

FILED FEB 28 2006

SENATE FILE 2294
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SSB 3208)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act precluding certain enforcement actions by the department
2 of natural resources or the attorney general based on
3 detrimental reliance.

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

SF 2294

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1 Section 1. Section 455B.109, Code Supplement 2005, is
2 amended to read as follows:

3 NEW SUBSECTION. 6. The department is precluded from
4 taking an enforcement action against a person for failing to
5 comply with a requirement if the person has detrimentally
6 relied upon the department's binding explanation of the
7 requirement as provided in section 455B.110.

8 Sec. 2. NEW SECTION. 455B.110 ENFORCEMENT ACTION --
9 PRECLUSION BASED ON DETRIMENTAL RELIANCE.

10 1. As used in this section, unless the context otherwise
11 requires:

12 a. "Department representative" means an official or
13 employee of the department or an agent of the department,
14 including a contractor who holds themselves out as acting on
15 behalf of the department.

16 b. "Enforcement action" means any of the following:

17 (1) For the department, issuing an order, initiating or
18 acting as a party in a contested case proceeding, or rendering
19 a proposed or final decision as provided in chapter 17A, for
20 purposes of imposing, assessing, or collecting a civil penalty
21 under section 455B.109 or 455B.191.

22 (2) For the attorney general, bringing a judicial
23 proceeding, or acting as a party in a judicial proceeding,
24 including a civil or criminal action, to the extent authorized
25 by section 455B.112, 455B.146, 455B.146A, or 455B.191.

26 2. a. The department is precluded from taking an
27 enforcement action to impose, assess, or collect a civil
28 penalty against a person who has detrimentally relied upon a
29 binding explanation by the department which erroneously
30 advises the person how to comply with a requirement of a
31 statute or departmental rule, including by performing or
32 refraining from performing an act.

33 b. The attorney general is precluded from taking an
34 enforcement action to obtain a criminal judgment or impose,
35 assess, or collect a civil penalty against a person who has

1 detrimentally relied upon a binding explanation by the
2 department as provided in paragraph "a".

3 3. The department's explanation may be provided to a
4 person who may have violated this chapter in writing or
5 verbally, including by a departmental representative. If the
6 department's explanation is provided in writing, it shall be a
7 binding explanation. If the department's explanation is
8 provided verbally, it shall become binding as follows:

9 a. The person must deliver a request for confirmation to
10 the department at an address established by the department for
11 the purpose of receiving requests for confirmation. The
12 person's request for confirmation must be in writing and
13 delivered to the department within fourteen days after the
14 department's explanation was verbally provided to the person.
15 The person's request for confirmation must include all of the
16 following:

17 (1) A return address for the department to deliver a
18 response to the person.

19 (2) The explanation sought to be confirmed.

20 (3) The date that the department's explanation was
21 provided.

22 (4) The name of the department representative who provided
23 the explanation.

24 b. The department may deliver a response to the person's
25 return address as provided in the request for confirmation.
26 The department's response shall do one of the following:

27 (1) Confirm that the department's explanation provided
28 verbally to the person is binding. The department may deliver
29 the response to the person at any time.

30 (2) Deny that the department's explanation is binding.
31 The department may include a binding explanation in writing.
32 The department's response must be delivered to the person
33 within thirty days after the person delivers the request for
34 confirmation to the department. If the department fails to
35 deliver a timely response to the person, the explanation

1 sought to be confirmed by the person as provided in the
2 person's request for confirmation shall be the binding
3 explanation.

4 4. The department's explanation, the person's request for
5 confirmation, and the department's response may be transmitted
6 in an electronic format, including but not limited to the
7 internet, and shall be deemed written.

8 5. a. If a binding explanation concerns a requirement
9 subject to a variance as provided in section 455B.143, or
10 otherwise as a waiver or variance as provided in section
11 17A.9A, the binding explanation shall be deemed to be a waiver
12 or variance as provided in those sections.

