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)

= New Language by the Senate

* = Language Stricken by the Senate

A BILL FOR

An Act relating to agriculture and food, including the powers and duties of the department of agriculture and land stewardship, providing penalties, making penalties applicable, and including effective date provisions.

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

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

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

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

3. The department shall implement the foreign animal disease preparedness and response strategy if necessary to prevent, control, or eradicate the transmission and incidence of foreign animal diseases that may threaten or actually threaten ~~livestock~~ animals in this state. In implementing the strategy, the department may utilize emergency response measures as otherwise required under section 163.3A. The department may but is not required to consult with interested persons when implementing the strategy.

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

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

b. The authorization must be any of the following:

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

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

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

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

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

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

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

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

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

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

the United States.

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

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

(a) The name and address of the department.

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

(c) The delivery date of the notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. An award ordered under this subsection shall be paid

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

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

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

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

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

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

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

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

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

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

2. A person shall not knowingly release swine to become

feral swine.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 14. CODE EDITOR DIRECTIVE.

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

Section 163.3 to section 163.3G.

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

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

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

DIVISION II

FOOD OPERATION TRESPASS

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

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

requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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