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GENERAL NOTICE

NOTICE 339 OF 2012

DEPARTMENT OF POLICE

DRAFT MOVEMENT OF ANIMALS AND ANIMAL PRODUCE BILL, 2012 FOR PUBLIC COMMENTS

The administration of the Stock Theft Act, 1959 (Act No. 57 of 1959) has been transferred to the Minister of Police on 19 August 2011. In view of the importance to effectively combat Stock Theft, a draft Bill to repeal and substitute the Stock Theft Act, 1959, namely the Movement of Animals and Animal Produce Bill, 2012, has been drafted.

The attached draft Bill is hereby submitted for public comments, in order to finalise it for submission to Cabinet to obtain approval to introduce the Bill to Parliament.

Interested persons are invited to submit written comments on the draft Bill within 30 days from the date of publication of this notice to:

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REPUBLIC OF SOUTH AFRICA

**MOVEMENT OF ANIMALS AND ANIMAL
PRODUCE BILL**

(MINISTER OF POLICE)

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in
Government Gazette No of 2011)
(The English text is the official text of the Bill)*

[B - 2011]

BILL

To protect the South African livestock owners from the theft of animals and animal produce; to combat and investigate crimes concerning animals and animal produce; to monitor the movement of animals and animal produce within and through the borders of the Republic of South Africa;

Be it enacted by the Parliament of the Republic of South Africa, as follows:-

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DEFINITIONS

In this Act, unless the context indicates otherwise:-

- (i) **“acquire”** means receive, obtain, temporary receives for purpose of sale and also any way in which ownership is not transferred;
- (ii) **“animals”** means any horse, mule, ass, cattle, sheep, goat, pig or ostrich or the carcass or a portion of the carcass of any such animal;
- (iii) **“animal produce”** means whole or any part of skins, hides, horns, intestines, heads, parts of bones, claws, semen or embryos and any wool, mohair or ostrich feathers and ostrich eggs;
- (iv) **“auction”** also means video auctions ;
- (v) **“agent”** means a person who acts for others in negotiating or arranging contracts in respect of or purchases, sales, or the transfer of animals or animal produce in return for a fee, commission or other consideration and **“broker”** has a corresponding meaning;
- (vi) **“Minister”** means the Minister of Police;
- (vii) **“person”** means natural and legal persons;
- (viii) **“possess”** does not necessarily mean the physical ownership of animals and animal produce, but also the intent to deal with it on behalf of the owner, agent or principal, or to control it as such and also have stray animals on your property;
- (xi) **“prescribed”** means prescribed by regulation;
- (xii) **“public sale”** means an public auction on premises to which all members of the public normally have access, which is subject to the following provisions:

- (a) that the sales transaction takes place on other days than Sundays or public holidays between 07:00 and 18:00; or
 - (b) in pursuance of an order issued by a competent court.
- (xiii) **“regulation”** means any regulation made or regarded as having been made under this Act;
- (xiv) **“fence”** means any wire fence, or any other fence, wall or gate through which no animal could pass without breaking it, or any excavation through or across which no animal can pass or any natural boundary through or across which no animal would ordinarily pass;
- xv) **“this Act”** includes the regulations.

CHAPTER 1

APPLICATION OF THE ACT

Application of the Act

1. (1) In the event of any inconsistency between this Act and any other law in force at the commencement of this Act, other than the Constitution, this Act prevails.
- (2) No person may possess, transport, handle, transfer, sell, purchase, acquire or supply animals or animal produce unless he or she is in possession of the prescribed documents and registers where applicable.
- (3) (a) The Minister may exempt in the *Gazette* a person from any or all provisions of this Act.

(b) Any such exemption may be –

- (i) general or specific;
- (ii) for any time;
- (iii) subject to any condition necessary to reach the objective of this Act;
- (iv) changed or revoked at any time.

CHAPTER 2

DEALING WITH ANIMALS AND ANIMAL PRODUCE

Import, export and transport of animals and animal produce

2. (1) No person may import animals or animal produce into or export animals or animal produce from the Republic, or cause any animals or animal produce to be exported from the Republic, unless he or she is in possession of the prescribed documents and registers.
- (2) No person may, between sunset and sunrise, drive, carry or convey any animals or animal produce in any other way than in or on a vehicle unless the person is the owner, lessee or occupant of land where the animals or animal produce are driven, carried or conveyed over, unless otherwise prescribed.
- (3) No person may, between sunset and sunrise, receive any animals or animal produce that have been driven, carried or conveyed in any other way than on or in a vehicle, unless otherwise prescribed.
- (4) Notwithstanding the provisions of any other Act, animals or animal produce crossing the border out of or into South Africa must be identified with a permanent identification mark as is prescribed.

