

CHAPTER 657 NUISANCES

657.1 Nuisance--what constitutes--action to abate.

Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property, so as essentially to unreasonably interfere with the comfortable enjoyment of life or property, is a nuisance, and a civil action by ordinary proceedings may be brought to enjoin and abate the same and to recover damages sustained on account thereof.

Section History: Early form

[C51, § 2131-2133; R60, § 3713-3715; C73, § 3331; C97, § 4302; C24, 27, 31, 35, 39, § 12395; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 657.1]

Section History: Recent form

95 Acts, ch 195, §34

657.2 What deemed nuisances.

The following are nuisances:

1. The erecting, continuing, or using any building or other place for the exercise of any trade, employment, or manufacture, which, by occasioning noxious exhalations, unreasonably offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals or the public.
2. The causing or suffering any offal, filth, or noisome substance to be collected or to remain in any place to the prejudice of others.
3. The obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water.
4. The corrupting or rendering unwholesome or impure the water of any river, stream, or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others.
5. The obstructing or encumbering by fences, buildings, or otherwise the public roads, private ways, streets, alleys, commons, landing places, or burying grounds.
6. Houses of ill fame, kept for the purpose of prostitution and lewdness, gambling houses, places resorted to by persons participating in criminal gang activity prohibited by chapter 723A, or places resorted to by persons using controlled substances, as defined in section 124.101, subsection 5, in violation of law, or houses where drunkenness, quarreling, fighting, or breaches of the peace are carried on or permitted to the disturbance of others.
7. Billboards, signboards, and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view of any portion or part of a public street, avenue, highway, boulevard, or alley or of a railroad or street railway track as to render dangerous the use thereof.

8. Any object or structure hereafter erected within one thousand feet of the limits of any municipal or regularly established airport or landing place, which may endanger or obstruct aerial navigation, including take-off and landing, unless such object or structure constitutes a proper use or enjoyment of the land on which the same is located.

9. The depositing or storing of flammable junk, such as old rags, rope, cordage, rubber, bones, and paper, by dealers in such articles within the fire limits of a city, unless in a building of fireproof construction, is a public nuisance.

10. The emission of dense smoke, noxious fumes, or fly ash in cities is a nuisance and cities may provide the necessary rules for inspection, regulation and control.

11. Dense growth of all weeds, vines, brush, or other vegetation in any city so as to constitute a health, safety, or fire hazard is a public nuisance.

12. Trees infected with Dutch elm disease in cities.

Section History: Early form

[C51, § 2759, 2761; R60, § 4409, 4411; C73, § 4089, 4091; C97, § 5078, 5080; S13, § 713-a, -b, 1056-a19; C24, 27, 31, 35, 39, § 5740, 5741, 6567, 6743, 12396; C46, 50, § 368.3, 368.4, 416.92, 420.54, 657.2; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 657.2]

Section History: Recent form

92 Acts, ch 1163, § 116; 92 Acts, ch 1231, § 56; 95 Acts, ch 195, §35; 98 Acts, ch 1072, § 1

Internal References

Referred to in § 654B.1

Footnotes

See also § 319.10, 329.2, 329.5

657.8 Feedlots.

This chapter shall apply to the operation of a livestock feedlot, only as provided in chapter 172D.

Section History: Early form

[C77, 79, 81, § 657.8]

657.11 Animal feeding operations.

1. The purpose of this section is to protect animal agricultural producers who manage their operations according to state and federal requirements from the costs of defending nuisance suits, which negatively impact upon Iowa's competitive economic position and discourage persons from entering into animal

agricultural production. This section is intended to promote the expansion of animal agriculture in this state by protecting persons engaged in the care and feeding of animals. The general assembly has balanced all competing interests and declares its intent to protect and preserve animal agricultural production operations.

