

1976 Bill 43

Second Session, 18th Legislature, 25 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 43

THE STRAY ANIMALS ACT

MR. BUTLER

First Reading

Second Reading

Third Reading

BILL 43

1976

THE STRAY ANIMALS ACT

(Assented to _____, 1976)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows

1. In this Act

- (a) "agricultural product" means
 - (i) any growing crop or crop being harvested, or
 - (ii) any pasture or hay crop, or
 - (iii) any market or domestic garden or any produce therein, or
 - (iv) any stored grain or stored forage;
- (b) "highway" has the same meaning as it has in *The Highway Traffic Act, 1975*;
- (c) "inspector" means
 - (i) any person appointed or designated as an inspector pursuant to section 4, or
 - (ii) a member of the Royal Canadian Mounted Police;
- (d) "livestock" means
 - (i) any horse, head of cattle, sheep, swine, goat, mule or ass, or
 - (ii) any other animal specified in the regulations as livestock to which this Act and the regulations apply;
- (e) "Minister" means the Minister of Agriculture.

2. For the purposes of this Act

- (a) the "last person in possession of the livestock" means the last person in actual possession of the livestock, but does not include a person who captures, confines or impounds livestock pursuant to this Act, and

Explanatory Notes

1. Definitions.

2. Interpretation.

- (b) where livestock are captured, confined or impounded pursuant to this Act, the "last person in possession of the livestock" means the person who was the last person in actual possession of the livestock before the capture, confinement or impoundment of the livestock.

3. The Crown in right of Alberta is bound by this Act.

4. (1) In accordance with *The Public Service Act* there may be appointed such inspectors and other persons as are required for the purposes of this Act and the regulations.

(2) The Minister may

- (a) designate any person as an inspector for the purposes of this Act either for all or for any part of Alberta subject to such conditions as he considers necessary, or

- (b) appoint any person as an assessor for the purposes of this Act,

and prescribe his remuneration and travelling and living expenses.

3. Crown bound.

4. Staff.

PART 1

LIABILITY FOR TRESPASSING LIVESTOCK

5. Where livestock trespass and

- (a) damage is done to land or any agricultural product by the livestock or by any person in capturing the livestock, or
- (b) expenses are reasonably incurred in capturing, maintaining and transporting the livestock and in ascertaining the owner or the last person in possession of the livestock,

the owner of the livestock and the last person in possession of the livestock are jointly and severally liable for the damage or expenses or both except as otherwise provided in section 6.

6. (1) A person is not liable under section 5 for any damage or expense which is due wholly to the fault of the person suffering the damage.

(2) In determining whether liability for any damage or expense under section 5 is excluded by subsection (1), the damage or expense shall not be treated as due to the fault of the person suffering it by reason only that he could have prevented it by fencing his land.

7. (1) Where any person

- (a) opens and fails to close a gate, or
- (b) tampers with, damages or destroys a gate or fence, as a result of which livestock escape, the person doing or failing to do the act or thing referred to in clause (a) or (b) is liable to the persons referred to in subsection (2) for
- (c) any damage done to land or to any agricultural product by the livestock or by any person in capturing the livestock, and
- (d) any expenses reasonably incurred in capturing, maintaining and transporting the livestock and in ascertaining the last person in possession of the livestock.

(2) The person doing or failing to do the act or thing referred to in subsection (1) is liable for the damage and expense referred to in subsection (1) to

- (a) the owner of the livestock, and
- (b) where the last person in possession of the livestock was required to pay for any damage or expense under section 5, to that person.

(3) Nothing in this section restricts the liability under section 5 of the owner and the last person in possession of the livestock.

5. Liability for damage and expense due to trespassing livestock.

6. Exceptions from liability.

7. Liability on opening and not closing a gate or damaging a fence.

PART 2
CAPTURE OF STRAY LIVESTOCK

8. (1) Where livestock trespass on any land, the owner or occupier of the land may

- (a) while the livestock are on his land
 - (i) capture and confine them on his land, or
 - (ii) authorize a person to capture and confine them on the land on which they are trespassing,
- or
- (b) authorize an inspector to capture the livestock.