Public sale of animals and animal produce

3. (1) A person shall only deliver or sell animals, uncured raw meat, a carcass or portion of a carcass or unprocessed animal produce to members of the public from a vehicle, container, road stall, structure or residence that are not registered business premises, if such a seller is in possession of his or her identity document or passport and other prescribed documents which shall be displayed on request.
- (2) The sale of animals, uncured raw meat, a carcass or portion of a carcass or unprocessed meat and animal produce shall be restricted to a specific area and time as prescribed.
- (3) Information of the transactions shall be reflected in a register as is prescribed.

Control over the movement of animals or animal produce

4. (1) A person who delivers animals or animal produce to a person to sell, process, barter, provide, give or dispose of in any other manner, shall, for the purposes of this section, be deemed to have disposed of those animals or animal produce, to such person.
- (2) A person who is not the owner of animals or animal produce may not drive or transport animals or animal produce -
 - (a) by rail;
 - (b) on or along a public road; or
 - (c) over land of which he or she is not the owner, lessee or occupier; unless he or she is in possession of his or her identity document or passport.

- (3) A person mentioned in subsection (1) shall also have a document not older than four days, in his or her possession, as is prescribed.
- (4) If the animals or animal produce are being transported in a vehicle, it is presumed that the driver of the vehicle is in possession of the animals or animal produce.
- (5) No person shall, if the animals or animal produce are to be driven or transported by rail, on or along a public road or land -
- (a) receive animals or animal produce after it has been bought, bartered, provided, given or sold, if the original owner or agent of the animals or animal produce, did not provide a document in terms of this Act;
 - (b) drive or transport animals or animal produce by rail or on a public road or land, unless the original owner or agent provide a document as is prescribed.
- (6) A person in possession of animals or animal produce, shall at all times be in possession of his or her identity document and the prescribed documents which must accompany the animals or animal produce.
- (7) The movement of animals or animal produce may be restricted to a certain area, time and method with specific instructions to -
- (a) transport contractors;
 - (b) owner of animals or animal produce; or
 - (c) appointed agents.

Control over the movement of animals or animal produce from land of which the owner of animals or animal produce is not the owner, lessee or occupier

5. (1) No person who is or was employed by an owner or occupier of any land shall remove any animal or animal produce owned by him or her or under his or her control from any land owned or occupied by such owner or occupier unless he or she is in possession of a document, furnished by such owner or occupier or the agent of such owner or occupier containing the following -
- (a) date not more than seven days before the removal;
 - (b) a description of the animals or animal produce; and
 - (c) a certificate that to the best knowledge and belief of the person furnishing the document, the person identified, is entitled to remove the animals or animal produce on the specific date.
- (2) An owner or occupier of land, or an agent of such owner or occupier, shall, when requested to do so by a person as is referred to in subsection (1), shall forthwith furnish him or her with any document which he or she may require in terms of subsection (3).
- (3) An owner, occupier or person who possess land who provide grazing, standing place or storage space shall -
- (a) provide the prescribed document to the owner of animals or animal produce who request him or her for permission to remove the animals or animal produce from the land, without delay; and
 - (b) furnish the document in the prescribed manner.

Acquiring animals or animal produce from a person whose residential address and identity is unknown to the buyer

6. (1) No person may acquire or take into possession animals or animal produce in any manner or receive animals or animal produce for sale, processing, safekeeping or feeding them, from a person who does not have an identification document in his or her possession and a known address.
- (2) A person who is the owner of animals, or has animals or animals produce under his or her control or supervision and who trades with, receives or processes animals or animal produce must keep a document of the animals or animal produce as is prescribed.
- (3) A person who issues the prescribed document must certify that he or she knows the owner of the animal or animal produce and that the person who receives the document has the right to remove the animals or animal produce.
- (4) An owner, occupier or person who possess land who provide grazing, standing place or storage space shall -
- (a) provide the prescribed document to the owner of animals or animal produce who request him or her for permission to remove the animals or animal produce from the land, without delay; and
- (b) furnish the documents in the prescribed manner.

