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IMPORTANT NOTICE

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CONTENTS • INHOUD

<i>No.</i>		<i>Page No.</i>	<i>Gazette No.</i>
	PREMIER'S NOTICE		
3	North West Animal Pounds Act (7/2010): For general information.....	2	6912

PREMIER'S NOTICE

No. 3

12 July 2011

It is hereby notified that the Premier of the North West Province has assented to the following Act which is hereby published for general information:-

No. 07 of 2010: North West Animal Pounds Act, 2010

NORTH WEST ANIMAL POUNDS ACT
ACT NO. 7 OF 2010



ASSENTMENT

DATE OF ASSENTMENT

DATE OF COMMENCEMENT: DATE OF PUBLICATION

(English text signed by the Premier)

ACT

To regulate for the establishment, erection and control of pounds in the Province; to regulate the impounding, care and disposal of impounded animals in the Province; and to provide for matters incidental thereto.

BE IT ENACTED by the North West Provincial Legislature as follows:-

ARRANGEMENT OF SECTIONS

1. Definitions
2. Application of the Act
3. Establishment of pounds
4. Appointment of pound master
5. Impounding of animals
6. Animals too vicious, intractable or wild to be driven to the pound
7. Release of animals before removal to pound
8. Care of trespassing or impounded animals
9. Animals not to be worked
10. Pound into which an animal may be taken

11. Information to be supplied to pound master of animals sent to pound
12. Acceptance of animals to a pound
13. Pound register
14. Notice to owner of impounded animals
15. Care of impounded animals
16. Death or injury of impounded animal
17. Release of impounded animals
18. Sale of impounded animals
19. Marking of impounded animals
20. Pound master may not purchase impounded animals
21. Fees payable to the pound master
22. Assessment of damages
23. Monitoring and support to municipalities
24. Delegation of powers
25. Regulations
26. Offences and penalties
27. Repeal of laws
28. Short title and commencement

Definitions

1. In this Act, unless inconsistent with the context:-

“animal” means any equine or bovine animal and animals shall have a corresponding meaning;

“bovine (bovid)” means an animal of large family of ruminants having a pair of hollow un-branched horns e.g oxen, sheep, goats and antelope;

“equine” means an animal with horse characteristics;

“department” means the North West Provincial Department of Local Government and Traditional Affairs;

“dispose” means to put apart or to arrange in a particular manner or to place in certain order or to have power to arrange or settle affairs or to regulate affairs;

“dispose of” to deal with conclusively or to settle or to give away or to sell or to get rid of or to throw away;

“MEC” means a Member of the Executive Council responsible for Local Government and Traditional Affairs;

“municipality” means a municipality established in terms of section 156 of the Constitution of the Republic of South Africa Act, Act No. 108 of 1996;

“owner” includes a person who is known or whose identity, with exercise of reasonable diligence, can be ascertained and, in relation to:-

- (a) an animal, includes the owner or agent or other person having lawful custody or possession of such animal; or
- (b) land, includes the owner, lessee or lawful occupier of such land, or his or her agent;

“pound” means a pound established in terms of section 3 of this Act;

“pound master” means a person appointed in terms of section 4 of this Act;

“prescribed” means prescribed by regulations contemplated in section 25 of this Act;

“public road” means any road, street or thoroughfare or any other place which is commonly used by the public or section thereof or to which the public or section thereof have the right of access and includes—

- (a) the verge of any such road, street or thoroughfare;
- (b) any bridge, ferry or ford traversed by any such road, street or thoroughfare; and
- (c) any other work or thing forming part of or connected with or belonging to such road, street or thoroughfare;

“veterinarian” means an animal health practitioner who possesses the necessary qualifications accredited or recognized by the South African Qualifications Authority;

Application of the Act

2. This Act applies to all pounds established anywhere in the province whether in terms of this Act or any other law which is in force immediately prior to the promulgation of this Act or otherwise repealed in terms of any provision of this Act.

Establishment of pounds

3. (1) A local municipality situated within the boundaries of the North West Province may establish in its area of jurisdiction a pound to be operated in terms of the provisions of this Act.

