.1.

11 *d.* "Food operation" means any of the following:

12 (1) A location where a food animal is produced, maintained,
13 or otherwise housed or kept, or processed in any manner.

14 (2) A location other than as described in subparagraph (1)
15 where a food animal is kept, including an apiary, livestock
16 market, vehicle or trailer attached to a vehicle, fair,
17 exhibition, or a business operated by a person licensed to
18 practice veterinary medicine pursuant to chapter 169.

19 (3) A location where a meat food product, poultry product,
20 milk or milk product, eggs or an egg product, aquatic product,
21 or honey is prepared for human consumption, including a food
22 processing plant, a slaughtering establishment operating under
23 the provisions of 21 U.S.C. §451 et seq. or 21 U.S.C. §601
24 et seq.; or a slaughtering establishment subject to state
25 inspection as provided in chapter 189A.

26 (4) A food establishment or farmers market that sells or
27 offers for sale a meat food product, poultry product, milk
28 or milk product, eggs or an egg product, aquatic product, or
29 honey.

30 *e.* "Meat food product", "poultry product", and "prepared"
31 mean the same as defined in section 189A.2.

32 2. A person commits food operation trespass by entering
33 or remaining on the property of a food operation without the
34 consent of a person who has real or apparent authority to allow
35 the person to enter or remain on the property.

1 3. Subsection 2 does not apply to any of the following:

2 a. A person entering a right-of-way, if the person has not
3 been notified or requested by posted signage or other means to
4 abstain from entering onto the right-of-way or to vacate the
5 right-of-way.

6 b. A person having lawful authority to enter onto the
7 property of the food operation, including but not limited to a
8 federal, state, or local government official.

9 c. A person who is given express permission by the owner of
10 the food operation to enter onto or remain on the property of
11 the food operation.

12 d. A person employed by a food operation while acting in the
13 course of employment.

14 Sec. 18. Section 716.8, Code 2020, is amended by adding the
15 following new subsection:

16 NEW SUBSECTION. 8. a. For a first offense, a person who
17 commits food operation trespass as provided in section 716.7A
18 is guilty of an aggravated misdemeanor.

19 b. For a second or subsequent offense, a person who commits
20 food operation trespass as provided in section 716.7A is guilty
21 of a class "D" felony.

22 Sec. 19. EFFECTIVE DATE. This division of this Act, being
23 deemed of immediate importance, takes effect upon enactment.