(2) No owner, occupier or person on their behalf capturing trespassing livestock under subsection (1) shall permit or allow the captured livestock to be

- (a) transported or driven across or along any highway, or
 - (b) transported or driven over any land of which he is not the owner or the person in possession,
- unless authorized to do so by an inspector.

(3) Where an owner or occupier or a person on his behalf captures livestock trespassing on his land he shall, within 48 hours of the time that the livestock is confined, complete a statement of capture and expenses incurred in connection therewith and send it to the inspector.

9. An inspector may

- (a) upon receipt of a request to capture livestock pursuant to section 8, or
 - (b) at any time where he is satisfied that livestock is trespassing,
- capture and impound the livestock or authorize a person to capture the livestock on his behalf.

10. (1) An inspector may impound livestock captured or confined pursuant to this Act by issuing a notice of impoundment containing at least the following:

- (a) a description of the livestock,
- (b) the date of impoundment,
- (c) a description of the place where the livestock was captured,
- (d) a statement that the livestock is impounded, and
- (e) the signature of the inspector impounding the livestock.

(2) Upon the issue of a notice of impoundment, the livestock described in the notice become subject to the control of the inspector and shall not be transported or disposed of except

8. Owner's and occupier's right to capture trespassing livestock.

9. Inspector's powers.

10. Impoundment and its effect.

- (a) in accordance with this Act, and
- (b) with the consent of an inspector.

(3) No person shall transport, move or dispose of live stock impounded pursuant to this Act without the prior consent of an inspector.

11. An inspector may enter any land or premises without the consent of the owner or occupier thereof for the purpose of capturing trespassing livestock and removing it from the land or premises.

12. Where an inspector receives a statement of capture of livestock pursuant to section 8, subsection (3), he shall impound the livestock and

- (a) leave the livestock with the person who has the livestock confined, or
- (b) transport or arrange for the transport of the livestock to a livestock market, a stockyard or other place which, in the opinion of the inspector, is a suitable place to keep the livestock.

13. Where an inspector impounds livestock, he shall

- (a) where he knows or is able to determine the owner or the last person in possession of the livestock,
 - (i) notify one or both of them of the impoundment of the livestock, and
 - (ii) by notice in writing warn the owner or the last person in possession of the livestock or both, that unless the expenses referred to in section 5, clause (b) are paid to the inspector within 14 days of the date of the notice, that the livestock will be sold by public auction without further reference to either of them,
- or
- (b) where he does not know and after reasonable enquiry is unable to determine who is the owner or the last person in possession of the livestock, sell the livestock by public auction.

14. (1) Where, before livestock impounded pursuant to this Act is sold by public auction, the owner or the last person in possession of the livestock claims it and pays the expenses referred to in section 5, clause (b), the inspector shall release or authorize the person confining the livestock to release the livestock to the owner or the last person in possession of the livestock.

11. Powers of inspector to enter land.

12. Inspector must arrange for the confinement of the livestock in a suitable place.

13. Inspector's duties.

14. Release or sale of impounded livestock.

(2) Where livestock is impounded pursuant to this Act and

(a) the owner or the last person in possession of the livestock refuses to pay the expenses referred to in section 5, clause (b), or

(b) no person claims the livestock, the inspector shall, upon expiry of the notice referred to in section 13, clause (a) or after the reasonable enquiry referred to in section 13, clause (b), sell the livestock by public auction.

15. (1) Where livestock is sold by public auction pursuant to this Act, the proceeds of sale shall be forwarded to the Provincial Treasurer and disbursed in accordance with this section.

(2) Where the owner and the last person in possession of the livestock are not known, the proceeds of sale of the livestock shall be disbursed in the following priority:

(a) in paying the expense of selling the livestock,

(b) to pay for any expense in capturing and confining the livestock,

(c) to pay for any expense in transporting the livestock and attempting to ascertain the owner or the last person in possession of the livestock,

(d) to pay for any expense in maintaining the livestock, and

(e) to pay for any damage to land or to an agricultural product caused by the livestock or by any person in capturing the livestock

(i) if the amount of the damage claim is, in the opinion of an inspector, reasonable, or

(ii) in accordance with an assessment made pursuant to section 16,

and any balance of the proceeds of sale remaining shall be paid into the General Revenue Fund.