13 b. If a binding explanation concerns a requirement that is
14 not subject to a variance or waiver as provided in section
15 455B.143 or 17A.9A, the department shall deliver a notice to
16 the person who has been precluded from being subjected to an
17 enforcement action. The notice shall provide that the person
18 may be subject to an enforcement action on or after a future
19 date. The department shall establish a future date which
20 allows the person a reasonable period to comply with the
21 requirement. However, the department shall not nullify a
22 binding explanation if it would result in undue hardship to
23 the person including but not limited to requiring the person
24 to move, demolish, or rebuild a structure which was
25 constructed or expanded in reliance on the department's
26 binding explanation.

27 6. The department or attorney general may take an
28 enforcement action against a person regardless of a binding
29 explanation if any of the following applies:

30 a. The person obtains the binding explanation in bad
31 faith, having actual knowledge that the explanation was
32 erroneous.

33 b. The binding explanation concerns a requirement in a
34 statute or departmental rule that has been superseded by a
35 requirement in a statute enacted or rule adopted after the

1 explanation becomes binding.

2 7. Nothing in this section prevents the department from
3 conducting an investigation or issuing a subpoena requiring
4 the attendance of a witness or the production of evidence
5 pertinent to a hearing.

6 Sec. 3. Section 455B.112, Code Supplement 2005, is amended
7 to read as follows:

8 455B.112 ACTIONS BY ATTORNEY GENERAL.

9 1. In addition to the duty to commence legal proceedings
10 at the request of the director or commission under this
11 chapter; chapter 459, subchapters I, II, III, IV, and VI; or
12 chapter 459A, the attorney general may institute civil or
13 criminal proceedings, including an action for injunction, to
14 enforce the provisions of this chapter; chapter 459,
15 subchapters I, II, III, IV, and VI; or chapter 459A, including
16 orders or permits issued or rules adopted under this chapter;
17 chapter 459, subchapters I, II, III, IV, and VI; or chapter
18 459A.

19 2. However, the attorney general is precluded from taking
20 an enforcement action against a person for failing to comply
21 with a requirement if the person has detrimentally relied upon
22 the department's binding explanation of the requirement as
23 provided in section 455B.110.

24 Sec. 4. Section 455B.146, Code 2005, is amended to read as
25 follows:

26 455B.146 CIVIL ACTION FOR COMPLIANCE -- LOCAL PROGRAM
27 ACTIONS.

28 1. If any order, permit, or rule of the department is
29 being violated, the attorney general shall, at the request of
30 the department or the director, institute a civil action in
31 any district court for injunctive relief to prevent any
32 further violation of the order, permit, or rule, or for the
33 assessment of a civil penalty as determined by the court, not
34 to exceed ten thousand dollars per day for each day such
35 violation continues, or both such injunctive relief and civil

1 penalty.

2 2. However, the attorney general is precluded from taking
3 an enforcement action against a person for failing to comply
4 with a requirement if the person has detrimentally relied upon
5 the department's binding explanation of the requirement as
6 provided in section 455B.110.

7 3. Notwithstanding sections 331.302 and 331.307, a city or
8 county which maintains air pollution control programs
9 authorized by certificate of acceptance under this division
10 may provide civil penalties consistent with the amount
11 established for such penalties under this division.

12 Sec. 5. Section 455B.146A, Code 2005, is amended by adding
13 the following new subsection:

14 NEW SUBSECTION. 6. The attorney general is precluded from
15 taking an enforcement action against a person for failing to
16 comply with a requirement if the person has detrimentally
17 relied upon the department's binding explanation of the
18 requirement as provided in section 455B.110.

19 Sec. 6. Section 455B.191, Code 2005, is amended by adding
20 the following new subsection:

21 NEW SUBSECTION. 7. The department or the attorney general
22 is precluded from taking an enforcement action against a
23 person for failing to comply with a requirement if the person
24 has detrimentally relied upon the department's binding
25 explanation of the requirement as provided in section
26 455B.110.

27

EXPLANATION

28 This bill amends the first three divisions of Code chapter
29 455B, which provides authority to the department of natural
30 resources and in some cases the attorney general to bring an
31 enforcement action against persons who violate provisions
32 regulating environmental quality (air and water quality).

