

CHAPTER 1089

COMMUNICABLE DISEASES AFFECTING POULTRY — PATHOGENIC VIRUSES

H.F. 2476

AN ACT regulating transmissible viruses afflicting poultry, making an appropriation, and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 163.2, unnumbered paragraph 1, Code 2003, is amended to read as follows:

For the purpose of this chapter, infectious and contagious diseases shall be deemed to ~~embrace~~ include glanders, farcy, maladie du coit (dourine), anthrax, foot and mouth disease, scabies, hog cholera, swine dysentery, tuberculosis, brucellosis, vesicular exanthema, scrapie, rinderpest, ovine foot rot, avian influenza or Newcastle disease as provided in chapter 165B, or any other communicable disease so designated by the department.

Sec. 2. NEW SECTION. 165B.1 DEFINITIONS.

1. "Concentration point" means a location or facility where poultry originating from the same or different sources are assembled for any purpose. However, a concentration point does not include an animal feeding operation as defined in section 459.102 if the poultry are provided care and feeding for purposes of egg production or slaughter.

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

3. "Law enforcement officer" means an Iowa state patrol officer or a regularly employed member of a police force of a city or county, including but not limited to a sheriff's office, who is responsible for the prevention and detection of a crime and the enforcement of the criminal laws of this state.

4. "Manure" means the same as defined in section 459.102.

5. "Pathogenic virus" means any of the following:

a. A recognized serotype of the virus avian paramyxovirus which is classified as a velogenic or mesogenic strain of that virus and which may be transmitted to poultry.

b. A recognized serotype of the virus commonly referred to as avian influenza which may be transmitted to poultry.

6. "Poultry" means domesticated fowl which are chickens, ducks, or turkeys.

7. "Separate and apart" means to hold poultry so that neither the poultry nor organic material originating from the poultry has physical contact with other animals.

8. "Slaughtering establishment" means a slaughtering establishment operated under the provisions of the federal Meat Inspection Act, 21 U.S.C. § 601 et seq., or a slaughtering establishment that has been inspected by the state.

Sec. 3. NEW SECTION. 165B.2 ADMINISTRATION AND ENFORCEMENT.

1. a. The provisions of this chapter, including departmental rules adopted pursuant to this chapter, shall be administered and enforced by the department. The department shall establish, by rule, civil penalties which may be administratively or judicially assessed. The department may impose, assess, and collect the civil penalties. The attorney general or county attorney may bring a judicial action or prosecution necessary to enforce the provisions of this chapter.

b. The department shall retain moneys from civil penalties that it collects under this chapter. The moneys are appropriated to the department for the administration and enforcement of this chapter. Notwithstanding section 8.33, such moneys shall not revert, but shall be retained by the department for the purposes described in this paragraph. The department shall

submit a report to the chairpersons of the joint appropriations subcommittee on agriculture and natural resources by January 5 of each year. The report shall state, at a minimum, the total amount of moneys collected during the past calendar year and describe how these moneys were expended.

2. The provisions of this chapter do not limit the authority of the department, another state agency, or a political subdivision to regulate or bring an enforcement action against a person based on another provision of law, including but not limited to provisions in chapter 163, 717B, or 717D.

Sec. 4. NEW SECTION. 165B.3 DETERMINATION OF INFECTION.

The department may adopt rules if necessary to provide methods and procedures to determine whether poultry are infected with a pathogenic virus, which may include detection and analysis of the disease using techniques approved by the United States department of agriculture.

Sec. 5. NEW SECTION. 165B.4 INFECTED AND EXPOSED POULTRY — CIVIL PENALTY — INJUNCTIVE RELIEF.

1. A person who is the owner or custodian of poultry infected with or exposed to a pathogenic virus shall keep the poultry separate and apart, and shall dispose of infected or exposed poultry in accordance with requirements of the department. The person shall ensure the premises where such poultry are kept are sanitized as required by the department. The person shall dispose of the poultry carcasses, eggs, or manure as provided by the department.