(3) Where livestock is sold by public auction pursuant to this Act and a dispute exists or arises between

(a) the former owner or the last person in possession of the livestock, and

(b) any person claiming to have suffered damage to land or to an agricultural product as a result of the trespass of the livestock,

the proceeds of sale of the livestock shall be paid in accordance with subsection (2), clauses (a) to (d), and any balance remaining shall continue to be held in trust by the Provincial Treasurer until

(c) the parties to the dispute agree in writing to the disposition of the proceeds whereupon the Treasurer shall pay the proceeds in accordance with the agreement, or

15. Disposition of proceeds of sale of livestock.

- (d) a court awards damages and directs payment of the proceeds to one or more of the parties to the dispute whereupon the Treasurer shall pay the sum in accordance with the direction of the court and pay any balance remaining to the owner of the livestock.

16. (1) Where livestock is impounded pursuant to this Act and

- (a) the owner and the last person in possession of the livestock are not known, and
- (b) a person claiming to have suffered damage to land or to an agricultural product as a result of trespassing livestock and an inspector do not agree on the amount of damage done by the livestock and by any person in capturing the livestock,

the Minister may, upon being requested to do so, direct an assessor to assess the amount of the damage and, where appropriate, to determine the livestock responsible for the damage.

(2) An assessor shall, upon making his assessment and determination, give a written notice to the Minister, the inspector and the person claiming to have suffered damage, showing the assessment and the determination, if any.

(3) The assessment and the determination, if any, of the assessor is final for the purpose of computing the amount to be paid to a person claiming to have suffered damage pursuant to section 15, subsection (2), clause (e).

17. Where a person is able to establish to the satisfaction of the Minister within one year of the date of the sale of livestock by public auction pursuant to this Act that

- (a) he was the owner of the livestock, and
- (b) the balance of the proceeds of sale of the livestock were paid into the General Revenue Fund,

the Minister may direct the Provincial Treasurer to repay the balance of the proceeds of sale of the livestock to that person from moneys appropriated by the Legislature for that purpose.

18. Where livestock is sold by public auction pursuant to this Act and the proceeds of sale are insufficient to pay the expenses referred to in section 15, subsection (2), clauses (a) to (d), the Government of Alberta shall pay the expenses upon application therefor out of moneys appropriated by the Legislature for the purpose.

19. Where a dispute arises as to the reasonableness of any claim for expenses under this Part, the Minister may direct an assessor to determine what expenses are reasonable in the circumstances and the assessor's decision is final.

16. Assessment and determination in cases of dispute.

17. Claim on proceeds of sale of livestock paid into the General
evenue Fund.

18. Expenses not paid from proceeds of sale of livestock.

19. Dispute over expenses.

PART 3

PROTECTION OF LIVESTOCK AND DOMESTIC FOWL FROM DOGS

20. In this Part "domestic fowl" means any domestic variety of fowl.

21. The owner or the person in actual possession of livestock or domestic fowl or any person authorized by either of them may kill a dog in the act of pursuing, worrying or destroying that livestock or domestic fowl on land owned or occupied by the owner or person in actual possession of that livestock or domestic fowl.

22. (1) Where a person believes that any other person owns or has in his possession a dog that within one month of the date of his application under this section has worried, injured or destroyed livestock or domestic fowl outside land owned or occupied by the owner or person in possession of the dog, he may apply to a provincial judge for an order that the dog be killed.

(2) Where the provincial judge finds that a dog has, within one month of the date of the application under subsection (1), worried, injured or destroyed livestock or domestic fowl outside the land occupied by the owner or person in possession of the dog, the provincial judge may

- (a) order the dog to be killed, or
- (b) make such other order as to him appears appropriate in the circumstances.