33 BACKGROUND. Division I of Code chapter 455B provides the
34 department with general regulatory authority. The department
35 may establish a range of civil penalties for violations of the

1 Code chapter (Code section 455B.109). The attorney general is
2 authorized to institute civil or criminal judicial proceedings
3 necessary to enforce provisions of the Code chapter (Code
4 section 455B.112).

5 Division II of Code chapter 455B regulates air quality.
6 The attorney general at the request of the department may
7 institute a civil action in court to obtain injunctive relief
8 or impose a civil penalty of up to \$10,000 for a violation of
9 the division (Code section 455B.146). A person who knowingly
10 violates any provision of the division is guilty of an
11 aggravated misdemeanor (Code section 455B.146A). An
12 aggravated misdemeanor is punishable by confinement for not
13 more than two years and a fine of at least \$500 but not more
14 than \$5,000. A conviction for a subsequent violation is
15 punishable by imprisonment for not more than four years and a
16 fine of not more than \$20,000 (Code section 455B.146A).

17 Division III of Code chapter 455B regulates water quality.
18 Generally, a person who violates a provision of the division
19 is subject to a civil penalty of not more than \$5,000 (Code
20 section 455B.191). The Code section does not expressly
21 provide whether the department or the attorney general may
22 enforce the provision.

23 The department and the attorney general are required to
24 enforce the provisions of Code chapter 459 regulating animal
25 feeding operations and specifically confinement feeding
26 operations and open feedlot operations in the same manner as
27 provided in Code chapter 455B, division I (Code sections
28 459.103 and 459A.501). A person who violates an air quality
29 standard in Code chapter 459 is subject to a civil penalty
30 which is established, assessed, and collected in the same
31 manner as provided in Code section 455B.109. A person who
32 violates a water quality regulation which applies to a
33 confinement feeding operation or open feedlot operation is
34 subject to a civil penalty which is established, assessed, and
35 collected in the same manner as provided in Code section

1 455B.191. There are increased civil penalties for persons
2 classified as habitual violators which may be up to \$25,000
3 (Code section 459.604).

4 BILL'S PROVISIONS. The bill relates enforcement actions
5 brought and carried out by the department or the attorney
6 general under the provisions described herein. The bill
7 provides that the department is precluded from taking an
8 enforcement action to impose, assess, or collect a civil
9 penalty against a person who has detrimentally relied upon a
10 binding explanation by the department which erroneously
11 advises the person how to comply with a requirement of a
12 statute or departmental rule, including by performing or
13 refraining from performing an act. The bill provides that the
14 attorney general is precluded from taking an enforcement
15 action to obtain a criminal judgment or impose, assess, or
16 collect a civil penalty against a person who has detrimentally
17 relied upon such a binding explanation by the department.

18 In order to be binding, the department's explanation must
19 be in writing. If the department's explanation is made
20 verbally, it may become binding if the department confirms the
21 earlier verbal explanation as requested by the person who
22 would benefit from the confirmation. If the department does
23 not confirm the earlier verbal explanation or issue a new
24 written and binding explanation, the binding explanation is
25 that version contained in the person's request for
26 confirmation. The binding explanation may be treated as a
27 waiver or variance (see Code sections 455B.143 and 17A.9A).
28 Otherwise, the department must deliver a notice to the person
29 stating that the requirement will become applicable on a
30 future date, unless this would result in undue hardship on the
31 person who has relied upon the binding explanation. A binding
32 explanation does not apply if the person obtained it in bad
33 faith or a later enacted statute or adopted rule supersedes
34 it.

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Mulder co-chair
Black co-chair
Brunkhorst
Ragan

SSB# 3208
Agriculture
Succeeded By
SF/HF 2294

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
AGRICULTURE BILL BY
CO-CHAIRPERSON JOHNSON)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
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8 Sec. 2. NEW SECTION. 455B.110 ENFORCEMENT ACTION --
9 PRECLUSION BASED ON DETRIMENTAL RELIANCE.

