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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 36

AN ACT TO AMEND TITLE 3 OF THE DELAWARE CODE RELATING TO STRAY LIVESTOCK.

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

Section 1. Amend Chapter 77, Title 3 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 7700. Definitions

As used in this chapter:

(1) “Agent of the department” means a person who acts on behalf of the Department to carry out its activities.

(2) “At large” means livestock that strays from confinement or restraint and from the property of the owner including livestock that strays into a confined area that is owned by a person other than the owner of the livestock.

(3) “Department” means the Department of Agriculture.

(4) “Livestock” means domesticated species including: bovine, camelid, cervid, equine, swine, ruminants, ratites, rabbits, poultry, and other animals harvested for food, fiber, fur, or leather.

(5) “Unenclosed lands” means lands, other than the livestock owner’s property, where the livestock would be able to run loose, free of confinement, or otherwise unrestrained by the livestock owner.

Section 2. Amend § 7701, Title 3 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 7701. Permitting livestock to run at large; civil penalty.

Any person permitting livestock to run at large on the public highways or unenclosed lands within this State shall be tried before a justice of the peace or the Court of Common Pleas for the county in which the offense occurred and, if found guilty, shall receive a fine, which may not be suspended, of not less than \$25 nor more than \$200 for each offense.

(a) It is unlawful to allow livestock to run at large, on the public highways, or on unenclosed lands within the State.

(b) The Secretary of Agriculture may impose a civil penalty of not less than \$50 or more than \$100 for each offense on any person owning livestock found to have run at large, on the public highways, or on unenclosed land within the State. For each subsequent offense occurring within 12 months of a prior offense, the person is subject to a civil penalty not less than \$100 or more than \$200 for each offense. The minimum civil penalty for a subsequent offense may not be subject to suspension.

(b) No civil penalty shall be assessed unless the person charged has been given notice and opportunity for a hearing on each charge under Chapter 101 of Title 29.

(c) All civil penalties collected under this chapter must be remitted to the Department or other assigned agency.

Section 3. Amend § 7702, Title 3 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 7702. Taking up and impounding ~~stray~~ livestock at large.

(a) Any person or ~~resident owning land in this State~~ agent of the Department may take up any livestock found running at large ~~upon the public highways or on lands owned by that person~~ at large, upon the public highways, or on unenclosed lands within this State and impound the same. Such person or agent of the Department may demand and receive a reasonable sum for the ~~care~~ impoundment, care, and feeding of the ~~animal or animals~~ livestock while in such person's care. The care and shelter provided shall be humane and shall be adequate for the size and class of livestock impounded. The State ~~Veterinarian, a county extension agent of the county in which the livestock is impounded and a livestock owner of the same county~~ Veterinarian will be responsible for determining if the ~~animal or animals~~ livestock are being housed and fed properly as well as determining a fair and reasonable cost for impoundment, care, and feeding per day.

(b) The person or agent of the Department taking up and impounding the livestock shall forthwith give written notice of the taking up and impounding to the owner thereof, if known, or by leaving the notice with an adult person at the owner's or their usual place of abode; or, if unknown, shall place a notice of 3 days duration in ~~2 local newspapers at least 2~~ forms of media, including 1 print, adequately describing the livestock and giving an accurate location where the livestock was found, and the name, address ~~address~~, and telephone number of the person holding the ~~animal or animals~~ livestock.

(c) Any person or agent of the Department taking up and impounding livestock under this chapter who refuses or neglects to give notice as provided in this section, shall be liable to the owner of such livestock in civil damages, to be recovered in a civil action before a ~~justice of the peace~~ Justice of the Peace Court or the Court of Common Pleas of the county in which the livestock was taken up.

Section 4. Amend § 7703, Title 3 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 7703. Damage by ~~stray~~ livestock at large.

(a) Upon the application of any person, or the person's agent, sustaining any damage by reason of the livestock running at large contrary to this chapter, the person or person's agent may seek restitution from any justice of the peace a Justice of the Peace Court or the Court of Common Pleas of the county in which damage was incurred by livestock, which may or may not have been taken up and impounded. ~~impounded, shall designate the State Veterinarian, a county extension agent and a livestock owner of the county in which the damage was incurred, who shall estimate said damages and make a report to the justice or Court, in writing, under their hands or the hands of the majority of them, the amount of damage estimated. The justice or Court shall immediately give notice thereof to the parties interested. The damages so ascertained, together with the legal charges for impounding and keeping the livestock, shall be paid by the person claiming the stock before the same shall be delivered.~~

(b) If the owner of livestock cannot be located or identified and the livestock is taken up by the State, the State shall be held harmless for damages committed by the livestock.