20. Definition.

21. Self-explanatory.

22. Order to kill a dog worrying, injuring or destroying livestock.

PART 4

REGULATIONS, OFFENCES AND PENALTIES

23. The Lieutenant Governor in Council may make regulations

- (a) prescribing the fees that may be charged by a person for the capture, maintenance, transportation and confinement of livestock;
- (b) governing the application by persons for payment of expenses referred to in section 18;
- (c) governing the method and manner in which livestock is to be captured, confined, transported and sold under this Act;
- (d) authorizing the Minister to prescribe forms for the purposes of this Act and the regulations.

24. (1) No person shall permit or allow any livestock owned by him or in his possession to trespass on land owned by another person.

(2) No person shall permit or allow any livestock owned by him or in his possession to be on any highway unless it is in his or another person's direct and continuous charge and he or that other person is competent to control the livestock.

(3) Subsections (1) and (2) do not apply to a highway, other than a primary highway, within the boundaries of any land in an Indian reserve or within the boundaries of any land

- (a) held under a grazing lease or grazing permit, or
- (b) established and operated as a community grazing reserve,

pursuant to *The Public Lands Act*.

(4) Any person who contravenes or fails to comply with this section is guilty of an offence and liable on summary conviction to a fine of not more than \$500.

25. Nothing in section 24 imposes any civil liability for damages on the owner or person in control of livestock that is on a highway contrary to that section and any question of liability for damages arising in a civil action shall be determined as if that section had not been enacted.

23. Regulations.

24. Livestock straying on a highway.

25. Civil liability unaffected.

26. Any person who

(a) opens and fails to close a gate, or

(b) tampers with, damages or destroys a gate or fence, as a result of which livestock escape, is guilty of an offence and liable on summary conviction to a fine of not more than \$500.

27. Any person who contravenes or fails to comply with any provision of this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not more than \$500.

26. Offence to leave open or damage a gate or fence as a result of which an animal escapes.

27. General penalty.

PART 5

TRANSITIONAL, CONSEQUENTIAL AND REPEAL

28. In this Part

- (a) “former Domestic Animals Act” means *The Domestic Animals (Municipalities) Act* being chapter 112 of the Revised Statutes of Alberta;
- (b) “former Stray Animals Act” means *The Improvement Districts Stray Animals Act* being chapter 181 of the Revised Statutes of Alberta.

29. An entire or mischievous animal found running at large in a pound district within an improvement district and impounded pursuant to section 3, subsection (3) of the former Stray Animals Act before the coming into force of this Act shall be dealt with and treated for all purposes as if this Act had not come into force and the former Stray Animals Act had remained in force.

30. Any animal found on a community pasture pursuant to section 5, subsection (2) of the former Stray Animals Act before the coming into force of this Act shall be dealt with and treated for all purposes as if this Act had not come into force and the former Stray Animals Act had remained in force.

31. Upon the coming into force of this Act each pound-keeper appointed pursuant to the former Stray Animals Act shall deliver the pound book referred to in section 10 of the former Stray Animals Act to the Minister upon the conclusion of any proceedings taken or continued pursuant to this Part.

32. Any person capturing an animal pursuant to section 13 of the former Stray Animals Act before the coming into force of this Act shall deal with the animal as if this Act had not come into force and the former Stray Animals Act had remained in force.

33. Any animal impounded pursuant to section 13 of the former Stray Animals Act before the coming into force of this Act shall be dealt with as if this Act had not come into force and the former Stray Animals Act had remained in force.

34. Any proceeds of sale pursuant to section 28 of the former Stray Animals Act shall be dealt with for all purposes as if this Act had not come into force and the former Stray Animals Act had remained in force.

28. Definitions.

29. Entire or mischievous animals.

30. Strays on community pasture.

31. Pound books.

32. Captured animals.

33. Impounded animals.

34. Proceeds of sale.

35. Any adjudgment under the former Stray Animals Act by a justice shall be continued to its conclusion for all purposes as if this Act had not come into force and the former Stray Animals Act had remained in force.

36. Where a person is, at the coming into force of this Act, in possession of an estray on his premises under section 40 of the former Stray Animals Act, the estray shall be dealt with as if this Act had not come into force and the former Stray Animals Act had remained in force.