10 1. As used in this section, unless the context otherwise
11 requires:

12 a. "Department representative" means an official or
13 employee of the department or an agent of the department,
14 including a contractor who holds themselves out as acting on
15 behalf of the department.

16 b. "Enforcement action" means any of the following:

17 (1) For the department, issuing an order, initiating or
18 acting as a party in a contested case proceeding, or rendering
19 a proposed or final decision as provided in chapter 17A, for
20 purposes of imposing, assessing, or collecting a civil penalty
21 under section 455B.109 or 455B.191.

22 (2) For the attorney general, bringing a judicial
23 proceeding, or acting as a party in a judicial proceeding,
24 including a civil or criminal action, to the extent authorized
25 by section 455B.112, 455B.146, 455B.146A, or 455B.191.

26 2. a. The department is precluded from taking an
27 enforcement action to impose, assess, or collect a civil
28 penalty against a person who has detrimentally relied upon a
29 binding explanation by the department which erroneously
30 advises the person how to comply with a requirement of a
31 statute or departmental rule, including by performing or
32 refraining from performing an act.

33 b. The attorney general is precluded from taking an
34 enforcement action to obtain a criminal judgment or impose,
35 assess, or collect a civil penalty against a person who has

1 detrimentally relied upon a binding explanation by the
2 department as provided in paragraph "a".

3 3. The department's explanation may be provided to a
4 person who may have violated this chapter in writing or
5 verbally, including by a departmental representative. If the
6 department's explanation is provided in writing, it shall be a
7 binding explanation. If the department's explanation is
8 provided verbally, it shall become binding as follows:

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21 provided.

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23 the explanation.

24 b. The department may deliver a response to the person's
25 return address as provided in the request for confirmation.
26 The department's response shall do one of the following:

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31 The department may include a binding explanation in writing.
32 The department's response must be delivered to the person
33 within thirty days after the person delivers the request for
34 confirmation to the department. If the department fails to
35 deliver a timely response to the person, the explanation

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2 person's request for confirmation shall be the binding
3 explanation.

4 4. The department's explanation, the person's request for
5 confirmation, and the department's response may be transmitted
6 in an electronic format, including but not limited to the
7 internet, and shall be deemed written.

8 5. a. If a binding explanation concerns a requirement
9 subject to a variance as provided in section 455B.143, or
10 otherwise as a waiver or variance as provided in section
11 17A.9A, the binding explanation shall be deemed to be a waiver
12 or variance as provided in those sections.

13 b. If a binding explanation concerns a requirement that is
14 not subject to a variance or waiver as provided in section
15 455B.143 or 17A.9A, the department shall deliver a notice to
16 the person who has been precluded from being subjected to an
17 enforcement action. The notice shall provide that the person
18 may be subject to an enforcement action on or after a future
19 date. The department shall establish a future date which
20 allows the person a reasonable period to comply with the
21 requirement. However, the department shall not nullify a
22 binding explanation if it would result in undue hardship to
23 the person including but not limited to requiring the person
24 to move, demolish, or rebuild a structure which was
25 constructed or expanded in reliance on the department's
26 binding explanation.

27 6. The department or attorney general may take an
28 enforcement action against a person regardless of a binding
29 explanation if any of the following applies:

30 a. The person obtains the binding explanation in bad
31 faith, having actual knowledge that the explanation was
32 erroneous.

33 b. The binding explanation concerns a requirement in a
34 statute or departmental rule that has been superseded by a
35 requirement in a statute enacted or rule adopted after the

1 explanation becomes binding.

2 7. Nothing in this section prevents the department from
3 conducting an investigation or issuing a subpoena requiring
4 the attendance of a witness or the production of evidence
5 pertinent to a hearing.

6 Sec. 3. Section 455B.112, Code Supplement 2005, is amended
7 to read as follows:

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9 1. In addition to the duty to commence legal proceedings
10 at the request of the director or commission under this
11 chapter; chapter 459, subchapters I, II, III, IV, and VI; or
12 chapter 459A, the attorney general may institute civil or
13 criminal proceedings, including an action for injunction, to
14 enforce the provisions of this chapter; chapter 459,
15 subchapters I, II, III, IV, and VI; or chapter 459A, including
16 orders or permits issued or rules adopted under this chapter;
17 chapter 459, subchapters I, II, III, IV, and VI; or chapter
18 459A.