Authorization from the owner of animals and animal produce to a person who controls or supervises it on behalf of the owner

7. (1) No person may take control of or supervision over animals for grazing, safekeeping or treatment, or animal produce for safekeeping or treatment on land or premises of which he or she is the owner, lessee, occupier or supervisor, unless he or she is the owner of such animals or animal produce and in possession of the prescribed document.
- (2) The owner of the animals or animal produce must provide prescribed documents to the person who has supervision or control over the animals or animal produce when the person take possession of such animals or animal produce.
- (3) A person who, for the purpose of grazing, feeding, safekeeping or treatment, transfers animals or animal produce, must furnish the owner, lessee, occupier or supervisor of animals or animal produce, with the prescribed documents.

CHAPTER 3

DOCUMENTATION, REGISTERS AND RECORD KEEPING

Documents

8. (1) The Electronic Communications and Transactions Act, 2002, (Act No 25 of 2002) applies with the necessary changes to any transaction in terms of this Act.
- (2) The owner or possessor of the animals must keep an animal register as is prescribed.
- (3) A person selling, buying, transporting, handling, transferring or supplying animals or animal produce must ensure that -

- (a) the identity of a person acquiring any animal or animal produce is verified;
 - (b) documents and registers are compiled with the information as is prescribed;
 - (c) the said documents and registers are kept by the transferee;
 - (d) copies of the said documents and registers are handed over to the recipient;
 - (e) the said documents, and the copies thereof are kept for at least three years; and
 - (f) the registers are kept for at least 3 (three) years after the date of the last entry.
- (4) It is an offence for a person in possession of animals or animal produce to be in possession of insufficient or no documents and registers.
- (5) The provisions of subsections (2) and (3) are not applicable in the case of animals or animal produce driven or transported by the owner, or his or her employee of such animals or animal produce on or along a part of a public road that crosses land belonging to the owner, occupier, or lessee, or his or her agent.

Appointment of agent acting on behalf of owner

9. (1) (a) A person acting as an agent on behalf of an owner of animals or animal produce, must have a document issued by the owner of animals or animal produce or a competent court in the format as is prescribed.

- (b) The document must not be older than six months.
- (2) The person issuing the document must certify that he or she gives the agent a mandate to take part in trade on his or her behalf.

CHAPTER 4

SEARCH, SEIZURE, DISPOSAL, FORFEITURE, DAMAGES AND EVIDENCE

Search, seizure, disposal, forfeiture, damages and evidence

- 10. (1) The Criminal Procedure Act, 1977 (Act No. 51 of 1977) applies with the necessary changes to any search, seizure, forfeiture, disposal, damages and evidence in terms of this Act.
- (2) A police official may without a warrant -
 - (a) search the person in control of the animals, animal produce or any object refer to in section 11(1);
 - (b) investigate and determine the identification of the animals or animal produce;
 - (c) search and investigate the means of transport and container used at any time to obtain greater clarity about the origin and destination of the animals and animal produce;
 - (d) demand that the owner or person who is taking the animals or animal produce across the border, present documentation as is prescribed;

- (e) take photographs of animals or animals produce, obtain nose prints or other prints, obtain hair and skin samples, scrapings or blood samples of animals or animal produce;
 - (f) mark animals or animal produce for purposes of identification by means of brand marks, tattoos, paint marks or any electronic means of identification;
 - (g) seal any vehicle, vessel, aircraft or container with an official seal which can be broken by a police official; and
 - (h) seize any animals, animal produce, vehicle, vessel, aircraft or arrest a person taking animals or animal produce across border if there is a reasonable suspicion that the animals or animal produce are not lawfully in the persons possession.
- (3) A police official may without a warrant, and without a person being arrested, take fingerprints, palm prints, footprints, clothes and bodily samples of a person or group of persons or may cause any such prints or samples to be taken if there are reasonable grounds to –
 - (a) suspect that a person or more of the persons in the group have committed an offence in terms of this Act; and
 - (b) believe that the prints or samples or the results of an examination thereof, will be of value in the investigation by excluding or including one or more of the persons as possible perpetrators of the offence.
- (4) The person who has control over prints or samples taken in terms of this section -
 - (a) may examine them for the purposes of the investigation of the relevant offence or cause them to be so examined; and