2. A person who violates this section is subject to a civil penalty of at least one hundred dollars but not more than one thousand dollars, as determined by the department. 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 twenty-five thousand dollars.

3. The department may seek injunctive relief as provided in section 163.62.

Sec. 6. NEW SECTION. 165B.5 RESTRICTED CONCENTRATION POINTS — CIVIL PENALTIES.

1. A person shall not operate a restricted concentration point. A restricted concentration point includes, but is not limited to, all of the following:

a. A concentration point where poultry are sold, bartered, or offered for sale or barter, if the concentration point is part of a market where poultry are sold, bartered, or offered for sale or barter to the general public.

b. A concentration point where poultry are placed together as part of a contest, including but not limited to an event conducted for purposes of producing violent contact between the poultry.

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

a. A slaughtering establishment, public stockyard, livestock auction market, state or federal market, livestock buying station, or a livestock dealer's yard, truck, or facility.

b. A fair conducted pursuant to chapter 173 or 174.

c. An event sanctioned by the department.

d. A 4-H function.

e. An event sponsored or sanctioned by the Iowa turkey marketing council, the Iowa turkey federation, the national turkey federation, the Iowa poultry association, the Iowa egg council, the American egg board, or the American poultry association.

3. a. A person who owns or operates a restricted concentration point is subject to a civil penalty of not less than five thousand dollars for the first violation and not less than twenty-five thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

b. A person who has a legal interest in infected poultry or has custody of infected poultry which are located at a restricted concentration point is subject to a civil penalty of not less than five thousand dollars for the first violation and not less than twenty-five thousand dollars for

each subsequent violation. Each day that a violation continues constitutes a separate violation.

c. A person who transports poultry to or from a restricted concentration point is subject to a civil penalty of not less than one thousand dollars for the first violation and not less than five thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

d. A person who purchases, offers to purchase, barter, or offers to barter for poultry at a restricted concentration point is subject to a civil penalty of not less than one hundred dollars for the first violation and not less than one thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

e. A person who charges admission for entry into a restricted concentration point where a contest occurs or otherwise holds, advertises, or conducts the contest is subject to a civil penalty of not less than one thousand dollars for the first violation and not less than five thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.

f. A person who attends or participates in a contest at a restricted concentration point where a contest occurs is subject to a civil penalty of not less than one hundred dollars for the first violation and not less than one thousand dollars for each subsequent violation. Each day that a violation continues constitutes a separate violation.¹

4. This subsection applies to poultry maintained at a restricted concentration point, or poultry transported to or from a restricted concentration point.

a. The department or a law enforcement officer may confiscate poultry before a contested case proceeding or judicial hearing is conducted to determine whether this section has been violated. If the department or a court determines that a violation of this section has occurred, the poultry are conclusively deemed to be infected with a pathogenic virus. The poultry shall be kept separate and apart until destroyed by euthanasia as defined in section 162.2.

b. The department shall provide that real or personal property that is exposed to the poultry shall be sanitized as required to eliminate the source of the pathogenic virus. As part of the sanitation, the department shall provide for the disposal of poultry carcasses, eggs, or manure. Upon inspection, the department shall certify that the sanitization has been performed as required by this paragraph.

c. The department may utilize the procedures provided in section 17A.18A in order to enforce the provisions of this section. The attorney general or county attorney may petition the district court for an expedited hearing.

d. The department shall be reimbursed by the owner of the poultry or property for costs required to carry out this subsection. However, if the enforcement action is brought due to the activity of a law enforcement officer of a political subdivision, the political subdivision shall be reimbursed by the owner of the poultry or property for those costs. The department or political subdivision shall certify the amount to the county auditor of any county in which the owner is a titleholder of real property. The amount shall be placed upon the tax books which shall be a lien upon the real property, and collected with interest and penalties after due, in the same manner as other unpaid property taxes.

Approved April 16, 2004

¹ See chapter 1175, §329 herein