19 2. However, the attorney general is precluded from taking
20 an enforcement action against a person for failing to comply
21 with a requirement if the person has detrimentally relied upon
22 the department's binding explanation of the requirement as
23 provided in section 455B.110.

24 Sec. 4. Section 455B.146, Code 2005, is amended to read as
25 follows:

26 455B.146 CIVIL ACTION FOR COMPLIANCE -- LOCAL PROGRAM
27 ACTIONS.

28 1. If any order, permit, or rule of the department is
29 being violated, the attorney general shall, at the request of
30 the department or the director, institute a civil action in
31 any district court for injunctive relief to prevent any
32 further violation of the order, permit, or rule, or for the
33 assessment of a civil penalty as determined by the court, not
34 to exceed ten thousand dollars per day for each day such
35 violation continues, or both such injunctive relief and civil

1 penalty.

2 2. However, the attorney general is precluded from taking
3 an enforcement action against a person for failing to comply
4 with a requirement if the person has detrimentally relied upon
5 the department's binding explanation of the requirement as
6 provided in section 455B.110.

7 3. Notwithstanding sections 331.302 and 331.307, a city or
8 county which maintains air pollution control programs
9 authorized by certificate of acceptance under this division
10 may provide civil penalties consistent with the amount
11 established for such penalties under this division.

12 Sec. 5. Section 455B.146A, Code 2005, is amended by adding
13 the following new subsection:

14 NEW SUBSECTION. 6. The attorney general is precluded from
15 taking an enforcement action against a person for failing to
16 comply with a requirement if the person has detrimentally
17 relied upon the department's binding explanation of the
18 requirement as provided in section 455B.110.

19 Sec. 6. Section 455B.191, Code 2005, is amended by adding
20 the following new subsection:

21 NEW SUBSECTION. 7. The department or the attorney general
22 is precluded from taking an enforcement action against a
23 person for failing to comply with a requirement if the person
24 has detrimentally relied upon the department's binding
25 explanation of the requirement as provided in section
26 455B.110.

27 EXPLANATION

28 This bill amends the first three divisions of Code chapter
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4 section 455B.112).

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6 The attorney general at the request of the department may
7 institute a civil action in court to obtain injunctive relief
8 or impose a civil penalty of up to \$10,000 for a violation of
9 the division (Code section 455B.146). A person who knowingly
10 violates any provision of the division is guilty of an
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12 aggravated misdemeanor is punishable by confinement for not
13 more than two years and a fine of at least \$500 but not more
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15 punishable by imprisonment for not more than four years and a
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19 is subject to a civil penalty of not more than \$5,000 (Code
20 section 455B.191). The Code section does not expressly
21 provide whether the department or the attorney general may
22 enforce the provision.

23 The department and the attorney general are required to
24 enforce the provisions of Code chapter 459 regulating animal
25 feeding operations and specifically confinement feeding
26 operations and open feedlot operations in the same manner as
27 provided in Code chapter 455B, division I (Code sections
28 459.103 and 459A.501). A person who violates an air quality
29 standard in Code chapter 459 is subject to a civil penalty
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31 manner as provided in Code section 455B.109. A person who
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33 confinement feeding operation or open feedlot operation is
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4 BILL'S PROVISIONS. The bill relates enforcement actions
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22 would benefit from the confirmation. If the department does
23 not confirm the earlier verbal explanation or issue a new
24 written and binding explanation, the binding explanation is
25 that version contained in the person's request for
26 confirmation. The binding explanation may be treated as a
27 waiver or variance (see Code sections 455B.143 and 17A.9A).
28 Otherwise, the department must deliver a notice to the person
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30 future date, unless this would result in undue hardship on the
31 person who has relied upon the binding explanation. A binding
32 explanation does not apply if the person obtained it in bad
33 faith or a later enacted statute or adopted rule supersedes
34 it.

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