- (b) must immediately destroy them when it is clear that they will not be of value as evidence.
- (5) Bodily samples to be taken from the body of a person may only be taken by a registered medical practitioner or registered nurse.
- (6) A police official may do such test, or cause such tests to be done, as may be necessary to determine whether a person suspected of having committed an offence in terms of this Act, has committed such an offence.
- (7) A police official may take photographs of animals or animal produce, obtain nose prints or other prints, obtain hair and skin samples, scrapings or blood samples of animals or animal produce.
- (8) Whenever any peace officer, police official, or owner, lessee or occupier of land reasonably suspects that a person has in or under any container or covering or in or upon any vehicle any animals or animal produce in regard to which an offence has been committed, such peace officer, police official, owner, lessee or occupier may without warrant, search such container or vehicle and remove such covering, and if he or she thereupon find any animals or animal produce in regard to which he or she reasonably suspects an offence to have been committed, he or she may without a warrant arrest such person and seize such vehicle or container and shall as soon as possible convey such person and the animals or animal produce so found, and the vehicle or container so seized, to the nearest police station with the necessary facilities.
- (9) A peace officer, police official or someone who is appointed as is prescribed, may within the three years, demand an inspection of the animal register, and upon such demand, the person having possession of such register shall produce it for inspection to the person making the demand.

CHAPTER 5

PRESUMPTIONS

Possession of an object or means that could be used to injure, kill or steal animals under certain circumstances.

11. (1) A person found in possession of any objects or means with regard to which a reasonable suspicion exists that the objects or means can be used to injure, kill or steal animals, and is unable to provide a satisfactory explanation of such possession, shall be guilty of an offence.
- (2) When a person is charged of an offence in subsection (1), the onus is on the State to prove that the object or articles are usually used to injure, kill or steal animals where the accused has been arrested.

Failure to give a satisfactory account of the possession of animals or animal produce

12. (1) A person found with animals or animal produce in his or her possession or control which do not have registered identification marks, and who is unable to give a satisfactory account of such possession shall be guilty of an offence, on condition that the burden of proof rests on the State to prove that the account given is unsatisfactory.
- (2) A person found amongst or having control over animals who is unable to give a satisfactory account of his or her presence there, is guilty of an offence on condition that the burden of proof rests on the State to prove that the account given is unsatisfactory.

Absence of reasonable grounds to presume that animals or animal produce have been acquired legally

13. (1) A person who in any manner, otherwise than at a public sale, acquires or receives into his or her possession from any other person stolen animals or stolen animal produce without having reasonable cause, proof of which shall be on such first mentioned person, for believing, at the time of such acquisition or receipt, that such animals or animal produce is the property of the person from whom he or she acquires or receives it or that such person has been duly authorised by the owner thereof to deal with it or dispose of it, shall be guilty of a offence.
- (2) In the absence of evidence to the contrary which raises reasonable doubt, proof of possession as contemplated in subsection (1) shall be sufficient evidence of the absence of reasonable cause.

Entering enclosed land, kraal, shed, stable or other walled place where animals or animal produce are kept or stored

14. (1) A person authorized to supervise and be in charge of animals or animal produce which are on land which has sufficient fences on all sides, a kraal, shed, stable or other walled places where animals or animal produce are kept or stored, may ask a person who enters or leaves the land, kraal, shed, stable or other walled place to-
- (a) provide his or her name, surname, address and proof of identity by means of his or her identity document or passport;
- (b) declare what he or she has in his or her possession;
- (c) declare and exhibit the contents of any vehicle or container of any kind which he or she has in his or her possession;

- (d) allow his or her vehicle or container under his or her control to be searched;
 - (e) must submit himself or herself to a search; and
 - (f) comply with a lawful condition or command from the owner, lessee, occupier or authorized person.
- (2) If a person has to move or open a gate or fence, climb, crawl or walk over, under or through a fence to gain access to land, kraal, shed, stable or other walled place, such action is considered as trespassing on that land, kraal, shed, stable or other walled place.
- (3) A police official, owner of land or his designee and persons under his or her direct command or a person as prescribed, can enter the land, kraal, shed, stable or other walled place without the permission of the owner, lessee, occupier or authorized person -
 - (a) as part of his or her duties; and
 - (b) must display his or her appointment certificate or authorization if asked to do so.
- (4) No person may without the permission of the owner, lessee, occupier or authorized person enter or trespass land with sufficient fences, kraal, shed, stable or other walled place.
- (5) If a person has to move or open a gate or fence, climb or walk over, under or through a fence to gain access to land, kraal, shed, stable or other walled place such action is considered as trespassing on that land, kraal, shed, stable or other walled place.