(2) A person other than a municipality may establish a pound at his or her or its own cost; provided that he or she or it has been granted authority to do so by the relevant local municipality in the prescribed manner.

(3) A pound established anywhere in the Province in terms of any law, whether applicable or repealed, prior to the enactment of this Act is deemed to be established in terms of this Act and shall be administered in terms of the provisions of this Act.

(4) A pound master or owner of a pound referred to in subsection (3) above shall apply for written authority at a local municipality having jurisdiction to continue with the operations of the pound within three calendar months of the promulgation of this Act.

(5) Where a person has applied for authorization from a local municipality to establish and operate a pound, the municipality shall consider the application and make known its decision to any such applicant; provided that where the municipality has refused and or failed to grant such authority any such applicant may appeal to the MEC for intervention.

(6) Where no pound is established in a local municipal area, the MEC may establish a temporary State pound, which shall operate in terms of the provisions of this Act; provided that such pound shall cease to exist once a municipal or privately owned pound has been established in terms of the provisions of sub-section (1).

Appointment of pound master

4. (1) A local municipality or a person establishing a pound shall appoint a pound master who shall hold office and operate the pound subject to the provisions of this Act.

(2) A pound master currently operating a pound in accordance with any law, whether applicable or repealed, shall operate such pound established in accordance with the provision of this Act.

(3) A person is disqualified to be appointed a pound master if he or she:-

- (a) is under 18 years of age;
- (b) is an un-rehabilitated insolvent;

- (c) has been declared by a competent authority to be mentally incapable in terms of the Mental Health Care Act, Act No. 17 of 2002 or any other related legislation;
- (d) has been convicted of a criminal offence and sentenced to imprisonment for a period exceeding 12 months without an option of a fine; and
- (e) has been removed from an office or a position of trust on account of misconduct.

Impounding of animals

5. (1) An owner of land upon which an animal is found trespassing may seize such animal for purposes of impounding it; provided that before any such animal may be removed to a pound, and where possible notice must be given by such person to the owner of an animal.

(2) An animal that is found straying or unattended on a public road may be seized by:-

- (a) a member of the South African Police Services;
- (b) a member of the North West Road Traffic inspectorate;
- (c) a member of a municipal traffic inspectorate; or
- (d) a pound master appointed in terms of the provisions hereof.

(3) Subject to the provisions of section 9, a person who keeps an animal seized for purposes of impounding for a period longer than six hours must supply it with feed, water and any other necessary care that the seized animal may require.

(4) A magistrate who has jurisdiction or member of stock theft unit of the SAPS may, in writing order a pound master to impound an animal alleged or proved to have been stolen, in the pound.

(5) An animal impounded in terms of subsection (4) must not be released, unless a magistrate who has jurisdiction or member of the stock theft unit of the SAPS, as the case may be, orders or authorizes in writing the release of such animal.

(6) No person is allowed to seize, impound or detain any animal except in accordance with the provisions of this Act.

Animals too vicious, intractable or wild to be driven to the pound

6. Where an animal found trespassing on land or to be straying unattended on a public road or public place is certified by a State Veterinarian or a person contemplated in section 5(2)(a)-(c) to be too dangerous, vicious, intractable, too sick to be driven or transported to a pound, or too wild, it may be disposed of in an acceptable manner; provided that, where possible, a notice shall be given to the owner of such animal before destruction or disposal is effected.

Release of animals before removal to pound

7. A person whose animal has been seized for purposes of impoundment may before the impounding of thereof, upon proof of ownership shown, request the person who seized such animal to release it prior to its removal to the pound, in which event the person who seized the animal:-

- (a) may release it, if the animal was seized as contemplated in section 5(1);
- (b) may release it, if the animal was seized as contemplated in section 5(2); or
- (c) may approach a Court with jurisdiction in respect of any claim for damages which he or she may have suffered.

Care of trespassing animal

8. A person may not work, use or ill-treat an animal found trespassing on his or her land before he or she may remove it to a pound.