37. An animal that is impounded pursuant to section 8 or 28 of the former Domestic Animals Act before the coming into force of this Act shall be treated for all purposes as if this Act had not come into force and the former Domestic Animals Act had remained in force.

38. Any animal captured and impounded or confined pursuant to Part 2 of the former Domestic Animals Act shall be treated for all purposes as if this Act had not come into force and the former Domestic Animals Act had remained in force.

39. Any by-law passed by a council of a municipality pursuant to the former Domestic Animals Act ceases to have effect and is repealed upon the coming into force of this Act except insofar as it may be deemed to be continued for purposes of this Part.

40. Where any impoundment is made or an appeal commenced under section 29 of the former Domestic Animals Act before the coming into force of this Act, the impoundment and appeal shall be continued for all purposes as if this Act had not come into force and the former Domestic Animals Act had remained in force.

41. Any sheep seized pursuant to section 72 of the former Domestic Animals Act before the coming into force of this Act shall be treated for all purposes as if this Act had not come into force and the former Act had remained in force.

42. Upon the coming into force of this Act each pound-keeper appointed pursuant to the former Domestic Animals Act shall deliver the pound book referred to in section 31 of the former Domestic Animals Act to the Minister upon the conclusion of any proceedings taken or continued pursuant to this Part.

43. If any action is taken, proceeding is commenced, claim is made, liability is incurred or thing is done under the former Stray Animals Act or the former Domestic

35. Former judgments.

36. Estrays.

37. Impounded animals.

38. Captured or confined animals.

39. Municipal by-laws.

40. Impoundment and appeals.

41. Sheep.

42. Pound books.

43. General.

Animals Act, that action, proceeding, claim, liability or thing shall be continued to its conclusion as if this Act had not come into force and the former Stray Animals Act or the former Domestic Animals Act, as the case may be, had remained in force.

44. The Highway Traffic Act, 1975 is amended by striking out sections 130 and 131.

45. The Livestock Brand Inspection Act is amended by striking out section 49.

46. The Municipal Government Act is amended as to section 161 by striking out clause (b).

44. Amends chapter 56 of the Statutes of Alberta, 1975 (Second Session). Sections 130 and 131 presently read:

130. (1) In this section "highway" means a primary highway, a secondary road or rural road within the meaning of The Public Highways Development Act.

(2) No domestic animal shall be on a highway unless it is in direct and continuous charge of a person who is competent to control it and who is controlling it in such manner that it does not obstruct or cause any damage to the highway or create any hazard to traffic on the highway.

(3) An employee of the Department or a peace officer may take into custody any animal that is on a highway contrary to subsection (1) and cause it to be taken to, fed and kept in a suitable place, in which case he has a lien upon the animal for the expenses of the removal, care, feeding and keeping of the animal.

(4) The Livery Stable Keepers Act applies with all necessary modifications for the purpose of recovering such expenses and disposing of any surplus moneys.

(5) Notwithstanding any action that may have been taken under subsection (3), the owner of an animal that is on a highway contrary to subsection (2) is guilty of an offence.

(6) Subsections (2) to (5) do not apply to a highway, other than a primary highway, within the boundaries of any land

- (a) held under a grazing lease or grazing permit, or
- (b) established and operated as a community grazing reserve, pursuant to The Public Lands Act.

(7) When any person is charged with an offence under this section, the judge trying the case may dismiss the case if he is of the opinion that the offence was committed wholly by accident or misadventure and without negligence and that the person could not by the exercise of reasonable care or precaution have avoided the offence.

131. Nothing in section 130 imposes any civil liability for damages on the owner of an animal that is on a highway contrary to that section and any question of liability for damages arising in a civil action shall be determined as if that section had not been enacted.

45. Amends chapter 63 of the Statutes of Alberta, 1971. Section presently reads:

49. (1) Any person who knowingly has in his possession livestock found estray, must notify

- (a) the brand owner or the local inspector, or
- (b) impound the animal in accordance with The Domestic Animals (Municipalities) Act or The Improvement Districts Stray Animals Act in the area where the livestock was found

within seven days.

(2) Failure to comply with the instructions of the inspector or to impound the livestock as required in subsection (1) constitutes an offence.