2. An animal feeding operation, as defined in section 455B.161, shall not be found to be a public or private nuisance under this chapter or under principles of common law, and the animal feeding operation shall not be found to interfere with another person's comfortable use and enjoyment of the person's life or property under any other cause of action. However, this section shall not apply if the person bringing the action proves that an injury to the person or damage to the person's property is proximately caused by either of the following:

a. The failure to comply with a federal statute or regulation or a state statute or rule which applies to the animal feeding operation.

b. Both of the following:

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

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

3. This section does not apply to a person during any period that the person is classified as a chronic violator under this subsection as to any confinement feeding operation in which the person holds a controlling interest, as defined by rules adopted by the department of natural resources. This section shall apply to the person on and after the date that the person is removed from the classification of chronic violator. For purposes of this subsection, "confinement feeding operation" means an animal feeding operation in which animals are confined to areas which are totally roofed, and which are regulated by the department of natural resources or the environmental protection commission.

a. A person shall be classified as a chronic violator if the person has committed three or more violations as described in this subsection prior to, on, or after July 1, 1996. In addition, in relation to each violation, the person must have been subject to either of the following:

(1) The assessment of a civil penalty by the department or the commission in an amount equal to three thousand dollars or more.

(2) A court order or judgment for a legal action brought by the attorney general after referral by the department or commission.

Each violation must have occurred within five years prior to the date of the latest violation, counting any violation committed by a confinement feeding operation in which the person holds a controlling interest. A violation occurs on the date the department issues an administrative order to the person assessing a civil penalty of three thousand dollars or more, or on the date the department notifies a person in writing that the department will recommend that the commission refer, or the commission refers the case to the attorney general for legal action, or the date of entry of the court order or judgment, whichever occurs first. A violation under this subsection shall not be counted if the civil penalty ultimately imposed is less than three thousand dollars, the department or commission does not refer the action to the attorney general, the attorney general does not take legal action, or a court order or judgment is not entered against the person. A person shall be removed from the classification of chronic violator on the date on which the person and all confinement feeding operations in which the person holds a controlling interest have committed less than three violations described in this subsection for the prior five years.

b. For purposes of counting violations, a continuing and uninterrupted violation shall be considered as one violation. Different types of violations shall be counted as separate violations regardless of whether the violations were committed during the same period. The violation must be a violation of a state statute, or a rule adopted by the department, which applies to a confinement feeding operation and any related animal feeding operation structure, including an anaerobic lagoon, earthen manure storage basin, formed manure storage structure, or egg washwater storage structure; or any related pollution control device or practice. The structure, device, or practice must be part of the confinement feeding operation. The violation must be one of the following:

- (1) Constructing or operating a related animal feeding operation structure or installing or using a related pollution control device or practice, for which the person must obtain a permit, in violation of statute or rules adopted by the department, including the terms or conditions of the permit.
- (2) Intentionally making a false statement or misrepresenting information to the department as part of an application for a construction permit for the related animal feeding operation structure, or the installation of the related pollution control device or practice, for which the person must obtain a construction permit from the department.
- (3) Failing to obtain a permit or approval by the department for a permit to construct or operate a confinement feeding operation or use a related animal feeding operation structure or pollution control device or practice, for which the person must obtain a permit from the department.
- (4) Operating a confinement feeding operation, including a related animal feeding operation structure or pollution control device or practice, which causes pollution to the waters of the state, if the pollution was caused intentionally, or caused by a failure to take measures required to abate the pollution which resulted from an act of God.
- (5) Failing to submit a manure management plan as required, or operating a confinement feeding operation required to have a manure management plan without having submitted the manure management plan.

4. This section shall apply regardless of the established date of operation or expansion of the animal feeding operation. A defense against a cause of action provided in this section includes, but is not limited to, a defense for actions arising out of the care and feeding of animals; the handling or transportation of animals; the treatment or disposal of manure resulting from animals; the transportation and application of animal manure; and the creation of noise, odor, dust, or fumes arising from an animal feeding operation.

5. If a court determines that a claim is frivolous, a person who brings the claim as part of a losing cause of action against a person who may raise a defense under this section shall be liable to the person against whom the action was brought for all costs and expenses incurred in the defense of the action.

6. This section does not apply to an injury to a person or damages to property caused by the animal feeding operation before May 21, 1998.

Section History: Recent form

95 Acts, ch 195, §36; 96 Acts, ch 1118, § 1; 98 Acts, ch 1209, § 38, 39, 53