Animal not to be worked

9. A pound master under whose care an animal has been kept may not work, use or ill-treat such animal; provided that the pound master may milk any such animal to avoid damaging its udder; provided further that the pound master may not sell such milk or supply it to other persons.

Pound into which an animal may be taken

10. A person who seizes an animal for purposes of impounding it must remove such animal into the nearest accessible pound, using the shortest possible route and within

the shortest possible time; provided that animals may be separated according to their species and gender.

Information supplied to pound master of animals sent to pound

11. A person who removes a seized animal to a pound must advise the pound master in writing of:-

- (a) the number and description;
- (b) the land or place from which the animal was seized; and
- (c) the name and particulars of the owner, if known, of land from which the animal was seized.

Acceptance of animal to a pound

12. (1) A pound master must not refuse to accept an animal for impoundment regardless of its condition or origin.

(2) A pound master must accept an animal seized by the SAPS at the same tariff of fees prescribed by the MEC; provided that such animal may be kept for such period as the SAPS may require and may only be released to the SAPS, or on instructions by the SAPS or pursuant to a court order upon payment of prescribed pound fees.

Pound register

12. (1) A pound master must keep and maintain a pound register into which an animal kept in the pound shall be registered, which register shall be available for inspection by interested any person at all reasonable times.

(2) A pound master who:-

- (a) neglects or refuses to comply with the provisions of subsection (1) hereof; or
- (b) knowingly and intentionally makes a false entry or omits to make an entry in the pound register; or
- (c) wrongfully and intentionally destroys or erases any previous entry from the pound register; or

(d) willfully delivers a wrong copy or extract from the pound register to any person,

commits an offence and may be liable on conviction to imprisonment for a period not exceeding 12 months, or to a fine, or to both imprisonment and a fine.

(3) A pound master shall keep all records and registers in respect of a pound for a period of not less than five years.

Notice to owner of impounded animal

14. (1) A pound master must give notice, in the prescribed manner, to the owner of an impounded animal of the impoundment if:-

- (a) he or she knows the name and address of owner of such animal; or
- (b) the name and address of the owner of impounded animal can be ascertained with the exercise of reasonable diligence.

(2) Where the owner of impounded animal cannot be reasonably ascertained, the pound master must issue a notice in writing inviting the owner and or the public to identify the animal within a period of 21 days, failing which such animal may be sold by the pound master on auction.

Care of impounded animal

15. (1) A pound master must ensure proper medical care and feeding of impounded animals and shall be liable to the owner of an impounded animal for any loss or damage or injury sustained by the owner by reason of neglect or default by the pound master or his or her employees.

(2) A pound master who:-

- (a) neglects impounded animal; or
- (b) exposes impounded animal to danger; or
- (c) works or uses impounded animal or permits another person to work or use impounded animal,

commits an offence and may be liable on conviction to imprisonment not exceeding 12 months or to a fine, or to both imprisonment and a fine.

(3) A pound master must keep male and female animals separately while impounded.

(4) A pound master must keep an animal which is infected with any disease contemplated in the Animal Deceases Act, 1984 (Act 35 of 1984), or if the pound master has reasonable suspicion that an impounded animal is infected with any such disease, isolated and report the disease to the nearest State veterinarian.

(5) A Court having jurisdiction may, if satisfied that an impounded animal is dangerously vicious or permanently disabled or too ill or gravely injured, order that such animal be destroyed or disposed of: provided that prior notice of such destruction or disposal should be given to the owner of the animal.

Death or injury of impounded animal

16. A pound master must, whenever an animal in his care dies or is injured, register the description of such animal, the nature and cause of death or injury thereof in the pound register, and give notice of death or injury of the animal to the owner thereof in the prescribed manner.

Release of impounded animal

17. (1) A pound master must release an impounded animal:-

- (a) when an owner provides him with proof of identity and ownership; and
- (b) upon receipt from the owner of the prescribed fees the pound master is entitled to in terms of this Act.