46. Amends chapter 246 of the Revised Statutes of Alberta 1970. Section 161, clause (b) presently reads:

161. For the purpose of regulating and controlling animals the council of any municipality may pass by-laws

- (b) providing for detaining and impounding animals running at large, and
 - (i) determining the compensation to be allowed for carrying out the provisions of such by-law and for services rendered with respect to, and sustenance supplied for, animals detained or impounded,
 - (ii) appointing poundkeepers,
 - (iii) providing sufficient yards, buildings and enclosures for the safe-keeping of such animals as it may be the duty of the poundkeeper to impound,
 - (iv) appraising damages to be paid by the owners of animals impounded for trespassing, and
 - (v) providing for the sale or destruction of animals in case they are not claimed within a reasonable time or in case damages, costs and expenses are not paid,

47. *The Public Lands Act is amended by striking out section 59.*

48. *The Special Areas Act is amended as to section 16 by striking out subsection (2).*

49. *The Domestic Animals (Municipalities) Act is repealed.*

50. *The Improvements Districts Stray Animals Act is repealed.*

51. This Act comes into force on a date or dates to be fixed by Proclamation.

**47. Amends chapter 297 of the Revised Statutes of Alberta 1970.
Section 59 presently reads:**

59. (1) All livestock found on public lands that are not the subject of a disposition are the property of the Crown in right of Alberta as against every one except a person who is able to establish a better title thereto.

(2) Any person appointed for the purpose by the Minister may round up, seize and detain any livestock that are found on any public lands that are not the subject of a disposition.

(3) Upon seizing any livestock bearing any visible brand, mark or vent and any offspring running with them, the person making the seizure shall send to the owner by mail at his last known post office address, a notice in writing setting out

- (a) the date of seizure,
- (b) the description of the livestock seized,
- (c) the description of the place at which the livestock is kept, and
- (d) the amount of rental payable for the use of the public lands upon which the livestock was found grazing.

(4) Unless the owner pays to the Minister the amount owing under subsection (3), clause (d) together with the costs of rounding up, seizing and detaining the livestock by the expiration of fifteen days from the date of the mailing of the notice, the Minister may dispose of the livestock in any manner he sees fit.

(5) Where seizure is made of livestock not bearing any visible brand, mark or vent, the Minister may dispose of them in any manner he thinks fit.

(6) The property in any livestock that is disposed of by the Minister pursuant to this section passes to the purchaser and all rights of property that existed in the livestock immediately before the sale are extinguished.

(7) Any moneys received by the Minister as a result of a disposition of livestock pursuant to subsection (4) or (5) shall be applied firstly in payment of the costs incurred in seizing, rounding up, detaining, offering for sale and selling or otherwise disposing of the livestock and, secondly, in payment of the sum payable to the Minister under subsection (3), clause (d).

(8) The balance, if any, shall be paid to the persons who, in the opinion of the Minister, are entitled thereto and who, within six months after the date of the sale, make application in writing to the Minister for payment.

(9) If after the expiration of six months from the date of the sale and after paying such persons as have within that period made application for payment, any surplus remains, the surplus shall be paid into and forms part of the General Revenue Fund.

48. The Special Areas Act, section 16, presently reads:

16. (1) For the purpose of controlling and regulating any part of an area set aside for a community grazing area, the Minister with the approval of the Lieutenant Governor in Council

- (a) may make such provision for the administration thereof as he considers proper, and
- (b) may prescribe
 - (i) the persons who may have animals thereon,
 - (ii) the number, kind and description of animals that any person may place thereon,
 - (iii) the fees payable in respect of any animals permitted to graze thereon,
 - (iv) the times at which and the manner in which round-ups are to be made, and
 - (v) the rules relating to the impounding and dealing with stray animals thereon.

(2) If any provision made pursuant to subsection (1) conflicts with any provision of The Domestic Animals (Municipalities) Act, the provision made pursuant to subsection (1) prevails.

49. Repeals chapter 112 of the Revised Statutes of Alberta 1970.

50. Repeals chapter 181 of the Revised Statutes of Alberta 1970.