Section 5. Amend § 7704, Title 3 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 7704. ~~Sale of strays.~~ Livestock disposition.

(a) ~~In case~~ If the livestock is not claimed and all legal charges satisfied in accordance with this chapter within ~~40~~ 7 days, the person having the livestock in charge shall have the option to turn over ownership for adoption or advertise the livestock to be sold at public ~~sale, sale.~~

(b) Notice of the livestock sale under subsection (a) of this section must be provided as follows:

(1) If the owner is unknown, by placing a notice giving the particulars of the sale in 2 local newspapers at least 2 forms of media, including one print, for a duration of 3 days and days.

(2) If the owner is known, by giving a copy of the notice to the owner of the livestock, if known, livestock or by leaving the same with an adult person at his usual place of abode.

~~(b)-(c)~~ (c) At the time fixed in the advertisement, the person having the livestock in charge shall proceed to sell the livestock, but may postpone the sale for good and sufficient cause. The proceeds of the sale, after deducting all legal charges, shall must be deposited with the clerk of the peace of the county in which the proceedings took place. The clerk shall hold the proceeds for 6 months, unless sooner claimed by some person proving himself or herself to be the real owner of the livestock. If not so claimed, the proceeds shall be turned over to the Department of Agriculture.

81 (d) The State and the Department make no representation as to the health of any livestock sold or adopted under
82 this chapter and may not be held liable for any damages pursuant to the sale or adoption of livestock sold or adopted under
83 this chapter.

84 Section 6. Amend § 7705, Title 3 of the Delaware Code by making deletions as shown by strikethrough and
85 insertions as shown by underline as follows:

86 § 7705. Exceptions.

87 This chapter shall not apply to ~~cattle or other stock in charge~~ livestock in the care of a drover using due diligence
88 in the control thereof, or to ~~cattle or their stock~~ livestock which accidentally escapes from the ~~enclosures~~ care of the drover.
89 Proof of these circumstances shall always be admitted so that no injustice to the owners be inflicted in consequence thereof.

90 Section 7. Amend § 7706, Title 3 of the Delaware Code by making deletions as shown by strikethrough and
91 insertions as shown by underline as follows:

92 § 7706. Accidental escape of livestock; liability of owners.

93 ~~No~~ An owner, or other person in charge of ~~cattle or other~~ livestock, who receives 25% or more of the person's
94 annual gross income from the sale of agricultural products or the resale of animals grown, raised, or produced for food,
95 fiber, fur or leather shall be is not responsible in any action by reason of ~~cattle or other~~ livestock accidentally escaping ~~from~~
96 ~~their enclosure~~ and straying at large, on any public ~~highway~~ highway, or on unenclosed lands within of this State unless the
97 owner or other person in charge thereof has ~~intentionally~~ negligently allowed the livestock to escape or unless he or she is
98 guilty of negligence in the care of the ~~cattle or other~~ livestock.

99 Section 8. Amend § 7707, Title 3 of the Delaware Code by making deletions as shown by strikethrough and
100 insertions as shown by underline as follows:

101 § 7707. Enforcement; disposition of ~~fin~~ es civil penalties.

102 The Department has the authority for administering and enforcing this chapter and may promulgate regulations to
103 administer and enforce this chapter. The Delaware State Police, local police officers of the community in which the offense
104 took place, and ~~agents of the Department of Agriculture shall enforce this chapter prohibiting livestock running at large.~~
105 Department of Health and Social Services' Office of Animal Welfare shall assist the Department, at the request of the
106 Department. All ~~fin~~ es civil penalties imposed for violations of ~~the stray livestock laws this chapter~~ shall be paid to the
107 ~~Department of Agriculture.~~ Department. Any civil penalties collected by the Department under this section are hereby
108 appropriated to the Department to carry out the purposes of this section. ~~The Department of Health and Social Services'~~
109 ~~animal welfare officers shall assist the Department of Agriculture, at the request of the Department of Agriculture.~~

SYNOPSIS

This Act more effectively and efficiently clarifies the enforcement authority of the Department of Agriculture regarding livestock at large. The offenses will now be civil penalties rather than criminal fines, expenses for impoundment will be reimbursed by the violator, and other sources of media can be used to give public notice of impoundment or sale of any livestock at large. This Act is intended to penalize repeat offenders that knowingly let their livestock run at large.

Author: Senator Simpson