(2) A pound master shall, when releasing an impounded animal, provide the owner with a receipt bearing the particulars of the pound, fees paid and the identity of the owner of the animal.

(3) An impounded animal may not be released before the pound fees, which may include assessed damages, if any, have been paid unless a Court with jurisdiction orders that the animal be released from the pound.

(4) A pound master may retain an animal if the owner is unable to pay him or her prescribed fees or costs occasioned by the impounding for purposes of recovering such fees or costs that are due and payable.

Sale of impounded animals

18. (1) Impounded animals may be sold by the pound master by public auction only when:-

(a) she or he is satisfied that notice has been given to the owner, in the prescribed manner, of the impending sale, which notice shall contain the following information:-

- (i) the number and description of the animals;
- (ii) amount of fees payable.

(b) a period of 21 calendar days has elapsed since the issuing of a notice referred to in sub-section (1)(a).

Marking of impounded animals

19. All impounded animals sold by public auction in terms of this Act, must be marked in the prescribed manner, before their removal from the pound.

Pound master may not purchase impounded animals

20. A pound master may not purchase, whether directly or indirectly, an animal on sale in terms of section 18 of this Act.

Fees payable to pound master

21. A pound master shall be entitled to:-

- (a) charge the owner of impounded animals fees prescribed in terms of this Act;

- (b) recover any costs for feeding, water, dipping, medical treatment, inoculation, or any other treatment made in terms of the provisions of this Act or any other applicable law; and
- (c) assessed damages, which amount of damages shall be paid to the owner of the land who has suffered damages.

Assessment of damages

22. (1) A person who owns land upon which an animal has trespassed or who has suffered damages as a result thereof, may claim damages by approaching a Court with jurisdiction.

(2) An expert may be used to assess the damage caused by the animal so impounded: provided that the fees for the services of such expert assessor may be recovered from the owner of the animal.

(3) Despite the provisions of subsections (1) and (2) above, the owner of the land who suffered damages and the owner of the animal may reach agreement about the amount of damages payable by the owner of animals.

Monitoring and support to municipalities

23. (1) The Department must monitor and support the municipalities on pound matters depending on their capacity.

(2) The MEC may, by Notice in the *Provincial Gazette*, determine the role of traditional leaders on matters relating to the care, sale and impoundment of animals in the Province.

Delegation of powers

24. The MEC may delegate in writing to the Head of Department or to Municipal Managers, any power conferred upon the MEC by this Act, except a power relating to the formulation of regulations.

Regulations

25. (1) The MEC may make regulations not inconsistent with this Act, prescribing:-

- (a) the establishment, registration and operation of pounds;
- (b) guidelines for the construction of pounds;
- (c) recording and keeping of pound registers;
- (d) fees payable to the pound master in respect of the impounding of animals, which fees may be varied from time to time;
- (e) the procedure for conducting of sale of animals held under the provisions of this Act;
- (f) the marking of impounded animals to be sold by public auction;
- (g) forms and notices to be given in terms of the provisions hereof; and
- (h) any other matter which the MEC may deem necessary.

(2) The MEC shall publish a Notice in the *Provincial Gazette* a list of all pounds established in terms of the provisions of this Act.

Offences and penalties

26. A person who, subject to the provisions of section 15:-

- (a) contravenes or fails to comply with any provision of this Act;
- (b) resists, hinders or obstructs a pound master in the exercise of the pound master's powers or duties in terms of this Act; or
- (c) knowingly and with the intent to deceive, furnishes false information or particulars to a pound master in relation to:-
 - (i) the animal or the name and address of the owner of impounded animal or animal tendered for impoundment; or
 - (ii) land or the name and address of the landowner on which animal was found trespassing;

shall be guilty of an offence and is on conviction, liable to a fine or to imprisonment for a period not exceeding six months, or to both the fine and imprisonment.

Repeal of laws

27. Laws appearing in the schedule annexed hereto are repealed to the extent stated therein.

Short title and commencement

28. This Act is called the North West Pounds Act, 2010 and shall come into operation on date of publication in the *Provincial Gazette*.