CHAPTER 6**OFFENCES, PENALTIES AND JURISDICTION****Offences**

15. (1) It is an offence to contravene or fail to comply with any -
- (a) provision of this Act;
 - (b) condition of a document or registers or authorization issued or granted by or under this Act;
 - (c) provision, direction or requirement under this Act.
- (2) It is an offence to -
- (a) wilfully obstruct or hinder a police official in the exercise of the powers conferred upon him or her or in the duties assigned to him or her in terms of this Act.
 - (b) disobey any lawful order of a police official whether verbal or in writing; or
 - (c) wilfully give false information to a police official.

Act applicable in all cases where the charge is one of the theft of animals and animal produce.

16. (1) The provisions of this Act is applicable in all cases where an accused is charged or subpoenaed with regard to theft of animals or animal produce, notwithstanding the fact that this Act is not mentioned in the charge or subpoena.

Conviction on a charge of theft of animals and animal produce

17. (1) A person charged with the theft of animals or animal produce can be found guilty of -
- (a) theft or attempted theft of such animals or animal produce;
 - (b) maiming animals during the theft or attempt of theft of animals;
 - (c) receipt, transfer or possession of such animals or animal produce;
 - (d) provoking, inciting, persuasion to –
 - (i) steal such animals or animal produce;
 - (ii) receive such animals or animal produce;
 - (iii) maim animals; or
 - (e) that he or she received the stolen animals or animal produce, knowing that it was stolen, disposed thereof or that he or she assisted in the disposing thereof;
 - (f) a contravention of section 12 or 13.
- (2) A person charged with the theft of animals or animal produce that belong to a specific person, can be found guilty of any of the offences stated in subsection (1), notwithstanding the fact that the prosecution could not prove that such animals or animal produce indeed belonged to that specific person.

Penalties

18. (1) Notwithstanding any other law, a magistrate's or regional court shall in respect of a person who has been convicted of an offence referred to in -
- (a) section 11(1), 12(1) and 13(1), 17 (1) (a), (b), (c), (d), and (e) and (f), sentence the person, in the case of -
 - (i) a first offender, to imprisonment for a period not less than 10 years;
 - (ii) a second offender of any such an offence, to imprisonment for a period not less than 15 years;
 - (iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than 20 years.
 - (b) Section 1(1), 2(1), (2) and (3), 3(1) and (3), 4(1), (2), (3), (4), (5) and (6), 5(1), (2), (3), (4), and (5), 6(1) and (2), 7(1), (2), (3), and 8(1), (2), (3), (4), and (6), 9(1) and (2), 10(4) and (5), 14(1) and (2) a fine not exceeding R20,000 or both such fine and imprisonment for a period not exceeding 10 (ten years).

Jurisdiction

19. A court of a magistrate's as contemplated in section 89(1) of the Magistrates' Court Act, 1944 (Act No. 32 of 1944), may impose any penalty in terms of this Act, despite anything to the contrary contained in any other law.

CHAPTER 7

REGULATIONS

Regulations

20. The Minister may make regulations regarding -
- (a) anything which may or must be prescribed in terms of this Act;
 - (b) any matter pertaining to record keeping;
 - (c) any other matter which must be regulated for the legal movement of animals or animal produce for the achievement of the objects of this Act;

CHAPTER 8

REPEAL OF LAWS AND SAVING

Repeal of laws and saving

21. (1) Subject to subsection (2), the laws mentioned in Schedule 1 are hereby repealed.
- (2) Any proclamation, regulation, notice, approval, authority, licence, permit, none or document issued, made, given or granted and any other action taken under any provision of a law repealed by this Act, must be regarded as having been issued, made, given, granted or taken under the corresponding provision of this Act.

Short title and commencement

22. This Act is called the Movement of Animals and Animal Produce Act, 2012, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE 1**Laws repealed (section 21)**

Number and year of law	Short title	Extent of repeal
Act No 57 of 1959	Stock Theft Act	The whole